

BEFORE THE LAND USE HEARINGS OFFICER
CLACKAMAS COUNTY, OREGON

Regarding an Appeal of a Planning Director
Decision Approving an Application for a Two-
Lot Partition Within the R10 Zone.

Case File No:
Z0197-22-M Appeal

(Nielsen Partition)

A. SUMMARY

1. The Applicant, Appellant, and owner of the subject property is April Nielsen.
2. The subject property is located at 6434 SE Jennings Avenue, Milwaukie, OR 97267, within Clackamas County. The legal description is T2S, R2E, Section 17BC, Tax Lots 01000 and 01001, W.M. The subject parcel is a corner lot with frontage on SE Jennings Avenue, an improved road, and SE Jennings Crest Lane, a dead-end gravel access road.
3. The parcel is an approximately 0.9 acre parcel, zoned Urban Low Density Residential (R-10), with an existing circa 1968 home taking access from SE Jennings Avenue to remain on Parcel 1 (Tax Lot 01001) and Parcel 2 (Tax Lot 01000) taking access from SE Jennings Crest Lane, a 50 foot wide dead-end gravel road that is not maintained by the County nor constructed to code requirements. SE Jennings Crest Lane currently provides access to SE Jennings Avenue for several homes, but the useable road width is shifted to the side of the right-of-way (ROW) and is constricted by overgrowth.
4. The subject property is located within the Metro Urban Growth Boundary (UGB) just south and west of the City of Gladstone. The site is within the Oak Lodge Sanitary, Water and Storm Districts. The site is relatively flat and does not contained wetlands, natural hazards, or other environmentally sensitive areas.
5. This appeal concerns five contested conditions of approval: (1) requiring Street Lights; (2) requiring a dedication of approximately 10 feet of ROW along the entire SE Jennings Avenue site frontage; (3) requiring granting a minimum 8-foot wide public easement for sign, slope, sidewalk, and public utilities adjacent to the ROW along the entire frontage of SE Jennings Avenue and SE Jennings Crest Lane; (4) requiring a 16-foot wide street improvement along the entire site frontage of SE Jennings Crest Lane; and (5) a Fee-in-lieu based on the construction cost of a 5-foot wide sidewalk along the 240 feet of frontage on SE Jennings Crest Lane.
6. On August 18, 2022, Hearings Officer Carl Cox (the “Hearings Officer”) conducted a public hearing to receive testimony and evidence in the matter.
7. Prior to closing the record, the Hearings Officer asked whether any of the parties or members of the audience wanted an opportunity to provide additional evidence, arguments, or testimony. After no one requested such an opportunity, the Hearings Officer asked the Applicant/Appellant whether she wished to waive the period for submitting a final written argument, and she stated she did. The Hearings Officer closed the record at the conclusion of the public hearing.
8. The Hearings Officer approved the Partition, subject to the conditions of approval included in this final order.

B. HEARING, FACTS, AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony and evidence at the August 18, 2022 public hearing about this appeal and related application. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually over the Zoom platform due to the corona virus. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the County's staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
2. At the hearing, County Planner Liz Dance summarized the County's review of the application and related appeal, and presented the County's review of the application in support of its July 11, 2022 Staff Decision, with a PowerPoint presentation, related Exhibits 1-8, and the County's recommendation of approval of the Partition subject to Conditions of Approval. Ms. Dance referred to the submitted application and pointed out that there were no special exceptions requested to be considered with the application.
3. Ms. Dance discussed the Applicant/Appellant's application to partition her 0.90 acre, 39,204 sq. ft. property located in the R10 zone. The Land Use application for the partition was submitted on April 28, 2022, and was deemed complete by the County on May 19, 2022. On July 11, 2022, the County's Planning Director¹ issued a Land Use Decision with a number of Conditions of Approval, including the conditions that are the subject of this appeal. The County received this appeal on July 21, 2022, prior to the close of the 12 day appeal period.
4. Ms. Dance noted that the Appellant is appealing Conditions of Approval 1.B – Street Lights and Transportation Engineering Conditions 4, 5, 7 and 8 outlined in the findings and the County's Zoning and Development Ordinance (ZDO). Ms. Dance explained that condition 1.B addresses the requirement as outlined in ZDO 1006.02 requiring street light standards for all development within the Portland Metro UGB. Ms. Dance pointed out that, as outlined in the County's findings, the approved development is within the Portland Metro UGB requiring street light assessment and annexation into the Clackamas County service District No. 5. Ms. Dance asserts that even though no new streets are being created the condition requires the Street Lighting assessment and annexation.
5. Ms. Dance also pointed to the associated findings for these conditions per ZDO 1006.02, 1007.01(B), 1007.02(E), 1007.02(F), 1007.03(A), 1007.06(A). Ms. Dance pointed out that these standards outline requirements in the ZDO for Street Lighting and ROW dedications and improvements associated with the requested partition. Ms. Dance referred to an analysis of the appealed conditions and findings as well as a proportionality analysis by County Engineering staff, providing a summary of their analysis. First, with respect to Appellant's

¹ See ZDO 1307.03(B), stating that the Planning Director includes "any County staff member authorized by the Planning Director to fulfill the responsibilities assigned to the Planning Director by the [ZDO]." County Planner Lizbeth Dance acted in this capacity in reviewing and approving this application.

statement on the appeal form that conditions 4 and 5 are “already done” staff respond that, if the applicant/Appellant can verify that the ROW and utility easement already exist, then proposed conditions 4 and 5 will be satisfied. Otherwise, staff assert that the ROW dedication and grant of easement are requirements that must be met prior to Plat Recording and remain among the proposed Conditions of Approval.

6. Ms. Dance next pointed to the Appellant’s identification of Conditions 7 and 8 on the appeal form, both related to SE Jennings Crest Lane improvements. Regarding Condition 7, the Appellant stated that it is a “public road since 1969 County should pave.” Ms. Dance reported that SE Jennings Crest Lane is a public road that is not maintained by the County. Ms. Dance described it as among the types of roads that were dedicated as public ROW but were never constructed to a level that would be accepted by the County for maintenance. Ms. Dance asserts that the County is not able to spend Road Fund dollars on non-maintained roads, unless the Board of County Commissioners authorizes the spending on an emergency basis. Ms. Dance describes SE Jennings Crest Lane as currently improved with a gravel surface that does not meet minimum access standards for public roads within the UGB. Ms. Dance points to ZDO Section 1007.02(F)(1) requirements that road frontage improvements within the UGB include surfacing. Ms. Dance also points to the Roadway Standards Section 225.5 requirement that a 16 foot wide paved roadway is the minimum standard, where Fee-In-Lieu-Of (FILO) will be utilized and full frontage improvements will not be constructed.
7. Regarding Condition 8 relating to sidewalk requirements on SE Jennings Crest Lane, the Appellant stated that it is a “dead end road no sidewalk.” Ms. Dance points out that, although there is no sidewalk for the road, ZDO 1007.04(C) requires sidewalk improvements along the frontage of partition applications. Under ZDO Section 1007.08(A), payment of FILO is an alternative to constructing sidewalk and local roads where there are no sidewalks in the vicinity.
8. Ms. Dance submitted recommended revised Conditions of Approval for the Section II findings in the County’s original decision, Conditions for Roads & Connectivity, Conditions of Approval 7 and 8 contested by the Appellant. The recommended revisions are based an expanded proportionality analysis conducted by Ken Kent with the County’s Development Engineering department. Specifically, the revision for Condition 7 reduces the length of required half-street improvements to the first 179 feet of site frontage of SE Jennings Crest Lane (the entire 159 feet of site frontage for Parcel 1, plus the first 20 feet of site frontage along Parcel 2). The original Condition 7 required the improvement along the entire 159 feet of site frontage of Parcel 1 along SE Jennings Crest Lane and the entire 240 feet of site frontage along Parcel 2, for a total of 399 feet of half-street improvements. The recommended revision for Condition 8 is to require that, prior to Final Plat Approval, the Applicant/Appellant design and construct curb, landscape, sidewalk, and concrete driveway approach improvements along the entire site frontage of Parcel 1 on SE Jennings Crest Lane, or pay a Fee-in-Lieu of constructed improvements based on a construction estimate for the required improvements.
9. Ms. Dance referred to a public comment submitted by an adjacent property owner in support of requiring the road improvements for SE Jennings Crest Lane. The neighbor described the

poor condition of the existing graveled surface and the need for realignment of the drive surface of SE Jennings Crest Lane within its access easement. The County did not receive any other such citizen written comments or input prior to the hearing.

10. Ms. Dance also referred to additional clarification submitted by the Applicant/Appellant of the items that are the subject of this appeal, as well as photos submitted by the Applicant/Appellant.
11. Kenneth Kent, County Development Engineering, testified that he reviewed County Assessor maps for the subject property, and available surveys and plat records, and did not locate any records showing that the ROW and utility easements required by Conditions of Approval 4 and 5 contested by the Appellant are already in place.
12. Mr. Kent discussed the August 9, 2022 Memorandum he prepared in advance of this hearing, reviewing the Conditions of Approval that are the subject of this appeal and recommending certain revisions to the contested conditions. Mr. Kent noted that Condition 4 relates to the requirement to dedicate 10 feet of additional ROW on the SE Jennings Avenue site frontage to provide a 35-foot wide one-half ROW width. Condition 5 relates to the requirement to grant an 8-foot wide public utility easement adjacent to the public ROW on the SE Jennings Avenue and SE Jennings Crest Lane site frontage. Mr. Kent points out that if the Applicant can verify that the ROW dedication and utility easements in fact already exist, then proposed conditions 4 and 5 will be satisfied.
13. Mr. Kent also discussed Conditions 7 and 8 related to SE Jennings Crest Lane improvements contested by the Appellant. Mr. Kent stated that SE Jennings Crest Lane is a public road that is not maintained by the County as it is only a ROW that was never constructed to a level that would be accepted by the County for maintenance. Mr. Kent points out that SE Jennings Crest Lane is currently improved with a gravel surface that does not meet minimum access standards for public roads within the UGB. He points to ZDO Section 1007.02(F)(1) requiring that road frontage improvements within the UGB include surfacing (such as asphalt). Mr. Kent also points out that under County Roadway Standards Section 225.5 a 16 foot wide paved roadway is the minimum standard where FILO will be utilized and full frontage improvements will not be constructed.
14. With respect to the Condition 8 requirements for sidewalk improvements on SE Jennings Crest Lane, Mr. Kent points to ZDO 1007.04(C) requirements for sidewalk improvements along the frontage of partition applications. Mr. Kent further points to ZDO 1007.08(A), providing for payment of FILO as an alternative to constructing sidewalk and local roads where there are no sidewalks in the vicinity.
15. Mr. Kent discussed the initial review of the proposed partition by County engineering staff, and the findings by staff concerning the public improvements required under the ZDO and Roadway Standard to mitigate the additional impacts of the proposed land division. Mr. Kent discussed how staff concluded that the improvements on both the SE Jennings Avenue and SE Jennings Crest Lane frontages for the site would not be proportional to the impacts of the development. Mr. Kent described these requirements, referring to ZDO Section 1007

requirements for standard frontage improvements that would include pavement widening, curb, landscape strip, and sidewalk along the public street frontages of the project site. Mr. Kent pointed to the Conditions of Approval reducing the requirement to pave the existing gravel surface of SE Jennings Crest Lane to a width of 16 feet along the entire site frontage, and pay a FILO for 240 feet of sidewalk related to the frontage of proposed Parcel 2. Mr. Kent described how staff again reviewed and reevaluated the proportionality of required improvements, their costs, and benefits, and recommended revisions to the Conditions of Approval in order to better address possible future development on Parcel 2.

16. The revised analysis Mr. Kent described is detailed in the memorandum submitted by the County in preparation for this hearing. Below are relevant excerpts:

“To analyze rough proportionality, staff looked at typical costs associated with constructing new streets in a residential subdivision, assuming each lot contributing one half of the standard street needed to provide access for vehicles, pedestrians and bikes. The improvements include pavement, curb, landscape strip, sidewalk and storm drainage. There are other costs that may be shared by each lot in a subdivision or partition, such as improvements on the road frontage of the development site, curb ramps, improvements on two frontages for corner lots, and water quality facilities for storm drainage. With this in mind, the costs for this rough proportionality analysis serves as a rough estimate for the range or improvement costs that are proportional to the impacts of a new residential building lot under the Nollan-Dolan court cases.”

“To establish typical costs for a residential development site, 100 feet of frontage (R10 Zoning) was assumed for each lot, with the standard one half street improvements for an urban road. The typical cost of frontage improvements on a local road is approximately \$21,000 per lot, or \$210 per lineal foot of frontage. The cost of frontage improvements on an arterial road is approximately \$30,700 per lot, or \$307 per lineal foot of frontage. For a typical 2-lot partition in the R10 zone, the cost would range from \$21,000 to \$61,400, depending on the length of street frontage and whether the site is located on a local or arterial road, with the higher number involving 200 feet of frontage on an arterial and the lower number involving 100 feet on a local road. Frontage improvements costs that fall within the above range would be found proportional.”

