

**BEFORE THE LAND USE HEARINGS OFFICER  
OF CLACKAMAS COUNTY, OREGON**

Regarding an Appeal of a Planning Director	)	<b>Case File No.</b>
Decision Approving a Partition in an Urban	)	<b>Z0128-20-M</b>
Low Density Residential Zone.	)	<b>(Winter)</b>

**A. SUMMARY**

1. The owners are Peter and Elyse Winter. The applicant is Peter Winter.
2. The appellant is Shell Kottkamp.
3. The subject property is located at 15631 Southeast Roethe Lane, Milwaukie, Oregon, 97267. The legal description is T2S, R2E, Section 07DA, Tax Lot 401, W.M. The subject property is approximately 1.58 acres and is zoned R-10 – Urban Low Density Residential 10,000 Square Foot Minimum.
4. On July 23, 2020, the Hearings Officer conducted a public hearing to receive testimony and evidence about the application. At the conclusion of the public hearing, the record was left open seven days for new evidence, testimony, and argument; seven additional days for responses to the new evidence, testimony, and argument; and seven additional days for the applicant’s final legal argument.

**B. HEARING AND RECORD HIGHLIGHTS**

1. The Hearings Officer received testimony at the public hearing on this application on July 23, 2020. The public hearing was conducted virtually using the Zoom platform. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearings, 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 Planning Director’s decision, 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 Rick McIntire discussed the Planning Director's decision and recommended that the Planning Director's decision be upheld.
3. No one argued in favor of the application.
4. The appellant, Shell Kottkamp, and Carol Branson testified in opposition to the application.
5. At the conclusion of the public hearing, the Hearings Officer left the record seven days for new evidence, testimony, and argument; seven additional days for responses to the new evidence, testimony, and argument; and seven additional days for the applicant's final legal argument.<sup>1</sup>

### **C. FACTS**

This case involves the appeal of a Planning Director decision approving a partition in an R-10 zone. The parcel is 1.58 acres, and the applicant proposes to partition the property into three parcels: one of 9610 square feet for a new home site; one of 10,000 square feet for a new home site; and one of 44,788 square feet with an existing home. The subject property is located at the midpoint of Southeast Roethe Lane (Roethe Lane), a private roadway connecting to SE Roethe Road about 200 feet to the southeast. The site currently contains the one single family detached dwelling. Review of the proposed partition is subject to a type II procedure, whereby the decision is made by the Planning Director. The Planning Director approved the proposed partition.<sup>2</sup> This appeal followed.

### **D. DISCUSSION**

There are a number of approval criteria that are applicable to the proposed partition. The Planning Director's decision thoroughly explains how all of the applicable approval criteria are satisfied. Most of the findings in the Planning Director's decision are not challenged. It would be a waste of the County's money and resources to review and repeat all of the unchallenged findings in the Planning Director's decision. I have reviewed the Planning Director's decision, and I agree with those findings. Therefore, I adopt and

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<sup>1</sup> The appellant sought to extend the open record period, but that request was denied.

<sup>2</sup> Under ZDO 1307.03(B), 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]."

incorporate the findings in the Planning Director's decision in this decision, except as discussed further.

The issue in this appeal is the condition of Roethe Lane. The Planning Director's decision describes the condition of Roethe Lane as follows:

“SE Roethe Lane is private roadway that provides access to SE Roethe Road. SE Roethe Lane is located within a variable width easement, generally 37 feet in width from SE Roethe Road up to the project site. The existing private road serves 10 homes. The road was previously established within a 30-foot wide easement that served three large properties, two of which have since re-developed into multiple lots. The most recent development involved a seven-lot subdivision to the east that widened the easement and provided additional road width and a sidewalk on one side. The existing easement and road width is adequate to provide access to the proposed partition and future redevelopment of Parcel 1.” Planning Director Decision 23.

The appellant and other opponents (opponents) live in the developments to the east of the property that were created out of the other two large parcels. Opponents use Roethe Lane to access their residences from SE Roethe Road. Prior to the new developments there was a driveway to the subject property. When the new developments were constructed the existing driveway was widened to provide access to the new residences to the east. Apparently, the road improvements did not improve (or adequately improve) the original driveway. Opponents argue that the western portion of Roethe Lane (the original driveway) is in very poor condition and that the applicant should be required to bring it up current standards. The Planning Director's decision states:

