

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

Regarding an application by Pavel Dubintsov and	)	<b><u>FINAL ORDER</u></b>
Alexander Shevtsov for approval of 5-lot	)	
minor single-family residential subdivision	)	
for property located at 4610 SE Whipple Avenue,	)	<b>File No.</b>
Milwaukie, Oregon	)	<b>Z1024-05-SS</b>
	)	<b>(Shevtsov Subdivision)</b>

**A. SUMMARY**

1. On December 22, 2005, Pavel Dubintsov and Alex Shevtsov (the “applicants”) filed an application for tentative subdivision approval for property located at 4610 SE Whipple Avenue, Milwaukie, Oregon. The property is also identified on the Clackamas County Assessor’s maps as T2S, R2E, W.M., Section 18AB, Tax Lot 2500 (the “site.”) The application was deemed complete on December 21, 2005; however, on March 10, 2006, the applicants requested, and were granted, permission to extend the review period to allow the submittal of additional information. The applicants also waived their rights to a decision within the 120-day period allowed under ORS 215.427.

a. The site includes approximately .85 acre, and is developed with a single family dwelling. As proposed, the property will include five lots. The existing dwelling will remain on one of the lots. The site is rectangular and relatively flat. The driveways from the dwellings will front on SE Whipple Avenue.

b. The subject property is zoned R-7 (Urban Low Density Residential, 7,000 sq./ft. unit district.) Property on SE Whipple Road is generally developed at R-7 densities. According to the applicants, the site is the last parcel to be redeveloped into approximately 7,000 square foot lots.

c. The site has approximately 309 feet of frontage on SE Whipple Avenue and 119 feet of frontage on SE Gordon Avenue, both being local residential roads. The segment of SE Whipple Avenue between SE Gordon Avenue and SE McLoughlin Boulevard includes a 30 foot wide right-of-way that serves 15 existing dwellings. County transportation engineering staff have recommended that the applicants dedicate an additional five feet of road width along SE Whipple Avenue to satisfy minimum road design width and dedication requirements. County staff also recommend that the applicant provide an eight-foot wide utility, slope and sidewalk easement along the frontages of both SE Gordon and SE Whipple Avenues. County staff proposed conditions requiring half-street improvements and curb-tight sidewalks along SE Whipple Avenue. No street improvements or sidewalks are proposed or required along the SE Gordon frontage.

2. On June 14, 2007, Rick McIntire, Clackamas County planner, issued a staff report which sets out the applicable approval criteria and development standards. The staff report recommended denial, in part because the applicants had not submitted evidence showing that the site is not susceptible to landslides. The staff report noted that the applicants had raised objections to the county road dedication requirements, and to conditions of approval regarding the construction of sidewalks.

3. On June 21, 2007, Clackamas County Land Use Hearings Officer Anne Corcoran Briggs (the "Hearings Officer") held a duly noticed *de novo* public hearing about the application. County staff, Alex Shevtsov, Dick Jones, Oak Lodge Community Council, and Linda Antolic, a neighbor, testified regarding the application. At the hearing the applicant requested additional time to submit evidence regarding landslide risk. The Hearings Officer left the record open until July 12, 2007 for the submittal of additional evidence.

4. On June 27, 2007, Alex Shevtsov requested the deadline for new evidence be extended to August 5, 2007. The county did not object to this request, but asked that the deadline be extended to August 6, 2007, a regular business day. Accordingly, the Hearings Officer issued an order that extended the deadline for submitting new evidence to August 13, 2007, and allowed the applicant until August 20, 10027 to submit legal argument in support of the application. The record closed to all parties on August 20, 2007.

## **B. HEARING AND RECORD HIGHLIGHTS**

1. The Hearings Officer received testimony at the June 21, 2007 public hearing. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. At the beginning of the hearing, the Hearings Officer made the statement required by ORS 197.763 and disclaimed any *ex parte* contacts, bias or conflicts of interest. The following are highlights by the Hearings Officer of selected testimony in the record.

2. County planner Rick McIntire summarized the county's position regarding compliance with subdivision standards. He testified that the primary basis for staff's recommendation pertained to landslide hazards. Mr. McIntire noted that the area is a documented landslide hazard area, although the most recent major landslide occurred many years ago. He commented that the applicants had submitted a geotechnical evaluation for a property located in the area, but argues that the geology of the area varies significantly, and that a report for one site does not satisfy the requirement for an assessment of other sites in the area.