“The project site includes approximately 462 feet of public right-of-way frontage, with 63 feet on SE Jennings Avenue and 399 feet on SE Jennings Crest Lane. For the proposed partition, the costs of standard frontage improvements based on the typical cost per lineal foot of frontage on SE Jennings Avenue and SE Jennings Crest Lane would be approximately \$103,131. The cost is approximately 40.46 to 79.64 percent higher than a typical development. Based on this, full frontage improvements were found to not be proportional to the impacts of the proposed partition.”

“As conditioned in the Planning Director’s decision, the frontage improvements are roughly estimated to cost \$47,049 and fall within the proportional range of improvement costs. It should be noted that frontage improvements as currently conditioned are intended to address impacts of one new development site with a single family residence. Further

development of Parcel 2 would warrant review of additional access and frontage improvements.”

“With review of this appeal and proportionality, Engineering staff have reevaluated the conditions and are recommending revisions to the conditions to better address possible future development on Parcel 2. Proposed Parcel 2 can be further divided in and if that occurs, additional paving and frontage improvements and/or FILO payment would be addressed. In addition to land divisions, under middle housing standards, certain housing types such as a duplex, triplex, quadplex or cottage cluster are possible and would also be subject to frontage improvements. The proposed revisions to the conditions require paving SE Jennings Crest Lane from SE Jennings Avenue for 179 feet to include the first 20 feet of frontage of Parcel 2. In addition, a FILO payment for the cost of curb, landscape strip with street trees and sidewalk would be required for the frontage of Parcel 1 on SE Jennings Crest Lane. With these revised conditions, a rough cost estimate of the combined costs of paving SE Jennings Crest Lane and FILO is \$35,000, which falls within the proportional range.”

17. The Appellant April Nielsen provided testimony and argument in support of her appeal, asserting that her application to partition her property should be approved without the specific conditions she is contesting. Ms. Nielsen contends that Condition 1.B that may require her to pay for a street light is unfair and unwarranted. Ms. Nielsen contends it is unfair to annex only her property into the lighting utility district and make her pay for the required streetlight, when none of the surrounding property owners are being annexed into the district or being required to pay for the streetlight. Further, Ms. Nielsen points to the street light requirement cited by the County as related to new streets and subdivisions. Ms. Nielsen contends that her partition will not result in any new streets or subdivisions, that SE Jennings Crest Lane has been a County road since 1969 and therefore is not a “new street” and her property is not a “subdivision.”
18. Ms. Nielsen asserts that the conditions requiring dedication of the 10 foot ROW along the entire SE Jennings Avenue site frontage (disputed Condition 4) and requiring granting a minimum 8-foot wide public easement for sign, slope, sidewalk, and public utilities adjacent to the ROW along the entire frontage of SE Jennings Avenue and SE Jennings Crest Lane are unnecessary, contending that these dedications and easements already exist. Ms. Nielsen reports that the dedication of ROW along SE Jennings Avenue was done when lot 1002 and 1003 were partitioned in 1973. She further states that the ROW in front of 6434 Jennings Avenue is still clear from any obstructions. Ms. Nielsen points to a photo of the frontage area for this property that shows a fence constructed several feet back from the improved roadway, asserting that the fence was built behind the dedicated ROW. The photograph shows a front yard fence built close to the home on the lot, appearing to be well over 10 feet (and perhaps 18-20 feet) back from the existing improved roadway.
19. Ms. Nielsen does not dispute that SE Jennings Crest Lane is a narrow gravel dead-end road that is not maintained by the County, as described by Ms. Dance. Rather, Ms. Nielsen asserts that SE Jennings Crest Lane was dedicated as a 50 foot wide public road in 1969 and already includes the required dedication from her own property. Ms. Nielsen points to photos she

submitted that show the road is a narrow, graveled access road that runs close to her neighbor's cyclone fence. Ms. Nielsen points to the unimproved and overgrown area along her own property, and a power pole visible in a photo that appears approximately 15-20 feet back from the gravel roadway and partially obscured by densely overgrown brush. Ms. Nielsen reports that since the roadway dedication was made in 1969 the County has never done anything for it, "not even mowing the brush that has been there for more than 35 years." Ms. Nielsen contends that: "The County should improve the road not a single homeowner trying to put a house on a tax lot that was created back in 1973." Ms. Nielsen proposes that, at most, she should be required to clear the brush from the ROW along her property and widen the gravel road.

20. With respect to the sidewalk requirement, Ms. Nielsen describes SE Jennings Crest Lane as 400 feet long. Ms. Nielsen asserts that, after the brush is cleared and that part of the road improved to the standard it is now (gravel) there will never be a sidewalk needed. Ms. Nielsen asserts that sight distance will be unobstructed along SE Jennings Crest Lane providing safe pedestrian and bike access. Further, Ms. Nielsen contends that, with the addition of 1 more home, there will then be only 4 homes along SE Jennings Crest Lane, with only homeowners, public utilities, deliveries, and guests using the road. With respect to the FILO for the sidewalks, Ms. Nielsen contends that any money she is required to spend for improvements should go to improving the roadway access her own property utilizes and not go to the County's general fund for sidewalk improvements.
21. Roger Kofler is a neighbor of the Applicant/Appellant, residing on property at 17177 SE Jennings Crest Lane. Mr. Kofler submitted a written statement prior to the hearing that does not oppose the application in this matter, but supports the Conditions of Approval required by the County related to roadway improvements to SE Jennings Crest Lane that are the subject of this appeal. Mr. Kofler states that he is not concerned about a streetlight, but is concerned about the condition of SE Jennings Crest Lane and improving the safety of this access. Mr. Kofler describes the SE Jennings Crest Lane ROW as a footpath that became a fire access road, before being used as an access road for the homes along SE Jennings Crest Lane. Mr. Kofler reports that with the addition of the new home on SE Jennings Crest Lane proposed by the Applicant/Appellant there will be a total of six residences using this gravel road. Mr. Kofler explains that two of these residences are addressed on SE Jennings Avenue but use SE Jennings Crest Lane to access their parking areas. Mr. Kofler describes the existing gravel road as a mud hole in wet weather and a dust bowl in dry weather, with poor sight distances resulting in unsafe conditions. Mr. Kofler states that the driveable surface of the road is shifted to the west alongside his fence and needs to be shifted to the middle of the ROW to allow for parking on both sides of the road.
22. Annette Hall is also a neighbor of the Applicant/Appellant, residing on property at 6320 SE Jennings Avenue. Ms. Hall supports the Conditions of Approval required by the County related to roadway improvements to SE Jennings Crest Lane that are the subject of this appeal. Ms. Hall stated that the cyclone fence she had installed along her property adjacent to SE Jennings Crest Lane is on her own property, but the roadway is shifted from the center of the ROW and is nearly up to her fence. Ms. Hall asserts that SE Jennings Crest Lane has

significant traffic and needs improvement as it has a very narrow entrance onto SE Jennings Avenue that needs widening and has poor sight distances.

C. DISCUSSION

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters. This appeal was processed as Type II procedure pursuant to Clackamas County Zoning and Development Ordinance (ZDO) Section 1307. These procedures provide for de novo review of the application whereby all issues of law and fact are heard anew, and no issue of law or fact decided by the lower-level review authority is binding on the parties in the hearing. The record of the initial proceedings shall, however, be made a part of the record of the appeal. New parties may participate, and any party may present new evidence and legal argument by written or oral testimony.

This appeal concerns a Planning Director decision approving the Applicant/Appellant's proposed Partition subject to a number of Conditions of Approval including, among other things, requirements for a street light, dedication of approximately 10 feet of ROW width along the entire SE Jennings Avenue site frontage, granting a minimum 8-foot wide easement for sign, slope, sidewalk, and public utilities adjacent to the ROW along the entire frontage of SE Jennings Avenue and SE Jennings Crest, a 16-foot wide half-street improvement along the entire site frontage of SE Jennings Crest, and a Fee-in-Lieu based on the construction cost of a 5-foot wide sidewalk along the 240 feet of frontage of Parcel 2 on SE Jennings Crest. The Planning Director (or designee) is the County's decision maker for procedure Type II applications, including this Partition application. The County Hearings Officer is the designated appeal review authority for these procedure Type II decisions.²

Under the 5th Amendment of the U.S. Constitution, requiring a property owner to dedicate portions of her private property or pay money for public improvements in exchange for development approval is a "taking" requiring just compensation, unless there is an "essential nexus" between the condition and the development proposal's impacts on the local government's public infrastructure. Nollan v. California Coastal Com., 483 U.S. 825, 846-37 (1987); Dolan v. City of Tigard, 512 US 374 (1994); Clark v. City of Albany, 137 Or App 293 (1995); Rogers Mach., Inc. v. Washington County, 181 Or App 369 (2002). Local governments and municipalities often impose conditions, fees, and various charges on developers as a condition of zoning changes, building and development permits, or other governmental approvals necessary for new (and generally more intensified) development to occur. Thus, conditions tied to issuing development permits must be roughly proportional to the burden on the property owner and be reasonably related to the subject matter of the permit. Agencies granting permits may require property owners to pay money and may deny the permit request if the property owner refuses the condition.

In reviewing land use restrictions, such as the zoning and development regulations at issue here, no "set formula" determines whether an unconstitutional taking has occurred. Lucas v. South

² See ZDO Table 1307-1. Also See ZDO 1307.03(B), stating that the Planning Director includes "any County staff member authorized by the Planning Director to fulfill the responsibilities assigned to the Planning Director by the [ZDO]."

Carolina Coastal Council, 505 US 1003, 1015, 112 S Ct 2886, 120 L Ed 2d 798 (1992). Instead, a decision-maker must engage in an essentially ad hoc, factual inquiry that considers whether the land use regulation "substantially advance[s] legitimate state interests" and "does not den[y] an owner economically viable use of his land." *Agin v. Tiburon*, 447 US 255, 260, 100 S Ct 2138, 65 L Ed 2d 106 (1980); see also *Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 US 687, 704, 119 S Ct 1624, 143 L Ed 2d 882 (1999) (land use regulations are tested under the Takings Clause to determine whether they are reasonably related to legitimate public interests). Thus, when the government regulates property without physically occupying it, the Takings Clause is much less protective of the interests of the property owner and much more deferential to the public interests served.

In *Clark*, a city required a developer, as part of a site approval process for construction of a fast-food restaurant, to restrict his use of the developed property in certain ways and to make improvements to the site. The 9th Circuit Court of Appeals concluded that "not all conditions of approval come within the ambit of the Dolan test" holding that conditions requiring traffic-free areas on the site and site modifications such as meeting storm drainage requirements were use regulations, not exactions subject to Dolan. *Clark*, 137 Or App at 300, 301-02. In *Rogers Mach.*, a property owner/developer challenged the imposition of a Traffic Impact Fee (TIF) assessment required at the time of issuance of a building permit, providing funding for improvements to city streets and arterials. The 9th Circuit Court of Appeals upheld the assessment of fees of this nature, holding: "There is no principled basis on which to distinguish generally applicable development fees that fund the infrastructure expansion needed to support new development from other legislatively imposed and generally applicable taxes, assessments, and user fees. We therefore join the several courts in other jurisdictions that have held that Dolan does not apply to such legislatively imposed and calculated development fees."

More recently, the U.S. Supreme Court reaffirmed these principles in *Koontz v. St. Johns River Water Management District*, 570 U.S. 595, 613-14 (2013). In *Koontz*, the Court rejected arguments that applying Nollan/Dolan scrutiny to money exactions will leave no principled means to distinguish impermissible land-use exactions from property taxes, stating that its decision "will not work a revolution in land use law or unduly limit the discretion of local authorities to implement sensible land use regulations."

This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section(s) 202, 315, 1001, 1002, 1003, 1006, 1007, 1012, 1017, 1105, and 1307; and the Comprehensive Plan. Clackamas County Land Use and Zoning Staff reviewed these Sections of the ZDO in conjunction with this proposal and makes the following findings and conclusions, reviewed, adopted and/or modified by the Hearings Officer in light of the above principles informing this review:

I. PROJECT OVERVIEW:

Per County records, tax lot 22E17BC 01001 and 01000 combined, from one lot of record as defined in ZDO Section 202, which the applicant proposes to divide, for one additional buildable lot. Tax lot 22E17BC 01000. One lot is proposed at 10,018 sq. ft., and shall contain the existing home site (Parcel 1), and one lot is proposed at 29,185 sq. ft. for a new home site (Parcel 2). The site is relatively flat and staff has not identified wetlands, natural hazards, or other environmentally

sensitive areas. The State Wetland Inventory (SWI) also confirms that there are no hydric soils or wet soils in the vicinity. The site is located near the City of Gladstone, but outside their jurisdiction. Staff did not receive comments from the City.

