

FINDINGS OF FACT and FINAL ORDER MIDDLE HOUSING LAND DIVISION DECISION

ISSUANCE DATE:	March 1, 2024
FILE NO.:	24-004 MHL D
PROJECT NAME:	Ten Eyck Rim Subdivision Middle Housing Land Division
APPLICANT/OWNER:	Tom Orth and John Holmlund
APPLICABLE CRITERIA:	SMC 17.100.50.D
TAX MAP AND LOTS:	2S 4E 13AD, Tax lots 1600, 1700, 1800, 1900, 2000, 2100, 2200, 2300, and 2400
ZONING DESIGNATION:	Medium Density Residential (R-2)
COMPREHENSIVE PLAN DESIGNATION:	Medium Density
STAFF CONTACT:	Patrick Depa, Senior Planner

BACKGROUND:

The Ten Eyck Rim Subdivision was recorded as Plat No. 4704 in May 2023. The plat was approved for nine (9) duplex lots. All nine (9) duplex lots gain access from either Pleasant Street or Hood Street, five from Pleasant Street and four from Hood Street. The properties are zoned R-2, Medium Density Residential and duplex units have been approved for and are currently under construction on Lots 1 - 4 of the subdivision.

The applicant is proposing to use the middle housing land division procedures as set forth in ORS 92.031 to divide the nine lots in the Ten Eyck Rim Subdivision. This process is outlined in Section 17.100.50, Middle Housing Land Divisions, of the Sandy Municipal Code (SMC). The middle housing land division will be reviewed under the Middle House Land Division criteria in Section 17.100.50 (D) which allows each lot in the subdivision to be divided into two lots. Following tentative land use approval, the applicant intends to batch all nine middle housing land divisions to record a replatted subdivision modifying the total amount of individual lots from nine (9) lots to eighteen (18) lots.

The above-referenced proposal was reviewed as a Middle Housing Land Division. The following exhibits, findings of fact, and conditions explain the proposal and the conditions of approval.

EXHIBITS:

Applicant's Submittals

- A. Ten Eyck Rim Plat 4704
- B. Land Use Application
- C. Project Narrative
- D. Individual Lot Proposed Partition Surveys
- E. Overall Subdivision Proposed Re-plat

COMMENTS:

General: No comments were received from the public.

Building: The Building Official has stated that the owner/builder has followed all the Oregon Residential Specialty Code regulations on firewalls pertaining to common property line development. All building permits on the four lots (Lots 1-4) submitted for review have been approved to be partitioned using the Middle Housing Land Division regulations.

Fire District: No comments from Clackamas Fire were received on this proposal.

Public Works: Verified that the duplexes have already been constructed with separate utilities for each unit except the storm water system. There is currently one storm line that runs behind the original nine (9) lots with individual area drains at the rear of each lot. When individual surveys and deeds are recorded, a storm water easement shall be included in each survey and described within the legal description.

FINDINGS OF FACT:

General

1. These findings are based on the applicant's original submittal received on January 30, 2024, with payment received on February 7, 2024. In accordance with Section 17.18.120 (B) this application was accepted on February 7, 2024. The application was deemed complete on February 8, 2024, and a letter of completeness was emailed the same day.
2. The subject properties are located north of Highway 26, to the east of Ten Eyck Road, between Pleasant Street and Hood Street. The properties are mostly vacant except for the partially constructed duplexes on Lots 1-4.
3. The subject properties have a Comprehensive Plan Map designation of Medium Family Residential and a Zoning Map designation of Medium Family Residential (R-2).
4. The existing subdivision (Plat 4704) was recorded in May of 2023 and divided the property into nine lots.
5. While the existing sanitary sewer moratorium does not allow land divisions that create new buildable lots, Section 4.1. of Moratorium Resolution 2023-27 allows middle housing land divisions as they do not necessitate a design review and do not modify the number of equivalent dwelling units (ERUs) on the subject lots.
6. The proposed replat was determined to be a Middle Housing Land Division within the purview of SMC 17.100.50.B. Middle Housing Land Divisions and will be processed that way.
7. This middle housing land division contains no street(s) that require an extension or reconstruction/realignment nor creates an increase in the allowable density resulting with the parcels complying with the standards of the zoning district and this chapter.