“Public comments have been received from adjacent neighbors regarding the condition of SE Roethe Lane and potential construction impacts as a result of the proposed development. Other than minimum access width and other safety considerations, there are no specific requirements in the Clackamas County Roadway Standards to upgrade the surface of off-site existing improved roads. However, there will be a condition of approval requiring that the lots created by the proposed partition share in maintenance of SE Roethe Lane. In addition, the applicant will be required to document the existing condition of the roadway prior to final partition plat approval and to repair any damage to the road surface that is created by development of the required partition improvements prior to final plat approval.” Planning Director's

Decision 23.<sup>3</sup>

The condition of approval referenced by the Planning Director states:

“Prior to issuance of the Development Permit and prior to any construction activities, the applicant shall provide photo/video evidence of the existing condition of the SE Roethe Lane road surface from its intersection with SE Roethe Rd. to the southerly boundary of the subject property. The applicant shall repair any additional damage caused to the roadway by construction activities related to this partition, returning the road to an as good or better condition, prior to recording of the final plat. The Shared Maintenance Agreement shall provide for repairs to the roadway resulting from damage during home construction on Parcels 2 and 3 and any future parcels.” Planning Director’s Decision 15.

Opponents appeal concerns the quoted findings and condition of approval. While opponents’ arguments are difficult to follow, I understand them to argue that the western portion of Roethe Lane is substandard and the applicant must improve it because: (1) Clackamas County erred or was negligent in some manner in approving prior improvements to Roethe Lane; (2) Clackamas County Roadway Standards (CCRS) require improvement of Roethe Lane; and (3) Clackamas County Zoning and Development Ordinance (ZDO) 1307.14(B)(1) requires improvement to Roethe Lane. Opponents also argue that a private impartial geotechnical engineering expert must be retained at the applicant’s expense to conduct an independent analysis of the current state of Roethe Lane and to supervise any repairs to damage caused by the applicant during construction. Finally, opponents argue the applicant should be required to post a bond to cover the cost of any necessary repairs.

### **1. Improvements to Roethe Lane**

Opponents argue that when Clackamas County approved changes to the original driveway serving the subject property the County negligently or otherwise errantly approved substandard improvements. Opponents devote a substantial amount of effort into explaining why prior improvements to Roethe Lane were substandard. Opponents do not, however, explain, why even if that is so it is the applicant’s responsibility to remedy those errors.<sup>4</sup> While it may well be that prior improvements to Roethe Lane, particularly in 2002,

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<sup>3</sup> In case it is not clear from the discussion, the applicant would be required to make improvements on his property like driveways, but would not be required to make improvements to Roethe Lane.

<sup>4</sup> Opponents do not allege that the applicant made the substandard improvements.

were substandard. Even if that is true, however, that mistake was made long ago, and any period for appealing those decisions or correcting them has long passed. Simply put, any prior mistakes do not provide a basis to deny the application or require improvements to be made in this application. The Planning Director’s decision explains that Roethe Lane, even if it is not in great condition, is adequate to provide access to the subject property. Any previous errors by the County or a previous developer do not provide a basis to deny the application or require off-site improvements. As the County Traffic and Engineering Department stated during the open record period:

“As discussed at the hearing and as provided in the staff report, there are no specific requirements in the Clackamas County Roadway Standards to reconstruct an off-site existing road to bring it up to the current structural section. Those factors that are considered, include legal access/easement width, whether the roadway is paved (within the UGB) and provides minimally safe adequate access. Although staff recognizes that the existing asphalt surface has aged, the roadway was improved on two occasions through a Development permit, and meeting the minimum private road standards at the time.”

Opponents also argue that the CCRS require improvement of Roethe Lane. CCRS 120(a) provides:

“Any development, which will impact the service level, safety, or operational efficiency of roads serving such land development *and is required by other County code or ordinance to improve such roads*, shall improve those roads in accordance with these Standards, the ZDO, the Comprehensive Plan, and the CIP.” (Emphasis added.)

According to opponents, the proposed partition will impact the service level, safety, or operational efficiency of Roethe Lane so the applicant must improve Roethe Lane to current standards. As the emphasized language illustrates, however, CCRS 120(a) only requires roads be improved to current standards when there is a requirement in the ZDO or other County provisions to improve the road in the first place. As discussed, in the present case there is nothing that requires the applicant to improve Roethe Lane. Therefore, CCRS 120(a) does not require the applicant to improve Roethe Lane.

Opponents also argue that CCRS 225.5 requires the improvement of Roethe Lane. CCRS 225.5 provides:

“On a *case by case basis*, the County *may* require construction of

improvements within existing off-site (beyond a development site's frontage) public rights-of-way in order to provide adequate safe access *to newly created lots or parcels or for other development resulting from a land use decision. If Engineering determines* that off-site roadway improvements are necessary to achieve minimally adequate and safe traffic flow, *such improvements may be required* before Engineering can recommend approval of a proposed development.” (Emphases added.)

