

**FINDINGS OF FACT and FINAL ORDER
TYPE III LAND USE DECISION**

DATE: August 2, 2022

FILE NO.: 22-026 AP

PROJECT NAME: Tickle Creek Village Partition Appeal

APPLICANT: Tracy Brown Planning Consultants, LLC

OWNER: Dubarko Development Corp.

ADDRESS: 37101 Dubarko Road

LEGAL DESCRIPTION: Parcel 2 of Partition Plat No. 1991-152

ASSESSOR DESCRIPTION: T2S R4E Section 14 Tax Lot 3100

The above-referenced proposal was reviewed as a Type III Appeal before the Planning Commission on a Type I Minor Partition. The following findings of fact and conditions (bold text) explain the proposal and the conditions of approval.

FINDINGS OF FACT

General

1. These findings are based on the applicant's original submittal received on April 6, 2022, with additional items received on May 3, 2022, and May 4, 2022. The application was deemed complete on May 4, 2022. The 120-day deadline is September 1, 2022.
2. The subject property is located at 37101 Dubarko Road to the east of Ruben Lane and north of Dubarko Road. The entire parcel contains 10.32 acres.
3. The subject property has a mixed Comprehensive Plan Map designation of Medium Density Residential and High Density Residential. The property has a mixed Zoning Map designation of Medium Density Residential (R-2) and High Density Residential (R-3) and is partially overlaid by the FSH Overlay.
4. This proposed partition to Parcel 2 of Partition Plat No. 1991-152 would divide the one legal lot of record into two (2) parcels: Parcel 1 (4.44 acres) and Parcel 2 (5.88 acres). The common lot line is proposed to the north of the development area that is being constructed with Tickle Creek Village (File No. 19-038 DR/FSH/VAR/TREE).

5. This minor partition was reviewed by staff according to the requirements for a Type I procedure as the land division did not create a street and the resulting parcels comply with the Development Code. As such, notification of the proposal was not required.
6. On June 2, 2022, the applicant appealed the Type I staff decision based on the following two items:
 - a. The first reason for appeal was regarding the termination of an existing sanitary sewer easement and the creation of a new sanitary sewer easement prior to recording of the partition plat.
 - b. The second reason for appeal was the applicant's desire to not install required right-of-way frontage improvements (i.e., curbs, sidewalks, street trees, and lighting) on Freightway Lane.
7. The City of Sandy completed the following notices:
 - a. Notification of the appeal was mailed to affected property owners within 500 feet of the subject property on June 23, 2022.
 - b. A legal notice was published in the Sandy Post on July 6, 2022.
8. One (1) written public comment was received in regard to the appeal. Chris Warnock submitted a comment expressing concerns with right-of-way improvements to Freightway Lane.
9. The Planning Commission held a public hearing on July 25, 2022, to discuss the proposal. Tracy Brown spoke on behalf of the applicant. There were no public comments.
10. On July 25, 2022, the Planning Commission reviewed the appeal. The Commission upheld staff's decision on the partition with the following modification:
 - a. The installation of frontage improvements along Freightway Lane was conditioned in the future concurrent with future development of Parcel 2.

Chapters 17.38 and 17.40 – Medium Density Residential and High Density Residential

11. The subject property is 10.32 acres and has a mixed Zoning Map designation of Medium Density Residential (R-2) and High Density Residential (R-3) and is partially overlaid by the FSH Overlay. With approval of the Tickle Creek Village, it was determined that the allowable density range for Parcel 1 was between 36 and 85 dwelling units. The approved multi-family development was for 67 dwelling units. **Future development of Parcels 1 and 2 shall adhere to the density, use allowances, and development standards of the underlying zoning districts.**

Chapter 17.80 – Additional Setbacks on Collector and Arterial Streets

12. Section 17.80.10 specifies additional setbacks for structures constructed adjacent to collector and arterial streets. This applies to applicable front, rear, and side yards. Ruben Lane is a collector street and Dubarko Road is a minor arterial, therefore **future structures on Parcels 1 and 2 require a setback of 20 feet along Ruben Lane and Dubarko Road.**

Chapter 17.84 – Improvements Required with Development

13. Chapter 17.84 contains requirements for construction of public improvements. Section 17.84.20 (A)(1) requires installation of frontage improvements prior to approval of the final plat. As part of File No. 19-038 DR/FSH/VAR/TREE the applicant is required to improve street frontages along Dubarko Road to City standards. The frontage improvements required along Ruben Lane are already complete. Parcel 2 has frontage along a short stretch of right-of-way that was dedicated with Partition Plat No. 1991-152. This right-of-way is defined as approximately 112.79 feet on its southern line and has a 45.70-foot curve into Ruben Lane, and is detailed as Ruben Lane in some documentation, but as Freightway Lane in other documentation. This right-of-way regardless of the actual name is a local street. On July 25, 2022, the Planning Commission decided that the frontage improvements along Freightway Lane do not need to be completed prior to recording of the partition plat. **The Planning Commission conditioned that frontage improvements along Freightway Lane and the corner radius (112.79 feet on its southern line and a 45.70-foot curve) shall be installed concurrently with future development of Parcel 2.**

