

**NOTICE OF DECISION**  
**TYPE I MINOR PARTITION**

**Date:** November 23, 2005

**FILE NO.:** 05-031 MP, Evens Minor Partition

**APPLICANT:** Mark Evens

**PROPERTY OWNER:** Mark Evens

**LOCATION:** South side of Tupper Road, east of Strawbridge Parkway.

**LEGAL DESCRIPTION:** R24E Section 13CA Tax Lot 9007

**APPLICABLE CRITERIA & REVIEW STANDARDS:**

Sandy Development Code Sections 17.12 Procedures for Decision Making; 17.18 Processing Applications; 17.22 Notices; 17.40 R-3 Zoning District (Ord. 2005-03); 17.84 Improvements Required with Development; 17.80 Setbacks on Collector and Arterial Streets; 17.86 Parkland and Open Space (Ord. 2004-06); 17.100 Land Division.

The specific goals and policies of the Sandy Comprehensive Plan are not directly applicable to this application because relevant code sections do not cite specific policies as criteria for evaluating this proposal.

**DECISION:** Approve the Minor Partition subject to Conditions of Approval.

**FINDINGS OF FACT**

General

1. The applicant submitted a preliminary minor partition application on September 14, 2005, which was deemed complete on September 28, 2004 after additional information was submitted.
2. The site is relatively flat with some slopes along the northern portion of the site. There is an existing home on the north-central portion of the property. There is a small pine tree, a holly

tree and a small blue spruce tree along the site's frontage on Tupper Road. There is existing vegetation on Parcel 1 including a Western Red Cedar at the southeast corner of the existing home. There is one 24" DBH maple tree at the southwest corner of the Parcel 2.

3. The site has a Comprehensive Plan designation of High Density Residential, and a Zoning Map designation of R-3, High Density Residential.
4. The total site size is 15,998 square feet (.37 acre).
5. There is an existing wooden fence located along the site's eastern property line and a chain link fence that meanders along the southern property line. Staff recommends the chain link fence is relocated and placed inside the property boundaries.

#### 17.40 – High Density Residential (Ordinance 2005-03)

6. According to the City of Sandy Zoning Map the site has a zoning designation of R-3, High Density Residential. The R-3 zoning district permits a minimum of 10 and a maximum of 20 dwelling units per acre. The 15,998-square-foot site therefore has the potential of between 3.7 and 7.4 dwelling units. Based upon the rounding standards of Section 17.30.20 (H), density must be rounded down for a minimum of 3 and a maximum of 7 dwelling units on the site.
7. The applicant proposes to partition the 0.37 acre Tax Lot 9007 into two parcels. According to the preliminary partition plan, Parcel 1 is proposed to be 10,576-square feet, and Parcel 2 is proposed to be 5,422-square feet.
8. The applicant proposes to leave the existing home on Parcel 1 and to construct a duplex on Parcel 2. A duplex is a permitted use according to Section 17.40.10 (A). By leaving the existing home on Parcel 1 and constructing a duplex on Parcel 2, the total of three dwellings is in compliance with minimum and maximum density standards for the overall site. Parcel 2, as proposed (.12 acre) has a minimum density of 1.2 and maximum density of 2.4 dwellings, rounded down to maximum of 2 units. The proposed duplex (2 units) on Parcel 2 complies with minimum and maximum density standards for that parcel.
9. According to the development standards of Section 17.40.30, there is no minimum lot size in the R-3 zoning district. The minimum average lot width for a single-detached dwelling is 40 feet. Parcel 1 as proposed maintains the minimum average lot width standard. According to the tentative partition plan, the existing home is located 11.2 feet from the proposed southern property line. The front of Parcel 1 is located adjacent to Tupper Road. The rear yard for Parcel 1 is located between the existing home and the proposed southern property line. The minimum rear-yard setback is 15 feet. The applicant submitted a letter stating that there is a deck on the south side of the existing home and that he is willing to remove the deck in order to comply with applicable setback standards. Staff recommends a condition of approval requiring the tentative partition plat to be modified if necessary to ensure there is a minimum of 15 feet between the foundation of the existing dwelling and southern property line.