According to opponents, improvement of Roethe Lane is necessary to provide minimally and adequate safety flow to their existing developments. Even assuming CCRS 225.5 could apply to existing development rather than “newly created lots or parcels or for other development resulting from a land use decision,” CCRS 225.5 only applies on a case by case basis and only provides that the County *may* require such improvements – not that the County must require such improvements. Furthermore, CCRS 225.5 only applies when “[e]ngineering determines that off-site roadway improvements are necessary to achieve minimally adequate and safe traffic flow \* \* \*.” In this case, Engineering specifically determined that improvement of Roethe Lane was *not* necessary to achieve minimally adequate and safe traffic flow. Therefore, CCRS 225.5 does not require the applicant to improve Roethe Lane.

Finally, opponents argue that ZDO 1307.14(B)(1) requires the imposition of conditions to improve Roethe Lane. ZDO 1307.14(B)(1) provides:

“Conditions shall be imposed to ensure compliance with the standards and approval criteria applicable to the land use permit, or shall be reasonably calculated to fulfill public needs emanating from the proposed land uses as set forth in the application, in the following respects:

- “1. Protection of the public from the potentially deleterious effects of the proposed use[.]”

According to opponents, conditions requiring the improvement of Roethe Lane must be imposed to protect the public from the deleterious effects of the proposed use. Opponents do not develop their argument very well. I assume they are not arguing that the first clause of ZDO 1307.14(B) applies, because as discussed Roethe Lane does not need to be improved “to ensure compliance” with any standards or approval criteria applicable to the application. Presumably, opponents are arguing that improvements to Roethe Lane would “be reasonably calculated to fulfill public needs emanating from the proposed land

uses as set forth in the application.” Presumably, the deleterious effects of the proposed use would be additional vehicle trips on Roethe Lane.

Initially, I do not see that the additional vehicle trips from two additional residences (approximately 20 vehicle trips per day) would create such deleterious effects that protection of the public should be required. Furthermore, requiring an applicant to solve an existing public problem when all of the applicable approval are satisfied would be a textbook unconstitutional taking. Therefore, a conditional of approval requiring improvement of Roethe Lane pursuant to ZDO 1307.14(B)(1) is not appropriate.

## **2. Private Geotechnical Engineering Expert**

Opponents argue that a private impartial geotechnical engineering expert should be retained at the applicant’s expense to conduct an independent analysis of the current state of Roethe Lane and to supervise any repairs to damage caused by the applicant during construction. Opponents apparently want a private expert to review both the current state of Roethe Lane to determine repairs that should be made by the applicant and to supervise and approve any repairs necessitated by damage to Roethe Lane during the construction related to the partition.

There is nothing in ZDO or any other County provisions that I am aware of that grants the County the authority to appoint a private firm to essentially police the actions of an applicant. Even if I was inclined to impose such a condition of approval (which I am not), there is no authority to do so. As discussed later, there is a condition of approval that requires the applicant to satisfy the County that he has repaired any damage to Roethe Lane caused by construction related to the partition. Opponents request is denied.

## **3. Bond for Repairs to Roethe Lane**

The Planning Director’s decision included a condition of approval (also quoted earlier) requiring the applicant to document the condition of Roethe Lane prior to any construction activities and demonstrate to the County that Roethe Lane be returned to at least the conditions it was in before the activities:

“Prior to issuance of the Development Permit and prior to any construction activities, the applicant shall provide photo/video evidence of the existing condition of the SE Roethe Lane road surface from its intersection with SE Roethe Rd. to the southerly boundary of the subject property. The applicant shall repair any additional damage caused to the

roadway by construction activities related to this partition, returning the road to an as good or better condition, prior to recording of the final plat. The Shared Maintenance Agreement shall provide for repairs to the roadway resulting from damage during home construction on Parcels 2 and 3 and any future parcels.” Planning Director Decision 15.

Opponents argue that the applicant should be required to post a bond in order to assure that any such repairs are made. The Transportation and Engineering Department agreed with opponents’ request and provided language requiring a bond. The condition of approval is modified as follows:

“Prior to issuance of the Development Permit and prior to any construction activities, the applicant shall provide photo/video evidence of the existing condition of the SE Roethe Lane road surface from its intersection with SE Roethe Rd. to the southerly boundary of the subject property. The applicant shall repair any additional damage caused to the roadway by construction activities related to this partition, returning the road to an as good or better condition, prior to recording of the final plat. The applicant shall post a minimum \$10,000 bond, consistent with the provisions of Clackamas County Roadway Standards Section 190, to ensure that damage to SE Roethe Lane as specified in this condition, is repaired, prior to recording the final plat. The Shared Maintenance Agreement shall provide for repairs to the roadway resulting from damage during home construction on Parcels 2 and 3 and any future parcels.”