14. Section 17.84.90 contains requirements for creating easements for public sanitary sewer, water, stormwater, and pedestrian/bicyclist facilities whenever these facilities are located outside the public right-of-way. As noted by the Public Works Director in File No. 19-038 DR/FSH/VAR/TREE the applicant proposed several buildings over or encroaching into the existing 20-foot-wide sanitary sewer trunk line easement and proposed to relocate approximately 500 linear feet of this line to the common drive and parking areas. **The existing 20-foot-wide sanitary sewer easement (No. 74-4252) shall be terminated prior to recording the plat and a minimum 15-foot-wide public sanitary sewer easement shall be dedicated to the City of Sandy to accommodate the new sanitary sewer line that is being installed on Parcel 1.**

Chapter 17.98 – Parking, Loading, and Access Requirements

15. Section 17.98.80 details standards for access to arterial and collector streets. Dubarko Road is a minor arterial and Ruben Lane is a collector. Parcel 1 has approved access to Dubarko Road. Parcel 2 has frontage along a short stretch of right-of-way that was dedicated with Partition Plat No. 1991-152. This right-of-way is defined as approximately 112.79 feet on its southern line, and is detailed as Ruben Lane in some documentation, but as Freightway Lane in other locations. This right-of-way regardless of the actual name is a local street. Therefore, Parcel 2 shall take access from Freightway Lane. **The tentative plat shall be revised to include a Vehicle Non-Access Reserve (VNAR) along Ruben Lane to the south of Freightway Lane.**

Chapter 17.100 – Land Division

16. Section 17.100.40(D) contains criteria for approving a partition. The proposed partition shall satisfy all five approval criteria in order for the partition to be approved.

17. Criterion one requires the proposed partition to be consistent with the density, setback, and dimensional standards of the base zoning district. Development of Parcel 1 shall follow the approval conditions in File No. 19-038 DR/FSH/VAR/TREE. Future land use approval for development of Parcel 2 will need to be consistent with the density, setback, and dimensional standards in the Sandy Municipal Code. A portion of Parcel 1 and a

considerable portion of Parcel 2 are encumbered by wetlands, a stream, and steep slopes. Per Section 17.60.20 (C.) no new lot shall be platted or approved for development that is exclusively in restricted development areas as defined in Subsection 17.6.20 (A.). Based on existing FSH Overlay mapping there is a portion of Parcel 2, approximately 25,000 square feet based on Google Earth calculations, outside the FSH Overlay and therefore is outside the restricted development area. Therefore, both parcels are developable. Criterion one is satisfied.

18. Criterion two requires the proposed partition to be consistent with the design standards set forth in this chapter. All standards set forth in Chapter 17.100 of the Development Code can be satisfied with partition of the subject property. Parcel 1 received approval for multifamily housing with File No. 19-038 DR/FSH/VAR/TREE and is being constructed as Tickle Creek Village. Parcel 2 does not include any proposed development at this time. **Future development on Parcel 1 and Parcel 2 shall comply with the design standards in Chapter 17.90.** Criterion two is satisfied.
19. Criterion three requires public facilities to be adequate, available, or can be provided to serve the proposed partition. Water and sanitary sewer service is available and could be extended by the property owner to both parcels as required. As noted by the Public Works Director in File No. 19-038 DR/FSH/VAR/TREE the applicant proposed several buildings over or encroaching into the existing 20-foot-wide sanitary sewer trunk line easement and proposed to relocate approximately 500 linear feet of this line to the common drive and parking areas. **The existing 20-foot-wide sanitary sewer easement (No. 74-4252) shall be terminated prior to recording the plat and a minimum 15-foot-wide public sanitary sewer easement shall be dedicated to the City of Sandy to accommodate the new sanitary sewer line that is being installed on Parcel 1.** Criterion three is satisfied.
20. Criterion four requires that all proposed improvements meet City standards. Section 17.84.20 (A)(1) requires installation of frontage improvements prior to approval of the final plat. All future site and frontage improvements shall be required to be developed in accordance with City standards. The improvements required with File No. 19-038 DR/FSH/VAR/TREE are solely applicable to Parcel 1. Since the improvements associated with Tickle Creek Village do not affect Parcel 2 there is no need to financially guarantee the improvements prior to recording of the plat for this subject partition. However, Parcel 2 has frontage along a short stretch of right-of-way that was dedicated with Partition Plat No. 1991-152. This right-of-way is defined as approximately 112.79 feet on its southern line and has a 45.70-foot curve into Ruben Lane, and is detailed as Ruben Lane in some documentation, but as Freightway Lane in other documentation. This right-of-way regardless of the actual name is a local street. On July 25, 2022, the Planning Commission decided that the frontage improvements along Freightway Lane do not need to be completed prior to recording of the partition plat. **The Planning Commission conditioned that frontage improvements along Freightway Lane and the corner radius (112.79 feet on its southern line and a 45.70-foot curve) shall be installed concurrently with future development of Parcel 2.** Criterion four is satisfied.
21. Criterion five requires the plan to preserve the potential for future redivision of the parcels, if applicable. Parcel 1 could likely not be divided any further based on the approval of

