

## **HERMISTON PLANNING COMMISSION**

### **Regular Planning Commission Meeting**

**June 8, 2022**

Chairman Saylor called the meeting to order at 7:00PM. Present were Commissioners Caplinger, Doherty, Hamm, Burns, Sargent, and Fialka. Commissioner Kirkpatrick was excused. Staff in attendance included Planning Director Clinton Spencer, City Attorney Richard Tovey and Heather La Beau. Youth Advisory Members Jeannine Heredia and Elizabeth Doherty were also in attendance.

### **Minutes**

Commissioner Caplinger moved and Commissioner Fialka seconded to approve the minutes of the April 13, 2022, regular meeting. Motion passed.

### **Hearing- Major Variance Gilbert 4N2802CB Tax Lot 5900- 1660 N First St**

There were no conflicts of interests declared. Chairman Saylor opened the hearing at 7:01PM and read the hearing guidelines.

Planning Director Spencer presented the staff report. The variance is for a request to reduce the setback requirement from a street. The property owner is unwilling to sell additional property in order for the purchaser to meet the building setback. The travel lanes, parking area, building and drive-through lane does not have enough space to meet the setback of 20 feet. A setback of 15'11" is proposed. The C-2 zone allows a setback from a street be reduced to 10' if solid landscaping is installed. This is not an option for this proposal due to the drive-through lane. E Oregon Ave is 60' wide and a condition of approval is to install and maintain landscaping in the area between the back of sidewalk and property line.

Commissioners discussed drive through car stacking, Hermiston Drain easement, street improvements, and Highway 395 access.

### **Testimony**

Ian Plum Chief Development Officer of Ambrosia QSR 400 E Mill Plain Blvd Vancouver WA 98660- The staff report is appreciated. They have worked with ODOT and the E Oregon Ave access is considered the best option. They are hopeful to get the variance to bring Popeye's restaurant and the jobs to Hermiston.

Chairman Saylor closed the hearing at 7:15pm.

### **Findings of Fact**

**Exceptional or extraordinary conditions apply to the property that do not apply generally to other properties in the same zone or vicinity, which conditions are a result of lot size, shape, topography or other circumstances over which the applicant has no control.**

1. The property is described as 4N 28 02CB Tax Lot 5900 and is zoned Outlying Commercial (C-2).
2. The site is proposed for development of a new 2,536 square foot restaurant. A restaurant is an outright permitted use in the C-2 zone.
3. The applicant has negotiated a purchase agreement with the underlying landowner for a new lot of 100 feet in width. The landowner is unwilling to sell more than the north 100 feet of the property.
4. There are design requirements for vehicle circulation on the site which must be met. Specifically, two-way circulation south of the proposed building requires 20 feet and parking south of the building requires an additional 20 feet. Thus, the building cannot be located closer than 40 feet from the south lot line.
5. The proposed building and sidewalk width are 41.5 feet (33-foot building width and 8.5 feet for sidewalk).
6. Fifteen feet, eleven inches remains to between the north building line and the property line on E Oregon Ave. At least twelve feet is required for the drive-up lane.

7. The setback in the C-2 zone is 20 feet from a street but may be reduced to 10 feet where solid ground cover landscaping is provided (§157.041(D)(1)).
8. Parking and travel lanes are permitted in setback areas.
9. The building cannot be located closer than proposed to the south property line without sacrificing safe corridors for two-way vehicle traffic.

**The variance is necessary for the preservation of a property right of the applicant that is substantially the same as is possessed by owners of other property in the same zone or vicinity.**

10. Other restaurants with drive-up windows in the vicinity have travel lanes and parking within their required setback areas.
11. Without variance approval, the site will not be able to accommodate the permitted use and necessary vehicle facilities.
12. Similar businesses in the vicinity have utilized other means to achieve similar development. For example, the Jack in the Box restaurant at 1305 N First St meets the setback requirement, but was required to utilize an adjacent property for vehicle travel lanes. In this instance, the adjacent property owner is not willing to grant vehicular access.

**The authorization of the variance shall not be materially detrimental to the purposes of the zoning ordinance, be injurious to property in the zone or vicinity in which the property is located, or be otherwise detrimental to the objectives of any development pattern or policy.**

13. Through the imposition of appropriate approval conditions, the variance can preserve the intent of the setback requirement.
14. The proposed variance exceeds the minimum setback of 10 feet with solid landscaping and sets the building at 15 feet 11 inches with 12 feet of travel lane and 3.5 feet of landscaping south of the property line, plus an additional 4 feet of landscaping between the property line and back of sidewalk within the E Oregon Ave right of way.
15. The site is constrained by access restrictions relating to N First St which is also a state highway. ODOT has reviewed several access options and found that this option best reduces N First St congestion and ensures a safe intersection. The necessity of locating the E Oregon Driveway at the proposed location 150 feet east of N First St reduces the development options for locating the restaurant itself. After reviewing several iterations of development proposal, city staff, ODOT, and the applicant determined there was not another suitable location for the building that preserves safety and creates a viable development site.

**It is impossible to maintain the zoning ordinance requirements and at the same time build, erect or use the structure.**

16. As noted in findings 4, 9 and 15 above, the building must be located at the proposed location to guarantee adequate moving space for two-way traffic south and east of the building. There is not enough space on the property to accommodate two-way traffic in the parking area as required by §157.150(G)(5) and meet the 20-foot setback required by §157.041(D)(1).
17. Without a variance it is impossible to erect the structure in compliance with code.