10. Section 17.74 of the Sandy Development Code allows accessory development, including decks, to encroach into setbacks. The amount of permitted encroachment depends upon the height of the deck and whether or not there is a roof over the deck. No details were submitted depicting the existing deck. The deck in the rear yard of the existing home on Parcel 1 shall comply with the setback standards of accessory development as detailed in Section 17.74.10 (E). This may require removal of all or a portion of the existing deck. The applicant shall demonstrate the deck on Parcel 1 complies with the Projecting Building Features standards of Section 17.74.10 (E) prior to obtaining the Planning Director's signature on the partition plat.
11. There is no minimum lot width for duplexes.
12. The minimum lot frontage in the zoning district is 20 feet. The site has no frontage on a public street at this time, however it is likely that the site will have frontage on a public street if Tax Lots 9005 and 9006 (south of the site) are converted into public right-of-way as has been requested by the owner of Tax Lot 8801. Regardless, the applicant proposes a 20-foot-wide access easement benefiting Parcel 2, as well as at least 20 feet of lot width between the northern and southern property lines, which complies with the intent of the minimum lot frontage standard.
13. The applicant proposes construction of a duplex on Parcel 2 at some point in the future. Future development of Parcel 2 shall comply with the development standards in effect at the time a building permit is submitted, including the setback standards of Section 17.40.30. If the developer of Parcel 2 has the ability to obtain access to/from a public right-of-way south of the site, and if the developer takes access from this right-of-way, the developer may be responsible for costs associated with construction of a public street in the right-of-way.
14. Following the minor partition, Parcels 1 and 2 will be in general conformance with applicable development standards detailed in Section 17.40.30 (R-3) of the Development Code.
15. The applicant will extend public water and sewer laterals to serve Parcel 2.
16. Improvements are in place along the site's frontage of Tupper Road.
17. Parcel 1 and 2 has 87.84 feet of frontage on Tupper Road, therefore it is not necessary to take access via an alley or shared private drive. The applicant proposes access to Parcel 2 via a 20-foot-wide access easement over Parcels 1 and 2 and Tax Lot 9002.

#### 17.60 – Flood and Slope Hazard Overlay District

18. According to the Zoning Map, the site is located in the Flood and Slope Hazard Overlay District.
19. The applicant's topographic survey depicts the top of bank of No-Name Creek and the required 50-foot setback from the creek. The 50-foot setback impacts the southeast corner of Parcel 2.

20. No development is proposed at this time but the applicant intends to build a duplex on Parcel 2 in the future. Development of Parcel 2 shall be in compliance with the standards of Section 17.60, Flood and Slope Hazard Overlay District.

#### 17.80 – Setbacks on Collector and Arterial Streets

21. Tupper Road is a collector street according to Section 17.80. The existing structure on Parcel 1 complies with the 20-foot setback standard.

#### 17.84 – Improvements Required with Development

22. There is an existing 5-foot-wide curb-tight sidewalk along the site's Tupper Road frontage.

23. There are existing public water and sanitary-sewer lines in Tax Lots 9005 and 9006 south of the site. The applicant will extend private water and sanitary sewer laterals to serve the new parcel. A 20-foot-wide utility easement is also proposed along the property line between Parcels 1 and 2, and Tax Lot 9002.

24. No information was provided in regard to stormwater facilities. Stormwater facilities shall be provided in compliance with Section 13.18. Staff recommends retaining existing trees including the 24" Maple, if possible, and to factor this into the stormwater calculations.

25. Franchise utilities shall be installed in conformance with Section 17.84.40.

26. Utility easements shall be provided in accordance with Section 17.84.90 for any public utilities located outside of public rights-of-way.

27. Mail delivery facilities shall be provided in accordance with Section 17.84.100. The applicant shall coordinate with the Sandy Postmaster and the Planning Director to determine the appropriate location of mail facilities.

#### 17.86 – Parkland and Open Space

28. Section 17.86.10 requires dedication of parkland in association with approval of a partition.

29. The applicant proposes a duplex on Parcel 2 (two dwelling units). Based upon the dedication formula provided in Section 17.86.10 (2), the applicant is responsible for dedication of 0.03 acre (2 units x 3 pph x .0043 = 0.03).

30. Section 17.86.40 allows the applicant to pay fees in lieu of parkland dedication if the city does not require park dedication.

31. According to Resolution 2004-07, the current payment in lieu of park dedication is \$241,007 per acre of required dedication.

32. The applicant is therefore responsible for a fee in lieu of park dedication of \$7,230.21 (0.03 x \$241,007 = \$7,230.21).
33. According to Section 17.86.40 (2), the fee in lieu of park dedication shall be paid prior to approval of the final plat.

