



CITY OF ST. HELENS PLANNING DEPARTMENT
M E M O R A N D U M

TO: City Council
FROM: Jacob A. Graichen, AICP, City Planner
RE: Council decision for the Appeal AP.1.21 of Partition PT.1.21 for Andrew and Lindsay Schlumpberger
DATE: June 10, 2021

At your June 2, 2021 regular session, you deliberated on the public hearing for the matter identified above that occurred earlier that day and determined that the Partition can be approved with certain conditions. This reversed the Planning Commissions denial of this matter.

Attached are the Findings of Fact and Conclusion of Law for this decision. This is included as an authorization for Mayor's signature item on the June 16, 2021 regular session to give you the opportunity to confirm your decision and suggest and necessary edits/additions that captures the basis for your decision.

Your authorization of the Mayor's signature will formalize this decision. Staff will send post decision notices (notice to appeal) once we have the final executed version. The appeal authority on this matter is the Oregon Land Use Board of Appeals (LUBA).

**CITY OF ST. HELENS CITY COUNCIL
FINDINGS OF FACT AND CONCLUSIONS OF LAW
Appeal AP.1.21 (of Partition PT.1.21)**

APPLICANT: Andrew and Lindsay Schlumpberger

OWNER: same as applicant

ZONING: Suburban Residential, R10

LOCATION: 160 Belton Road; 5N1W-34BC-1100 and 5N1W-34-201

PROPOSAL: 2-parcel Partition

SITE INFORMATION / BACKGROUND

The subject property is located along the Columbia River, Dalton Lake and Belton Road. Belton Road provides access. It is developed with a detached single-family dwelling that, per the County Assessor data, was built in 1976. The subject property did not abut the Columbia River until 2004 when a Lot Line Adjustment was done that resulted in today's lot configuration, now proposed to be divided into two.

This is an appeal of a reapplication of Partition PT.1.20, which was amended administratively, then denied by the Planning Commission on appeal AP.1.20, and then appealed to the Oregon Land Use Board of Appeals (LUBA No. 2020-075). The Planning Commission denied the matter based on an on-site sewerage system drainfield easement recorded in 1976 as Book 208, Page 404 Columbia County Clerk's records. After the LUBA appeal was filed that easement was eventually extinguished (Instrument No. 2020-12301) and the LUBA appeal was dismissed. The applicant then re-applied for the partition (PT.1.21), which was denied by the Planning Commission based on inadequate access. The decision was appealed (AP.1.21) to the City Council by the applicant. On June 2, 2021, following notification, the City Council held a hearing on the appeal of that decision, and deliberated and decided on the matter the same day.

PUBLIC HEARING & NOTICE

Public hearing before the City Council: June 2, 2021

Notice of this proposal was sent to surrounding property owners within 200 feet of the subject property on May 4, 2021 via first class mail. Notice was sent to agencies by mail or e-mail on the same date.

Notice was published on May 12, 2021 in The Chronicle newspaper.

APPLICATION COMPLETENESS

This application was originally received on January 5, 2021. Staff identified missing information or other aspects that rendered the application incomplete and notified the applicant of the issue pursuant to SHMC 17.24.050 on January 20, 2021. The applicant provided revised or new information and the application was deemed complete on January 27, 2021. Based on

this alone, the 120-day rule (ORS 227.178) for final action for this land use decision would be May 27, 2021.

The Planning Commission's hearing on this matter took place on March 9, 2021. The record was left open for 14 days (to March 23, 2020) following the March 9th public hearing per request pursuant to ORS 197.763(6). As this was agreed upon by the applicant, this 14-day period is not subject to the limitations of the 120-day rule. An additional seven days (to March 30, 2020) was also granted to the applicant for final written argument, which does not contribute to the 120-day rule per ORS 197.763(6)(e). These actions add 21 days to the 120-day rule time period.

Thus, the 120-day rule (ORS 227.178) for final action for this land use decision is June 17, 2021 (i.e., May 27, 2021 + 21 days).

The City Council approved this application with conditions at their June 2, 2021 regular session. This final action took place prior to the June 17, 2021 120-day rule deadline. The City Council authorized the Mayor's signature of this Findings of Fact and Conclusions of Law document at their June 16, 2021 regular session.

APPLICABLE CRITERIA, ANALYSIS & FINDINGS

SHMC 17.140.040 – Partition approval criteria.