Mr. McIntire testified that the Antolics, property owners to the southeast, submitted written testimony requesting that the applicants be required to provide access to the rear of their property so it can be redeveloped. Mr. McIntire stated that he did not support the request, partly because the site will be regraded and retaining walls installed to create building sites on the resulting lots. If street access is required, the site will lose

a significant portion of its buildable area. In addition, Mr. McIntire testified that other abutting properties on SE Gordon could be redeveloped in conjunction with the Antolic site, which will provide more convenient access.

3. Alex Shevtsov testified that he believes the application can be approved as presented. He argues that the geotechnical study from the nearby site is adequate because the last significant landslide occurred in 1924. He argues that he was not required to submit an individualized geotechnical report for the dwelling he constructed on the site, and further review is not necessary to assure that the site is safe for development.

In addition, Mr. Shevtsov argues that the segment of SE Whipple Avenue that fronts his property was not fully dedicated as a public street. As a result, he asserts that he can create a private access easement along the frontage of the property, avoiding the lot frontage development standards (including paving, sidewalk and curb requirements) that apply to residential subdivisions fronting on local roads. He argued that the imposition of the development standards are a taking.

4. Dick Jones testified that he is concerned about landslide risk. He submitted photos of a recent landslide in Astoria, Oregon, that has resurfaced after a 50-year hiatus. He also testified that stormwater detention is going to be a problem for the existing dwelling on the site, which is located at the lowest site elevation. He stated that there is no place to collect the water in an on-site detention pond. He stated that the soils in the area are clay that become “greasy” in wet conditions.

5. Linda Antolic expressed concerns that her property would be landlocked by the proposed development. She testified that her property is long and narrow, and does not have adequate frontage on SE Gordon Avenue to accommodate additional access to the rear of her lot. She believes that the optimal solution would be to allow access over the site to her property, because she does not have the ability to force the neighbors to the south to create an access road between them to allow for redevelopment. She also commented that the addition of five dwelling units along her side property line will impinge on her privacy. She requested that a privacy fence be installed along the property line to minimize the loss of privacy.

6. Rick McIntire responded to the testimony by noting the area is located within a landslide hazard zone, although he does not believe that the situation is as dire as in Astoria. He testified that nevertheless, the evidence underscores staff’s concerns regarding development in a landslide prone area, and notes that the allowed density is predicated on evidence that the site can be developed to minimize landslide risks. With respect to Mr. Shevtsov’s arguments regarding the SE Whipple right-of-way, Mr. McIntire contended that the question of the proper width of SE Whipple is irrelevant, as the applicant will be required to dedicate the needed street right-of-way as a condition of approval. He noted that under the county regulations, subdivisions are not allowed to take access via a private easement that would be a through-street.

7. On August 3, 2007, the applicant submitted a geotechnical report from H.G. Schlicker and Associates. The report concludes that the site is, or can be made stable, provided the development occurs in accordance with recommendations included in the report. The report notes that portions of the site have fill up to a depth of four feet, which are not recommended for development. Exhibit 21.

8. On August 6, 2007, county staff submitted a memorandum into the record. Based on the geotechnical report, staff revised its recommendation to approval, subject to conditions. Staff requested that the development standards included in the H.G. Schlicker report be added as conditions of approval.

9. On August 20, 2007, Lynn M. Murphy, an attorney representing the applicants, submitted a memorandum that includes final written legal argument, requests a variance to certain development standards, and objects to several conditions of approval.

### **C. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. This application is subject to ZDO 301 (R-7 development standards); 1001 (general site development standards), 1002 (protection of natural features), 1003 (hazards to safety), 1006 (utility lines and facilities), 1007 (roads, circulation and parking), 1008 (storm drainage), 1012 (density standards), 1014 (design standards for land divisions), 1022 (concurrency standards), and 1105 (general subdivision development standards.) The standards at issue include: 1002, 1003, 1006, 1007, 1008, and 1014.

2. ZDO 1002. These standards require that developments be designed to reflect the natural limitations of the site. It requires that the applicants minimize site disturbance, especially on steep slopes, wetlands, and floodplains. Staff recommended a condition of approval (Condition 7(c)), which would require the applicants to re-vegetate all graded and filled areas as soon as feasible following grading.

