

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

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<b>ISSUANCE DATE:</b>	October 10, 2023
<b>FILE NO.:</b>	23-029 MP
<b>PROJECT NAME:</b>	Taco Bell Partition
<b>APPLICANT/OWNER:</b>	Brad Picking (Sandy Safeway Center LLC)
<b>ADDRESS:</b>	37317 Highway 26
<b>TAX LOT:</b>	2S 4E 14, Tax lot 203
<b>ZONING DESIGNATION:</b>	General Commercial (C-2)
<b>COMPREHENSIVE PLAN DESIGNATION:</b>	Commercial
<b>STAFF CONTACT:</b>	Patrick Depa, Senior Planner

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**BACKGROUND:**

The current size of the subject property is 1.62 acres and has two buildings on it. The subject property gains access from Kate Schmitz Avenue which has ingress/egress from Hwy 26. The applicant is proposing to partition off approximately .68 acres. The property being partitioned off has one building operating as a Taco Bell Restaurant (Parcel 1). As part of the partition, the applicant is proposing a thirty (30) foot wide access easement over the property being partitioned from Kate Schmitz Avenue for access to benefit the new lot (Parcel 2) containing O'Reilly's Auto Parts and Domino's Pizza.

The above-referenced proposal was reviewed as a Type I Minor Partition. The following exhibits, findings of fact, and conditions explain the proposal and the conditions of approval.

**EXHIBITS:**

**Applicant's Submittals**

- A. Land Use Application Forms
- B. Proposed Partition Survey
- C. Adjusted Project Narrative
- D. Record of Survey 1 (SN 20237)
- E. Record of Survey 2 (SN 27839)

**FINDINGS OF FACT:**

**General**

1. These findings are based on the applicant's original submittal received on August 14, 2023. A letter of incompleteness was emailed on September 8, 2023. After further review of on-site utilities, the application was deemed complete on October 2, 2023.
2. The subject property is located at 37317 Highway 26. The property has two existing buildings, one is the Taco Bell Restaurant and the other a multi-unit commercial building with O'Reilly's Auto Parts and Domino's Pizza. The entire existing parcel totals about 1.62 acres.

3. The subject properties have a Comprehensive Plan Map designation of Commercial and a Zoning Map designation of General Commercial (C-2).
4. Brad Picking (Sandy Safeway Center LLC) applied to partition the subject parcel (tax lot 203), into two separate lots. The lot was created in its current configuration in 1998 with a series of property line adjustments.
5. While the existing sanitary sewer moratorium does not allow land divisions that create new buildable lots, staff interpreted that this partition could be processed during the moratorium as any new sanitary sewer connection would necessitate a design review and this partition does not modify the buildable of the subject lots.
6. The application is considered a minor partition per Section 17.100.40 and reviewed under the Type I criteria. A Type I Design Review is an administrative review therefore, notification to surrounding property owners is not required. However, the Development Services Department sent a request for comment to internal departments in the City of Sandy.
7. The Public Works Department stated that all the utility lines on site are privately owned and maintained, and no public easements were necessary on this proposal. Place a note on the face of plat stating that all utilities on the subject parcels will be private.

### **DECISION CRITERIA:**

#### **17.100.40– Minor and Major Partitions and Replats**

8. D. *Approval Criteria.* The Director or Planning Commission shall review the tentative plan for a minor partition, major partition, or replat based on the classification procedure (Type I, II or III) and the following approval criteria:
  - a. The proposed partition or replat meets the density requirements, setbacks, and dimensional standards for all lots in the base zoning district or zoning districts if multiple zoning districts exist in the proposed partition or replat. **The partition is not in conflict with any of the development requirements of Section 17.44.30. No development or ancillary projects are associated with this application. All future development on the subject properties will continue to be required to meet all applicable development code requirements. This criterion is satisfied.**
  - b. The proposed partition or replat meets the requirements of the Bornstedt Village Overlay (BVO), if the proposed partition or replat is located in the BVO, or other specific area plan, if the proposed partition or replat is located in another specific plan area, as required in Chapter 17.54. **The subject property is not located within the BVO. This criterion is satisfied.**
  - c. The proposed partition or replat meets the requirements of hillside development as required in Chapter 17.56. **The subject property does not have development that needs a Hillside Development Review. This criterion is satisfied.**