8. A middle housing land division is a land division for a duplex in accordance with ORS 92.031. **The applicant shall add a note to the plat that the approval of the land division was given under ORS 92.031.** A middle housing land division results in the creation of separate units of land for each dwelling unit of the duplex.

DECISION CRITERIA:

Sec. 17.100.50. Middle housing land divisions.

D. *Approval Criteria.* The Director shall review middle housing land division applications based on the procedure set forth in Chapter 17.18 and the following approval criteria:

1. A proposal for development of middle housing shall be in compliance with the Oregon Residential Specialty Code and land use regulations applicable to the original lot or parcel allowed under ORS 197.758(5);

Evaluation: This middle housing land division is not in conflict with any of the development requirements of Section 17.38.30., Development Standards for R-2 zoning. No development or ancillary projects are associated with this application or property. All future development on the subject properties will continue to be required to meet all applicable Oregon Residential Specialty Code and development code requirements. *This criterion is satisfied.*

2. Separate utilities are provided for each dwelling unit;

Evaluation: All existing and future dwellings will have been constructed with separate utilities for each unit as required except for the stormwater drainage system. The development was designed to direct the drainage into a shared and connected stormwater conveyance system at the rear of each lot. The stormwater pipe transfers the stormwater collected through individual area drains into the public system along Ten Eyck Road. A utility easement and a maintenance agreement shall be included on all future surveys and in all legal descriptions. *This criterion is satisfied.*

3. The following easements are shown for each dwelling unit on the tentative plan:
 - a. Easements necessary for locating, accessing, replacing and servicing all utilities;
 - b. Easements for pedestrian access from each dwelling unit to a public road;
 - c. Easements necessary for any common use areas or shared building elements; and
 - d. Easements necessary for any dedicated driveways or parking.

Evaluation: When the final plat is submitted for review and approval, the City will confirm that all required utility easements are represented prior to the final plat being recorded. **The applicant shall detail any required easements on the plat.** Prior to the issuance of a Certificate of Occupancy, all sidewalks and driveways will be installed to facilitate access to each lot. No common use areas or shared buildings are affected by the Middle House Land Divisions. **The applicant shall repeal and replace the tree protection covenant detailing**

that the retention trees on Lots 5 and 6 are now on Lots 9, 10, and 11. This criterion is satisfied.

4. The middle housing land division results in exactly one dwelling unit on each resulting lot or parcel, except for lots, parcels, or tracts used as common areas;

Evaluation: There are no proposed common areas. All resulting lots in this middle housing land division will contain only one dwelling unit as required. **This approval prohibits the construction of an accessory dwelling unit on any of the resulting lots. The applicant shall add a note to the plat that the resulting lots cannot contain an accessory dwelling unit.** *This criterion is satisfied.*

5. The application demonstrates that buildings or structures on the middle housing lots created by the middle housing land division will comply with applicable building code provisions relating to new property lines, and, notwithstanding the creation of new lots or parcels, that structures or buildings located on the middle housing lots will comply with the Oregon Residential Specialty Code;

Evaluation: All structures constructed on these lots were constructed in anticipation of being divided following the provisions of this section in compliance with the Oregon Residential Specialty Code, and all proposed structures are proposed to do the same. *This criterion is satisfied.*

6. The final plat shall include a notation indicating that the land division was approved through a middle housing land division and that the lots shall not be further divided;

Evaluation: The applicant is aware the final plat will be required to include a note that the replatted subdivision was approved through a middle housing land division and that the lots cannot be further divided. **The applicant shall add a note to the plat that the lots were approved through a middle housing land division and cannot be further divided.** *This criterion is satisfied.*