The applicants argue that the ZDO 1002 does not apply to the proposed subdivision because the site does not include steep slopes, trees or wooded areas, rivers or streams, wildlife habitats or other distinctive resource areas. Even if ZDO 1002 does include applicable approval standards, the applicants assert that Condition 7(c) is not necessary to satisfy any of the approval standards.

ZDO 1002 includes six subsections. Four of the subsections address specific site conditions (steep slopes, wetlands, etc.). Those subsections have not been applied to the proposal because the site does not contain the special features described. However, ZDO 1002.02, which sets out the general terrain preparation standards, does apply. In relevant part, ZDO 1002.02(B)(1) requires that “[d]evelopments \* \* \* be planned, designed, constructed and maintained to \* \* \* [a]void substantial probability of \* \* \* [a]ccelerated erosion.”

The site is relatively flat, has no significant natural features, and is located in a developed residential area. The site is subject to landslide hazards, and neighboring property is located at a lower elevation. Testimony shows that the clayey soils pond water during wet months. The applicant testified that he intends to construct retaining walls along the southerly boundary of the property (along the boundary to tax lot 2400), to create a flat spot for development. In addition, the geotechnical report includes evidence that portions of the property have fill that must be replaced if the area is used for development.

While the applicants are correct that there are no significant natural features or development constraints that would prevent development of the site, the Hearings Officer concludes that the evidence supports a finding that some type of vegetative cover is appropriate to protect downslope property owners (particularly the Antolics) from erosion caused by on-site grading. Accordingly, the Hearings Officer concludes that such a condition is reasonably calculated to protect the public from the deleterious effects of the development and therefore is allowed.<sup>1</sup>

3. ZDO 1003. The applicant submitted a geotechnical report that shows that the site can be subdivided and developed with up to five dwellings, provided certain design and construction recommendations are followed. Staff concurs with the conclusions set out in the report, and requests that the recommendations it contains be added as conditions of approval. The Hearings Officer concludes that it is feasible to develop the property with five residential lots, provided the recommendations in the geotechnical report are followed. Consequently, the applicant also satisfies the density standards set out in ZDO 1012. Condition 8 is imposed to require compliance.

4. ZDO 1006. ZDO 1006.02(C) requires that, unless the service provider prohibits undergrounding, all electrical, gas and communications services shall be installed underground. ZDO 1006.02(G) requires that street lights be installed at every subdivision intersection. The applicant requests a variance to these standards pursuant to ZDO 1203, or in the alternative, argues that the requirement to install streetlights is a taking under the U.S. Supreme Court analysis in *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 304 (1994)(*Dolan*).

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<sup>1</sup> ZDO 1303.09 permits the Hearings Officer to grant permits subject to conditions. ZDO 1030.09(B) provides:

“Such conditions 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; or

“2. Fulfillment of the need for public service demands created by the proposed use.”

The “legal argument” that may be submitted during the seven-day period following the local evidentiary proceedings may not include new evidence. ORS 197.763(6)(e) and (9). The applicants’ argument that the applicable development standards be waived, modified or not applied depends on new evidence that was submitted as part of the applicants’ final written legal argument and not on evidence that was presented prior to the close of the record. The Hearings Officer concludes that such evidence cannot be considered at this point in the proceedings, and may only be addressed through a new variance application, or through the modification process set out in 1305.01(L). Accordingly, unless a modification or variance is allowed, the applicants shall be required to abide by conditions of approval pertaining to street lighting and the undergrounding of utilities.

The applicants’ constitutional arguments are addressed below.

4. ZDO 1007 and 1014.

a. Antolics’ Comments. The Antolics requested that the applicants be required to provide a through road from SE Whipple to the rear of the Antolic property to facilitate re-development of their oversized lot. Staff evaluated that request, and concluded that the connection to the Antolic property is not needed to provide connectivity within the local street system, and would significantly reduce the developable area of the site. The Hearings Officer agrees with that analysis.

b. Applicants’ Objections to Condition 16. The applicants object to Condition 16 which requires utility and road right-of-way dedications and frontage improvements, including stormwater drainage, curbs, gutters and curb-tight sidewalks. Applicants argue that county has not demonstrated that there is a nexus between the proposed subdivision and the required improvements, or that the exactions are roughly proportional to the impact the subdivision will have on the local street system.<sup>2</sup> Finally, the applicants argue that even if the exactions are constitutional, they are inconsistent with development and street improvements that exist in the area.