- d. The proposed partition or replat meets the requirements of the flood and slope hazard overlay district as required in Chapter 17.60. **The subject property is not located within the FSH Overlay District. This criterion is satisfied.**
- e. The proposed partition or replat meets the additional setback standards on collector and arterial streets as required in Chapter 17.80. **All structures are existing. The current setback and orientation are approximately twice the required setback from Hwy 26. This criterion is satisfied.**
- f. The proposed partition or replat meets the building orientation standards on transit streets as required in Chapter 17.82. **This site is not in a residential district therefore this section and criterion do not apply. This criterion is satisfied.**
- g. The proposed partition or replat meets all improvement standards for sidewalks, pedestrian connections including tracts and easements, bicycle facilities, water facilities, sanitary sewer facilities, stormwater facilities, and all other standards as required in Chapter 17.84. **The site has existing sidewalks along Highway 26, and bicycle and pedestrian facilities that will not be modified with the partition. All utilities are private, so no additional easements have been requested. This criterion is satisfied.**
- h. The proposed partition or replat includes the dedication of land, or a fee in-lieu of land as required in Chapter 17.86 and the 2022 Parks and Trails Master Plan. **This section does not apply to commercial zones such as the C-2 zoning district. This criterion is satisfied.**
- i. The proposed partition or replat will meet the requirements of Chapter 17.90 at the time of house construction. **The buildings are existing. No modification to the buildings or site is being proposed at this time. This criterion is satisfied.**
- j. The proposed partition or replat meets the landscaping requirements of Chapter 17.92. **The site was constructed in the late 1990's and has mostly mature landscaping. However, various sections of the landscaping code have been amended since then and some of the site's landscaping is not in compliance. The applicant shall submit a landscape plan specifically for adherence to the street tree requirements. Required street trees shall be spaced at thirty (30) foot intervals and be chosen from the City's approved tree list. Street trees are required to be a minimum caliper of 1.5-inches measured 6 inches from grade and shall be planted per the City of Sandy standard planting detail. Trees shall be planted, staked, and the planter strip shall be graded and backfilled as necessary, and bark mulch, vegetation, or other approved material installed prior to occupancy. Tree ties shall be loosely tied twine or other soft material and shall be removed after one growing season (or a maximum of 1 year). The street tree requirement applies to both Kate Schmitz Avenue and Hwy 26. This criterion is satisfied if the conditions are met.**
- k. The proposed partition or replat provides on-street parking, off-street parking, driveway spacing, and driveway widths as required in Chapter 17.98. **Taco Bell has a drive-thru**

**and off-street parking for their customers which the partition doesn't modify. The site does meet both the customer and the employee parking requirement. This criterion is satisfied.**