**The variance requested is the minimum variance from the provisions and standards of the zoning ordinance which will alleviate the hardship.**

18. The proposal to reduce the setback from 20 feet to 15 feet 11 inches is the minimum setback which will accommodate city standards for access management and allow use of the structure as proposed.
19. The city will require landscape improvements between the drive up lane and right of way line to maintain the spirit of the ordinance requirement allowing a reduction in setback where landscaping is provided.

Conditions of Approval

1. E Oregon Ave shall be improved with a half-street improvement to local commercial status per Hermiston standard detail ST11. ST11 is designed for a 50-foot right of way and E Oregon Ave has a 60-foot right of way. Therefore, all area between the back of sidewalk and property line (approximately five feet) shall be landscaped and continuously maintained in the same manner as the on-site landscaping.
2. A landscape plan shall be included with the site plan review application and approved by planning staff as part of the site plan review process.

Commissioner Caplinger moved and Commissioner Burns seconded to make the project file a part of the record. Motion passed. Commissioner Caplinger moved and Commissioner Burns seconded to adopt the findings of fact. Motion passed. Commissioner Hamm moved and Commissioner Sargent seconded to approve the variance subject to the conditions of approval.

Youth Advisor Member Heredia introduced herself per Chairman Saylor's direction.

### **New Business- Replat Diamond Run Subdivision Phase 1 1210 E Elm Ave 4N2812B**

Planning Director Spencer presented the staff report for this expedited land division. This replat is being processed as a middle housing land division regulated under ORS 197.360 through 197.380 and ORS 92.031. Administrative approval was mailed to the applicant on June 2. Comments were received from the applicant's attorney, Wendie Kellington, and are attached. The applicant feels the requirement of individual utility connections from the main line to each property creates an unreasonable cost and requests the condition be removed. After review of the comments, staff amended the findings and conditions. Attached is an amended letter of approval dated June 8 which withdraws the June 2 letter. Upon emailing the updated June 8 letter to the applicant's attorney, comments were received requesting further clarification and the findings were again amended as reflected below.

Commissioners discussed concerns with the proposed utility connections including water pressure, building codes, and property owner disputes with future problems (clogs, breaks, and access). While the cost to make the necessary changes to comply may be substantial, it is a self-created problem of the developer due to changing the development plan. Commissioners do not want to set a precedent. Future phases of the development will comply with the City's public works standards and require a separate utility connection (from the main line) for each dwelling unit. It was noted that while covenants are important for zero lot line properties, the property owners may not be aware of any existing covenants or utility line locations. Livability is an important issue. It was acknowledged that the economic environment continues to change. Interest rates will affect all homebuilders, the planning commission cannot control those macro issues. The planning commission's job is not to make the project feasible, but to hold standards and deviate from standards when required. Changing economics is not a circumstance that merits a variance.

### **Testimony**

Scott Smith Home Run Land 2947 Blue Jay St Umatilla- Mr. Smith stated the developer has sold the lots. Mr. Smith stated that interested buyers cannot afford to purchase a duplex lot due to the current interest rates. By splitting the duplex into two homes, homeownership becomes available to those who can afford it. He would rather have homeowners on each side than having them available for rent. A duplex on one lot could have one utility connection. Due to the groundwater conditions on site, adding a new service to each house costs about \$20,000 each and will affect the integrity of the road over a long period of time by all the patches. Mr. Smith mentioned the lag time in acquiring materials. There is a wait of 28 weeks for meter setters. The area behind the walking path on Elm will be cleaned up as construction continues.

Jackie Sielaff 82552 D Street- Ms. Sielaff appreciates and is thankful for the Commissioners' comment of bait and switch. The comment was brought up at the last planning commission meeting and she feels it was unfair and uncalled for as they would not go in with a purposeful intent of switching the plan.

Findings of Fact**ORS 92.031**

**(2) A city or county shall approve a tentative plan for a middle housing land division if the application includes:**

**(a) A proposal for development of middle housing in compliance with the Oregon residential specialty code and land use regulations applicable to the original lot or parcel allowed under ORS 197.758 (5);**

*Findings:*

1. The City of Hermiston has received an application to replat Lots 1 through 72 of Phase 1 of Diamond Run Subdivision. Said replat facilitates the development of common-wall attached single-family dwellings (i.e. duplex dwellings) on Lots 1 through 7, Lots 9 through 20, Lots 29 through 35, Lots 37 through 41, Lots 44 through 48, Lots 51 and 52, Lot 54, Lots 58 through 63, Lot 66, and Lots 68 through 72. Lots not included are not replatted for attached single-family but are renumbered consistent with the revised lot numbering.
2. Under ORS 197.758(3) Hermiston is defined a medium-sized city (having a population between 10,000 and 25,000) and shall permit development of two-family dwellings on all lots zoned for single-family development. All lots proposed for division in (1) above are zoned Medium-High Density Residential (R-3) and permit one and two-family dwellings per 157.027(A) of the Hermiston Code of Ordinances.
3. Ten building permits have been submitted to the Hermiston Building Department to construct duplex dwellings permitted under ORS 197.758(3) and the builder has participated in meetings before the planning commission on April 13, 2022 and with city development staff on May 23, 2022 and committed to developing all remaining lots not able to accommodate multi-family dwellings with two-family dwellings as permitted by the State of Oregon.
4. The City of Hermiston finds that the proposal to develop the lots listed in (1) above with duplex dwellings is a qualifying proposal for the development of middle housing and therefore eligible for a middle housing land division subject to the requirements listed herein.

**(b) Separate utilities for each dwelling unit;**

*Findings:*

5. Separate utility connections are provided for each dwelling unit. Utility connections consist of one shared service for water and sewer connecting to the respective mainline in the adjacent public street. Each utility will branch within the utility easement or right-of-way depending upon the lot configuration.
6. The proposed utility connections constitute a deviation from the city's public works standards.
7. A deviation from the city's public works standards is hereby approved for Phase 1 of Diamond Run subdivision. Approval of said deviation is a site-specific process and does not constitute a precedent nor waiver of future imposition of public works standards.