Before turning to the applicants’ *Dolan* arguments, some explanation of the US Supreme Court’s takings jurisprudence is in order.<sup>3</sup> A taking occurs where the government occupies private space for the benefit of the public without compensating for the use. Conversely, when a landowner proposes to develop private property in a way that would create a burden on the public, the government generally may, by exercise of the police power, prohibit the development. As an alternative to outright denial, the government may, in its discretion, protect the public interest at risk by conditioning development on some concession of the landowner--such as a concession of property interests--that mitigates the public burden that would otherwise justify prohibiting the

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<sup>2</sup> The applicants also assert that the nexus needs to reflect a legitimate governmental interest. However, that analysis, which sounds in federal Due Process jurisprudence, has been disavowed by the US Supreme Court with respect to Takings law. *See Lingle v. Chevron USA, Inc.*, \_\_\_ US \_\_\_, \_\_\_, 125 S Ct 2074, 2083, 161 L Ed 2d 876 (2005).

<sup>3</sup> This explanation borrows heavily from Judge Rosenblum’s discussion of the subject in *Hammer v. City of Eugene*, 202 Or App 189, 121 P3d 693 (2005).

development. The conditions, known as “exactions,” are not unlimited; they may be required of a property owner without compensation only if there is an essential nexus between the exaction and the public interest to be protected and the burden is roughly proportional to the impact the proposed development has on the public. The latter two standards are at play when a party raises a *Dolan* argument.

Here, the applicants appear to object to a range of conditions, some of which are not exactions at all. For instance, county standards that require the installation of a stormwater drainage system to accommodate runoff from the development is a standard that directly pertains to how the development is to be constructed, and is not an exaction. *See Clark v. City of Albany*, 137 Or App 293, 904 P2d 185 (1995) (site modifications, such as meeting storm drainage requirements, are use standards, not exactions subject to *Dolan*).

With respect to the right-of-way and utility easements and the required road improvements, the Hearings Officer agrees with the applicants’ characterization of those conditions as exactions. However, the Hearings Officer disagrees with both the evidentiary challenge to the county’s evidence of impact of the proposed development, and the applicants’ charge that the exactions are not roughly proportional to the impact of the proposal. First, the Hearings Officer finds that there is a nexus between the exaction and the impact of the development on the local street system. With respect to the eight foot wide public easement for sign, slope sidewalk and utilities, the evidence shows that the service providers require an eight foot wide easement to assure that utilities can be safely installed to serve the property. The required sidewalk can also be located within that easement.

Second, development of this site will add four dwellings to a street segment that has 15 dwellings on it. As noted, with this development, the street will be built out to R-7 densities. Boiled down to raw percentages, the proposed subdivision will add 26 percent more dwellings to the street than existed prior to the subdivision. Further, while the applicants challenge traffic engineering staff’s conclusion that the dwellings will generate approximately 40 trips per day, they do not provide substantial evidence to undermine that conclusion. The Hearings Officer finds the opinion of the traffic engineering staff with respect to the number of trips generated by the development to be reasonable. The additional 40 trips justify the right-of-way dedications and the half-street improvements.

Finally, with respect to the sidewalk, curb and gutter improvements, the Hearings Officer concludes that the proposed lots will generate use of a sidewalk system and that the other improvements are general use standards that address the greater impacts a subdivision has on a local street system. The owners of the subdivision lots will benefit from a more finished street system, which will likely reflect in higher property values. The fact that partitions of other properties along SE Whipple Avenue have not resulted in similar street improvement requirements does not mean that the county’s development standards for subdivisions result in a taking in this instance.

5. ZDO 1008. The applicants request that Condition 15(b) be revised to relieve the applicants of the obligation to install a stormwater drainage line connecting the site to the Oak Lodge Sanitary District drainage system. The applicants note that the area has developed over 80 years, and most properties use a drainage ditch to convey stormwater from their properties. The applicants also note that county standards indicate a preference for non-structural storm drainage techniques. In addition, the applicants question whether a connection to the Oak Lodge Sanitary District lines is feasible, given that there is some question as to the location and elevation of the nearest stormwater sewer connection.

The staff report notes that the proposed subdivision constitutes a “significant development” which required the submittal of an on-site storm drainage plan. The applicants did not submit such a plan, and Dick Jones testified that the applicants constructed a dwelling on the lowest portion of the property, making an on-site, above ground detention facility difficult to engineer. There is evidence from the Oak Lodge Sanitary District that a stormwater sewer connection is located approximately 100 feet from the boundary of the property. That, coupled with other comments from the District, lead to the conclusion that it is feasible to engineer an adequate storm drainage system for the property that conforms to District standards. In the absence of evidence that the applicants’ proposal (drainage through ditches) provides a feasible alternative, the Hearings Officer concludes that Condition 15(b) is necessary to protect the public interest in directing stormwater to a facility that has the capacity to handle the runoff from the proposed development.