- l. The proposed partition or replat provides tree retention as required in Chapter 17.102. **No trees are being removed as part of this partition proposal. This criterion is satisfied.**
- m. The proposed partition or replat provides a street pattern that meets the dimensional standards for blocks as required in Chapter 17.100 and street cross-sections that meet the width requirements as detailed in Chapter 17.10, Definitions. **No new streets will be created or are necessary with the proposal, so this requirement is not applicable. This criterion is satisfied.**
- n. The proposed street layout includes the siting of all collector and arterial streets substantially as depicted in the 2022 Transportation System Master Plan. **Other than the applicant designating the access drive as an easement, no new street connections will be created or are necessary. Hwy 26 is depicted on the preliminary survey. This criterion is satisfied.**
- o. The proposed street improvements, including sidewalks, planter strips or swales, street trees, street lighting, curbs, asphalt, and vehicular and bicycle lanes and striping, are consistent with the 2022 Transportation System Master Plan or are grandfathered in. The improvements shall be constructed to the standards described in the Oregon Standard Specifications for Construction (OSSC) 2021 (or most recent revision) and the AASHTO Policy on Geometric Design of Highways and Streets (Green Book)—2018 (or most recent revision). **The parking layout, pedestrian walkways, bike lanes, vehicle maneuvering lanes, and striping are consistent with the most recent Transportation System Plan. This criterion is satisfied.**
- p. The proposed partition or replat is consistent with the design standards set forth in this chapter. **The proposed partition meets the design standards of Section 17.100 – Land Division and the 17.44.30 - Design Standards of the General Commercial (C-2) District. This criterion is satisfied.**
- q. The proposed street pattern is connected and consistent with the Comprehensive Plan or official street plan for the City of Sandy. **All interior maneuvering lanes and access points connect to Kate Schmitz Avenue. No new streets are being created, no new access points are being created, and none of the existing uses are changing. This requirement is not applicable. This criterion is satisfied.**
- r. The proposed partition or replat creates traffic volumes that do not exceed average daily traffic (ADT) standards for local streets as detailed in Chapter 17.10, Definitions. **All interior maneuvering lanes and access points lead out to Kate Schmitz Avenue and then out to Hwy 26, neither of which is designated as a local street. This requirement is not applicable. This criterion is satisfied.**

- s. The proposed subdivision includes utilities that meet the requirements of the City of Sandy Water System Master Plan and the City of Sandy Wastewater System Facilities Plan. **All utilities are existing and will remain the same under private control and ownership. This criterion is satisfied.**
- t. The proposed partition or replat includes the installation of all utilities underground, including electric, natural gas, fiber, telecommunication lines, water, and sanitary sewer, and the required easements for such utilities. **All utilities are existing and will remain the same under private control and ownership. This criterion is satisfied.**

**DECISION:**

For the reasons described above, the proposed partition of Map 2S 4E 14 Tax Lot No. 203 is hereby **approved** 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. Submit a revised partition plat with the following modifications:
  - Provide a signature block on the partition plat for the City of Sandy Development Services Director, as well as the appropriate Clackamas County offices.
  - Add City of Sandy Planning File No. “23-029MP” to the final partition plat submittal.
  - Place a note on the face of plat stating that all utilities on the subject parcels will be private.
2. Submit two paper copies of a Final Plat with required fee for City review.
3. The applicant shall submit a partial landscape plan specifically for adherence to the street tree requirements. Required street trees shall be spaced at thirty (30) foot intervals and be chosen from the City’s approved tree list.
4. Street trees are required to be a minimum caliper of 1.5-inches measured 6 inches from grade and shall be planted per the City of Sandy standard planting detail. Trees shall be planted, staked, and the planter strip shall be graded and backfilled as necessary, and bark mulch, vegetation, or other approved material installed prior to occupancy. Tree ties shall be loosely tied twine or other soft material and shall be removed after one growing season (or a maximum of 1 year).
5. All of the street trees shall be planted and pass inspection by Planning Division staff.

**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. An easement over the east access drive from Kate Schmitz Avenue will need to be recorded as well as depicted on the preliminary survey.
2. Successors-in-interest of the applicant shall comply with requirements of this partition approval prior to recording of the partition plat.

*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.*



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Patrick Depa  
Senior Planner

**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 twelve (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 Section 17.28.50;
5. *Payment of required filing fees.* Payment of required filing fees is jurisdictional and must accompany an appeal at the time it is filed;
6. The name and mailing address of the person or entity appealing the decision; and
7. List and two sets of mailing labels for property owners within 300 feet of the subject property (for appeal of a Type I decision), 500 feet of the subject property for appeal of a Type II, III, or IV decision, or 1,000 feet for appeal of an annexation request. The property owner list and labels shall be obtained from a Title Company no more than seven days prior to submitting the appeal.