**(c) Proposed easements necessary for each dwelling unit on the plan for:**

**(A) Locating, accessing, replacing and servicing all utilities;**

*Finding:*

8. Utility easements of 10 feet in width are provided along the front property line of all lots. Said easements were dedicated on the plat for Diamond Run Phase 1. These easements are preserved on the plat.
9. Multiple easements providing for electrical transmission are provided extending service from the UEC electric substation at the northwest corner of the site.

**(B) Pedestrian access from each dwelling unit to a private or public road;***Finding:*

10. Each lot abuts public right of way and no easements are needed to accommodate pedestrian access to each unit.
11. Pedestrian access easements providing access from the development to public trail facilities, required as part of the original Diamond Run approval, are preserved.

**(C) Any common use areas or shared building elements;***Finding:*

12. No common areas or shared building elements are proposed. This requirement is not applicable.

**(D) Any dedicated driveways or parking; and***Finding:*

13. All driveways will be the sole responsibility of the property owner on which the driveway is located. This requirement is not applicable.

**(E) Any dedicated common area;***Finding:*

14. No common areas are proposed. This requirement is not applicable.

**(d) Exactly one dwelling unit on each resulting lot or parcel, except for lots, parcels or tracts used as common areas; and***Finding:*

15. Each lot is proposed for exactly one dwelling unit. Building permit applications are on file for 10 units as of May 27, 2022 and additional permit applications are expected to be filed.
16. Pursuant to ORS 92.031(3) the city will prohibit further division of the lots listed in (1) above.
17. Pursuant to ORS 92.031(6) the city will prohibit the construction of accessory dwellings permitted under §157.136(A)(3) of the Hermiston Code of Ordinances on all lots listed in (1) above.

**(e) Evidence demonstrating how buildings or structures on a resulting lot or parcel will comply with applicable building codes provisions relating to new property lines and, notwithstanding the creation of new lots or parcels, how structures or buildings located on the newly created lots or parcels will comply with the Oregon residential specialty code.***Finding:*

18. As noted in (3) above, the building permits on file with the City of Hermiston have been reviewed and demonstrate compliance with the applicable building code requirements relating to property lines and separation of structures. The City will continue to require this compliance on all future attached single-family dwellings created for middle housing.

**Conditions of Approval**

1. Pursuant to ORS 92.031(3)(a) the city will prohibit further division of the lots split for middle housing. Said lots are Lots 1-14, Lots 16-39, Lots 47-52, Lots 56 and 57, Lots 60-67, Lots 69-78, Lots 80-83, Lots 86-95, Lots 98-107, and Lots 109-122.
2. Pursuant to ORS 92.031(6) the city will prohibit the construction of accessory dwellings permitted under §157.136(A)(3) of the Hermiston Code of Ordinances on all lots listed in Condition 1 above.
3. Pursuant to ORS 92.031(3)(b) a notation shall be placed on the plat stating that approval was granted under ORS 92.031.

4. Pursuant to ORS 92.031(2)(e) all attached single-family dwellings constructed on the lots listed in Condition 1 above shall be constructed in accordance with applicable building codes provisions relating to new property lines and the Oregon residential specialty code.
5. Addresses shall be removed from the final plat.

Commissioner Doherty moved and Commissioner Burns seconded to make the project file a part of the record. Motion passed. Commissioner Burns moved and Commissioner Hamm seconded to adopt the findings of fact as amended. Motion passed. Commissioner Doherty moved and Commissioner Burns seconded to approve the final plat subject to the conditions of approval. Motion passed.

**New Business- Conditional Use Permit Review Hermiston High School Athletic Fields 425-435 W Orchard Ave**

Planning Director Spencer presented the staff report. Staff recommends delaying the review of the conditional use permit until June 2023, when two full years of operation will have been conducted.

Commissioner Hamm moved and Commissioner Fialka seconded to delay review of the conditional use permit until the June 2023 planning commission meeting. Motion passed.

**Planner Comments and Unscheduled Communications**

Items discussed included-

- Commissioner Sheffield resignation
- Prairie Meadows (Hayfields)
- City Hall Construction
- Santiago Manufactured Home Park
- Walking path/sidewalk on Diagonal Blvd
- Project PATH shelter
- Code Amendments for Middle Housing
- Introduction of Commissioners for Youth Advisor Members

**Adjourn**

Chairman Saylor adjourned the meeting at 8:40PM.



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Wendie L. Kellington  
P.O. Box 159  
Lake Oswego Or  
97034

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Facsimile (503) 636-0102  
Email: [wk@klgpc.com](mailto:wk@klgpc.com)

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June 7, 2022

Via Electronic Mail  
Clint Spencer  
Planning Director  
City of Hermiston  
180 NE 2<sup>nd</sup> St  
Hermiston, OR  
97838

RE: Diamond Run Phase 1 Middle Housing Land Division 1210 E Elm Ave 4N2812B

Dear Clint:

This firm represents the applicants in the above entitled matter, AAA Renovation & Construction LLC and its managing member, Anthony Potts as well as Lloyd and Lois Piercy. Please include this letter in the record of the above matter. We further request that you provide this letter and its exhibit to the planning commission for their proceeding regarding plat approval tomorrow evening.