II. ZDO SECTION 1000: DEVELOPMENT STANDARDS:

1001 GENERAL PROVISIONS

1001.01 PURPOSE

Section 1000, *Development Standards*, is adopted to implement policies in the Comprehensive Plan that are applicable to new development and thereby ensure that land is:

- A. Used efficiently to support broad-based economic development and the adequacy of housing and public services;
- B. Developed in an environmentally sustainable and aesthetically appealing manner;
- C. Supplied with public facilities sufficient to meet demand; and
- D. Served by a safe, convenient, multimodal, and interconnected transportation system.

The Hearings Officer concurs with the Planning Director's determination that the proposed partition is new development and, therefore, subject to the Purpose of this Section.

1001.02 APPLICABILITY

- A. Except where a different applicability standard is set forth elsewhere in Section 1000, Section 1000 applies to partitions; subdivisions; replats; institutional, commercial, and industrial developments; manufactured dwelling parks; condominiums; multifamily dwellings; two- and three-family dwellings; and attached single-family dwellings where three or more dwelling units are attached to one another. Notwithstanding this provision, level one through three mobile vending units are not subject to Section 1000, except as set forth in Section 837, *Mobile Vending Units*. In addition, Section 1009, *Landscaping*, does not apply to partitions, subdivisions, and replats.

The Hearings Officer concurs with the Planning Director's determination that the proposed development is a Partition and therefore Section 1000 applies to this proposal. There is no distinction in the applicability of these standards between an application for a single partition and an application for a larger subdivision. The applicable standards pertaining to Section 1000 are outlined under Conditions of Approval, while the applicable criteria are addressed in findings below.

1002 PROTECTION OF NATURAL FEATURES

1002.01 HILLSIDES

- A. Development on slopes greater than or equal to 20 percent and less than or equal to 35 percent—except that for residential development in the RR, MRR, and HR Districts, the upper limit is 25 percent—shall require review of a Type I application pursuant to Section 1307, *Procedures*, and shall be subject to the following standards:
- B. Development on slopes greater than 35 percent—and residential development on slopes greater than 25 percent in the RR, MRR, and HR Districts—shall require review of a Type II application pursuant to Section 1307 and shall be subject to the following standards:

The Hearings Officer concurs with the Planning Director's determination that the site does not contain steep slopes. These criteria are not applicable.

1002.02 DEVELOPMENT RESTRICTION FOLLOWING EXCESSIVE TREE REMOVAL

- A. Definitions: For a complete list of definitions see ZDO Subsec. 1002.02
- B. Excessive Tree Removal: Excessive tree removal is the removal of more than three trees—excluding those identified as exempt in Subsection 1002.02(E)—on a lot of record in a calendar year.
- C. Development Restriction: If excessive tree removal occurred in the five years immediately preceding the date that a complete application is filed for design review, a subdivision, a partition, or a conditional use, the application will be denied.

*Based on aerial photography from 2012 to present, there is no evidence that any trees were removed from the site. Imagery from the County GIS 2012 Aerial photos is the same or substantially similar to 2020 aerial photos. There has been no report of tree removal within the last year. **The Hearings Officer concurs with the Planning Director's determination that this standard is met.***

1002.03 TREES AND WOODED AREAS

Existing wooded areas, significant clumps or groves of trees and vegetation, consisting of conifers, oaks and large deciduous trees, shall be incorporated in the development plan wherever feasible. The preservation of these natural features shall be balanced with the needs of the development, but shall not preclude development of the subject property, or require a reduction in the number of lots or dwelling units that would otherwise be permitted. Site planning and design techniques which address incorporation of trees and wooded areas in the development plan include, but are not limited to, the following:

The site does appear to contain some mature trees. It may be required to remove some trees to accommodate the new development. Regardless of whether trees are present or not, this subsection contains subjective criteria. Pursuant to Oregon Revised Statute (ORS) 193.307, the county may only apply clear and objective standards for development associated with housing. Therefore, this standard is not applicable. Nevertheless, staff advises the applicant

*to maintain as many mature trees as possible, and not to remove trees that are not encroaching into the new driveway or house footprint. This is not an explicit condition, but rather, an advisory note and condition. **The Hearings Officer concurs with this analysis by the Planning Director and concurs with this advisory note and advisory condition.***

1002.04 RIVER AND STREAM CORRIDORS

The following standards shall apply to land that is outside both the Metropolitan Service District Boundary (MSDB) and the Portland Metropolitan Urban Growth Boundary (UGB).

*The subject property is located inside of both the MSDB and Portland Metropolitan UGB. **The Hearings Officer concurs with the Planning Director's determination that these standards do not apply.***

1002.05 DEER AND ELK WINTER RANGE

Development in deer and elk winter range below 3,000 feet in elevation, as identified on Comprehensive Plan Map III-2, *Scenic and Distinctive Resource Areas*, shall be designed to minimize adverse wildlife impacts.

The Hearings Officer concurs with the Planning Director's determination that the proposed development is outside of these areas and, therefore, this standard is not applicable.

1002.06 MOUNT HOOD RESOURCE PROTECTION OPEN SPACE

Development in areas shown as Resource Protection Open Space on Comprehensive Plan Maps X-MH-1 through X-MH-3, *Resource Protection Open Space*, proposed in or within 100 feet of natural wetlands shall be designed to: [*meet certain criteria*]

The Hearings Officer concurs with the Planning Director's determination that the proposed development is not located on this map and, therefore, this standard is not applicable.

1002.07 SIGNIFICANT NATURAL AREAS

Five significant natural areas are identified as unique/natural features on Comprehensive Plan Map III-2, *Scenic & Distinctive Resource Areas*. These areas are more specifically referred to as Williams Lake Bog, the land at Marmot, Multorpor Bog, Delphridge, and Wilhoit Springs. In these significant natural areas, the following shall be restricted, to the extent necessary to protect the unique or fragile character or features that are the basis for the unique/natural feature designation: building and road construction, filling and excavation, paving, and tree removal. Restrictions may be modified pursuant to Subsection 1011.03.

The Hearings Officer concurs with the Planning Director's determination that the proposed development is not located on this map and, therefore, this standard is not applicable.

1003 HAZARDS TO SAFETY

1003.01 PURPOSE

- A. To protect lives and property from natural or man-induced geologic or hydrologic hazards and disasters.
- B. To protect property from damage due to soil hazards.
- C. To protect lives and property from forest and brush fires.
- D. To avoid financial loss resulting from development in hazard areas.

1003.02 STANDARDS FOR MASS MOVEMENT HAZARD AREAS

An engineering geologic study shall be required for development proposed on slopes of twenty (20) percent or greater. The study shall include items under subsection 1003.02B 2.

The Hearings Officer concurs with the Planning Director's determination that there are no geo hazards on site per DOGAMI maps and, therefore, this standard is not applicable.

ZDO SEC 1003.03 THROUGH 1003.05

The Hearings Officer concurs with the Planning Director's determination that these standards are not applicable and need not be addressed.

1006 UTILITIES, STREET LIGHTS, WATER SUPPLY, SEWAGE DISPOSAL, SURFACE WATER MANAGEMENT, AND EROSION CONTROL

1006.01 GENERAL STANDARDS

The proposed Partition will be served by a variety of utility and infrastructure services that are subject to this Subsection, the applicable standards of which are outlined above under Conditions of Approval, and findings for which are addressed below.

1006.02 STREET LIGHTS

Street lights are required for all development inside the Portland Metropolitan Urban Growth Boundary (UGB). The following standards apply:

*The site is located inside the Portland Metropolitan UGB. Therefore, the standards of this Subsection apply, and are outlined under Conditions of Approval, such that street lighting shall be installed pursuant to the requirements of Clackamas County Service District No. 5 and the electric company serving the development. **The Hearings Officer concurs with this analysis by the Planning Director and concludes that Conditions of Approval must address these street lighting requirements.***

I understand the Applicant/Appellant's arguments concerning street light requirements. However, the ordinance at issue here is a generally applicable zoning ordinance requiring a number of public improvements as a condition for any development on property located inside the Portland UGB.

1006.03 WATER SUPPLY

- A. All development which has a need for, or will be provided with, public or community water service shall install water service facilities and grant necessary easements pursuant to the requirements of the district or company serving the development.

The water supply for the proposed Partition will be provided by the Oak Lodge Water Services District (OLWSD). OLWSD provided comments May 26, 2022, with the following comments:

- 1) *The proposed development is located within the service area of Oak Lodge Water Services for sanitary sewer, water and surfacewater and shall be subject to the Oak Lodge Rules and Regulations and Design and Construction Standards for applicable utilities.*

*Staff concurs with these findings/comments, as well as recommended conditions of approval by OLWSD. Those conditions of approval will be listed above in the Conditions of Approval Section. **The Hearings Officer concurs with staff that this criteria can be met.***

- B. Approval of a development that requires public or community water service shall be granted only if the applicant provides a preliminary statement of feasibility from the water system service provider.

- 1) The statement shall verify that water service, including fire flows, is available in levels appropriate for the development and that adequate water system capacity is available in source, supply, treatment, transmission, storage and distribution. Alternatively, the statement shall verify that such levels and capacity can be made available through improvements completed by the developer or the system owner.

*The applicant has submitted a preliminary statement of feasibility from CRWD, indicating that water service is available. **The Hearings Officer concurs with this finding.***

- 2) If the statement indicates that water service is adequate with the exception of fire flows, the applicant shall provide a statement from the fire district serving the subject property that states that an alternate method of fire protection, such as an on-site water source or a sprinkler system, is acceptable.

*The statement does not include a provision for adequate fire flows. **The Hearings Officer concurs with staff that this standard can be met by condition of approval.***

- 3) The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve water system capacity for the development.

*The statement is dated May 26, 2022, and water system capacity is not needed to be reserved for the proposed Partition. **The Hearings Officer concurs with this finding.***

- C. Prior to final approval of any partition or subdivision, the applicant shall provide evidence that any wells in the tract subject to temporary or permanent abandonment under Oregon Revised Statutes (ORS) 537.665 have been properly abandoned.

The Hearings Officer concurs with staff that this standard can be met by condition of approval.

- D. The following standards apply inside the Portland Metropolitan Urban Growth Boundary, Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline, and Zigzag Village:
1. Land divisions or other development requiring water service shall not be approved, except as provided in Subsection 1006.03(D)(4), unless they can be served by a public water system in compliance with drinking water standards as determined by the Oregon Health Authority.
 2. New development requiring water service within the boundaries of a water service system, created pursuant to ORS Chapters 264, 450, or 451, shall receive service from this system.
 3. New public water systems shall not be created unless formed pursuant to ORS Chapters 264, 450, or 451.
 4. A lot of record not located within the approved boundaries of a public water system may be served by an alternative water source.

The Hearings Officer concurs with staff that these standards can be met by conditions of approval.

- E. The following standards apply outside the Portland Metropolitan Urban Growth Boundary (UGB), Government Camp, Rhododendron, Wemme/Welches, Wildwood/Timberline, and Zigzag Village:

The Hearings Officer concurs with staff that the subject property is located within the UGB and, therefore, this criteria does not apply.

1006.04 SANITARY SEWER SERVICE

- A. All development that has a need for sanitary sewers shall install the facilities pursuant to the requirements of the district or company serving the development.

Sanitary sewer for the proposed Partition will be provided by Oak Lodge Sanitary, Water and Storm Districts (OLWSD). OLWSD has provided comments and conditions dated May 26, 2022 which are as follows:

1. *The proposed development is located within the service area of Oak Lodge Water Services for sanitary sewer, water and surfacewater and shall be subject to the Oak Lodge Rules and Regulations and Design and Construction Standards for applicable utilities.*

2. *These conditions only apply to a single family development proposal on a single lot. If that proposal/scope changes, these conditions will be null and void and the proposal will be reviewed against the District's rules, regulations and design and construction standards in effect on the date of complete application to OLWSD; not Land Use application.*
 3. *Sanitary sewer and/or water SDCs will be assessed at the time of building permit.*
- B. Approval of a development that requires sanitary sewer service shall be granted only if the applicant provides a preliminary statement of feasibility from the sanitary sewage treatment service provider and the collection system service provider.
1. The statement shall verify that sanitary sewer capacity in the wastewater treatment system and the sanitary sewage collection system is available to serve the development or can be made available through improvements completed by the developer or the system owner.
The applicant has submitted a preliminary statement of feasibility from OLWSD, indicating that sanitary sewer capacity is available as outlined above.
 2. The service provider may require preliminary sanitary sewer system plans and calculations for the proposed development prior to signing a preliminary statement of feasibility.
The applicant has provided enough detail for OLWSD to approve a Preliminary Statement of Feasibility.
 3. The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve sanitary sewer system capacity for the development.
The statement is dated 5/26/2022, and sanitary sewer system capacity is not needed to be reserved for the proposed Partition.