A request to partition land shall meet all of the following criteria (1-5):

(1) The proposal conforms with the city's comprehensive plan;

Finding(s): There is no known conflict with the specific Comprehensive Plan policies identified in Chapter 19.12 SHMC.

There is no known conflict with the addendums to the Comprehensive Plan which includes Economic Opportunities Analysis (Ord. No. 3101), Waterfront Prioritization Plan (Ord. No. 3148), the Transportation Systems Plan (Ord. No. 3150), the Corridor Master Plan (Ord. No. 3181), the Parks & Trails Master Plan (Ord. No. 3191), the Riverfront Connector Plan (Ord. No. 3241), and the Housing Needs Analysis (Ord. No. 3244).

(2) The proposed partition complies with all statutory and ordinance requirements and regulations;

Finding(s): New property lines do not create any new substandard compliance with the **R10 zone standards**, except as described herein.

There is **area of special flood hazard** (i.e., 100 year flood) associated with the Columbia River. Pursuant to SHMC 17.46.050(1)(g)(ii) this Partition must:

- (A) Be consistent with the need to minimize flood damage.
- (B) Have public utilities and facilities such as sewer, gas, electrical, and water systems, located and constructed to minimize or eliminate flood damage;
- (C) Have adequate drainage provided to reduce exposure to flood hazards.

Based on the Flood Insurance Rate Maps (FIRMS), there appears to be adequate area outside of the floodplain to meet these requirements. It is possible that any development of Parcel 2 can avoid this. Further consideration will occur when Parcel 2 is developed. City may require elevation data to ensure any development is outside of the floodplain.

Per SHMC 17.132.025 a **tree plan** is required. Most trees can probably be saved, but some are proposed to be removed eventually for driveway and utility service to Parcel 2. Some anticipated to be removed are noted on the final plat. Also, some were removed less than a year from the date of this application; the applicable stumps and identified replacements are noted. Per 17.132.025(3):

(3) Trees removed within the period of one year prior to a development application listed above will be inventoried as part of the tree plan above and will be replaced according to SHMC 17.132.070(4).

Trees within protection zones are already protected per Chapter 17.40 SHMC. Tree replacement shall be required when future development occurs. A protection program defining standards and methods that will be used by the applicant to protect trees during and after construction is a code requirement related to this. The preliminary plat includes some general notes in that regard.

Utilities are already underground in this area. This is required.

(3) Adequate public facilities are available to serve the proposal (to address transportation facilities in this regard, a traffic impact analysis shall be prepared, as applicable, pursuant to Chapter 17.156 SHMC);

Finding(s): Water is available. There is a water main within the Belton Road right-of-way along the west side of the subject property and along the south side of the property. For the purpose of this Partition, whether or not Parcel 2 will have access to the southerly water main is unknown, but it is at least available from the Belton Road right-of-way to Parcel 2 via proposed easements as shown on the preliminary plat.

Sanitary sewer is available. When 160 Belton Road was originally built in 1976 it was connected to an on-site septic system with holding tank and drain field. Around the late 1980s with further improvements in the early 1990s a septic tank effluent pump (STEP) system was installed in the area. This is a pressurized sanitary sewer system with limited capacity.

Sometime after the STEP system was installed, the subject property connected; it currently gets billed for both water and sanitary sewer.

The applicant provided an analysis of the STEP system by an Oregon Registered Professional Engineer that notes that the STEP system has 8 connections currently and potential capacity for more (12-20 total or 4-12 more connections). Proposed Parcel 1 is already served and Parcel 2 has the ability to be served as the STEP system can handle an additional connection.

Storm Water. Both the Columbia River and Dalton Lake are nearby. Given the parcel sizes and adjacency of large bodies of water, storm water can be managed if done properly, in a manner courteous to neighbors and in compliance with all regulations.

Street system/access. The street system for this area does not meet the current standards today. Any property owner with a legal property is entitled to *develop* it as allowed by zoning. The question before the Council on this matter is if improvements to the street can remedy this for the purpose of approving this Partition and to what extent improvements can be legally imposed. This is important as this will create a new parcel that can be developed, which will result in increased use of the street system than what is possible based on existing conditions and circumstances.