#### **4. Other Arguments**

Opponents raise other issues that do not have anything to do with the applicable approval criteria, such as allegations that the applicant has failed to pay for his share of a road maintenance agreement, has intentionally damaged Roethe Lane, and is a bully. While the applicant has certainly used, shall we say, colorful language, none of opponents’ arguments provide a basis to deny the application or require the applicant to improve Roethe Lane.

### **F. DECISION**

Based on the findings, discussion and conclusions provided or incorporated herein and the public record in this case, the Hearings Officer hereby **APPROVES** the application for the proposed partition.

### **G. CONDITIONS OF APPROVAL**

**I. General Conditions:** Ben Blessing; 503-742-4521; Bblessing@clackamas.us

- 1) Preliminary partition approval is based upon the preliminary partition plan, the Findings discussed herein, and these conditions of approval. Any change in design, including lot layout and access to lots, must be approved by the Planning and Zoning Division prior to final plat approval. No work shall occur under this permit other than which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitations of approval described herein.
- 2) This decision becomes effective the day after expiration of the appeal period. After that date, no changes to these conditions can be made without a new land use application unless otherwise specified herein.
- 3) The services of a registered professional land surveyor and a civil engineer are required to satisfy these conditions of approval.
- 4) **NOTE:** The applicant is advised to take part in a Post Land Use Approval 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. If you like to take advantage of this meeting please contact Wendi Coryell at (503) 742-4657 or by e-mail at [wendicor@clackamas.us](mailto:wendicor@clackamas.us). There is no additional fee for this service.
- 5) **Platting:** Pursuant to ORS 92, five (5) copies of the draft partition plat survey of the development shall be submitted to the Engineering Division for routing & review.
  - a. A copy of the final plat survey and review deposit shall also be submitted separately to the County Surveyor's office for review.
  - b. After the draft plat is approved by the Planning & Zoning Division staff and reviewed by the Survey Department, one (1) mylar copy and four (4) paper copies of the final plat shall be submitted to the County Engineering Division for final review.

- c. The draft and final plats shall be prepared by a registered professional land surveyor in a form and with information consistent with the provisions of ORS 92, relevant portions of ORS 209.250, the County ZDO, Chapters 11.01 and 11.02 of the County Code and these conditions of approval.
  - d. When final approval is given by the Planning and Zoning Division and the final plat is approved by the County Surveyor, the plat must then be filed and recorded with the County Clerk. All property taxes shall be paid in full for the current year in order for the plat to be recorded.
  - e. None of the individual parcels may be sold, transferred or assigned until the final plat has been approved by the County Surveyor and recorded with the County Clerk.
- 6) **Approval Period:** Pursuant to subsection 1106.05(A) of the ZDO, this preliminary partition approval is valid for **four years** from the date of this final written decision. **Failure to record the final partition plat with the County Clerk within four years of the date of this decision will void this approval unless a time extension is approved (see following).**
- 7) **Time Extensions:** Prior to expiration of this approval, the applicant may request a single two-year extension of the preliminary approval subject to the criteria set forth in Section 1305 of the ZDO.
- 8) **Easements:** All existing, proposed and required easements shall be shown upon the final plat.
- 9) **Fire Protection:** Pursuant to Subsection 1001.03, and **prior to final plat approval,** the applicant shall submit stamped and approved plans or written verification from the Clackamas Fire District No. 1 Fire Marshal indicating that the Fire District's access and fire flow standards have been, or will be met. **CFD#1 Contact:** Matt Amos, Deputy Fire Marshal, 503-742-2660, [matt.amos@clackamasfire.com](mailto:matt.amos@clackamasfire.com)