We have reviewed your June 2, 2022 letter to the Piercy's regarding the City's apparent decision regarding above application for the requested Middle Housing Land Division. We have comments and concerns about the City decision reflected in the June 2, 2022 letter and in the planning commission staff report recommendation regarding the plat for a Middle Housing Land Division. Our concerns both relate to the City's mistaken application of the state SB 458 standards as well as the City local rules' embellishment regarding the City's interpretation of its public works standards, to require separate water and sewer mains be provided to each *property line*, rather than separate utilities being provided to each *dwelling unit*, the latter is what SB 458 expressly allows. In fact, there is really no dispute about separate utilities being provided to each dwelling unit under the proposal; the proposal clearly does that. On this, as you will see below, the proposal very definitely provides separate utilities to each dwelling unit as required by SB 458. A graphic attached as Exhibit 1<sup>1</sup> demonstrates how utilities will be provided to each dwelling unit.

Thus, we are, respectfully, concerned about Condition 4, that is appended to the City's June 2, 2022 letter decision attached to your staff report and that we understand is being recommended to the planning commission to be imposed on the approval of the plat. We request that you remove Condition 4 altogether, as it is unlawful and, respectfully, simply

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<sup>1</sup> One page shows the traditional engineering designation for a water meter – of a box with multiple internal squares. The other image shows the water meter divided as it will be to provide separate utilities to each dwelling unit.

inappropriate. The proposal is only a Middle Housing Land Division if it provides separate utilities to each dwelling unit and there is no dispute the proposal is for a Middle Housing Land Division. That is the end of the matter under SB 458. That the City public works provisions may be capable of being interpreted to provide different guidelines for utility connections to property lines or building sites under certain interpretations, is irrelevant under SB 458.<sup>2</sup> And regardless, clearly, the City public works guidelines expressly allow deviation in appropriate circumstances, regardless of the general directives they may suggest. Complying with state law, is one of them.

### **The Proposal Will Provide Separate Utilities to Each Dwelling Unit as SB 458 Requires and Allows**

The proposal is for a SB 458 Middle Housing Land Division. As such, state law in SB 458 provides a limited decisional paradigm for City actions on applications like this one for “Middle Housing.” This is because Oregon has decided it needs “Middle Housing” and the Oregon legislature decided that local standards were otherwise imposing unreasonable costs on the delivery of that housing, making it next to impossible for the state to deliver affordable housing. Accordingly, the legislature stepped in to limit the restrictions that local government could impose, in SB 458. Accordingly, SB 458 imposes significant constraints on the City decision here, meaning that the City cannot impose expensive conditions like Condition 4. If allowed, the City’s Condition 4 and related findings will **add more than \$1 million dollars in cost to this modest Middle Housing Land Division**. Stopping the application of local provisions that result in the imposition of such astronomical costs on housing is exactly what SB 458 was designed to prohibit. We discuss below, specific problems.

SB 458 limits the conditions that may be imposed on a Middle Housing Land Division like this one, to two:

- (3) A city or county may add conditions to the approval of a tentative plan for a middle housing land division to:**
  - (a) Prohibit the further division of the resulting lots or parcels.**
  - (b) Require that a notation appear on the final plat indicating that the approval was given under this section.**

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<sup>2</sup> In truth, the public works guidelines are not hard and fast rules anyway. They give the City the flexibility to approve the proposal without Condition 4 and related findings. In this regard, those public works guidelines say, for example: “These Design Standards cannot provide for all situations. They are intended to assist but not to substitute for competent work by design professionals and experienced Contractors. It is expected that engineers and Contractors will bring to each project the best of skills from their respective disciplines.”

“These Design Standards are not intended to unreasonably limit any innovative or creative effort that could result in better quality, better cost savings, or both. Any proposed departure from the Design Standards will be judged, however, on the likelihood that such variances will produce a compensating or comparable result, in every way adequate for the user and City residents.”

“Alternate materials and methods will be considered for approval by the City Engineer as the need arises and conditions warrant modification. This consideration will be on a case-by-case basis and require sufficient justification prior to approval (see Section 1.5 of this section).”



The City then proposes a condition of approval that is really a denial of the proposal, which is not allowed under SB 458. The City conditions not only violate the above restriction on conditions and denials, but also reflect the application of local guidelines that are contrary to the state’s limited grant of authority, in circumstances like that here:

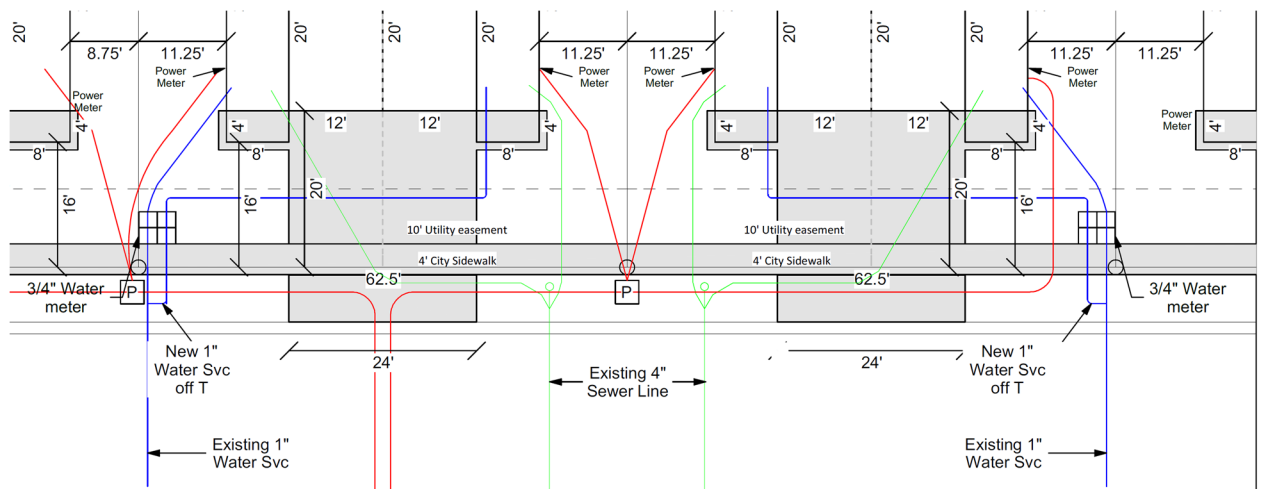
- 4. Separate utilities are required for each dwelling unit. A utility service as defined as a separate utility service between the public utility line located in the right of way adjacent to the unit and the water meter or sewer connection for each dwelling unit. Shared connection to city main lines are not permitted under City of Hermiston public works standards.