There are currently about ten homes accessed by a single narrow road (Belton Road / Grey Cliffs Drive) with no outlet, starting from the driveway to the Elks Lodge at 350 Belton Road and proceeding easterly to road terminus. The first approximate 500 feet of this section of road is paved at a width of approximately 17 feet, thereafter the width is around 11' in most places.

Of particular concern are the dwellings and lots lying beyond where Belton Road narrows to approximately 11 feet in width. There are about 9 to 11 lots (9 developed with detached single-family dwellings), beyond the first point (with no outlet) where the road narrows to 11'. This narrowing starts at about the midpoint of the property addressed as 265 Belton Road. 265 Belton Road is included in the lot and dwelling count as the driveway providing access is after said point where the road narrows to 11'.

Public road standards are generally addressed in Chapter 17.152 SHMC. There are several classifications with Belton Road classified as a "local street" per the City's Transportation Systems Plan. As applicable to the analysis of this Partition:

- Local street, normal: 34' roadway width. No max dwelling unit limit. 50' minimum right-of-way width.
- Local "skinny" street: 20' or 26' roadway width. Limited to 200 average daily trips (ADT) (i.e., about 20 detached single-family dwellings). 60' minimum right-of-way width.

Note: City of St. Helens Ordinance No. 3264 removes the 20' wide standard as an option and increases the 26' wide option to 28' wide. However, this application was deemed complete before the Development Code amendments of Ordinance No. 3264 took effect. Thus, the 20' standard must be honored for the purpose of this Partition application.

- Cul-de-sac (essentially a local street that terminates at one end): limited to 20 dwelling units; Normal max length is 400'.

What complies? Belton Road's right-of-way width is 50 feet and meets the local street standard and exceeds the local "skinny" street standard. There are less than 20 lots, so the capacity intended for local "skinny" streets and "cul-de-sac" (no outlet) streets as fully constructed per city standards are acceptable.

What does not comply? The no outlet road exceeds 400 feet and the roadway portion is predominately less than 20' wide over its course. Moreover, frontage improvements (e.g., curb and sidewalk) are absent altogether.

The Council determined that, though the street system is deficient, particularly as to roadway width, certain improvements could offset the impacts of one additional undeveloped parcel developed as allowed by the R10 zoning district. At the time this partition application was deemed complete, the anticipated principal use of the proposed undeveloped parcel based on zoning is a detached single-family dwelling, which generates approximately 10 average daily trips (ADT). Considering the 9 to 11 lots beyond the first point (with no outlet) where the road narrows to 11' and that a detached single-family dwelling generates 10 ADT, there is 90-110 ADT embodied in the lots served by the narrow road. Adding a new undeveloped parcel increases this to 100-120 ADT or about 8-11%. The council finds that this increase is minor and mitigatable.

The Council considered several factors in how to mitigate this minor increase. The Council considered the 20' wide skinny street roadway width standard along the subject property's Belton Road frontage, and if improved, would bring the overall street closer to the intended standard. The Council also considered testimony in the record and as presented at the June 2, 2021 public hearing about the functional value of a turnout at a blind (more-or-less 90 degree) corner of Belton Road that abuts the property. The Council acknowledged SHMC 17.84.070(4):

(4) Vehicle turnouts (providing a minimum total driveway width of 24 feet for a distance of at least 30 feet) may be required so as to reduce the need for excessive vehicular backing motions in situations where two vehicles traveling in opposite directions meet on driveways in excess of 200 feet in length.

Though this applies to private driveways (not public roads), an extra 4' of width at the blind corner would enhance safety under the unique circumstances. This segment of road precedes 7 dwellings (plus any new development on parcel 2) that depend on this segment of Belton Road. The City Council determined this is an optimum location for a vehicle turnout because it maximizes visibility westward where pull off opportunities are lacking for vehicles leaving the area increasing the probability that a vehicle by the turn out would see the oncoming vehicle and be able to use the turnout. It will also reduce the probability of vehicle collisions at the blind corner.

With that context, the City Council considered how to determine the adequacy of the public transportation facilities from which the partition site takes access. No issues were raised relating to the adequacy of transportation facilities other than Belton Road. Thus, the Council's analysis focused on the particulars of Belton Road.