6. Other arguments/potentially applicable criteria. The applicants argue that ORS 92.044(1)(a) permits the Hearings Officer to deviate from adopted county development standards where “the location and surrounding area” are not developed to the same standards. In relevant part, ORS 92.044(1) directs counties to “adopt standards and procedures \* \* \* governing \* \* \* the submission and approval of tentative plans and plats of subdivisions \* \* \*.” The standards referred to in ORS 92.044(1), “shall include, taking into consideration the location and surrounding area of the proposed subdivisions \* \* \* requirements for:” placement of utilities, securing safety from fire, flood, slides, preventing overcrowding, and facilitating the provision of transportation, water supply, sewerage, and drainage. ORS 92.044(1)(a).

The standards described in ORS 92.044(1) have been adopted by the Board of County Commissioners and the service districts that provide the utilities to the site. They are set out in the zoning ordinance, the Roadway Standards, and the service extension policies. The Hearings Officer’s duty is to apply those standards to applications; the Hearings Officer may not (as the applicants argue) alter those standards on an *ad hoc* basis to allow the applicants to develop their property to conform to the substandard conditions that exist in the area.

#### **‘D. CONCLUSION**

The evidence shows that the applicants have satisfied applicable approval standards, or that the standards can be satisfied through the imposition of conditions of approval. The Hearings Officer finds that the conditions are reasonably related to the impact of the proposed subdivision on the public, and are necessary to address the demands on the public infrastructure caused by the addition of four lots and four dwelling units. The conditions do not result in an unconstitutional taking of private property for public benefit.

### **E. DECISION**

Based on the findings set out in the staff report, as modified in this decision, and based on the discussion and conclusions provided or incorporated herein and the public record in this case, the Hearings Officer hereby approves Z1024-05-SS (Shevtsov Subdivision), subject to the following conditions:

1. Preliminary approval of the proposed five-lot minor subdivision is based upon the preliminary subdivision plan submitted with the application, the Findings herein and as modified by these conditions of approval. Any change in design, including lot layout and access to lots, must be approved by the Planning Division prior to final plat approval. Changes in approved access locations may also require additional public notice.
2. All conditions of approval shall be financially guaranteed or completed prior to final plat approval, unless otherwise noted herein.
3. Within two (2) years of the date of this decision, a final subdivision plat survey of the development must be submitted to the Planning Dept. for review. Pursuant to subsec. 110.05A of the ZDO, the final plat shall be prepared by 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, and these conditions of approval. Once approved by the Planning Division, the approved subdivision plat shall be submitted to the County Surveyor for review. When approved by the Surveyor, the plat must then be filed and recorded by the County Clerk. **Failure to record the final subdivision plat with the County Clerk within two (2) years of the date of this decision will void this approval.** Prior to expiration of this approval, the applicant may request a one (1) year extension subject to Sec. 1106.05A of the ZDO.
4. **None of the individual parcels shall be sold, transferred or assigned until the final subdivision plat has been approved by the County Surveyor and recorded with the County Clerk.** No additional Building or Manufactured Home Placement permits shall be issued until the final subdivision plat is recorded and sanitary sewer and storm water management facilities are approved, installed and operational.
5. All development and uses within the plat shall conform to the use and dimensional requirements of Sec. 301 of the ZDO. Nothing in this approval shall be construed to

allow any use or structure that is not otherwise permitted in the zoning district subject to Secs. 301 of the ZDO.