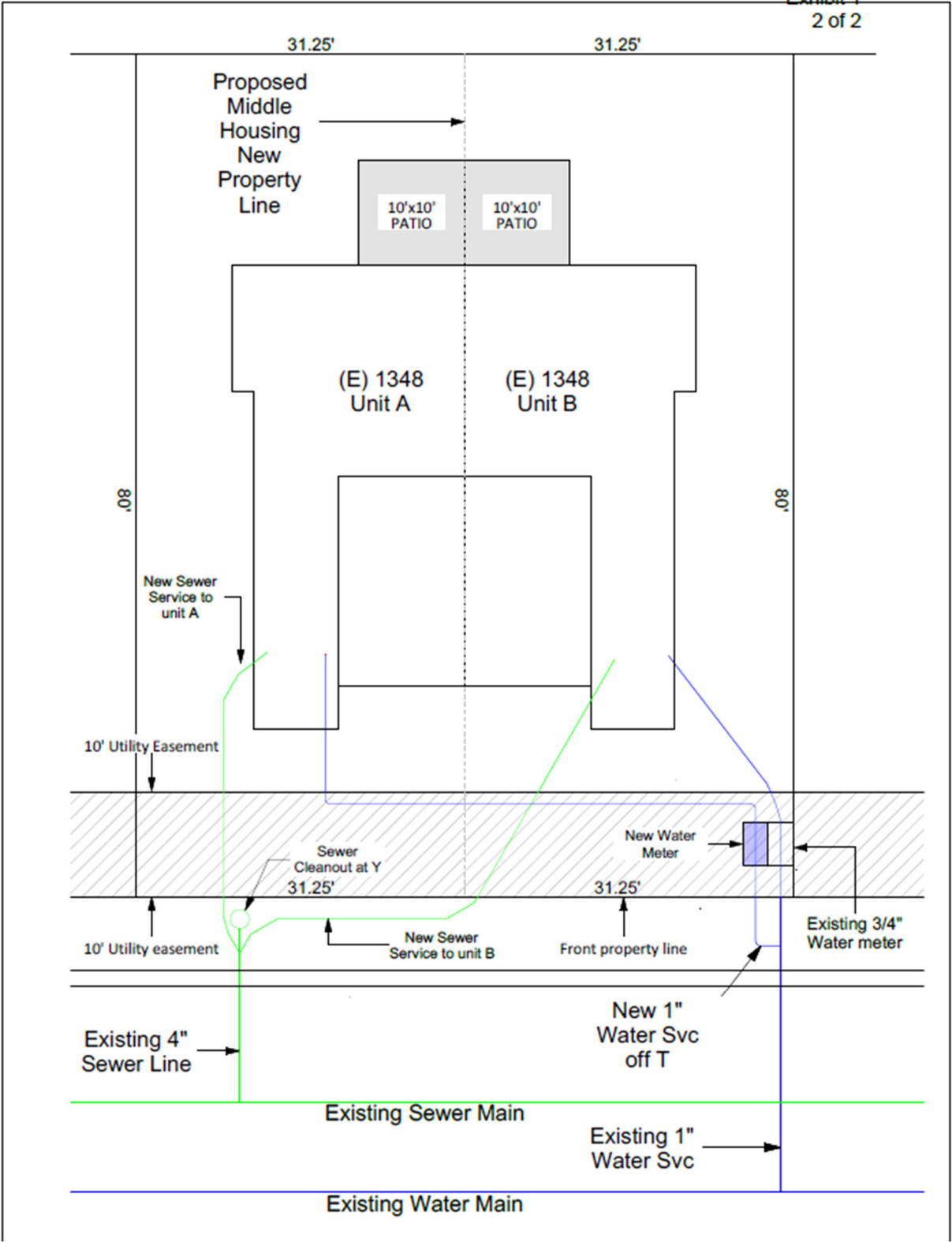
SB 458 further prohibits the City from applying and interpreting local provisions like the City public works guidelines that are inconsistent with SB 458:

**(c) May not subject an application to approval criteria except as provided in this section, including that a lot or parcel require driveways, vehicle access, parking or minimum or maximum street frontage.**

**(d) May not subject the application to procedures, ordinances or regulations adopted under ORS 92.044 or 92.046 that are inconsistent with this section or ORS 197.360 to 197.380.**

The issue here is whether the proposal provides “separate utilities to each dwelling unit.” There is no dispute that the proposal does so, as is plain from the two pages in Exhibit 1:



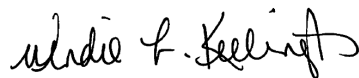


The only issue here is that the City public works guidelines are being applied and interpreted to require something different than state law expressly and unequivocally allows. This the City is simply not permitted to do under the express terms of SB 458. The City justification for the disputed condition that City public works guidelines state that “Each individual building *site* shall be connected \*\*\*” is simply irrelevant. SB 458 requires that separate utilities be provided to each “dwelling unit.” Not to each individual lot or building site. The distinction is important and conclusive. The proposal meets the state law requirement of separate utilities to each dwelling unit, and so must be approved without Condition 4 and related findings. The proposal may not be effectively denied on the basis of a, respectfully, tail-wagging -the-dog condition like Condition 4. And regardless, please keep in mind that the City rules can be applied by their express terms to not impose Condition 4, in any event. We also note that it is hard to dispute that the interpretation here that leads to Condition 4 serves no useful purpose, in addition to violating state law.