The pertinent code standard, SHMC17.140.040(3), includes a parenthetical stating that "to address transportation facilities in this regard, a traffic impact analysis shall be prepared, as applicable, pursuant to Chapter 17.156 SHMC." However, the Traffic Impact Analysis (TIA) standards are not applicable to developments that do not meet the applicability thresholds at 17.156.030. The proposed partition will create approximately 10 daily trips and therefore will not trigger the 250 new average daily trips under SHMC 17.156.030(3)(a).

No other TIA applicability standards were raised in the record, and the Council finds that none of the standards of 17.156.030(1), (2), or (3) are applicable to this application. Thus, the TIA standards are not applicable to this two-lot partition. Thus, Council interprets 17.140.040(3) not to require a TIA (see language that TIA “shall be prepared, as applicable, pursuant to Chapter 17.156.” (emphasis added).

Council also finds that the phrase “adequate public facility” is ambiguous in this circumstance because the word “adequate” is undefined in the SHMC and the TIA requirement for transportation facilities is not applicable. There are multiple reasonable interpretations of what constitutes a transportation facility adequate to serve a two-lot partition. One interpretation is that the inclusion of the phrase “as applicable” in the parenthetical is intended to result in small development that does not meet the TIA threshold being considered a de minimis impact and able to be served by existing transportation facilities.

A second interpretation is that the adequacy of a transportation facility is a factual question to be determined by substantial evidence in the record. While a TIA is not required, the TIA focuses on the capacity of a roadway and the number of additional trips. Thus, the context of the parenthetical about TIA standards, provides some direction supporting the interpretation that adequacy is determined by a factual analysis of whether the transportation facility is sufficient to accommodate the additional trips.

Here, the record contains substantial evidence that Belton Road does not have a significant history of vehicle collisions or traffic congestions, and that emergency vehicles are able to access the site. Multiple parties testified as to the accident history of Belton Road. Most were unaware of any accidents, while two people had first-hand knowledge of two separate accidents on Belton since 1968. The record also contained convincing testimony that Belton Road being narrow provides visual cues to drivers to proceed at reduced speed. Additional first-hand testimony established that the number of trips on Belton Road is such that residents rarely have to pass other cars when coming and going from their homes. Specific testimony on the issue established that one driver passed 5 cars (3 that were together) in 2 months of traveling on Belton, and another driver passed 1 car over the same time span. One person who doesn't live in the neighborhood but visits refuted this by testifying that they have encountered two to three vehicles over a 30–60-minute period of walking the area periodically, but the Council finds this to be unpersuasive. There was no other contradictory evidence. The record also contains multiple writings from the Fire Marshall confirming that their fire equipment can access the site via Belton Road. The Council finds second-hand testimony that a previous Fire Marshall at an unspecified time stated that they would not respond to fires on Belton Road to be unpersuasive. Applicants have also proposed improvements to widen the paved surface of the road along the site frontage and construct a turn-out at the 90-degree bend in the road. On balance, and consistent with the interpretation that adequacy is a function of a fact specific analysis of the sufficiency of the transportation facilities to accommodate the proposed additional trips, the record contains substantial evidence that the transportation facilities used to access this site are adequate to serve the proposed partition and will be made more adequate by improvements required as conditions of approval to the partition.

The only theory of adequacy provided by opponents of the partition is that the Council must interpret adequacy to be identical to compliance with all City standards that would apply to a new street. That interpretation is rejected. There are many streets in St. Helens that do not meet all standards for construction of new streets. To require all new residential lots to be served only by streets that meet the new standards creates a moving target (standards change over time) and as a practical matter would result in the underutilization of residential lands.

Finally, much discussion was had about the applicability of the 5th Amendment Takings Doctrine and state housing protections. Specifically, the rough proportionality rule from *Dolan v. City of Tigard*, 512 U.S. 374 (1994), application of rough proportionality to denial of a proposed land use under *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013), and the provisions for deciding land use applications for needed housing at ORS 197.522. Applicants and the attorney for opponent Ms. Hill offered legal analysis and opinions regarding what improvements to Belton Road can be required as conditions of approval within the limits of rough proportionality. All parties agreed that it was unconstitutional to require applications to improve the entire length of Belton Road to meet current street standards. This is where the respective analyses diverge. The attorney for Ms. Hill asserts that the partition must be denied because an approval categorically cannot be conditioned on improvements to Belton Road that will result in satisfaction of 17.140.040(3). The Council disagrees and as discussed above finds that it is not impossible for the partition to meet 17.140.040(3).