6. All development of the parcels is subject to the provisions of Secs. 301 and 1000 of the ZDO and those other relevant codes and ordinances adopted by the Board of County Commissioners pursuant to subsec. 1001.03 of the ZDO, including, but not limited to, the County Roadway Standards, County Excavation and Grading Ordinance, Oregon One and Two Family Dwelling Code, Oregon Manufactured Home Standards, Oregon Structural Specialty Code, etc.
7. Pursuant to subsec. 1002.02B of the ZDO, any grading, filling, and excavation done in connection with any development shall be in accordance with the County Excavation and Grading Ordinance administered by the County Soils Section and the County Building Codes Division.
  - a) All lots shall be graded to provide for gravity flow from homes for sanitary and storm water disposal.
  - b) Depending upon the extent of grading necessary to develop the proposed partition, the applicant/developer shall obtain a Grading Permit from the County WES/Soils Section if deemed necessary by the Soils Sec. and/or County Engineering Div. **prior to the commencement of on site construction and prior to final plat approval.**
  - c) Re-vegetation of all graded and/or filled areas shall be the responsibility of the developer and shall occur as soon as feasible following final grading.
  - d) If the grading within the buildable areas of individual lots results in fills over 12 inches in thickness, the fill shall be inspected and approved as structural fill suitable for home construction by a geologist or engineering geologist licensed to practice in the State of Oregon.
  - e) **Prior to final plat approval**, all grading shall be completed, inspected and approved, or completion of remaining work shall be financially guaranteed through the County Engineering Div.
8. All road, utility and homes construction shall be performed consistent with the recommendations of the H.G. Schlicker geotechnical report dated August 3, 2007.
9. All existing, required and proposed easements shall be shown and properly documented upon the final plat pursuant to ORS 92. Pursuant to subsec. 1006.02H of the ZDO, easements shall be provided as deemed necessary by the County Engineering Div., the OLSD, the OLWD, other special districts, and utility companies. Easements for special purposes shall be of a width deemed appropriate by the responsible agency. Such easements shall be shown upon the final plat of the subdivision. The need for, and location of, such easements shall be determined

during the street and street frontage, sanitary sewer and storm sewer plans review processes.

10. **Prior to final plat approval**, the applicant shall submit certification in writing from the Oak Lodge Water District (OLWD) that the plans for extension of the public water system needed to serve the development have been reviewed and approved by that agency.
11. **Prior to final plat approval**, the applicant shall submit stamped plans approval from the Clackamas County Fire District no. 1 Fire Marshal indicating that the Fire District's standards, including fire flows, grades, horizontal and vertical clearances, parking limitations and related signing and hydrant locations have been approved.
12. Underground utilities are required for this subdivision and shall be installed pursuant to the requirements of the utility service providers serving the development.
13. **Prior to final plat approval**, the developer shall submit a written request to the CCSD#5 for the installation of street lighting and the formation of an assessment area to pay for the operation and maintenance of street lighting (Contact Kevin Noreen, 503-353-4699).
14. **Prior to any soils disturbance and the commencement of construction** of the development and individual homes, the applicant shall obtain Erosion Control Permits from the Oak Lodge Sanitary District (OLSJ).
15. The development is subject to the Surface Water Management Rules & Regulations and Sewer Code of the OLSJ for sanitary and storm water systems and surface water management. For storm drainage, Section 1008 of the Zoning Ordinance also applies. Therefore, the developer is required to submit plans for review and approval to the OLSJ **prior to final plat approval**.

a) **Sanitary Sewer Conditions:**

- (1) The sanitary sewer plans and specifications are subject to the applicable state and federal laws for the construction of sewerage systems.
- (2) The costs of the sanitary sewer systems shall be borne entirely by the developer. Each lot is subject to a sanitary System Development Charge (SDC), sewer lateral tap fee and inspection fee. These fees shall be paid prior to the issuance of building permits on the individual lots. The OLSJ must inspect and approve the construction and testing of each lateral prior to occupancy of the home.
- (3) The developer may be required to install sanitary sewer and storm drain facilities to the limits of the property in order to allow for continuity in the

conveyance systems. Easements shall be provided as deemed necessary by the OLSD for gravity connections to adjoining properties.

- (4) The developer shall provide sanitary sewer easements where necessary as determined by the OLSD.
- (5) Preliminary plans for the development shall be submitted to the OLSD for review and approval **prior to final subdivision plat approval.**