Finally, we wish to point out that imposing Condition 4 is prohibited by ORS 197.758(5) that forbids the City applying regulations that individually or cumulatively discourage middle housing through unreasonable cost or delay. Adding a million dollars in costs to a proposal for middle housing, as here, when state law does not allow it and for no real good reason, is unreasonable.

It is respectfully requested that you decline to impose Condition 4 and related findings. Thank you.

Very truly yours,



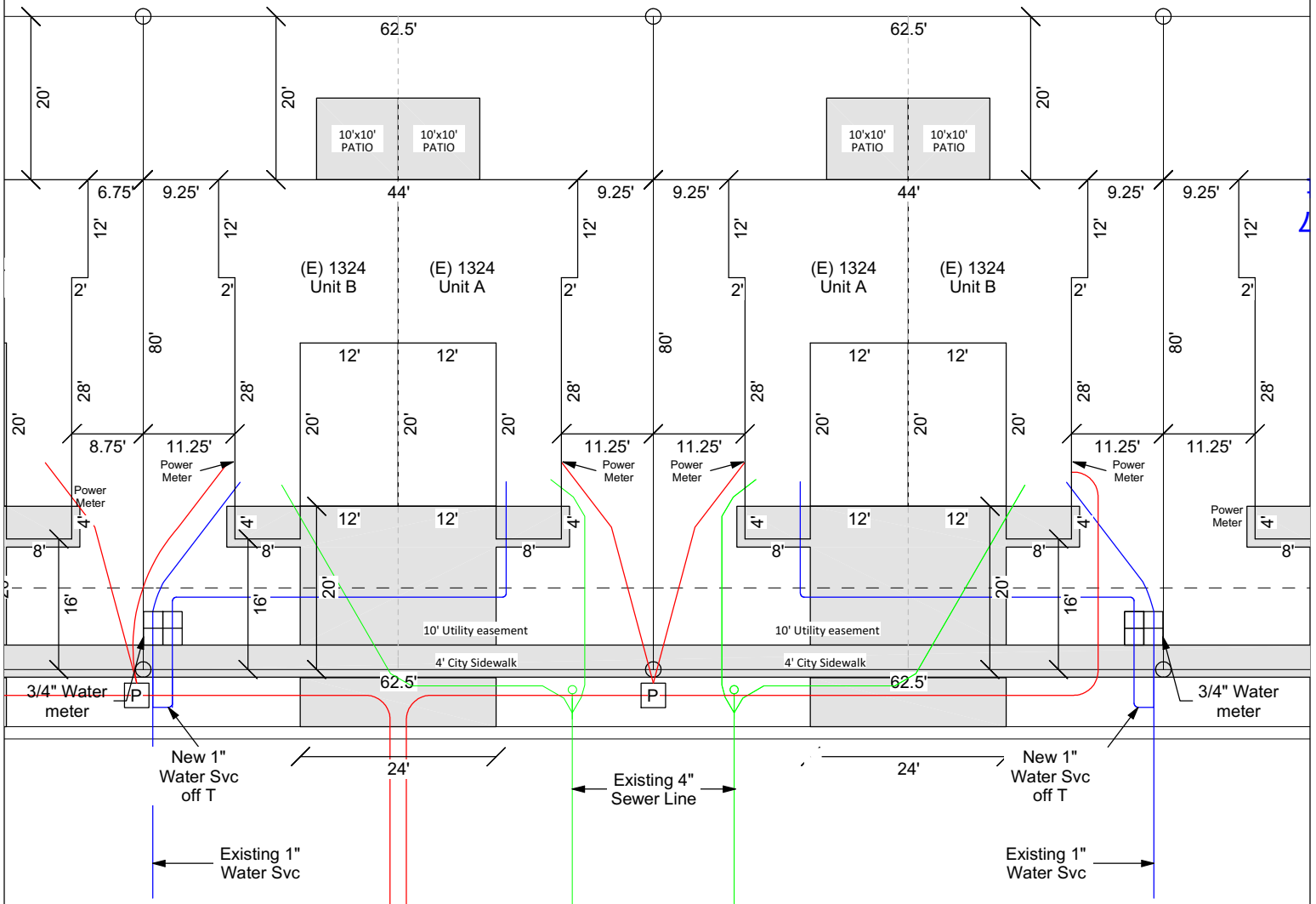
Wendie L. Kellington

WLK:wlk

Enclosure

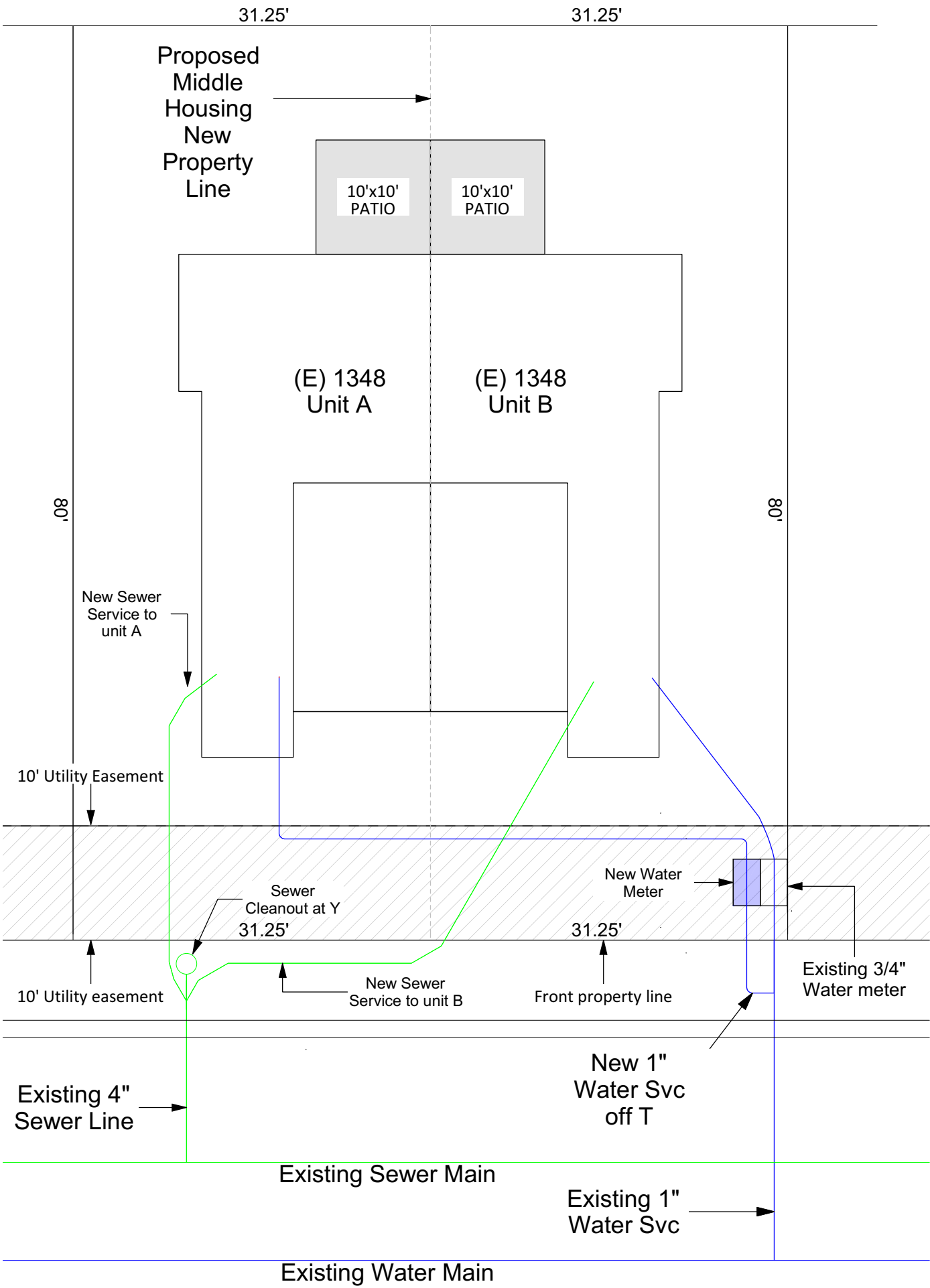
CC: Anthony Potts  
Lloyd and Lois Piercy

Lot 11 & 12  
5000 Sq Ft



PLAN NAME: 1324 Side Popout = 1348 sq ft  
PLOT MAP & LEGAL DESCRIPTION:  
- Diamond Run Phase 1 Lot 11 & 12  
SCALE: 1"=20'  
PARCEL: PARENT PARCEL  
ADDRESS: 1061 NE Emerald Dr





June 8, 2022

Lloyd and Lois Piercy  
PO Box 249  
Echo, OR 97826



Re: **Notice of Decision** – Middle Housing Land Division – Diamond Run Phase 1

This letter is intended to supersede and replace the city's June 2, 2022 letter approving the above referenced middle housing land division. The June 2 letter is hereby withdrawn. The findings of fact and conditions of approval from the June 2 approval are no longer in effect and the amended findings and conditions are attached to this letter.

The City of Hermiston has reviewed and granted tentative approval of your application for a replat of Diamond Run Subdivision Phase 1. The replat is intended to provide individual lots for duplex dwellings within the development. This request is considered a middle housing land division under ORS 197.360 and regulated under ORS 197.360 through 197.380 and ORS 92.031 and is processed differently than a standard replat governed under Chapter 154 of the Hermiston Code of Ordinances.

In reviewing your application, the city has applied the standards contained in ORS 92.031 to your tentative plan. Attached to this letter are findings of fact demonstrating compliance with these standards. Additionally, conditions of approval relating to compliance with State of Oregon rules for middle housing land divisions are attached.

This letter constitutes a tentative approval as required by the State of Oregon under ORS 92.031(2). This approval is an administrative approval. Under the provisions of Chapter 154 of the Hermiston Code of Ordinances, all land divisions must also be approved by the Hermiston Planning Commission and City Council. Pursuant to ORS 197.365(3)(b), the planning commission and city council will not hold hearings on this proposal as the required notice was provided by the city for the administrative review of the tentative plan. However, the planning commission will meet on June 8, 2022 to review and approve the final plat and the city council will meet on June 27, 2022 to review and approve the final plat. Both meetings will be held at 7:00 pm at the Hermiston Community Center, 415 Highway 395 S, Hermiston, OR.

You have the right to file an appeal of the city's decision. An appeal must be filed within 14 days of the date this letter is mailed. If no appeal is filed by 5 pm on June 22, 2022, the city's decision is considered final.