Tickle Creek Village. There is the potential to divide Parcel 2 further if access rights for the future division were granted from Freightway Lane. Criterion five is satisfied.

Chapter 17.102 – Urban Forestry

22. Section 17.102.20 contains information on the applicability of Urban Forestry regulations. The subject property is 10.32 acres and requires conformance with the tree retention requirements of Chapter 17.102. Both proposed parcels will be greater than 1 acre so any future tree removal from Parcel 1 or Parcel 2 will require compliance with Chapter 17.102 and Chapter 17.92. **No trees shall be removed from Parcels 1 or 2 prior to obtaining a Tree Removal permit from the City of Sandy.**

DECISION

For the reasons described above, the request by Dubarko Development Corp. to partition Parcel 2 of Partition Plat No. 1991-152 into two (2) parcels, containing Parcel 1 at 4.44 acres and Parcel 2 at 5.88 acres, is hereby approved by the Planning Commission as modified by the conditions listed below.

CONDITIONS OF APPROVAL

A. Prior to signing of the Final Plat all the following conditions shall be satisfied:

1. Terminate the existing 20-foot-wide sanitary sewer easement (No. 74-4252) or modify the existing easement with the location of the new 15-foot-wide easement on Parcel 1.
2. Submit two paper copies of a revised plat with the required fee for City review. The revised partition plat shall include the following modifications:
 - Detail a Vehicle Non-Access Reserve (VNAR) along Ruben Lane to the south of Freightway Lane to restrict access for Parcel 2 to Ruben Lane.
 - Detail a minimum 15-foot-wide public sewer easement dedicated to the City of Sandy to accommodate the new sanitary sewer line on Parcel 1.
 - Provide a signature block on the partition plat for the City of Sandy Development Services Director, as well as the appropriate Clackamas County offices.
 - Remove the signature block for the City Engineer.
 - Add City of Sandy Planning File No. “22-026 AP” to the final partition plat submittal.

B. Within 30 days of Recording of Final Plat:

1. Submit a digital version of the recorded partition plat as approved by the City and Clackamas County.

C. General Conditions of Approval:

1. The frontage improvements along Freightway Lane and the corner radius (112.79 feet on its southern line and a 45.70-foot curve) shall be installed concurrently with future development of Parcel 2.
2. Future development of Parcel 2 requires approval of a Land Use Application in accordance with applicable regulations. Parcel 2 shall take access from Freightway Lane.
3. Future structures on Parcels 1 and 2 require a setback of 20 feet along Ruben Lane and Dubarko Road.
4. Future development of Parcels 1 and 2 shall adhere to the density, use allowances, and development standards of the underlying zoning districts and in Chapter 17.90.
5. No trees shall be removed from the subject property prior to obtaining a Tree Removal permit from the City of Sandy.
6. Successors-in-interest of the applicant shall comply with requirements of this partition approval prior to recording of the partition plat.
7. Land use approval does not connote approval of public improvement plans submitted with the land use application. Plan details shall be reviewed during the construction plan submittal phase.
8. Approval of this partition may be revoked if conditions of approval are not met. Approval does not grant authority for the unrestricted use of the site. Any use of the site may be prohibited until such time as all required improvements are completed.
9. Any conditions or regulations required by Clackamas County, Fire District No. 72, or state or federal agencies are hereby made a part of this permit and any violation of these conditions and/or regulations or conditions of this approval will result in the review of this permit and/or revocation.



Jerry Crosby
Planning Commission Chair

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 calendar days of notice of the decision. Any person interested in filing an appeal should contact the city to obtain the form, "*Notice of Appeal*", and Chapter 17.28 of the Sandy Development Code regulating appeals. All applications for an 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.