b) **Surface Water Conditions:**

- (1) The costs of the storm and sanitary sewer systems shall be borne entirely by the developer. Each lot is subject to a Surface Water System Development Charge (SDC). These fees shall be paid prior to the issuance of building permits.
- (2) Prior to any soils disturbance and the commencement of construction, the applicant shall obtain an Erosion Control Permit from the OLSD.
- (3) The existing storm sewer located in SE Whipple Ave. terminates at 4581 SE Whipple Ave., approximately 100 ft. to the southeast of the subject property. This storm sewer shall be extended to and along the entire site frontage on Whipple Ave. to serve the proposed development unless alternative storm water discharge is approved by the OLSD.
- (4) The applicant's engineer shall submit documentation to the OLSD verifying that the storm sewer has adequate capacity to accommodate the proposed development and existing flows. If not, the applicant shall design and construct necessary improvements to the system to the satisfaction of the OLSD. Plans and profiles for the storm sewer extension shall be prepared by a professional engineer with scales of 1"=50' horizontal and 1"=10' vertical.
- (5) Storm water quantity on-site detention facilities shall be designed and installed to capture runoff from all lots in the subdivision. The facilities shall be designed such that the peak release rate does not exceed the pre-development rates for the 2- through 25-year, 24-hour storms. Detention calculations shall be performed using the King County method (SBUH hydrograph) showing design calculations for the pre-development and post-development detained storm flows using the following rainfall amounts: 2-year storm of 2.6", 5-year storm of 3.1" 10-year storm of 3.5" and 25-year storm of 4.0".
- (6) The detention facilities shall be provided with piping that accepts surface water flows from all paved areas, roof, foundation and footing drains and shall collect storm water crossing onto the property. The flow control

manhole shall have a minimum 2-foot deep sump to capture pollutants and all catch basins shall be trapped to remove sediment, oil and grease.

- (7) If any portion of the surface water runoff will be disposed in an underground injection system (as defined in OAR 340, Division 44), the system must be registered with the Oregon Department of Environmental Quality. Any additional State permit requirements will be determined at that time.
- (8) All storm water falling onto or crossing into the site shall be routed around the site to an acceptable outfall or through the on-site conveyance/detention system.
- (9) Building permits for the individual lots shall not be approved by the OLSD until the storm sewer system is complete in all respects and are accepted by the OLSD.
- (10) **Prior to construction and final plat approval**, the owner shall sign an Agreement to Maintain Stormwater Detention and Conveyance Facilities on forms prepared by the OLSD. The Agreement shall be recorded with and referenced upon the final subdivision plat.
- (11) The applicant shall submit complete civil-engineered plans for surface water management facilities stamped by a licensed Civil Engineer, to the OLSD for review and approval **prior to final plat approval**.

16. The County DTD, Engineering Div. has submitted comments and recommendations containing the following requirements designed to assure compliance with the provisions of Secs. 1007 and 1014 of the ZDO, the relevant provisions of the County Roadway Standards and the Comprehensive Plan pertaining to right of way dedications, street and street frontage improvements and access to, and within, the proposed development:

- a) All required street, street frontage, right of way dedications and related improvements shall be designed and constructed in compliance with the standards and requirements of the Clackamas County Zoning and Development Ordinance, the Clackamas County Roadway Standards and the Comprehensive Plan, unless otherwise noted herein, or an alternative is approved by the Engineering Division.
- b) The applicant's surveyor shall verify by survey that a 20-foot wide, one-half right-of-way width exists along the entire site frontage on SE Whipple Avenue and SE Gordon Avenue or shall dedicate additional right-of-way as necessary to provide the minimum one-half right-of-way widths pursuant to *Clackamas County Roadway Standards* Table 2-1 and subsections 1007.03A and 1007.03F of the ZDO.