Applicants' assert that the partition cannot be denied due to lack of improvements to Belton Road which if imposed as exactions would exceed rough proportionality. Further, applicants assert that ORS 197.522 mandates that the City approve the partition as needed housing if it is possible to do so with reasonable conditions. The applicants also propose improvements to their approximately 165-feet of frontage on Belton Road, specifically to widen the paved surface of Belton Road to 20' and construct a turn-out at the 90-degree bend in Belton Road.

The Council finds that the proposed street improvements will increase the ease with which cars can pass on Belton Road, remedy one of the two narrow bottlenecks, and increase sight distance at the 90-degree bend. It is reasonable to condition approval on the improvements proposed by applicants. No other improvements were proposed except to widen the entire length of Belton Road, which all parties agree would be an unconstitutional exaction. The Council also finds that ORS 197.522 does require the partition to be approved with reasonable conditions. Thus, denial of the partition in the face of reasonable conditions being offered by applicants would violate ORS 197.522, and potentially *Koontz*, as it would be the functional equivalent of giving applicants a choice between and unconstitutional exaction (widening the length of Belton) and denial. Accordingly, the Council declines to interpret 17.140.040(3), ORS 197.522, or the rough proportionality test to result in an outcome that is inconsistent with the 5th Amendment of the U.S. Constitution.

The City Council acknowledges that improving Belton Road along the subject property, by increasing the width to 20 feet, except at the blind corner where the width would be 24 feet (a distance of 30 feet) may be more than a government can impose on this development, but the applicant testified as to their willingness to accept such conditions of approval to improve safety for the benefit of the neighborhood. The Council finds that this is acceptable and is sufficient to

approve this partition. However, the Council did not consider requiring addition improvements, such as sidewalk and curb, given the extent of requirements consented to by the applicant. Given the applicant's consent to the improvements, the city is not in violation of law for the imposition of such.

Paving. The street is paved where it lies within public right-of-way, but turns to gravel when it leaves the right-of-way along the south side of the subject property. Paving is required in residential areas per current standards. This would apply to any new road or driveway, or expansions of existing roads/driveways.

(4) All proposed lots conform to the size and dimensional requirements of this code; and

Finding(s): There are two aspects of this criterion, 1) Sensitive Lands and 2) the provisions of the R10 zoning district.

Sensitive Lands. The site abuts the Columbia River (with 75' upland protection zone required per Chapter 17.40 SHMC) and Wetland D-16, otherwise known as Dalton Lake (with 75' upland protection zone required per Chapter 17.40 SHMC). The applicant has conducted an Environmental Assessment to determine the boundaries of these sensitive lands and their respective buffers, which are reflected on the preliminary plat.

The City's local wetland inventory also identified Wetland D-17 on or close to the property, but the Environmental Assessment effort determined D-17 was not close to the property and does not impact this partition.

For subdivisions (creating 4 or more lots), significant wetlands and riparian areas and their protection zones are required to be part of dedicated preservation tracts to be managed by a homeowners association or other responsible entity. Partitions do not create tracts. Thus, the City has allowed easements as a substitute to preserve these areas (e.g., see P.P. No. 2009-17). However, the intent of this is for newly created properties to be "whole" excluding the sensitive lands and protection zones. "Whole" means that the net property not encumbered needs to meet the standards of the Development Code.

Thus, the **R10 zoning district** standards. The minimum lot size of the R10 zoning district is 10,000 square feet. The net area excluding the wetland, riparian area and protection zones still exceeds this for both parcels. The minimum lot width at the building line is 70' or 80' for a corner lot. Parcel 1 is a corner lot and exceeds this. Parcel 2 gets close to 70' in its net area, but still meets the standard.

The minimum lot width at the street is 60' or 30' along an approved cul-de-sac (i.e., dead-end road). Parcel 1 meets this and Parcel 2 meets the "cul-de-sac standard" given the 30' wide, increasing to 40' wide, access and utility easement off Belton Road.

Minimum lot depth is 100 feet. This is met for both parcels using the net area.

(5) All proposed improvements meet city and applicable agency standards.

Finding(s): This would be a requirement if approved. Fire Marshall consideration is particularly important given limited access to the area.

* * *

SHMC 17.140.050 – Special provisions for parcels created by through the partition process.