Sincerely,



Clinton Spencer  
Planning Director

C:   Ambience Homes  
      Byron Smith  
      Development Staff  
      Building Department  
      Rich Tovey



**Findings of Fact for Diamond Run Phase 1 Middle Housing Land Division**

**June 8, 2022**

**E Diagonal Blvd**

**ORS 92.031**

**(2) A city or county shall approve a tentative plan for a middle housing land division if the application includes:**

**(a) A proposal for development of middle housing in compliance with the Oregon residential specialty code and land use regulations applicable to the original lot or parcel allowed under ORS 197.758 (5);**

*Findings:*

1. The City of Hermiston has received an application to replat Lots 1 through 72 of Phase 1 of Diamond Run Subdivision. Said replat facilitates the development of common-wall attached single-family dwellings (i.e. duplex dwellings) on Lots 1 through 7, Lots 9 through 20, Lots 29 through 35, Lots 37 through 41, Lots 44 through 48, Lots 51 and 52, Lot 54, Lots 58 through 63, Lot 66, and Lots 68 through 72. Lots not included are not replatted for attached single-family but are renumbered consistent with the revised lot numbering.
2. Under ORS 197.758(3) Hermiston is defined a medium-sized city (having a population between 10,000 and 25,000) and shall permit development of two-family dwellings on all lots zoned for single-family development. All lots proposed for division in (1) above are zoned Medium-High Density Residential (R-3) and permit one and two-family dwellings per 157.027(A) of the Hermiston Code of Ordinances.
3. Ten building permits have been submitted to the Hermiston Building Department to construct duplex dwellings permitted under ORS 197.758(3) and the builder has participated in meetings before the planning commission on April 13, 2022 and with city development staff on May 23, 2022 and committed to developing all remaining lots not able to accommodate multi-family dwellings with two-family dwellings as permitted by the State of Oregon.
4. The City of Hermiston finds that the proposal to develop the lots listed in (1) above with duplex dwellings is a qualifying proposal for the development of middle housing and therefore eligible for a middle housing land division subject to the requirements listed herein.

**(b) Separate utilities for each dwelling unit;**

*Findings:*

5. Separate utility connections are provided for each dwelling unit. Utility connections consist of one shared service for water and sewer connecting to the respective mainline in the adjacent public street. Each utility will branch at the property line, providing a separate water meter and sewer connection for each dwelling unit.
6. The proposed utility connections constitute a deviation from the city's public works standards.
7. A deviation from the city's public works standards is hereby approved for Phase 1 of Diamond Run subdivision. Approval of said deviation is a site specific process and does not constitute a precedent nor waiver of future imposition of public works standards.



**(c) Proposed easements necessary for each dwelling unit on the plan for:**

**(A) Locating, accessing, replacing and servicing all utilities;**

*Finding:*

8. Utility easements of 10 feet in width are provided along the front property line of all lots. Said easements were dedicated on the plat for Diamond Run Phase 1. These easements are preserved on the plat.
9. Multiple easements providing for electrical transmission are provided extending service from the UEC electric substation at the northwest corner of the site.

**(B) Pedestrian access from each dwelling unit to a private or public road;**

*Finding:*

10. Each lot abuts public right of way and no easements are needed to accommodate pedestrian access to each unit.
11. Pedestrian access easements providing access from the development to public trail facilities, required as part of the original Diamond Run approval, are preserved.

**(C) Any common use areas or shared building elements;**

*Finding:*

12. No common areas or shared building elements are proposed. This requirement is not applicable.

**(D) Any dedicated driveways or parking; and**

*Finding:*

13. All driveways will be the sole responsibility of the property owner on which the driveway is located. This requirement is not applicable.

**(E) Any dedicated common area;**

*Finding:*

14. No common areas are proposed. This requirement is not applicable.

**(d) Exactly one dwelling unit on each resulting lot or parcel, except for lots, parcels or tracts used as common areas; and**

*Finding:*

15. Each lot is proposed for exactly one dwelling unit. Building permit applications are on file for 10 units as of May 27, 2022 and additional permit applications are expected to be filed.
16. Pursuant to ORS 92.031(3) the city will prohibit further division of the lots listed in (1) above.
17. Pursuant to ORS 92.031(6) the city will prohibit the construction of accessory dwellings permitted under §157.136(A)(3) of the Hermiston Code of Ordinances on all lots listed in (1) above.

**(e) Evidence demonstrating how buildings or structures on a resulting lot or parcel will comply with applicable building codes provisions relating to new property lines and, notwithstanding the creation of new lots or parcels, how structures or buildings located on the newly created lots or parcels will comply with the Oregon residential specialty code.**

*Finding:*

18. As noted in (3) above, the building permits on file with the City of Hermiston have been reviewed and demonstrate compliance with the applicable building code requirements relating to property lines and separation of structures. The City will continue to require this compliance on all future attached single-family dwellings created for middle housing.

**Conditions of Approval for Diamond Run Phase 1 Middle Housing Land Division**

**June 8, 2022**

**E Diagonal Blvd**

1. Pursuant to ORS 92.031(3)(a) the city will prohibit further division of the lots split for middle housing. Said lots are Lots 1-14, Lots 16-39, Lots 47-52, Lots 56 and 57, Lots 60-67, Lots 69-78, Lots 80-83, Lots 86-95, Lots 98-107, and Lots 109-122.
2. Pursuant to ORS 92.031(6) the city will prohibit the construction of accessory dwellings permitted under §157.136(A)(3) of the Hermiston Code of Ordinances on all lots listed in Condition 1 above.
3. Pursuant to ORS 92.031(3)(b) a notation shall be placed on the plat stating that approval was granted under ORS 92.031.
4. Pursuant to ORS 92.031(2)(e) all attached single-family dwellings constructed on the lots listed in Condition 1 above shall be constructed in accordance with applicable building codes provisions relating to new property lines and the Oregon residential specialty code.
5. Addresses shall be removed from the final plat.