- c) The applicant shall grant an 8-foot wide public easement for sign, slope, sidewalk and public utilities purposes along the entire frontage of SE Whipple Avenue and SE Gordon Avenue.
- d) The applicant shall design and construct improvements along the entire site frontage of SE Whipple Avenue to local roadway standards, per Clackamas County Roadway Standards Table 2-1. These improvements shall consist of:
  - (1) A one-half street improvement with a minimum paved width of 14 feet from the centerline of the right-of-way to the curb. The structural section shall consist of 3 inches of Level 3 Hot Mix Asphalt Concrete (HMAC) Performance Grade (PG) 64-22,  $\frac{3}{4}$ " dense or  $\frac{1}{2}$ " dense placed in two lifts, consisting of 1 1/2 inches per lift, over 3 inches of  $\frac{3}{4}$ "-0 aggregate leveling course, over 6 inches of 1-1/2"-0 aggregate base course, over geotextile fabric (*ZDO* sections 1007.03A and 1007.03F, *Roadway Standards* Tables 2-1 and 2-11, *Comprehensive Plan* Table V-3).
  - (2) Standard curb, or curb and gutter if curbline slope is less than one percent with the face of the new curb located 14 feet from the centerline of the SE Whipple Avenue right-of-way. Centerline of the right-of-way shall be established by survey (*ZDO* subsections 1007.03A, 1007.03F, *Roadway Standards* Table 2-1 and *Comprehensive Plan* Table V-3).
  - (3) A 5-foot wide curb-tight sidewalk. Where mailboxes, fire hydrants, utility poles, etc, must be located within the limits of the sidewalk, an eyebrow shall be constructed so that the full unobstructed width of the sidewalk is provided around the obstruction. Mailboxes shall be relocated or replaced in accordance with standards established by the local Post Office. Additional easement width, as necessary, shall be granted to provide for any sidewalk eyebrows (*Comprehensive Plan* Table V-3 and *ZDO* section 1007.05B(3)).
  - (4) Where the sidewalk does not connect to a sidewalk on adjacent property, the ends of the sidewalks shall require the construction of temporary asphalt ramps, adjacent to the ends of the sidewalks, providing a transition from the new sidewalks to the edge of pavement. The ramps shall meet ADA guidelines and shall be a minimum of two (2) inches in thickness.
  - (5) A twenty-five foot radius curb at the intersection of SE Whipple Avenue and SE Gordon Avenue, per Clackamas County Roadway Standards Table 2-7.
  - (6) Curb/sidewalk ramp at the corner of SE Whipple Avenue and SE Gordon Avenue, per Clackamas County Roadway Standards Drawing S900.
  - (7) Driveway approaches shall be provided for each lot, constructed per Standard Drawing D600.

- (8) Drainage facilities in conformance with OLSD requirements, Section 1008 of the ZDO and Clackamas County Roadway Standards Chapter 3.
- e) Utility Placement Permits are required for any utility work required within the rights-of-way of SE Whipple and SE Gordon Avenues.
  - f) Positive drainage shall be provided for all lots to an acceptable surface water management system having the capacity to accommodate the anticipated contribution per OLSD requirements and Section 1008 of the ZDO. Storm water detention facilities cannot be located within public rights-of-way. Provisions shall be made for connection of roof and foundation drains from the new homes to the storm drainage system.
  - g) **Prior to final plat approval** and the commencement of site work, the applicant shall obtain a Street Construction and Encroachment Permit from the County Engineering Div. for the design and construction of all of the street and frontage improvements and storm drainage facilities. 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 SC&E applications.
  - h) Prior to approval of the street construction plans, a copy of an approved site-grading plan shall be submitted. Before and after ground line contours shall be shown.
  - i) All required improvements shall be constructed and inspected, or financially guaranteed, with the County Engineering Div. **prior to final plat approval**. Sidewalk construction within the plat may be coordinated with new house construction on individual lots, but shall be included within the bond for any remaining required improvements.
  - j) The applicant shall furnish sanitary sewer, storm drainage and domestic water easements as deemed necessary by the DTD Engineering Division, Oak Lodge Water, and the Oak Lodge Sanitary District as deemed necessary after final plans reviews. All such easements shall be shown and properly referenced upon the final partition plat.
  - k) The applicant shall submit, at time of initial paving, reproducible as built plans for all improvements showing all construction changes, added and deleted items, location of utilities, etc. A professional engineer shall stamp as built plans. In addition, provide one set of AutoCAD as built files on a floppy disk or in DXF format to be translated into AutoCAD format.

- l) The applicant's surveyor/engineer shall certify that the existing/proposed road construction corresponds to the new rights of way, easements and approved plan.

DATED this 17th day of September 2007.

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Anne Corcoran Briggs  
Clackamas County Land Use Hearings Officer

### **ENDANGERED SPECIES ACT NOTICE**

This decision addresses only the applicable criteria under the ZDO. It does not address whether the activities allowed by this decision will comply with the provisions of the federal Endangered Species Act ("ESA"). This decision should not be construed to or represented to authorize any activity that will conflict with or violate the ESA. It is the applicant, in coordination if necessary with the federal agencies responsible for the administration and enforcement of the ESA, who must ensure that the approved activities are designed, constructed, operated and maintained in a manner that complies with the ESA.

### **APPEAL RIGHTS**

ZDO 1304.01 provides that the Land Use Hearings Officer's decision is the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules adopted by LUBA describe when and how an appeal must be filed with LUBA. Presently, ORS 197.830(8) 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." ZDO 1304.02 provides that this decision will be "final" for purposes of a LUBA appeal as of the date of mailing of this final order (which date appears on the last page herein).