1006.05 SUBSURFACE SEWAGE DISPOSAL

All development proposing subsurface sewage disposal shall receive approval for the system from the County prior to submittal of a land use application for development. Said systems shall be installed pursuant to Oregon Revised Statutes 454.605 through 454.745 and Chapters 171, 523, and 828; Oregon Administrative Rules Chapter 340, Divisions 71 and 73; and the policies of the County.

Subsurface sewage disposal systems are not required since Sanitary Sewer is available. The Hearings Officer concurs with staff that this criteria is not applicable.

1006.06 SURFACE WATER MANAGEMENT AND EROSION CONTROL

The following surface water management and erosion control standards apply:

- A. Positive drainage and adequate conveyance of surface water shall be provided from roofs, footings, foundations, and other impervious or near-impervious surfaces to an appropriate discharge point.

An applicable Condition of Approval is outlined under Conditions of Approval.

- B. The requirements of the surface water management regulatory authority apply. If the County is the surface water management regulatory authority, the surface water management requirements of the *Clackamas County Roadway Standards* apply.

Oak Lodge Sanitary, Water and Storm Districts (OLWSD) is the surface water management authority for the area including the subject site. OLWSD has provided comments and conditions dated May 26, 2022 as follows:

- i. The proposed development is located within the service area of Oak Lodge Water Services for sanitary sewer, water and surfacewater and shall be subject to the Oak Lodge Rules and Regulations and Design and Construction Standards for applicable utilities.*
- ii. These conditions only apply to a single family development proposal on a single lot. If that proposal/scope changes, these conditions will be null and void and the proposal will be reviewed against the District's rules, regulations and design and construction standards in effect on the date of complete application to OLWSD; not Land Use application.*
- iii. Property owner shall apply for an erosion and sediment control permit from OLWSD.*

*Staff concurs with these findings, and has listed OLWSD' recommended conditions of approval related to stormwater in the Condition of Approval section. **The Hearings Officer concurs with staff that these standards can be met through these OLWSD Recommended Conditions of Approval.***

- 1) The surface water management regulatory authority may require a preliminary surface water management plan and report, natural resource assessment, and buffer analysis prior to signing the preliminary statement of feasibility.

*Enough data was presented to OLWSD to approve the Preliminary Statement of Feasibility. **The Hearings Officer concurs with staff that this criteria is not applicable.***

- 2) The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve surface water treatment and conveyance system capacity for the development.

The statement is dated May 26, 2022, and surface water treatment and conveyance system capacity are not needed to be reserved for the proposed Partition.

- C. Development shall be planned, designed, constructed, and maintained to:

- 1) Protect and preserve existing natural drainage channels to the maximum practicable extent;

No natural drainage channels will be disturbed.

- 2) Protect development from flood hazards;

There are no flood hazards on site.

- 3) Provide a system by which water within the development will be controlled without causing damage or harm to the natural environment, or to property or persons within the drainage basin;

Conditions outlined by OLWSD will be controlled and cleaned.

- 4) Ensure that waters drained from the development are substantially free of pollutants, including sedimentary materials, through such construction and drainage techniques as sedimentation ponds, reseeding, and phasing of grading;

Conditions outlined by OLWSD will require the design and implementation of a system that complies with the above standards at time of residential development.

- 5) Ensure that waters are drained from the development in such a manner that will not cause erosion to any greater extent than would occur in the absence of development.

Conditions outlined by OLWSD will require the design and implementation of erosion control methods that comply with the above standards at time of residential development.

- D. Where culverts cannot provide sufficient capacity without significant environmental degradation, the County may require the watercourse to be bridged or spanned.

A bridge or span is not needed nor proposed.

- E. If a development, or any part thereof, is traversed by any watercourse, channel, stream, creek, gulch, or other natural drainage channel, adequate easements for surface water management purposes shall be provided to the surface water management regulatory authority.

A watercourse has not been identified on this property.

- F. Channel obstructions are not allowed, except as approved for the creation of detention, retention, or hydropower facilities approved under this Ordinance. Fences with swing gates may be utilized.

As discussed, no channel or watercourses have been identified.

- G. The natural drainage pattern shall not be substantially altered at the periphery of the subject property. Greatly accelerated release of stored water is prohibited. Flow shall

not be diverted to lands that have not previously encountered overland flow from the same upland source unless adjacent downstream owners agree.

Conditions outlined by OLWSD will require the design and implementation of a system that complies with the above standards at time of residential development.

H. A surface water management and erosion control plan is required for significant residential, commercial, industrial, and institutional development. The plan shall include:

1. The methods to be used to minimize the amount of runoff siltation and pollution created from the development both during and after construction; and
2. Other elements required by the surface water management authority.

The Hearings Officer concurs with staff that a surface water management and erosion control plan is required for the proposed Partition. An applicable Condition of Approval is outlined under Conditions of Approval.

1006.07 PRELIMINARY STATEMENTS OF FEASIBILITY EXCEPTIONS

A land use application shall be deemed complete and may be approved without the submittal of one or more of the preliminary statements of feasibility required by Subsections 1006.03, 1006.04, and 1006.06 if the applicant demonstrates that a good faith attempt has been made to obtain the statement(s). At a minimum, demonstration of a good faith attempt shall require the applicant to submit the following:

All preliminary statements of feasibility have been obtained. An exception is not necessary.

1007 ROADS AND CONNECTIVITY

1007.01 GENERAL PROVISIONS

- A. **The location, alignment, design, grade, width, and capacity of all roads shall be planned, coordinated, and controlled by the Department of Transportation and Development and shall conform to Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards. Where conflicts occur between Section 1007, the Comprehensive Plan, and the Clackamas County Roadway Standards, the Comprehensive Plan shall control.**

The applicable standards of this Section for the proposed development are based on conformance with the above-listed regulatory documents:

The applicant has proposed a two-parcel partition of an approximately 0.90 acre property on the southeast side of SE Jennings Avenue and southwest side of SE Jennings Crest. There is an existing single family residence on proposed Parcel 1. Proposed Parcel 2 will be a new development site.

Oak Lodge Water Sanitary District (OLWSD) is the surface water management authority for the area including the subject site. The proposal must be in conformance with the rules and regulations of Oak Lodge Water Services and Chapter 4 of the Clackamas County Roadway Standards. Positive drainage must be provided to an existing storm drainage system capable of accommodating the estimated contribution.

- B. Right-of-way dedications and improvements shall be required of all new developments, including partitions, subdivisions, multifamily dwellings, two- and three-family dwellings, condominiums, single-family dwellings, and commercial, industrial, and institutional uses, as deemed necessary by the Department of Transportation and Development and consistent with Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.**

SE Jennings Avenue is designated as a minor arterial roadway. Clackamas County has adopted roadway standards that pertain to the structural section, construction characteristics, minimum required right-of-way widths and access standards for arterial roads. As specified under ZDO Section 1007, partition applications are required to improve the street frontage to current County standards.

The Hearings Officer concurs with this analysis by the Planning Director and concludes that Conditions of Approval must address these requirements for ROW dedications and improvements. I understand the Applicant/Appellant's arguments that these concerning street light requirements. However, the ordinance at issue here is a generally applicable zoning ordinance requiring a number of public improvements as a condition for any development on property located inside the Portland UGB.

The ordinance at issue here requires a number of these improvements, not just street lighting, that serve the local community by improving the local government's public infrastructure. With respect to street lights, they are required within the Portland UGB as part of the local government's plan for improvements to public infrastructure within this area of more intensified development. In other words, the County is requiring the streetlight because it is the adopted plan for improving public infrastructure within the UGB as development within the UGB occurs. Specifically, the Applicant/Appellant seeks to partition her property thereby creating an additional parcel on which she will be able to build at least one additional home. Associated with such use are many impacts to the local public infrastructure, including among other things vehicle traffic and pedestrian traffic and the corresponding safety issues street lighting helps alleviate.

The Applicant/Appellant is correct that the County is requiring her property's annexation into the district and for her to pay for the street light, while none of her neighbors are being annexed into the district or being required to pay for it. However, the partitioning and development of the Applicant/Appellant's property has an impact to these neighbors and the local public infrastructure that is being offset and mitigated by improvements to the infrastructure, including this requirement for a

street light. I conclude that there is an “essential nexus” between the condition and the development proposal’s impacts on the local government’s public infrastructure that is roughly proportional to the burden on the property owner and is reasonably related to the subject matter of the permit.

C. New developments shall have access points connecting with existing private, public, county, or state roads.

- 1) Intersection spacing and access control shall be based on Subsection 3.08.110(E) of the Metro Code (*Regional Transportation Functional Plan*); Chapters 5 and 10 of the Comprehensive Plan; and the Clackamas County Roadway *Standards*.

*No shared access is proposed for this site. This access is already existing, and can meet the above criteria. **The Hearings Officer concurs with staff that as Conditioned this standard can be met.***

- 2) *For development on any portion of a contiguous site identified on Comprehensive Plan Map 5-6, Potentially Buildable Residential Sites > 5 Acres in UGB, the applicant shall provide a conceptual map of new streets for the entire site. The map shall identify street connections to adjacent areas to promote a logical, direct, and connected system of streets; demonstrate opportunities to extend and connect new streets to existing streets, and provide direct public right-of-way routes. Closed-end street designs shall be limited to circumstances in which barriers prevent full street extensions. Closed-end streets shall not exceed 200 feet in length and shall serve no more than 25 dwelling units. Subsequent development on the site shall conform to the conceptual street map, unless a new map is approved pursuant to Subsection 1007.01(C)(2).*

*The subject property is not greater than 5 acres. **The Hearings Officer concurs with staff that this criteria is not applicable.***

- 3) Access control shall be implemented pursuant to Chapter 5 of the Comprehensive Plan and the Clackamas County Roadway Standards considering best spacing for pedestrian access, traffic safety, and similar factors as deemed appropriate by the Department of Transportation and Development.

*Access control shall be implemented pursuant to the above standards, as outlined above under the Conditions of Approval. **The Hearings Officer concurs with staff that this standard can be met.***

- 4) Approaches to public and county roads shall be designed to accommodate safe and efficient flow of traffic and turn control where necessary to minimize hazards for other vehicles, pedestrians, and bicyclists.

*The approach shall be designed pursuant to the standards mentioned herein, and as outlined above under the Conditions of Approval. **The Hearings Officer concurs with staff that this standard can be met.***

- 5) Joint access and circulation drives utilizing reciprocal easements shall be utilized as deemed necessary by the Department of Transportation and Development. In the NC District, joint street access for adjacent commercial developments shall be required.

According to the County Assessor's map, SE Jennings Avenue appears to be located within a 50-foot wide right-of-way, with a 25-foot one half width along the applicant's frontage. The standard right-of-way width for an urban arterial is 70 feet. Per ZDO Section 1007, the applicant will be required to dedicate approximately 10 feet of additional public right-of-way along the entire SE Jennings Avenue frontage to provide a one half right-of-way width of 35 feet.

The Hearings Officer concurs with staff that this standard must be met. The Applicant/Appellant asserts that this dedication has already been made. The related Condition of Approval proposed by staff requires that the ROW centerline and width shall be verified by a professional survey to the satisfaction of County DTC Engineering and Survey Departments. The survey is required. If the dedication has already been made, then the survey required will verify it.

- 6) Inside the Portland Metropolitan Urban Growth Boundary:
- a. The development shall have no more than the minimum number of driveways required by the Department of Transportation and Development on all arterial and collector streets.
 - b. For properties having more than one street frontage, driveways shall be located on the street with the lowest functional classification, if feasible.
 - c. Driveways shall be no wider than the minimum width allowed by the Clackamas County Roadway Standards.
 - d. Driveways shall be located so as to maximize the number of allowed on-street parking spaces, the number of street trees, and optimum street tree spacing.

*The project site has approximately 63 feet of frontage on SE Jennings Avenue. The minimum improvements required on the SE Jennings Avenue frontage consistent with Roadway Standards Drawing C140, include, but are not necessarily limited to, a 20-foot wide, one-half street width, curb, storm system improvements, a 5-foot wide unobstructed sidewalk with an ADA curb ramp at one end, and a 5-foot wide landscape strip with street trees. **The Hearings Officer concurs with staff that as Conditioned this standard can be met.***

- D. Street alignments, intersections, and centerline deflection angles shall be designed according to the standards set forth in Chapters 5 and 10 of the Comprehensive Plan and the Clackamas County Roadway Standards.

The applicant is not proposing any new streets or intersections. The Hearings Officer concurs with staff that this standard is not required.