(1) Lot Dimensions. Lot size, width, shape and orientation shall be appropriate for the location of the development and for the type of use contemplated, and:

- (a) No lot shall be dimensioned to contain part of an existing or proposed public right-of-way;
- (b) The depth of all lots shall not exceed two and one-half times the average width, unless the parcel is less than one and one-half times the minimum lot size of the applicable zoning district; and
- (c) Depth and width of properties zoned for commercial and industrial purposes shall be adequate to provide for the off-street parking and service facilities required by the type of use proposed.

Finding(s): (a) No existing or proposed right-of-way is impacted. (b) Excluding sensitive land protection buffers, the net area for Parcel 2 has an average width of approximately 90' and a depth of approximately 230'. This meets the depth to width ratio requirement more-or-less. Parcel 1 meets this easily. (c) Not applicable; the property is zoned residential.

(2) Through Lots. Through lots shall be avoided except where they are essential to provide separation of residential development from major traffic arterials or to overcome specific disadvantages of topography and orientation, and:

- (a) A planting buffer at least 10 feet wide is required abutting the arterial rights-of-way; and
- (b) All through lots shall provide the required front yard setback on each street.

Finding(s): No through lot is proposed.

(3) Large Lots. In dividing tracts into large lots or parcels which at some future time are likely to be redivided, the approving authority may require that the lots be of such size and shape, and be so divided into building sites, and contain such site restrictions as will provide for the extension and opening of streets at intervals which will permit a subsequent division of any tract into lots or parcels of smaller size, and:

- (a) The land division shall be denied if the proposed large development lot does not provide for the future division of the lots and future extension of public facilities.

Finding(s): Given surrounding wetlands, the Columbia River, floodplain associated with the Columbia River, one narrow road access for this neighborhood, this neighborhood's wildland-urban interface (a transition area between wildland and human development with a higher wildfire risk), and limited sanitary sewer capacity, density promotion is unwise in this area. Redevelopment planning such as "shadow plats" are not warranted for this proposal.

(4) Fire Protection. The fire district may require the installation of a fire hydrant where the length of an accessway would have a detrimental effect on firefighting capabilities.

Finding(s): There is an existing fire hydrant along Belton Road by the southern edge of the subject property.

The access easement and driveway proposed to serve Parcel 2 will exceed 150 feet. Per SHMC 17.152.030(3)(a), when access easements exceed 150 feet, they shall be improved in accordance

with the fire code. When Parcel 2 is developed, its driveway will need to be able to accommodate emergency vehicles. Any requirement of the Fire Marshall shall be met.

(5) Reciprocal Easements. Where a common drive is to be provided to serve more than one lot, a reciprocal easement which will ensure access and maintenance rights shall be recorded with the approved partition map.

Finding(s): An access easement is proposed to access Parcel 2 from the Belton Road right-of-way through Parcel 1. Maintenance agreement shall be required.

(6) Accessway. Any accessway shall comply with the standards set forth in Chapter 17.84 SHMC, Access, Egress, and Circulation.

Finding(s): This applies to the access from parcel 1 to parcel 2 only. Broader access considerations (i.e., Belton Road access for the neighborhood) is addressed above.

The access easement proposed to provide street connection to proposed Parcel 2 encompasses the southerly 30' of Parcel 1 (where there are previously recorded access and utility easements for other parties) and the west 40' of Parcel 1.

Parcel 2 is likely to be developed as a detached single-family dwelling. It could also be developed as a duplex beginning July 1, 2021 given Oregon House Bill 2001 (also see St. Helens Ordinance No. 3264). The minimum easement for up to two dwellings is 15' width with a minimum 10' pavement width.

In addition, the following requirements apply under SHMC 17.84.070:

(2) Private residential access drives shall be provided and maintained in accordance with the provisions of the Uniform Fire Code.

(3) Access drives in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus in accordance with the engineering standards of SHMC Title 18 and/or as approved by the fire marshal.

(4) Vehicle turnouts (providing a minimum total driveway width of 24 feet for a distance of at least 30 feet) may be required so as to reduce the need for excessive vehicular backing motions in situations where two vehicles traveling in opposite directions meet on driveways in excess of 200 feet in length.

New access to Parcel 2 will be subject to Fire Marshall/Fire Code standards. This includes a turn-around area.