#### 17.100 – Land Division

34. The applicant attended a pre-application conference with City staff on October 2, 2003.
35. The two proposed parcels are consistent with density and dimensional standards of the R-3 zoning district. Compliance with setbacks will be addressed when building permits are issued for development of Parcel 2, however, staff recommends the tentative partition plat is revised if necessary to ensure a 15-foot setback is provided between the rear of the existing home on Parcel 1 and its southern property line.
36. Adequate public facilities are available or can be extended to serve Parcels 1 and 2.
37. Any required public improvements must be completed to City standards.
38. No further division of Parcel 2 is possible because the maximum density is proposed (2 units). No future division of Parcel 1 is anticipated.
39. The applicant proposes a 20-foot-wide access easement across portions of Tax Lot 9002 and Parcel 1 (Tax Lot 9007) to serve Parcel 2. According to the City's database, the applicant does not own Tax Lot 9002. Staff recommends a condition of approval requiring the applicant to submit a copy of 20-foot-wide access easement for equal use and benefit of Parcels 1 and 2, as well as the duplex on Tax Lot 9002.
40. There is an existing 20-foot-wide asphalt driveway serving the duplex on Tax Lot 9002 and the existing home on Parcel 1. The applicant proposes a shared driveway to serve Parcels 1 and 2, and the duplex on Tax Lot 9002. A total of 5 dwelling units will share the driveway. No details were provided in regard to the design of the shared driveway. The driveway shall be improved, a minimum of 20-feet-wide to serve Parcel 2. Any landscaping on Tax Lot 9002 that is displaced by the driveway extension shall be replaced by the developer.
41. Access, utilities, easements, and future streets will not be adversely affected by the partition.
42. The partition is generally consistent with the design standards of Section 17.100.70-17.100.300 as addressed below.
43. The applicant proposes 5-foot-wide public utility easements along the site's perimeter property lines. Public utility easements shall be provided on all property lines, a minimum of 5-feet in width, in accordance with Section 17.100.130.

44. A total of 5 dwellings (Parcels 1 and 2, and the duplex on Tax Lot 9002) will take access on the shared driveway in compliance with Section 17.100.150(A). The 20-foot-wide easement serves two-way traffic in accordance with Section 17.100.150 (E). The applicant shall submit evidence that a mechanism has been established to ensure Parcels 1 and 2, and the duplex on Tax Lot 9002, participate in maintenance of the driveway in accordance with Section 17.100.150 (B).
45. The applicant will be responsible for the cost of any required street signs in accordance with Section 17.100.180.
46. The proposed Parcels 1 and 2 generally comply with the lot design standards of Section 17.100.210. However, recognizing a duplex will be constructed on Parcel 2, staff is concerned about limited maneuverability within the parcel due to its narrow width. Staff therefore recommends maximizing the width of the lot. Parcel 2 could be widened by completely removing all or a portion of the deck in the rear yard of the existing home on Parcel 1, and redrawing the partition plat so that there is no less than 15 feet between the existing foundation and the southern property line of Parcel 1.
47. Water facilities shall be provided in compliance with Section 17.100.220. Fire District 72 shall determine if a fire hydrant is required.
48. Sanitary sewer facilities shall be provided in compliance with Section 17.100.230.
49. No information was provided in regard to stormwater discharge. The applicant shall provide stormwater facilities in conformance with the standards of Section 13.18.
50. All utilities shall be installed underground in accordance with Section 17.100.250.
51. Grass seed planting for erosion control purposes shall take place prior to September 30 on all lots upon which a dwelling has not been started but the ground cover has been disturbed. The seeds shall be of an annual rye grass variety and shall be sown at not less than four pounds to each 1,000 square feet of land area.
52. The tentative partition plat shall include signature blocks for the City of Sandy Planning Director and applicable Clackamas County departments (e.g. Surveyor's office, Recorder's office).
53. Section 17.100.300 outlines improvements required in association with division of land. Prior to obtaining the city's signature on the partition plat, the applicant shall complete or bond any required public improvements.
54. The documents effectuating this partition shall become null and void if the partition is not recorded with the County Recorder within one year following approval, in accordance with 17.100.40 (H).

## **SUMMARY**

The proposed minor partition is in general conformance with requirements of the Sandy Development Code, including Chapters 17.40 and 17.100. The Conditions of Approval described below are necessary to ensure the proposal complies with all applicable City regulations.

**DECISION:** Approve the Minor Partition subject to the Conditions of Approval listed below.

### **CONDITIONS OF APPROVAL**

#### **I. The applicant shall revise the partition plat to include the following changes (*Submit to Planning Department*):**

1. Ensure there is a minimum of 15 feet between the foundation of the existing dwelling and southern property line of Parcel 1. Maximize the width of Parcel 2 by removing all or a portion of the deck in the rear yard of the existing home on Parcel 1.
2. Public utility easements shall be provided on all property lines, a minimum of 5-feet in width, in accordance with Section 17.100.130.
3. Utility easements shall be provided in accordance with Section 17.84.90 for any public utilities located outside of public rights-of-way.
4. Provide a signature block on the partition plat for the City of Sandy Planning Director, as well as the appropriate Clackamas County offices.