- E. All roads shall be designed and constructed to adequately and safely accommodate vehicles, pedestrians, and bicycles according to Chapters 5 and 10 of the Comprehensive Plan and the Clackamas County Roadway Standards. Development-related roadway adequacy and safety impacts to roadways shall be evaluated pursuant to the Clackamas County Roadway Standards and also to Oregon Department of Transportation standards for state highways.

The Hearings Officer concurs with staff that these standards can be met.

- F. Roadways shall be designed to accommodate transit services where transit service is existing or planned and to provide for the separation of motor vehicles, bicycle, and pedestrian traffic, and other modes as appropriate.

Transit services are not present at this site and is neither existing nor planned. The Hearings Officer concurs with staff that this standard is not required.

- G. The needs of all modes of transportation shall be balanced to provide for safe and efficient flow of traffic. Where practical, pedestrian crossing lengths shall be minimized and the road system shall be designed to provide frequent pedestrian connections.

No pedestrian crossing are existing or proposed along this proposal. The Hearings Officer concurs with staff that this standard is not required.

1007.02 PUBLIC AND PRIVATE ROADWAYS

- A. All roadways shall be developed according to the classifications, guidelines, tables, figures, and maps in Chapters 5 and 10 of the Comprehensive Plan and the provisions of the Clackamas County Roadway Standards.

- 1) Development along streets with specific design standards specified in Chapter 10 of the Comprehensive Plan shall improve those streets as shown in Chapter 10.

The project site has approximately 63 feet of frontage on SE Jennings Avenue. The minimum improvements required on the SE Jennings Avenue frontage consistent with Roadway Standards Drawing C140, include, but are not necessarily limited to, a 20-foot wide, one-half street width, curb, storm system improvements, a 5-foot wide unobstructed sidewalk with an ADA curb ramp at one end, and a 5-foot wide landscape strip with street trees. The Hearings Officer concurs with these staff findings.

- 2) Development along streets identified as Regional or Community Boulevards on Comprehensive Plan Map 5-5, *Metro Regional Street Design Classifications*, shall provide pedestrian, bicycle, transit, and visual amenities in the public right-of-way. Such amenities may include, but are not limited to, the following: street trees, landscaping, kiosks, outdoor lighting, outdoor seating, bike racks, bus shelters, other transit amenities, pedestrian spaces and access to the boulevard, landscaped medians, noise and pollution control measures, other environmentally sensitive uses,

aesthetically designed lights, bridges, signs, and turn bays as appropriate rather than continuous turn lanes.

*The proposed development is not located along a street identified as a Regional or Community Boulevard on Comprehensive Plan Map 5-5. **The Hearings Officer concurs with staff that this standard is not required.***

- 3) Development adjacent to scenic roads identified on Comprehensive Plan Map 5-1, *Scenic Roads*, shall conform to the following design standards, as deemed appropriate by the Department of Transportation and Development:

*The proposed development is not located along a Scenic Road. **The Hearings Officer concurs with staff that this standard is not required.***

- 4) In centers, corridors, and station communities, as identified on Comprehensive Plan Map IV-8, *Urban Growth Concept*, roads shall be designed to minimize the length of street crossings and to maximize connectivity for pedestrians as deemed appropriate by the Department of Transportation and Development. Other streetscape design elements in these areas include:

*The proposed development is not located in a center, corridor or station community. **The Hearings Officer concurs with staff that this standard is not required.***

- 5) In centers, corridors, and station communities, as identified on Comprehensive Plan Map IV-8, on local streets within the Portland Metropolitan Urban Growth Boundary (UGB), and in unincorporated communities, when conflicts exist between the dimensional requirements for vehicles and those for pedestrians, pedestrians shall be afforded additional consideration in order to increase safety and walkability. In industrial areas, the needs of vehicles shall take precedence.

*The site is not located in a center, corridor or station community. **The Hearings Officer concurs with staff that this standard is not required.***

- 6) In the NC, OA, VCS, and VO Districts, landscaping, crosswalks, additional lighting, signalization, or similar improvements may be required to create safe and inviting places for pedestrians to cross streets.

*The proposed development is not located in an NC, OA, VCS or VO District. **The Hearings Officer concurs with staff that this standard is not required.***

- B. The layout of new public and county roads shall provide for the continuation of roads within and between the development and adjoining developments when deemed necessary and feasible by the Department of Transportation and Development.

For partition applications on a local roadway, construction of all or a portion of the half-street frontage improvements may be addressed through payment of FILO under ZDO Subsection 1007.08(A), when deemed appropriate by the Engineering Division. The standard local roadway improvement along the frontage of a partition includes a 16-foot wide, one half paved street width, 6-inch curb, a five-foot wide unobstructed

sidewalk, a five-foot wide landscape strip with street trees, and storm system facilities. The Hearings Officer concurs with these findings and this analysis.

- C. New county and public roads terminating in cul-de-sacs or other dead-end turnarounds are prohibited except where natural features (such as topography, streams, or wetlands), parks, dedicated open space, or existing development preclude road connections to adjacent properties, existing street stubs, or existing roads.

The applicant is not proposing any new private, public or County roads. The Hearings Officer concurs with staff that this standard is not required.

- D. Developments shall comply with the intersection sight distance and roadside clear zone standards of the Clackamas County Roadway Standards. In addition:

- 1) No planting, signing, or fencing shall be permitted which restricts motorists' vision; and
- 2) Curbside parking may be restricted along streets with visibility problems for motorists, pedestrians, and/or bicyclists as deemed appropriate by the Department of Transportation and Development.

Intersection sight distance has not been specifically addressed in this area, however the engineering division will require all new entrances onto public roads, if the applicant proposes such an entrance, to comply with sight distance requirements. This standard can be met.

- E. New developments, subdivisions, and partitions may be required to dedicate land for right-of-way purposes and/or make road frontage improvements to existing rights-of-way as deemed necessary by the Department of Transportation and Development and consistent with Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.

The project site includes approximately 399 feet of frontage on SE Jennings Crest. SE Jennings Crest is currently improved with a gravel surface that does not meet minimum access standards for public roads within the Urban Growth Boundary. Under Roadway Standards 225.5, a 16 foot wide paved roadway is the minimum standard, where FILO will be utilized and construction of full frontage improvements will not be constructed. The Hearings Officer concurs with staff that as conditioned this criteria can be met.

- F. Road frontage improvements within the UGB and in Mt. Hood urban villages shall include:

- 1) Surfacing, curbing, or concrete gutters as specified in Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards;
- 2) Pedestrian, bikeway, accessway, and trail facilities as specified in Subsection 1007.04;

- 3) Transit amenities as specified in Subsection 1007.05; and
- 4) Street trees as specified in Subsection 1007.06.

Because there are no sidewalks on SE Jennings Crest, the applicant has the option to pay a fee-in-lieu-of construction. Although, not entirely based on transportation impacts, required public roadway improvements for partitions need to be proportional to the scale of the proposed development and the impacts on the transportation system. There are no existing sidewalks constructed on SE Jennings Crest and payment FILO is an option. Because of the limited scale of the proposed partition, and the need to pave 399 feet of SE Jennings Crest to the minimum standard, the FILO will be based on the cost of a 5-foot wide sidewalk along the 240 feet of frontage on Parcel 2. The Hearings Officer concurs in these findings and agrees with this analysis.

1007.03 PRIVATE ROADS AND ACCESS DRIVES

- A. Private roads and access drives shall be developed according to classifications and guidelines listed in Section 1007, Comprehensive Plan Figures 5-1 through 5-3, *Typical Roadway Cross Sections*, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards, except:
 - 1) When easements or “flag-pole” strips are used to provide vehicular access to lots or parcels, the minimum width shall be 20 feet, unless a narrower width is approved by the Department of Transportation and Development and the applicable fire district’s Fire Marshal;
 - 2) Where the number of lots served exceeds three, a wider width may be required as deemed appropriate or necessary by the Department of Transportation and Development consistent with other provisions of Section 1007, the Comprehensive Plan, and the Clackamas County Roadway Standards;
 - 3) Access easements or “flag-pole” strips may be used for utility purposes in addition to vehicular access;
 - 4) The standards listed above may be deviated from when deemed appropriate by the Department of Transportation and Development to accommodate one-half streets or private common access drives and roads within developed urban areas providing access to not more than seven lots; and
 - 5) The intersection of private roads or access drives with a public or county road and intersections of two private roads or access drives shall comply with the sight distance and clear zone standards pursuant to Subsection 1007.02(D).

Because there are no sidewalks on SE Jennings Crest, the applicant has the option to pay a fee-in-lieu-of construction. Although, not entirely based on transportation impacts, required public roadway improvements for partitions need to be proportional to the scale

of the proposed development and the impacts on the transportation system. There are no existing sidewalks constructed on SE Jennings Crest and payment FILO is an option. Because of the limited scale of the proposed partition, and the need to pave 399 feet of SE Jennings Crest to the minimum standard, the FILO will be based on the cost of a 5-foot wide sidewalk along the 240 feet of frontage on Parcel 2. **The Hearings Officer concurs in these findings and agrees with this analysis.**

Clackamas County Roadway Standards require that access roads in partitions are designed to provide adequate access for emergency services. Roads that exceed 150 feet in length, where the farthest corner of a home will be more than 300 feet from the street, typically requires a turnaround area that can accommodate a fire truck. Although SE Jennings Crest does not have a turnaround at the end, access will be addressed at the time of a building permit. Written verification from the Fire District will be required based on the current proposal, indicating adequate emergency service access is provided. **The Hearings Officer concurs with this requirement.**

1007.04 PEDESTRIAN AND BICYCLE FACILITIES

- A. General Standards: Pedestrian and bicycle facilities shall be developed according to the classifications and guidelines listed in Section 1007, Comprehensive Plan Figures 5-1 through 5-3, *Typical Roadway Cross Sections*, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.

*Additional pedestrian facilities may be required prior to final plat approval required with this development. **The Hearings Officer concurs with staff that this standard can be met.***

1007.05 TRANSIT AMENITIES

All residential, commercial, institutional, and industrial developments on existing and planned transit routes shall be reviewed by Tri-Met or other appropriate transit provider to ensure appropriate design and integration of transit amenities into the development. The design shall not be limited to streets, but shall ensure that pedestrian/bikeway facilities and other transit-supportive features such as shelters, bus pull-outs, park-and-ride spaces, and signing will be provided. The designs shall comply with Tri-Met standards and specifications.

*The proposed development is not located along a transit route. **The Hearings Officer concurs with staff that this standard is not required.***

1007.06 STREET TREES

- A. Within the Portland Metropolitan Urban Growth Boundary (UGB), street trees are required on all road frontage—except frontage on private roads or access drives—for subdivisions, partitions, multifamily dwellings, three-family dwellings, attached single-family dwellings where three or more dwelling units are attached to one another, and commercial, industrial, or institutional developments, except that for structural additions

to existing commercial, industrial, or institutional buildings, street trees are required only if the addition exceeds 10 percent of the assessed value of the existing structure, or 999 square feet. Street trees shall comply with the following standards:

*The project site has approximately 63 feet of frontage on SE Jennings Avenue. The minimum improvements required on the SE Jennings Avenue frontage consistent with Roadway Standards Drawing C140, include, but are not necessarily limited to, a 20-foot wide, one-half street width, curb, storm system improvements, a 5-foot wide unobstructed sidewalk with an ADA curb ramp at one end, and a 5-foot wide landscape strip with street trees. **The Hearings Officer concurs with staff that as conditioned this standard can be met.***

1007.07 TRANSPORTATION FACILITIES CONCURRENCY

- A. Subsection 1007.07 shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses.
- B. Approval of a development shall be granted only if the capacity of transportation facilities is adequate or will be made adequate in a timely manner. The following shall be exempt from this requirement:

*Per ZDO subsection 1007.07, adequate roadway capacity is required to handle the additional traffic generated by the development. At the present time SE Jennings Avenue and SE Jennings Crest operate during the mid-day one hour peak and first and second hours of the PM peaks, at acceptable volume to capacity (v/c) ratios, and therefore, meets the ZDO 1007.07 criteria. **The Hearings Officer concurs in these findings and agrees with this analysis.***

1007.08 FEE IN LIEU OF CONSTRUCTION

For all or part of the road frontage improvements required by Section 1007; located within the Portland Metropolitan Urban Growth Boundary (UGB) and required for a partition, a two- or three-family dwelling (where no more than one such dwelling is proposed), an attached or detached single-family dwelling, or a manufactured dwelling; the developer may elect to pay a fee in lieu of construction as follows.