New access to Parcel 2 shall be paved as required by the Development Code. When Parcel 2 is developed, it will need a minimum 10' wide paved driveway from Belton Road to the dwelling or other principal use proposed. This must be within the easement on Parcel 1 for Parcel 2 (cannot be on adjacent property). This is important to consider as the private road along the south side of the subject property, serving other properties, is mostly outside of the subject property where it intersects Belton Road, but angles into the subject property progressing eastward.

(7) The streets and roads are laid out so as to conform to the plats of subdivisions and maps of partitions already approved for adjoining property as to width, general direction and in all other respects unless the city determines it is in the public interest to modify the street or road pattern.

Finding(s): There is no reason to modify the overall road pattern.

CONCLUSION & DECISION

Based on the facts and findings herein, the City Council of the City of St. Helens overturns the Planning Commission denial and approves this Partition with the following conditions:

1. **This Land Partition preliminary plat approval shall be effective for a period of twelve (12) months from the date of this approval becoming final including the resolution of all appeals and appeal periods.** The approval shall become void if a final plat prepared by a professional registered surveyor in accordance with 1) the approved preliminary plat, 2) the conditions herein, and 3) the form and content requirements of the City of St. Helens Development Code (SHMC Title 17) and Oregon Revised Statutes is not submitted within the twelve (12) month approval period. **Note: a time extension of up to six months is possible per SHMC 17.140.035(3).**

2. **The following shall be required before the City accepts a final plat for review:**

- a. Construction plans for improvements to the portion of Belton Road within the public right-of-way that abuts the subject property for a total improved (paved) width of at least 20 feet, except the portion in proximity to the approximate 90-degree bend in the road where the width shall be at least 24' for a for a distance of at least 30 feet, shall be provided for city review and approval.

Location of the turnout (24-foot-wide portion) shall remedy the blind corner to the maximum extent possible where the public right-of-way has an approximate 90-degree angle along the west side of the subject property

The City may require no-parking identification.

3. **The following shall be required before the City signs an approved final plat:**

- a. Belton Road improvements per condition 2.a and consistent with the city-approved plans shall be completed and approved by the City.
- b. Applicant shall provide a maintenance agreement, subject to city review and approval, that will be recorded with the final plat per condition 5.

4. **In addition to compliance with local, county, state and other requirements, the following shall be included on the final plat:**

- a. Conservation easements to the City for wetlands and related upland protection zone, and riparian areas and related upland protection zones. For conservation easements, there

shall be a narrative that states: “this area subject to the restrictions and protections of the City of St. Helens” or an alternative as approved by the City.

- b. A note shall be included on the plat for the maintenance agreement for shared access (see condition 3.b and 5.a) with a line to write the instrument number on the plat upon the agreement’s recordation.

5. The following shall be recorded with the final plat:

- a. Maintenance agreement shall be required for the shared access (within easement) on Parcel 1 for the benefit of Parcel 2.

6. The following shall be required prior to any development or building permit issuance for Parcel 2 of this partition with implementation required prior to final inspection/ approval of the contemplated development:

- a. Fire Marshall approval of driveway design shall be required and included in the plans for applicable building/development permits.
- b. Plans as part of the building/development permits shall show minimum 10’ paved driveway width (or additional requirements per the Fire Marshall) from Belton Road to the dwelling or other principal use proposed. This must be within the easement(s) on Parcel 1 benefitting Parcel 2.

7. Any requirement of the Fire Marshall as it applies to this Land Partition shall be met.

8. All utilities shall be underground pursuant to SHMC 17.152.120.

9. Tree replacement shall be required when future development occurs, as applicable per Chapter 17.132 SHMC. Development shall follow the approved protection program defining standards and methods that will be used by the applicant/owner to protect trees during and after construction.

Specific location of replacement trees subject to city inspection and approval prior to any plan approval. Inspection of replacement tree plantings subject to city inspection prior to final approval.

10. This partition does not allow impacts to sensitives lands (such as floodplains, wetlands and their upland protection zones, and riparian areas and their upland protection zones). Additional permitting may be required for such impacts.

11. This partition is allowed on a street system already substandard for existing development given improvements as described herein to incrementally improve the system. This does not guarantee future land divisions for this or other property dependent on this substandard system.

12. Owner/applicant is still responsible to comply with the City Development Code (SHMC Title 17).

Rick Scholl, Mayor

Date