- 10) **Building Codes:** Building construction on any of the approved lots shall be consistent with Oregon Plumbing Specialty Code, Oregon Residential Specialty Code, Oregon Structural Specialty Code and/or Oregon Manufactured Home Standard requirements, as administered by the DTD, Building Codes Division. Foundation drain requirements shall be designed to ensure structural stability and proper foundation and crawl space drainage.
- 11) **Water Service:** Pursuant to Section 1006 of the ZDO, domestic and fire flow water supply facilities shall be installed and necessary easements granted, consistent with the rules & regulations of the Oak Lodge Water Service District and the Clackamas Fire District No. 1 (CFD#1). The applicant shall obtain all required approvals, plan reviews and/or permits and verification that the plat conforms to all requirements of the OLWSD and CFD#1 **prior to final plat approval.**
- a. The proposed development is located within the service area of Oak Lodge Water Services for potable water only and shall be subject to the Oak Lodge Rules and Regulations and Design and Construction Standards for applicable utilities.
  - b. Property owner shall apply for “Site Development Permit” from OLWSD and supply all relevant materials, fees and charges.
  - c. Prior to Site Development Permit issuance, all submittals shall be reviewed for compliance with Oak Lodge rules, regulations and design and construction standards in effect on the date of complete application to OLWSD; not Land Use application and not rules in effect at any previous application.
  - d. All fees and charges shall be paid before the Site Development permit is issued. 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.
  - e. The owner shall dedicate a 20-foot wide public easement for water utilities to Oak Lodge Water Services District.
  - f. The owner shall install public water utilities and dedicate these to Oak Lodge Water Services.

- 12) **Utilities:** Pursuant to Subsection 1006 of the ZDO, electricity, gas, and communications services shall be installed consistent with the requirements of the district or company serving the development. Except where otherwise prohibited by the utility district or company, **all new or relocated utilities shall be installed underground and in accordance with the requirements of the service providers.**
- 13) **Street Lighting:** Pursuant to Section 1006 of the ZDO, street lighting is required in conjunction with partition approvals within the Portland Metropolitan Urban Growth Boundary. **Prior to final plat approval,** 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 **prior to final plat approval.**

**II. County Surveyor Conditions:** County Survey department (503) 742-4475.

- 1) All partition plats shall be prepared pursuant to ORS 92 and County Code Chapters 11.01 and 11.02.
- 2) 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.
- 3) New easements should include a statement that the easements are for the lots or parcels shown and any future divisions thereof.
- 4) 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.

**III. Planning and Zoning Division Conditions:** Contact: Ben Blessing; 503-742-4521;  
[bblessing@clackamas.us](mailto:bblessing@clackamas.us)

- 1) Future construction on the proposed parcels shall be subject to the use, dimensional and development standards of Section 315, the relevant requirements of Section 1001.03 of the ZDO and relevant conditions of approval herein.
- 2) With the exception of the trees located southerly of the existing home within the area of required access road improvement, all other trees shall be retained unless removal is authorized by the County Planning and Zoning Division.
- 3) Approval of this partition does not signify approval of the additional lots shown in the master plan. Approval of the additional lots is subject to future application to and approval by the County Planning and Zoning Division.

**IV. WES Conditions:** Contact: Erik Carr Bertram, 503-742-4571, [ecarr@clackamas.us](mailto:ecarr@clackamas.us).

**A. General Standards:**

- 1) The proposed development is located within the service area of Water Environment Services (WES) and shall be subject to WES Rules and Regulations, and Standards (“WES RR&S”), in accordance with the following adopted ordinances:
  - a. Water Environment Services Rules and Regulations, July 2018, Ordinance No. 03-2018;
  - b. Sanitary Sewer Standards, Clackamas County Service District No. 1, July 1, 2013; and
  - c. Stormwater Standards, Clackamas County Service District No. 1, July 1, 2013.
- 2) The applicant shall procure the necessary plan approvals and permits in accordance with WES RR&S for sanitary sewer services and surface water management, including erosion control requirements prior to final partition plat approval.
- 3) Prior to plan approval, all sanitary and storm water plan submittals shall be reviewed for compliance with WES RR&S and these Conditions of Approval. All plans and reports submitted to WES for review and approval shall be stamped

and signed by a civil engineer licensed by the State of Oregon. The project construction, specifications, and testing shall be completed under the direction of the project engineer.

- 4) Any requests to modify current WES Design Standards shall be made in accordance with Sanitary Standards, Section 1.7 or Stormwater Standards, Section 1.6. The applicant shall provide all necessary information to evaluate the request, as determined by WES.
- 5) The applicant shall include the following materials with their first plan review submittal to WES:
  - a. Two (2) sets of complete civil construction plans for all sanitary and storm water improvements.
  - b. Two (2) copies of the final storm report, including the downstream analysis and infiltration testing.
  - c. \$800.00 minimum sanitary and storm water management plan review fees.
  - d. Erosion control permit application (available on WES website) and \$460.00 permit fee.
- 6) An existing Surface Water, Storm Drainage and Sanitary Sewer Easement granted to Clackamas County Service District No. 1 (Doc. 2002-009998) is permanent and not extinguishable. No development shall encumber use or access to this easement by WES. (*Section 5.3.2*). The final partition plat shall show and properly document this easement.
  - a. Placement of retaining walls or any other appurtenances within the easement shall be subject to issuance of an easement encroachment permit. The applicant shall provide adequate plans and profiles necessary for WES to review the proposal, as determined by WES.
- 7) Prior to final partition plat approval, the sanitary and storm systems shall be complete in all respects, in accordance with the approved plan, or a performance bond shall be provided by the applicant to guarantee the construction of the infrastructure. WES shall inspect and approve the construction of the sanitary and storm systems in accordance with the approved plans.