- A. The fee in lieu of construction may be paid if the road frontage improvements are located on a local, connector, or collector road that is not identified on Comprehensive Plan Map 5-3, *Essential Pedestrian Network*, and payment of the fee is deemed by the Department of Transportation and Development to be an acceptable alternative to construction of the required improvements; or

The Fee in lieu of construction is available for this development as outlined herein. The fee will be assessed prior to plat recording. **The Hearings Officer concurs with staff that this standard can be met.**

1012 LOT SIZE AND DENSITY

1012.01 APPLICABILITY

Section 1012 applies to the following land use permit applications in any zoning district that has a minimum lot size standard, district land area standard, or minimum density standard, except AG/F, EFU, and TBR:

- A. Subdivisions;
- B. Partitions;

The applicant is proposing a Partition that is not located in the AG/F, EFU or TBR zoning district. The Hearings Officer concurs with staff that, therefore, Section 1012 applies to this application.

1012.02 MINIMUM LOT SIZE EXCEPTIONS

In subdivisions, partitions, and replats, lots and parcels shall comply with the minimum lot size standards, if any, of the applicable zoning district, except as established by Subsections 1012.02(A) through (H).

No Exceptions are available for this proposal. The Hearings Officer concurs with staff that this criteria is not applicable.

1012.03 MAXIMUM LOT SIZE

In subdivisions, partitions, and replats in the VR-5/7, VR-4/5, and VTH Districts, lots and parcels shall comply with the maximum lot size standards of the applicable zoning district, except as established by Subsections 1012.03(A) through (C) for the VR-5/7 and VR-4/5 Districts.

The subject property is not located in any of these zoning districts, it is located in the R-10 zoning district. The Hearings Officer concurs with staff that this standard does not apply.

1012.04 GENERAL DENSITY PROVISIONS

- A. Density is a measurement of the number of dwelling units in relationship to a specified amount of land. In the context of a partition, subdivision, replat, or manufactured home park, density typically relates to potential dwelling units in the form of lots, parcels, or manufactured home park spaces. Density often is expressed as dwelling units per acre; however, this Ordinance implements density standards in many zoning districts by assigning a district land area (DLA), which is the starting point for determining the maximum number of dwelling units allowed on a particular site. In general, the DLA is the minimum lot area required per dwelling unit; however, the DLA is subject to adjustment for density bonuses, restricted area development limitations, and limits on the extent of new road area that must be subtracted.

In the case of the subject property, the DLA for the R-10 zoning district is 10,000 square feet.

- B. The DLA and the minimum lot size standard applicable to a particular zoning district are seldom the same. Often this is because the maximum density derived from the DLA standard is calculated over the entire site prior to any platting of new lots or parcels. The minimum lot size standard then typically permits flexibility in determining where on the site the allowed dwelling units will be developed. For example, some lots may be relatively large while others are smaller, or open space tracts may be platted while all lot sizes are relatively small. Regardless of allowed flexible sizing of individual lots or parcels, however, the maximum density allowed for the entire site remains the same.

In the case of the R-10 zoning district, the minimum lot size standard is 8,000 square feet.

- C. If the subject property is currently developed with one or more dwelling units that will be retained, such dwelling units shall be included in demonstrating compliance with the maximum and minimum density standards of Section 1012. Notwithstanding this provision, accessory dwelling units and temporary dwellings approved pursuant to Section 1204, *Temporary Permits*, are not included in demonstrating compliance with the density standards, provided that these dwellings will continue to comply with the requirements for accessory dwelling units or temporary dwellings, respectively.

*The applicant's site plan shows an existing single family residence contained in Parcel 1, which has been included in demonstrating density compliance. **The Hearings Officer concurs with staff that this standard is met.***

- D. If a subdivision, partition, or replat is proposed on property currently developed with two-family, three-family, or multifamily dwellings (or with a current design review approval for such development), maximum and minimum density shall be calculated separately for each proposed lot or parcel, except in a planned unit development or a development of two- or three- family dwellings approved pursuant to Subsection 1012.07, in which case maximum and minimum density shall be calculated for the entire property proposed for development prior to the creation of new lots or parcels.

*There are no two-family, three-family, or multifamily dwellings (or a current design review approval for such development). **The Hearings Officer concurs with staff that this standard is not applicable.***

- E. In a zoning district that does not allow new detached single-family dwellings, a lot created for a nonconforming detached single-family dwelling shall not be included in the gross site area used to calculate minimum and maximum density for the remaining lot(s).

*The R-10 zoning district allows detached single family dwellings. **The Hearings Officer concurs with staff that this standard is not applicable.***

1012.05 MAXIMUM DENSITY

If this Ordinance establishes a district land area (DLA) for the applicable zoning district, the proposed development shall be limited to a maximum density. Except as necessary to implement a minimum lot size exception granted pursuant to Subsection 1012.02 or as established by Subsections 1012.06 and 1012.07, maximum density shall be calculated as follows.

The DLA for the R-10 zoning district is 10,000 square feet. As such, the proposed Partition is limited to the maximum density calculated below.

- A. Calculate the land area of the subject property. The result is gross site area (GSA).

GSA equals 39,204 sq. ft.

- B. Subtract the following from GSA to determine net site area (NSA). In the event of an overlap between categories requiring a subtraction, the area of overlap shall be classified in the most restrictive category.

- 1) The land area of new county, public, or private roads (NR) in the HR, MRR, Urban Low Density Residential, VR-4/5, VR-5/7, and VTH Districts, except:

The subject property is located in the R-10 District, and NR = 0 sq. ft.

- a. If NR exceeds 15 percent of the GSA, only 15 percent of the GSA shall be subtracted.

NR is not greater than 15 percent of GSA.

- b. No subtraction shall be made for strips of land adjacent to existing road rights-of-way when such strips are required to be dedicated as a condition of approval;

Right-of-way dedications are not required with this partition.

- 2) In a zoning district other than HR and MRR, any land area of the GSA in the following highly restricted areas (HRA), except that no subtraction shall be made for HRA that will remain undeveloped, in which case density accruing to these areas may be transferred to unrestricted areas:

The subject property is not located in the HR or MRR zoning district.

- a. Slopes greater than 50 percent;

Developed areas of slopes greater than 50 percent equals 0.

- b. Mass movement hazards regulated by Section 1003, *Hazards to Safety*;

Developed areas of mass movement hazards regulated by Section 1003 equals 0.

- c. The floodway of the Floodplain Management District regulated by Section 703, *Floodplain Management District*;

Developed areas of floodway regulated by Section 703 equals 0.

- d. The Willamette River and the required buffer area regulated by Section 705, *Willamette River Greenway*;

Developed areas of the Willamette River and required buffers regulated by Section 705 equals 0.

- e. Habitat Conservation Areas regulated by Section 706, *Habitat Conservation Area District (HCAD)*; and

Developed areas of Habitat Conservation Areas regulated by Section 706 equals 0.

- f. Water Quality Resource Areas regulated by Section 709, *Water Quality Resource Area District*; and

Developed areas of Water Quality Resource Areas regulated by Section 706 equals 0.

The total developed area of HRA equals 0.

- 3) In a zoning district other than HR and MRR, fifty percent of the land area of any portions of the GSA in the following moderately restricted areas (MRA), except that no subtraction shall be made for MRA that will remain undeveloped, in which case density accruing to these areas may be transferred to unrestricted areas.:

The subject property is not located in the HR or MRR zoning district.

- a. Slopes equal to or greater than 20 percent and less than or equal to 50 percent; and

Fifty percent of slopes equal to or greater than 20 percent and less than or equal to 50 percent = 0.

- b. Areas outside the floodway but within the Floodplain Management District regulated by Section 703.

Fifty percent of developed areas outside the floodway but within the Floodplain Management District equals 0.

The total developed area of MRA equals 0.

- C. Divide the NSA by the DLA of the applicable zoning district. The result is base density (BD). The calculations that result in a determination of BD are represented by the following formula:

$$\{GSA - [NR + HRA + (MRA \times 0.5)]\} / DLA = BD^*$$

$\{39,204 - [0 + 0 + (0 \times 0.5)]\} / 10,000 = 3.92$. In turn, Base Density equals 3.

1012.08 MINIMUM DENSITY

A minimum density standard applies in the Urban Low Density Residential, HDR, MR-1, MR-2, PMD, RCHDR, SHD, and VA Districts. Minimum density shall be calculated as follows:

A calculation of the minimum density is 2.

1017 SOLAR ACCESS FOR LAND DIVISIONS AND REPLATS

1017.01 APPLICABILITY

Section 1017 applies to subdivisions, partitions, and Type II replats in the VR-4/5, VR-5/7, R-5, R-7, R-8.5, R-10, R-15, R-20, and R-30 Districts.

The applicant is proposing a Partition in the R-10 District. The Hearings Officer concurs with staff that, therefore, Section 1017 applies.

1017.02 DEFINITIONS

The following definitions apply to Section 1017:

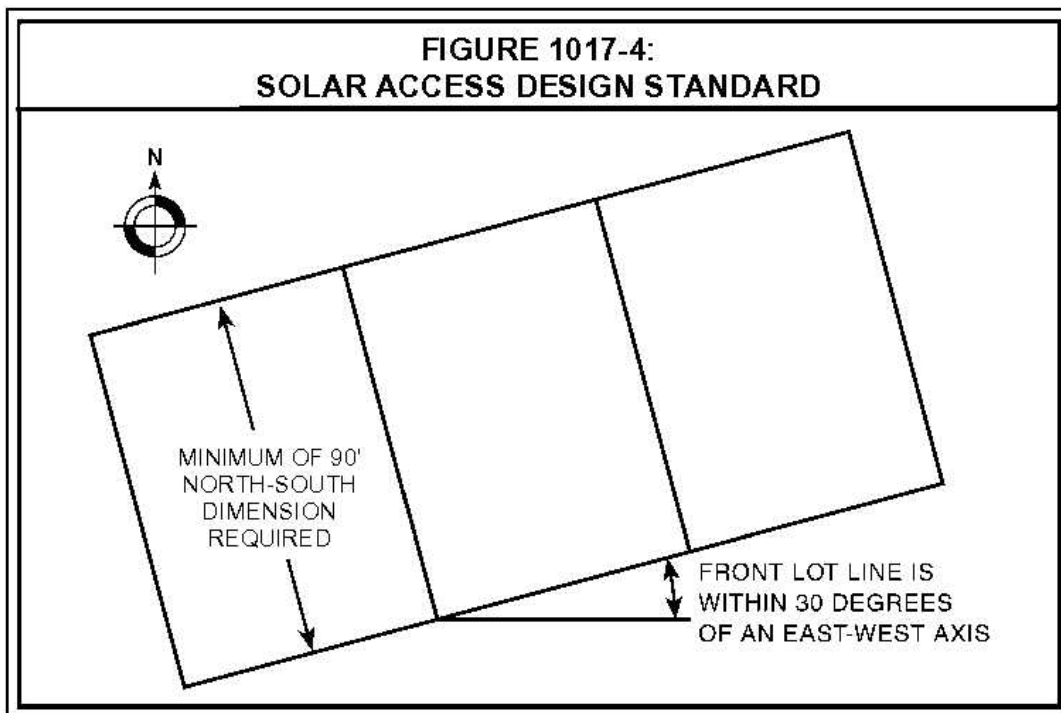
The criteria, requirements, standards and text of Section 1017 are subject to the definitions outlined in this Subsection.

1017.03 DESIGN STANDARD

Except as established by Subsection 1017.04, a minimum of 70 percent of the lots or parcels in the subdivision, partition, or Type II replat shall:

- A. Have a minimum north-south dimension of 90 feet. Undevelopable area, other than a required setback area, may be included in the north-south dimension if it abuts either of the lot lines used in calculating north-south dimension; and
- B. Have a front lot line that is oriented within 30 degrees of a true east-west axis. (See Figure 1017-4.)

A true east-west axis would have a bearing and direction of, for instance N 90° W. Given the 45 degree angle of the existing lot configuration it is not possible to meet this standard. thus an Exception must be granted. The Hearings Officer concurs with this analysis by staff.