#### **II. Prior to any construction activities the applicant shall submit additional information as part of construction plans and complete required items during construction as identified below: (*Submit to Public Works unless otherwise noted*)**

1. Demonstrate compliance with the stormwater standards of Section 13.18 of the Sandy Municipal Code. All stormwater facilities shall conform to the standards of Section 13.18.
2. Submit plans for all public improvements including water and sanitary sewer.
3. Obtain a grading and erosion control permit from the City of Sandy. (*Submit to Building Department*)

#### **III. Prior to plat approval the applicant shall complete the following or provide assurance for their future completion:**

1. All public improvements shall be completed to City standards. Water facilities shall be provided in compliance with Section 17.100.220. Fire District 72 shall determine if a fire hydrant is required. Sanitary sewer facilities shall be provided in compliance with Section 17.100.230. Prior to obtaining the city's signature on the partition plat, the applicant shall complete or bond the improvements.

2. Pay fee in lieu of park dedication of \$7,230.21 ( $0.03 \times \$241,007 = \$7,230.21$ ).
3. Submit legal description and map of 20-foot-wide access easement for equal use and benefit of Parcels 1 and 2, as well as the duplex on Tax Lot 9002.
4. The driveway shall be improved a minimum of 20-feet-wide to serve Parcel 2. The developer shall replace any landscaping materials that are removed from Tax Lot 9002 in order to extend the driveway to Parcel 2.
5. Submit a joint use maintenance agreement for future maintenance of the shared drive that serves Parcels 1, 2 and the duplex on Tax Lot 9002, in accordance with Section 17.100.150(B). The agreement shall specify that the owners and all future owners of these parcels agree to share the cost of maintaining the driveway. Following submittal of a draft maintenance agreement to the Planning Director for approval, the applicant shall complete, sign and record the agreement, and shall then submit a recorded copy of the agreement to the Planning Department.
6. The deck in the rear yard of the existing home on Parcel 1 shall comply with the setback standards of accessory development as detailed in Section 17.74.10 (E). This may require removal of all or a portion of the existing deck. The applicant shall demonstrate the deck on Parcel 1 complies with the Projecting Building Features standards of Section 17.74.10 (E) prior to obtaining the Planning Director's signature on the partition plat.
7. Mail delivery facilities shall be provided in accordance with Section 17.84.100. The applicant shall coordinate with the Sandy Postmaster and the Planning Director to determine the appropriate location of mail facilities.
8. Relocate the chain link fence and place inside the property boundaries.
9. Submit one original and one copy of the partition plat for City signature prior to filing the minor partition with the Clackamas County Surveyor's Office.

**IV. Prior to issuance of a building permits on Parcel 2, the applicant shall:**

1. Submit a reproducible copy (including electronic) of the recorded partition plat as approved by the city and Clackamas County. *(Submit to Planning Department)*
2. Submit a copy of the recorded 20-foot-wide access easement for equal use and benefit of Parcels 1, 2, and the duplex on Tax Lot 9002. *(Submit to Planning Department)*
3. Submit a copy of the recorded joint use maintenance agreement for future maintenance of the shared drive that serves Parcels 1, 2, and the duplex on Tax Lot 9002. *(Submit to Planning Department)*
4. Complete all required water, sanitary- and storm sewer improvements.



5. Complete all improvements that were bonded to obtain approval of the partition plat.
6. Franchise utilities shall be installed in conformance with Section 17.84.40.
7. Mail delivery facilities shall be provided in accordance with Section 17.84.100. The applicant shall coordinate with the Sandy Postmaster and the Planning Director to determine the appropriate location of mail facilities.

## **V. General Conditions**

1. Development of Parcel 2 shall comply with the development standards in effect at the time a building permit is submitted, including the setback standards of Section 17.40.30 as well as other applicable standards of the Development Code.
2. Development of Parcel 2 shall be in compliance with the standards of Section 17.60, Flood and Slope Hazard Overlay District.
3. All utilities shall be installed underground in accordance with Section 17.100.250.
4. Grass seed planting for erosion control purposes shall take place prior to September 30 on all lots upon which a dwelling has not been started but the ground cover has been disturbed. The seeds shall be of an annual rye grass variety and shall be sown at not less than four pounds to each 1,000 square feet of land area.

## **RIGHT OF APPEAL**

A decision on a land use proposal or permit may be appealed to the Planning Commission by an affected party by filing an appeal with the Director within 12 days of notice of the decision. The notice of appeal shall indicate the nature of the interpretation that is being appealed and the matter at issue will be a determination of the appropriateness of the interpretation of the requirements of the Code.

An application for an appeal shall contain:

1. An identification of the decision sought to be reviewed, including the date of the decision;
2. A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings;
3. The specific grounds relied upon for review;
4. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Chapter 17.28.50; and
5. Payment of required filing fees.

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Kevin Liburdy  
Planner