- 8) **Prior to final plat approval**, WES shall review the plat in conjunction with the approved sanitary sewer and stormwater plans. The sanitary and storm systems shall be complete in all respects, in accordance with the approved plans, prior to WES approving the plat for recording. All sanitary and storm drainage easements shall be shown on the plat. Any necessary off-site easements shall be obtained and recorded by the applicant prior to the plans being approved by WES.
- 9) The following easement designations and labels shall be used on the plat:
  - a. WES – CLACKAMAS WATER ENVIRONMENT SERVICES
  - b. SDE - STORM DRAINAGE EASEMENT GRANTED TO WES
  - c. SSE - SANITARY SEWER EASEMENT GRANTED TO WES
  - d. PSDE - PRIVATE STORM DRAINAGE EASEMENT
  - e. PSSE - PRIVATE SANITARY SEWER EASEMENT
- 10) The proposed development shall be subject to applicable fees and charges, in accordance with WES RR&S. All fees and charges shall be paid before plat approval, and are subject to change without notice to the applicant. All costs associated with the design, construction and testing of the sanitary sewer and storm system, including obtaining easements, shall be provided by, and at the sole expense of the applicant.

**B. For Sanitary Sewer, the following conditions shall apply:**

- 1) Prior to final plat approval, a separate and independent sanitary sewer service connection shall be provided to each lot, including any necessary private easements. The sanitary sewer service connection lateral shall be constructed with a clean out at the front edge of the property line. A 4-inch connection is typical for a single family residence. The applicant shall provide justification if proposing greater than 4-inch connection.
- 2) A point of connection to public sanitary sewer is available via an existing 8-inch mainline located on an adjacent property to the north. The applicant will be required to notify the adjacent property owner at least one week in advance of digging the trench for the new service lateral. Any landscaping, fencing, or paving that is disturbed shall be replaced in kind.

- 3) The applicant shall contact WES 48-hours in advance to schedule a tap of the public sanitary mainline. A \$125.00 tap-in fee shall apply for each 4-inch connection.
- 4) Any existing service laterals shall be used where feasible, as determined by WES. If an alternative or modification to the existing connection is proposed, the applicant shall provide justification for the modification to WES for review and approval, including any necessary plans and/or profiles as determined by WES. A tap-in fee shall apply for any new tap to the mainline.

**C. For Surface Water, the following conditions shall apply:**

- 1) All development that creates or modifies 5,000 square feet or more of impervious surface area shall be subject to WES RR&S and requires submittal of a Surface Water Management Plan and Storm Report (SWM Plan) to WES for review and approval. The SWM Plan shall demonstrate how the development will conform to WES RR&S and shall be prepared by a civil engineer licensed by the State of Oregon.
- 2) The SWM Plan shall provide a design to mitigate the storm water runoff from all proposed on-site permeable and impervious surface areas, all water entering the property from off-site, and any road and frontage improvements.
  - a. Any off-site stormwater entering the site shall be placed in a bypass pipe or mitigated on-site.
  - b. Future construction of the proposed graveled driveway on the southerly and easterly edges of Parcels 2 and 3 if approved by the Planning and Zoning Division, shall be subject to WES storm water standards. The applicant's SWM Plan shall include a design for this area, including any necessary private storm drainage easements.
- 3) The SWM Plan shall conform to the following general storm water standards, as well as all other applicable storm water requirements in accordance with WES RR&S:
  - a. **Water Quality Standard** - Water quality facilities shall be designed to capture and treat the first 1-inch of stormwater runoff from a 24-hour storm

event using either vegetation (Appendix H) or a Basic Treatment proprietary device (Appendix F).