1017.04 EXCEPTIONS TO THE DESIGN STANDARD

*ZDO Sec. 1704(A)(4) provides the following exception criteria: “An existing public easement or right-of-way prevents given streets, lots, or parcels from being oriented for solar access.” Staff finds that the 45 degree orientation of the lots and public street design precludes this development from meeting the solar standards. Thus, an exception to this standard is warranted. **The Hearings Officer concurs with the conclusion by staff that as exception to this standard is warranted and, therefore, finds this criteria is met.***

III. ZDO SECTION 1100: DEVELOPMENT REVIEW PROCESS/PLA

1105 SUBDIVISIONS, PARTITIONS, REPLATS, CONDOMINIUM PLATS & VACATIONS OF RECORDED PLATS

1105.01 PURPOSE AND APPLICABILITY

Section 1105 is adopted to provide standards, criteria, and procedures under which a subdivision, partition, replat, condominium plat, or vacation of a recorded plat may be approved, except:

*The proposed development is a Partition. Therefore, Section 1105 and its associated Purpose applies to this proposal. **The Hearings Officer concurs with this conclusion by staff. The Hearings Officer disagrees with the assertion made by Applicant/Appellant that this application for a partition is not subject to these requirements or is not a “subdivision.”***

1105.02 SUBMITTAL REQUIREMENTS FOR SUBDIVISIONS, PARTITIONS, AND REPLATS

*The applicant has provided the requisite submittal materials to proceed with review of the proposed Partition. **The Hearings Officer concurs with this conclusion by staff.***

1105.03 APPROVAL CRITERIA FOR SUBDIVISIONS, PARTITIONS, AND REPLATS

A major subdivision requires review as a Type III application pursuant to Section 1307, *Procedures*. **A minor subdivision or a partition requires review as a Type II application pursuant to Section 1307. A replat that proposes to increase the number of lots or parcels in the recorded subdivision or partition plat requires review as a Type II application pursuant to Section 1307. Otherwise, a replat requires review as a Type I application pursuant to Section 1307. A subdivision, partition, or replat shall be subject to the following standards and criteria:**

The applicant has proposed a Partition that is being reviewed as a Type II application pursuant to Section 1307.

- A. The proposed subdivision, partition, or replat shall comply with the applicable provisions of the section of this Ordinance that regulates the subject zoning district and Section 1000, *Development Standards*.

*The applicable standards pertaining to Section 1000 are outlined under Conditions of Approval, while the applicable criteria are addressed in findings above. Furthermore, dimensional standards are regulated under ZDO Sec. 315. **The Hearings Officer concurs with staff that these are the applicable standards and criteria for this application.***

- B. In an Urban Low Density Residential District, the applicant may designate the proposed subdivision, partition, or replat as a zero-lot-line development. In a zero-lot-line development, there are no minimum rear and side setbacks for single-family dwellings, manufactured homes, and structures accessory to single-family dwellings and manufactured homes, except from rear and side lot lines on the perimeter of the final plat.

*The subject property is located in the Urban Low Density Residential District and has not designated the proposed Partition as a zero-lot-line development. **The Hearings Officer concurs with staff that this criteria is not applicable.***

- C. As part of preliminary plat approval for a subdivision, approval of a phasing plan and schedule to allow final plat review to occur in two or more phases, each of which includes a portion of the subject property, may be granted in consideration of such factors as the size of the proposed subdivision, complexity of development issues, required improvements, and other factors deemed relevant. If a phasing plan and schedule is approved, such approval shall be subject to the following:

*This is a proposed Partition, not a subdivision. **The Hearings Officer concurs with staff that this criteria is not applicable.***

1105.04 ADDITIONAL APPROVAL CRITERIA FOR REPLATS

The number of lots or parcels in the replatted area shall not exceed the number previously approved for the area, unless:

- A. The gross site area of the affected plat is increased, or is of sufficient size to allow additional lots or parcels, or the zoning on the subject property has been changed since the existing plat was approved, permitting a greater density on all, or part, of the original platted area;
- B. The allowed density is recalculated pursuant to Section 1012, Lot Size and Density, on the basis of the gross site area of the original platted area and any additions to the gross site area, and, if applicable, on the basis of the new zoning;
- C. All existing lots or parcels within the plat that are not affected by the replat, including additional lots or parcels that may be created by subdivision or partition under existing zoning, are subtracted from the maximum density of the original plat area in determining allowed density for the replatted portion; and
- D. All open space requirements of the original plat, if applicable, are satisfied by the replatted subdivision or partition, or portion thereof.

This lot has never been platted. The Hearings Officer concurs with staff that replat criteria is not applicable.

1105.06 APPROVAL PERIOD AND TIME EXTENSION

The applicable standards of this Subsection are outlined under Conditions of Approval.

1105.07 FINAL PLAT REVIEW

If a preliminary plat is approved, finalizing the approval requires the completion of a final plat, except that a final plat is not required for a partition or partition replat in which all parcels are larger than 80 acres. The applicant shall comply with the following:

Through this land use permit decision, a preliminary plat is being approved, the standards for finalization of which through a final plat are outlined under Conditions of Approval. The Hearings Officer concurs with staff findings that the parcels involved with the proposed Partition are not all larger than 80 acres.

D. CONDITIONS OF APPROVAL:

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis. The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. It shall be the responsibility of the

property owner(s) to comply with the limitation of any approval resulting from the decision described herein.

The Clackamas County Land Use and Zoning staff recommended approval of this permit application for a partition subject to the following conditions, largely consistent with the original June 11, 2022 decision approving this application, except certain recommended revised conditions 7 and 8 having to do with road and sidewalk improvements, reviewed, adopted and/or modified by the Hearings Officer:

SECTION I. GENERALLY APPLICABLE CONDITIONS OF APPROVAL:

1. Conditions for Utilities, Street Lights, Water Supply, Sewage Disposal, Surface Water Management & Erosion Control

A) General Standards:

- i. The location, design, installation, and maintenance of all utility lines and facilities shall be carried consistent with the rules and regulations of the surface water management regulatory authority, which is Oak Lodge.
- ii. Utilities for electricity, natural gas, and communications services shall be installed pursuant to the requirements of the utility district(s) or company(ies) serving the proposed Partition. Except where otherwise prohibited by the utility district or company, all such facilities shall be installed underground.
- iii. Coordinated installation of necessary water, sanitary sewer, and surface water management and conveyance facilities is required.
- iv. Easements shall be provided along lot lines as deemed necessary by the County, special districts, and utility companies. Easements for special purpose uses shall be of a width deemed appropriate by the responsible agency.

B) Street Lights:

- i. Street lighting shall be installed pursuant to the requirements of Clackamas County Service District No. 5 and the electric company serving the development. A street light shall be installed where a new road intersects a County road right-of-way and, in the case of subdivisions, at every intersection within the subdivision.
- ii. Areas outside Clackamas County Service District No. 5 shall annex to the district through petition to the district.
- iii. The applicant shall contact Wendi Coryell of the County Engineering Division (503-742-4657) to make arrangements for any required street lighting. The applicant shall also arrange for the formation of an assessment area to pay for operation and maintenance of existing and/or new lighting.

The Applicant/Appellant is appealing this Condition of Approval. The ordinance at issue here requires a number of these improvements, not just street lighting, that serve the local community by improving the local government's public infrastructure. With respect to street lights, they are required within the Portland UGB as part of the local government's plan for improvements to public infrastructure within this area of

more intensified development. In other words, the County is requiring the streetlight because it is the adopted plan for improving public infrastructure within the UGB as development within the UGB occurs. Specifically, the Applicant/Appellant seeks to partition her property thereby creating an additional parcel on which she will be able to build at least one additional home. Associated with such use are many impacts to the local public infrastructure, including among other things vehicle traffic and pedestrian traffic and the corresponding safety issues street lighting helps alleviate.

The Applicant/Appellant is correct that the County is requiring her property's annexation into the district and for her to pay for the street light, while none of her neighbors are being annexed into the district or being required to pay for it. However, the partitioning and development of the Applicant/Appellant's property has an impact to these neighbors and the local public infrastructure that is being offset and mitigated by improvements to the infrastructure, including this requirement for a street light.

I conclude that there is an "essential nexus" between the condition and the development proposal's impacts on the local government's public infrastructure that is roughly proportional to the burden on the property owner and is reasonably related to the subject matter of the permit.

C) Water Supply-(Oak Lodge Water Services District):

As a condition of land use application approval, OLWSD requests the property owner be required to comply with the following requirements and to procure the necessary approvals and/or permits from the OLWSD in accordance with the OLWSD code, regulations or policies.

- i. The proposed development is located within the service area of Oak Lodge Water Services for sanitary sewer, water and surfacewater and shall be subject to the Oak Lodge Rules and Regulations and Design and Construction Standards for applicable utilities.
- ii. These conditions only apply to a single family development proposal on a single lot. If that proposal/scope changes, these conditions will be null and void and the proposal will be reviewed against the District's rules, regulations and design and construction standards in effect on the date of complete application to OLWSD; not Land Use application.
- iii. Property owner shall apply for an erosion and sediment control permit from OLWSD.
- iv. Property owner shall apply for a Utility Permit from OLWSD for the corresponding County building permit.
- v. Sanitary sewer and/or water SDCs will be assessed at the time of building permit.
- vi. All fees and charges shall be paid before the Utility Permit is issued. If applicable, all costs associated with the design, construction and testing of any applicable utility shall be proved by and at the sole expense of the owner and performed prior to plat approval.

- vii. Based on preliminary designs submitted for the Statement of Feasibility, the property owner may defer any utility connection proposal until building permit application unless the scope of this land use application changes.

2. Conditions for Roads & Connectivity:

If the applicant is advised to or chooses to modify the proposal in terms of access location and/or design following the preparation of these comments this office requests an opportunity to review and comment on such changes prior to a decision being made.

The following items are project requirements from the Department of Transportation and Development's Development Engineering Division. These conditions of approval are not intended to include every engineering requirement necessary for the successful completion of this project, but are provided to illustrate to the applicant specific details regarding the required improvements that may prove helpful in determining the cost and scope of the project. These conditions are based upon the requirements detailed in the County's Comprehensive Plan (Comp Plan), the County's Zoning and Development Ordinance (ZDO) and the County's Roadway Standards. Additional requirements beyond those stated in the conditions of approval may be required. The applicant may discuss the requirements of the project with staff at any time.

The requirements specifically required by the Comp Plan and the ZDO cannot be modified by the Development Engineering Division. However, the requirements detailed in these conditions of approval, derived from the Development Standards, are based upon nationally accepted standards and engineering judgment and may be modified pursuant to Section 170 of the Roadway Standards. The applicant is required to provide sufficient justification to staff in the request. Staff shall determine if a modification is warranted.

SECTION II. ADDITIONAL APPLICABLE CONDITIONS OF APPROVAL:

1. **Prior to final plat approval:** a Development Permit is required from the Engineering Division for review and approval of frontage improvements. The Permit shall be obtained prior to commencement of site work and recording of the partition plat. To obtain the permit, the applicant shall submit construction plans prepared and stamped by an Engineer registered in the State of Oregon, or plans acceptable to the Engineering Division, provide a performance guarantee equal to 125% of the estimated cost of the construction, and pay a plan review and inspection fee. The fee will be calculated as a percentage of the construction costs if it exceeds the minimum permit fee. The minimum fee and the percentage will be determined by the current fee structure at the time of the Development Permit application.
2. **Prior to final plat approval:** all required improvements shall be constructed and inspected, or financially guaranteed in the form of a performance bond. Performance bonds shall be in the amount of 125% of the approved engineer's cost estimate of the required improvements, and access has met minimum Substantial Completion requirements, per Roadway Standards Section 190.
3. All required street, street frontage and related improvements shall comply with the standards and requirements of the Clackamas County Zoning and Development Ordinance and the Clackamas County Roadway Standards unless otherwise noted herein.

4. The applicant shall dedicate approximately 10 feet of right-of-way width along the entire SE Jennings Avenue site frontage as necessary to provide a minimum one half right-of-way width of 35 feet. The right-of-way centerline and width shall be verified by a professional survey to the satisfaction of DTD Engineering and Survey Departments.

The Applicant/Appellant is appealing this Condition of Approval. The ordinance at issue here requires a number of these dedications and public improvements that serve the local community by improving the local government's public infrastructure. The Applicant/Appellant seeks to partition her property, thereby creating an additional parcel on which she will be able to build at least one additional home. Associated with such use are many impacts to the local public infrastructure that require the County to ensure that ROW width for future expansion of SE Jennings Avenue is preserved and not developed.

I conclude that there is an "essential nexus" between the condition and the development proposal's impacts on the local government's public infrastructure that is roughly proportional to the burden on the property owner and is reasonably related to the subject matter of the permit. The Applicant/Appellant asserts that this dedication has already been made. The related Condition of Approval proposed by staff requires that the ROW centerline and width shall be verified by a professional survey to the satisfaction of County DTC Engineering and Survey Departments. The survey is required. If the dedication has already been made, then the survey required will verify it.

5. The applicant shall grant a minimum 8-foot wide public easement for sign, slope, sidewalk and public utilities adjacent to the right-of-way along the entire frontage of SE Jennings Avenue and SE Jennings Crest.

The Applicant/Appellant is appealing this Condition of Approval and makes essentially the same contention here as with the ROW dedications: that the required easements already exist. Here, the ordinance requires an easement along both public ROW frontages for the property to ensure that room for public improvements that include the sign, slope, sidewalk, and utility easements adjacent to each ROW are in place to allow for future improvement to the local government's public infrastructure that serves this site. The Applicant/Appellant seeks to partition her property thereby creating an additional parcel on which she will be able to build at least one additional home. Associated with such use are many impacts to the local public infrastructure that require the County to ensure that ROW width for future expansion of these public improvements is preserved and these areas not developed.