7. The final plat shall include a note indicating that neither a Homeowners Association (HOA) nor Covenants, Conditions, and Restrictions (CC&Rs) can prohibit middle housing land division;

Evaluation: The applicant is aware the final plat will be required to include a note stating that neither an HOA nor the recorded CC&Rs can prohibit a middle housing land division. **The applicant shall add a note to the plat that neither an HOA nor recorded CC&Rs can prohibit middle housing land division.** *This criterion is satisfied.*

8. The deed shall contain a reference to the final plat, which includes a notation that the land division was approved through a middle housing land division and that the lots shall not be further divided; and

Evaluation: The applicant is aware the deed for each lot shall include notation stating that the land division was approved through a middle housing land division and the lot cannot be further

divided. **The applicant shall provide the deeds to City staff with a notation stating that land division was approved through a middle housing land division and the lots cannot be further divided.** *This criterion is satisfied.*

9. The proposal shall include street frontage improvements where a resulting lot or parcel abuts the street consistent with the current Transportation System Plan.

Evaluation: Each lot currently contains approved street frontage with the approval of the Ten Eyck Rim subdivision, and this will not change with approval of the middle housing land division. *This criterion is satisfied.*

DECISION:

For the reasons described above, the proposed middle housing land divisions of Lots 1, 2, 3, 4, 5, 6, 7, 8, and 9 of the Ten Eyck Rim subdivision (Plat No. 4704) are 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. Pay the plat review fee, and submit a digital version of the plat and two paper copies of the plat.
2. Add a note to the plat that the lots were approved through a middle housing land division and cannot be further divided.
3. Add a note to the plat that the resulting lots cannot contain an accessory dwelling unit.
4. Add a note to the plat indicating that the approval of the land division was given under ORS 92.031.
5. Add a note to the plat that neither an HOA nor recorded CC&Rs can prohibit middle housing land division.
6. Detail any required easements on the plat.
7. Repeal and replace the tree protection covenant detailing that the retention trees on Lots 5 and 6 are now on Lots 9, 10, and 11.

B. Within 30 days of Recording of Final Plat:

1. Submit a digital version of the recorded replat as approved by the City and Clackamas County.
2. Provide the deeds to City staff with a notation stating that land division was approved through a middle housing land division and the lots cannot be further divided.

C. General Conditions of Approval:

1. Successors-in-interest of the applicant shall comply with requirements of this middle housing land division approval prior to recording of the partition plat.
2. This approval prohibits the construction of an accessory dwelling unit on any of the resulting lots.
3. Expiration. Tentative plan approval for this middle housing land division shall expire in three (3) years from the date of this decision unless a final plat is approved within that timeframe.

Approval of this middle housing land division 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.



Patrick Depa
Senior Planner

RIGHT OF APPEAL

In accordance with Section 17.18.120 this land division was processed as an expedited land division pursuant to the procedures set forth in ORS 197.360 to 197.380. Any appeal shall follow the statutory appeal process as outlined in Section 17.28.70 and ORS 197.375. Appeals may only be made by the applicant or any person or organization who filed written comments within the applicable time period. Within 14 days of the date of the mailing of this decision, the decision may be appealed to the municipal judge. The appeal shall be submitted on a form approved by the Director, be accompanied by a deposit for costs established by the City's Master Fee Schedule, shall include two sets of mailing labels for property owners within 100 feet of the subject property, and be received by the City no later than 5:00 p.m. on the 14th day after the notice of decision is mailed. The appeal shall include a statement of issues on appeal. The appeal statement shall explain specifically how:

- a. The Director's decision violates the substantive provisions of land use regulations applicable to the application;
- b. The Director's decision is unconstitutional;
- c. The application is not eligible for review under the procedures for an expedited or middle housing land division review in Chapter 17.18; or
- d. The parties' substantive rights have been substantially prejudiced by an error in procedure made by the City.