- b. **Infiltration Standard** - The first ½ inch of runoff in a 24-hour period must be captured and retained onsite through an approved infiltration system.
  - c. **Detention/Flow Control Standard** – Detention/Flow Control Standard in Areas with Limited Downstream Capacity (Section 5.4.4.3) – Additional flow control requirements are necessary in areas with limited downstream capacity that cannot be upgraded, and are in addition to all other water quality and infiltration requirements. Within these designated basins (see maps in Appendix G), onsite detention facilities shall be designed to reduce the 25-year post-developed runoff rate to a 2-year pre-developed discharge rate, AND, from the 2-year post-developed runoff rate to ½ of the 2-year pre-developed discharge rate.
  - d. The **conveyance system** shall be sized for a minimum 25-year design storm.
- 4) Storm service connection laterals shall be provided to convey the storm water runoff and foundation drains for future development of Parcels 2 and 3, including private storm drainage easements.
  - 5) Grading plans shall clearly identify an overflow pathway system by which the storm/surface water within the development will be controlled without causing damage or harm to the natural environment, or to property or persons in the event of any storm water facility failure or bypass.
  - 6) The SWM Plan shall identify an acceptable point of discharge to safely convey storm water runoff from the entire boundary of the development.
  - 7) A Downstream Conveyance Analysis shall be included in the SWM Plan. The analysis must extend a minimum of 1500 feet or to the point where the development contributes less than 15% of the upstream drainage area, whichever is greater.
  - 8) A geotechnical engineer’s report shall be submitted with the SWM Plan and include an analysis of the infiltration facility design in relation to the adjacent retaining wall. The report shall consider hydrostatic pressure on the retaining wall, interception of infiltrated runoff by wall drains, and all other factors needed

to sufficiently review the project proposal, as determined by WES. The infiltration chamber system shall be designed so that the drains of the retaining wall do not intercept the infiltrated runoff.

- 9) The SWM Plan shall include an infiltration testing report to verify the feasibility of the proposed infiltration systems, in accordance with Appendix E. The report shall identify the location of each test pit, which must correspond to the location and depth of the proposed infiltration facility.
- 10) If infiltration is not feasible, the design engineer shall submit a modification request in accordance with Stormwater Standards Section 1.6 with an equivalent alternative design which can accomplish the same design intent as provided in these standards.
- 11) The property owners shall be responsible to perpetually inspect and maintain all stormwater management systems, in accordance with WES Rules, Section 12.10. The project engineer shall submit a Private Operations and Maintenance Plan that identifies the annual maintenance obligations and procedures of all stormwater facilities. The plan shall be submitted to WES prior to final plan approval.
- 12) The storm water maintenance plan shall be referenced in the Plat Restrictions. Upon plat approval, the signed agreement will be delivered to the County Surveyor's office by WES staff.
- 13) All new development shall meet WES Rules to preserve and maintain an undisturbed vegetated buffer to protect all water quality resource areas. The applicant shall coordinate with Clackamas County Planning Division for any buffer related requirements. *(Section 4)*

**D. For Erosion Control, the following shall apply:**

- 1) No visible or measurable erosion shall leave the property during construction or during any activity described in Section 6.2.1.
- 2) Site Plans for erosion control shall be required for all development, construction, grading, and any other activity which accelerates erosion as required by water quality standards set forth in OAR 340-41-445 through 340-41-470. The plans shall use the techniques and methods prescribed in the current WES Erosion

Prevention Planning and Design Manual. Site plans shall delineate the total area of disturbance.

- 3) Any development activity that results in over 800 sq ft of soil disturbance shall obtain a WES Erosion Prevention and Sediment Control Permit before the start of any grading or construction activities. The applicant shall submit a Permit application and erosion control site plans, and pay applicable permit fees (\$460 + \$80/acre over 1 acre).

**E. The following WES Fees and Charges shall apply:**

- 1) Sanitary Sewer Plan Review fees shall apply. A \$400.00 minimum is due with the first plan submittal;
- 2) Surface Water Plan Review fees shall apply. The total fee is equal to 4% of the construction cost for all stormwater management related facilities. A \$400.00 minimum shall be due with the first plan submittal.
- 3) An Erosion Prevention and Sediment Control (EPSC) permit fee shall apply. A \$460.00 minimum permit fee shall be due with the first plan submittal.
- 4) A Collection Sewer Charge (CSC) for the proportionate cost of constructing the public mainline sewer shall apply for each direct connection to the public sanitary sewer system. A CSC in the amount of \$12,000.00 shall be paid to WES prior to the plat being recorded.
- 5) System Development Charges (SDC's) for sanitary sewer and surface water management shall be assessed with the future building permits for Parcels 2 and 3, in accordance with WES RR&S and the prevailing rates in effect on the date when the building permit application is submitted. Current SDC rates:
  - a. Sanitary SDC: \$7,850.00 per single family building permit application
  - b. Storm SDC: \$211 per single family building permit application

**V. Engineering Division Conditions:** Ken Kent, 503-742-4673, [kenken@clackamas.us](mailto:kenken@clackamas.us)

- 1) 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 once plans have been submitted and reviewed. The applicant may discuss the requirements of the project with staff at any time.