I conclude that there is an "essential nexus" between the condition and the development proposal's impacts on the local government's public infrastructure that is roughly proportional to the burden on the property owner and is reasonably related to the subject matter of the permit. The Applicant/Appellant asserts that the required easements are already there. A survey is already required. If the easement is already in place, then the survey required will verify it.

6. Prior to Final Plat approval, the driveway approach on SE Jennings Avenue serving the existing home on Parcel 1 shall be paved to a minimum width of 12 feet, per Standard Drawing D500.

7. Prior to Final Plat approval, the applicant shall design and construct the following improvements along the first 179 feet of site frontage of SE Jennings Crest:
 - a. A 16-foot wide street improvement, measured from the right-of-way centerline. The structural section for SE Jennings Crest Lane improvements shall include, 4 inches of asphalt and 9 inches of base road, in accordance with Standard Drawing C100 for a local roadway.
 - b. The half street improvement design shall include cross sections every 25 feet, per Roadway Standards Section 250.7.5.
 - c. Drainage facilities in conformance with the Oak Lodge Water Services requirements and Clackamas County Roadway Standards Chapter four.

The Applicant/Appellant is appealing this Condition of Approval. The original July 11, 2022 decision issued by the County Planning Director required the Applicant/Appellant to construct a 16-foot wide half-street improvement along the entire 399 foot site frontage of SE Jennings Crest Lane. The County proposes a modification to the Condition of Approval, requiring the Applicant/Appellant to construct a 16-foot wide half-street improvement along the first 179 feet of site frontage along SE Jennings Crest Lane. Thus, the entire 159 foot site frontage of Parcel 1 along SE Jennings Crest Lane, and the first 20 feet of site frontage of Parcel 2 along SE Jennings Crest Lane, would have half-street improvements.

The Applicant/Appellant points to SE Jennings Crest Lane as being a County ROW for fifty years, while still being a narrow gravel road that is not maintained, and asserts that the County should improve and pave this County ROW. The Applicant/Appellant proposes to clear the brush along the ROW and to make the full roadway width available for use.

As explained by Ms. Dance and Mr. Kent, however, the SE Jennings Crest Lane ROW is not actually a County road as it was never constructed to Clackamas County Roadway Standards. When development within the County occurs, the County looks to the developer to improve the associated infrastructure to County standards, including building or improving roads to County standards. Thus, clearing the brush and widening the existing gravel road is not an option. The ordinance at issue here is a common and generally applicable zoning ordinance requiring public improvements as a condition for any development on property located within the County. The Applicant/Appellant seeks to partition her property thereby creating an additional parcel on which she will be able to build at least one additional home. Associated with such use are many impacts to the local public infrastructure, including among other things vehicle traffic and pedestrian traffic and the corresponding safety issues that a roadway meeting Clackamas County Roadway Standards helps alleviate.

The Applicant/Appellant is being required to improve the roadway as a condition of developing her property and partitioning it, not because she is a homeowner there. All developers are similarly required to make improvements, constructing the roads and sidewalks and building the infrastructure that serves the properties they develop. The partitioning and development of the Applicant/Appellant's property has an impact to the local public infrastructure and local residents that is being offset and mitigated by improvements to the infrastructure, including this requirement for half-street improvements along the site frontage for SE Jennings Crest Lane. I agree with the modification proposed by the County,

reducing the requirement to the first 179 feet of frontage along SE Jennings Crest Lane. This requires that the entire frontage of Parcel 1 receives half-street improvements, with the improvements reaching only the first 20 feet of Parcel 2. The remainder of the half-street improvements along Parcel 2 will be required with further development of that parcel. By essentially splitting the length of the half-street roadway improvements, requiring only 179 feet with this partition, and the remaining 220 feet of half-street roadway improvements when Parcel 2 is developed, the condition is more reasonably related to the subject matter of the permit and allows for flexibility with the Applicant/Appellant's development of Parcel 2. I found persuasive the memorandum and testimony by Mr. Kent that the cost of the required roadway together with the proposed Fee-In-Lieu related to the County's proposed Condition 8 is about \$35,000, and is well within the range of typical costs for such standard frontage improvements.

I conclude that there is an "essential nexus" between the condition and the development proposal's impacts on the local government's public infrastructure that is roughly proportional to the burden on the property owner and is reasonably related to the subject matter of the permit.

8. Prior to Final Plat approval, the applicant shall either a) design and construct the following improvements along the entire site frontage of Parcel 1 on SE Jennings Crest Lane, or b) pay a Fee-in-Lieu of constructed improvements based on a construction estimate for the required improvements. These improvements shall consist of:
 - a. Standard curb, or curb and gutter if curb line slope is less than one percent, with the curb located 16 feet from the centerline of the right-of-way.
 - b. A 5-foot wide landscape strip including street trees.
 - c. A 5-foot wide unobstructed sidewalk.
 - d. Minimum 12-foot wide concrete driveway approach, per standards Drawing D650.
 - e. The construction estimate for payment of Fee-In-Lieu shall be prepared by an Engineer registered in the State of Oregon, or an estimate deemed acceptable to the Engineering Division. The payment of Fee-In-Lieu shall be made prior to final plat approval.

The Applicant/Appellant is appealing this Condition of Approval. The original July 11, 2022 decision issued by the County Planning Director required the Applicant/Appellant to pay a Fee-in-Lieu based on the construction cost of a 5-foot wide sidewalk along the 240 feet of frontage of Parcel 2 on SE Jennings Crest Lane. The County proposes a modification to the Condition of Approval, requiring the Applicant/Appellant to either construct the 5-foot wide sidewalk with associated curb (or curb and gutter), 5-foot landscape strip including street trees, and minimum 12-foot wide concrete driveway approach, along the entire 159 feet of site frontage of Parcel 1 on SE Jennings Crest Lane. In the alternative, the County points out that the Engineering Division has deemed payment of a Fee-In-Lieu of constructed improvements an alternative. This is appropriate as there are no other sidewalks in the vicinity.

The Applicant/Appellant points to her property's nearly 400 feet of frontage along SE Jennings Crest Lane, a dead-end road that serves only a few homes. The Applicant/Appellant points out that SE Jennings Crest Lane has no sidewalk and connects only to SE Jennings

Avenue, another road with no sidewalk. The Applicant/Appellant submitted four photos showing that there are no sidewalks in the vicinity.

As discussed above, when development within the County occurs the County looks to the developer to improve all of the associated infrastructure to County standards, including building sidewalks and similar improvements to County standards. As concerning roadway improvements, the ordinance requiring sidewalks at issue here is a common and generally applicable zoning ordinance requiring these public improvements as a condition for any development on property located within the County. The Applicant/Appellant seeks to partition her property thereby creating an additional parcel on which she will be able to build at least one additional home. Associated with such use are many impacts to the local public infrastructure, including among other things vehicle traffic and pedestrian traffic and the corresponding safety issues that a sidewalk and associated improvements meeting Clackamas standards helps alleviate.

The Applicant/Appellant is being required to construct the sidewalk and related improvements as a condition of partitioning and developing her property. The Applicant/Appellant asserts that the money she is required to spend on improvements should go to the roadway access her own property utilizes and not go to the County's general fund for sidewalk improvements. In other words, Applicant/Appellant wants her development costs to directly benefit her own property, and not go to a sidewalk fund through payment of a Fee-In-Lieu. I note, however, that Applicant/Appellant has the option of constructing the sidewalk and related improvements, and thus the condition will directly benefit her own property. The alternative Fee-In-Lieu will pay for general improvements to the County's public infrastructure, and I find these fees substantively no different than the TIF fees the 9th Circuit Court of Appeals has upheld. The partitioning and development of the Applicant/Appellant's property has an impact to the local public infrastructure and local residents that is being offset and mitigated by all of these improvements to the infrastructure, including this requirement for sidewalks along a portion of the site frontage for SE Jennings Crest Lane or the payment of the Fee-In-Lieu of making these improvements.

I agree with the modification proposed by the County reducing the requirement to the frontage of Parcel 1 along SE Jennings Crest Lane. I found persuasive the memorandum and testimony by Mr. Kent that the cost of the required roadway and Fee-In-Lieu related to these conditions is about \$35,000, well within the range of typical costs for such standard frontage improvements. The remainder of the sidewalk and associated improvements along Parcel 2 will likely be required with further development of that parcel, along with the additional half-street improvements along Parcel 2's frontage. I conclude that there is an "essential nexus" between the condition and the development proposal's impacts on the local government's public infrastructure that is roughly proportional to the burden on the property owner and is reasonably related to the subject matter of the permit.

9. Written verification from the Fire District shall be provided indicating adequate emergency service access is provided to each parcel.
10. Utility installation plans for work within the SE Jennings Avenue and SE Jennings Crest right-of-way shall be submitted as part of the Development. Utility installations shall be in compliance with Chapter 7 of the Clackamas County Roadway Standards. Pavement

restoration shall be in accordance with Clackamas County Roadway Standards, Standard Drawing U280 and U290.

11. The applicant's attorney and/or surveyor or engineer shall provide written verification that all proposed lots have legal access and utility easements as required prior to recording of the plat.
12. The applicant shall furnish sanitary sewer, storm drainage and domestic water easements as deemed necessary by the DTD Engineering Division and Oak Lodge Water Services as deemed necessary after final plans reviews. All such easements shall be shown and properly referenced upon the final partition plat.

3. Conditions for Density

Minimum Density for the Lot of Record is 2 and Maximum Density for the Lot of Record is 3.

4. Conditions for Land Divisions

A) General Conditions:

- i. Approval of this land use permit is based on the submitted written narrative and plan(s) received April 28, 2022 and May 19, 2022. No work shall occur under this permit beyond that specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.
- ii. The service of a certified surveyor and/or engineer is required to satisfy these conditions. The County recommends you obtain a project manager to assist in obtaining the necessary permits to implement this project.
- iii. The applicant is advised to take part in a Post Land Use Transition meeting. County staff would like to offer you an opportunity to meet and discuss this decision and the conditions of approval necessary to finalize the project. The purpose of the meeting is to ensure you understand all the conditions and to identify other permits necessary to complete the project.

General Approval Criteria:

- B) The proposed Partition — including all, parcels, lots, tracts, easements, future structures, etc., potentially contained therein — shall comply with all applicable provisions of the R-10 Zoning District(s), as outlined in Section 315 of this Ordinance.
- C) **Advisory Condition:** If possible, please retain any mature trees that are not affected by construction of future home site.
- D) The proposed Partition shall comply with the applicable provisions of Section 1000 of this Ordinance, *Development Standards*, as outlined above.
- E) Approval Period and Time Extension:
 - i. Approval of a preliminary plat is valid for four years from the date of the final decision. If the County's final decision is appealed, the approval period shall commence on the date of the final appellate decision. During this four-year period,

the final plat shall be recorded with the County Clerk, or the approval will become void.

- ii. If a final plat is not recorded within the initial approval period established by Subsection 1105.06(A), a two-year time extension may be approved pursuant to Section 1310, *Time Extension*.

F) Final Plat Review:

- i. The form and content of the final plat shall comply with the County's final decision approving the preliminary plat and applicable provisions of Chapters 11.01 and 11.02 of the Clackamas County Code and Oregon Revised Statutes Chapters 92, 94, 100, and 209.
- ii. The final plat shall be submitted to the County for review. If a homeowners association is required, the declaration for a planned community, articles of incorporation, and bylaws shall be submitted to the County with the final plat. If the final plat and, if a homeowners association is required, the declaration for a planned community, articles of incorporation, and bylaws are consistent with the approved preliminary plat and the conditions of approval included in the County's final decision on the application have either been satisfied or guaranteed pursuant to Section 1311, *Completion of Improvements, Sureties, and Maintenance*, the Planning Director shall sign the plat.
- iii. Any private access easements should also contain provisions for public utility services such as water, electricity, communications, natural gas, storm drainage, sanitary sewer, emergency services, etc.
- iv. New easements should include a statement that the easements are for the lots or parcels shown and any future divisions thereof.
- v. Easements created for access to parcels that can be redeveloped or further divided shall contain language that would allow the access and utilities easement(s) used by any additional development or parcels created in future. Any private easements should also contain provisions for public utility services such as water, electricity, communications, gas, storm drainage, sanitary sewer, etc.

E. DECISION

Based on the findings, discussion, conclusions, and the public record in this matter, the Hearings Officer hereby APPROVES this application for Partition, subject to conditions of approval.

Dated: August 31, 2022



Carl D. Cox
Clackamas County Hearings Officer

APPEAL RIGHTS

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision is "final" for purposes of a LUBA appeal as of the date of the decision appearing by my signature.