- 2) The requirements specifically required by the Comprehensive Plan and the ZDO cannot be modified by the Development Engineering Division. However, the requirements detailed in these conditions of approval, derived from the County Roadway 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.
- 3) **Prior to final plat approval:** A Development Permit shall be obtained from the Engineering Division for review and approval review and approval of required access road 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.
- 4) **Prior to final plat approval:** All required improvements shall be designed and constructed by the applicant, inspected and approved by the County, or the improvements shall be financially guaranteed by the applicant pursuant to Section 1311 of the ZDO unless otherwise noted herein. For all incomplete required

improvements, a performance guarantee equal to 125% of the approved engineer's cost estimate will be required prior to final plat approval and recording.

- 5) 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.
- 6) **Prior to Final Plat approval**, the applicant shall design and construct improvements for the access road serving Parcels 1, 2 and 3, which shall consist of:
  - a. A minimum 24-foot wide reciprocal and perpetual common access and utility easement from SE Roethe Lane shall be provided up to the proposed east/west shared access road serving Parcel 1, 2 and 3. Beyond this point, the access easement can be reduced to a minimum width of 20 feet.
  - b. The proposed access easements along the southerly and westerly property lines shall be deleted from the plans.
  - c. A minimum 12-foot wide paved driveway, with 2-foot wide gravel shoulders, shall be constructed up to Parcels 1, 2 and 3 per Drawing R100 of the Clackamas County Roadway Standards. The design of the access road from SE Roethe Lane up to the east/west access road on Parcel 1 shall allow for future widening of the road surface to 20 feet in width to accommodate future development of the master plan.
  - d. A minimum 20-foot wide concrete driveway approach shall be constructed at the intersection of the shared access road with SE Roethe Lane, per Standard Drawing D650.
  - e. Retaining wall plans for the proposed walls adjacent to the shared access road shall include design and structural calculations and a geotechnical report.

Where the road is above the retaining wall, address recoverable slope or provide guard rail or similar design features.

- f. An emergency vehicle turnaround shall be provided on-site, per Standard Drawing C350 at location approved by the Fire Marshal. Written verification from the Fire District will be required indicating adequate emergency service access is provided.
  - g. Grading shall not occur within 2 feet of a property line unless a temporary construction is obtained.
  - h. Drainage facilities shall be provided in conformance with Water Environment Services requirements and *Clackamas County Roadway Standards* Chapter 4.
  - i. The parcels served by the private road shall be included in a Shared Private Road Maintenance Agreement implementing ORS 105.170 – 105.185 at minimum for the shared access road within the partition plat as well as SE Roethe Lane outside of the plat area. The Agreement shall provide for additional parcels as indicated in the master plan. The agreement shall be recorded with and referenced upon the final partition plat.
- 7) Prior to issuance of the Development Permit and prior to any construction activities, the applicant shall provide photo/video evidence of the existing condition of the SE Roethe Lane road surface from its intersection with SE Roethe Rd. to the southerly boundary of the subject property. The applicant shall repair any additional damage caused to the roadway by construction activities related to this partition, returning the road to an as good or better condition, prior to recording of the final plat. The applicant shall post a minimum \$10,000 bond, consistent with the provisions of Clackamas County Roadway Standards Section 190, to ensure that damage to SE Roethe Lane as specified in this condition, is repaired, prior to recording the final plat. The Shared Maintenance Agreement shall provide for repairs to the roadway resulting from damage during home construction on Parcels 2 and 3 and any future parcels.

- 8) A Utility Placement Permit shall be obtained for any utility work required within the SE Roethe Road public right-of-way. When there are multiple utility service trenches in the road, the trench repairs will grind and inlay the top 2” of the pavement restoration to include a minimum 12” tee beyond the furthest trench, and will be required to combine multiple trenches into one surface repair.
- 9) Written verification from the Fire District shall be provided indicating adequate emergency service access is provided to each parcel.
- 10) 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.
- 11) The applicant shall furnish sanitary sewer, storm drainage and domestic water easements as deemed necessary by the County Engineering Division, County Water Environment Services and the OLWSD as deemed necessary after final plans reviews. All such easements shall be shown and properly referenced upon the final partition plat.

DATED this 2<sup>nd</sup> day of September, 2020.

  
Fred Wilson  
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 an 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 will be “final” for purposes of a LUBA appeal as of the date of the decision (which date appears above my signature).