



PLANNING & DEVELOPMENT SERVICES

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BLACK Text Initial Appeal Statement
RED Text Applicant Response
BLUE Text Appellant Response

Initial Submitted July 27, 2020
Revised Submittal August 17, 2020

City of Coburg City Council
P.O. Box 8316
Coburg, OR 97408

Sent Via E-mail: HHearley@LCOG.org

Hand Delivered to City Hall

Dear City Councilors,

RE: WEICHERT SUBDIVISION (SUB-01-20) – APPEAL

Please accept this appeal of the Planning Commission’s decision to approve, with conditions, the Wiechert (Coburg Creek) Subdivision (SUB-01-20).

This appeal is submitted on behalf of Alan Wells, Peggy Wells, Dale Kast, Cathy Engbretson and Daniel Rux the “appellants”.

The appellants have standing to file this appeal as they testified before the Planning Commission in opposition to the subdivision. In addition, they each live and own property directly adversely impacted by the subdivision. The appellants have combined experience serving on the Coburg Planning Commission, restoring Coburg historic properties, and developing new residential and commercial projects in the community.

The appellants agree with the Planning Commission’s determination that the subject property is planned and zoned to provide new housing. The appellants acknowledge that Bruce Wiechert Custom Homes, Inc (the “applicant”) has a proven track record for extending public infrastructure and building high quality new homes.

This appeal is filed because of the following major concerns:

1. Exclusive use of N Skinner and Coleman Streets to handle all traffic from the subdivision and the Planning Commission’s Conditions #4 and #5 restricting parking on these streets.

2. Lack of public right-of-way dedications and improvements to E Van Duyn Street within the subdivision in alignment with the existing and planned future street extension.
3. Lack of public right-of-way dedications and improvements to Macy Street within the subdivision in alignment with the existing and planned future street extension.
4. The dedication of four Tracts for public park and recreation uses that will prevent the extension of Macy Street, primarily serve on-site stormwater drainage facilities, and are unsuitable for park and recreation uses.
5. City determination that the subdivision shall meet minimum residential density requirements when the site has significant access limitations.
6. City public notice was not done in compliance with the Coburg Zoning Ordinance No. A-200-1, Article X.C. and ORS 197.195(3).

Specifically, the subdivision does not comply with the following code standards:

- **Article VII.A.5** **Minimum Residential Density (TR)**
- **Article VII.B.5.b** **Minimum Residential Density (TMR)**
- **Article VII.A.4.b** **Minimum Lot Dimensions (TR)**
- **Article VII.B.3.b** **Minimum Lot Dimensions (TMR)**
- **Article VIII.E.1** **Dedication of Street ROW / Street Standards**
- **Article VIII.E.1.f** **Street Connectivity**
- **Article VIII.E.3.c** **Blocks**
- **Article VIII.E.3.e** **Reserve Strips**
- **Article VIII.E.3.h.** **Alignment**
- **Article VIII.E.3.i** **Existing Streets**
- **Article VIII.E.3.j** **Half Streets**
- **Article VIII.F.4** **Dedications**
- **Article XII.B.9** **Reserve Strips**
- **Article XII.B.13** **Through Lots and Parcels**
- **Article XII.B.19** **Park / Park Recreation Acquisitions**
- **Article XII.C.2.c(1)** **Compliance with Zoning Code**
- **Article XII.C.2.c(5)** **Orderly Transportation System**
- **Article XII.C.2.c(7)** **Adjacent Land Impacts / Public Safety / Access**
- **Article X.C.** **Type III Procedure**

Each standard is listed below followed by evidence demonstrating why the subdivision does not comply. Code text is shown in ***bold italics***.

For a summary of the detailed analysis, please see [Exhibit G – Code Analysis Summary](#).

Article VII.A.5 Minimum Residential Density (TR)
Article VII.B.5.b Minimum Residential Density (TMR)

The subdivision has significant access constraints and the minimum residential density standards should not apply.

Per Article II.A.5, land zoned Traditional Residential (TR):

“When lots are created through a land division, or site development is proposed for four or more dwelling units, a minimum density of 60 percent of the maximum density (or 5.4 units per acre) is required... This standard does not apply to the following developments:...

- (5) ***Development on physically constrained sites, where lot configuration, access limitations, topography, significant trees, wetlands or other natural features prevent development at the minimum density.” (emphasis mine)***

Per Article II.B.5.b, land zoned Traditional Medium Residential (TMR):

“When lots are created through a land division, or site development is proposed for four or more dwelling units, a minimum density of 80 percent of the maximum density (or 10.4 dwelling units per acre) is required... This standard does not apply to the following developments:...

- (5) ***Development on physically constrained sites, where lot configuration, access limitations, topography, significant trees, wetlands or other natural features prevent development at the minimum density.” (emphasis mine)***

The site is at the edge of the Coburg Urban Growth Boundary (UGB) and has severe access constraints. There are currently no public streets providing access from the north, east or west sides of the site. The County’s recent approval of a partition establishing the site as a legal lot prohibits providing a street connection from the north (outside the UGB) through County EFU zoned land to serve the subdivision.

The only access to the site is from the south - N Skinner Street (*which feeds to E Locust Street*), and Coleman Street. None of these streets – N Skinner, E Locust and Coleman - are improved according to city street standards. Each only has a 12-foot paving width for two-way traffic.

The Planning Commission imposed Conditions of Approval in an attempt to address problems with the site access. These conditions only require the applicant to improve offside roadway access points to 16 feet. The conditions do not require street improvements to N Skinner and Coleman that will meet local street standards including a minimum paved width of 20 feet.

Providing access to the north, east or west will require a series of well-orchestrated public and private actions. While not insurmountable, the funding sources, time frames, and legal requirements create uncertainty regarding when and how access will be improved beyond the sole use of N Skinner (to E Locust) and Coleman.

Based on the severe access limitations, the minimum density requirement should not be applied. This would give greater flexibility for the developer to design a subdivision that achieves the applicant's goal (detached single family homes), while also complying with other critical code standards including street network connectivity, dedication of land suitable for park and recreation uses, and decreased traffic impacts on historic neighborhoods and Coburg's "central park," Norma Pfeiffer park, the north boundary of which is E Locust Street.

Finally, the code also allows the minimum density requirement to be altered due to the existence of significant trees. Public testimony was submitted for the Planning Commission hearing about concern for keeping heritage trees along the east edge of the subdivision. This may be an additional argument in favor of easing the minimum density requirement.

Applicant Response: The only access to the site is from the south. Requiring access from the north, east or west would impose an undue burden upon the property owner since he does not have control over those access points. There is nothing in the code specifying the minimum number of access point to a subdivision. The City Engineer and Fire Marshal are responsible in determining the adequacy of the access. The two existing access streets will be improved to the satisfaction of the City Engineer and Fire Marshal. The Traffic Impact Analysis submitted with the application determined the "Level of Service" for the two access streets is acceptable to accommodate the proposed subdivision.

The Minimum density requirement was determined by the City Planner and because of this, the proposed subdivision was increased from 39 lots to 46 lots.

The trees along the east edge of the subdivision are not heritage trees and are not on the subject property.

Appellant Response: The code states minimum density requirements do not apply to constrained sites with "access limitations" or "topography" that "prevent development at the minimum density". The applicant asserts the subdivision is required to contain 46 lots but then seeks exceptions to other standards because of site constraints including topography. The choice is clear – either the site has constraints or it does not.

Density is based on the number of homes – not lots. The developer's decision to only create lots for detached single-family homes is a self-imposed hardship. It is not the appropriate way to get exceptions or variations from the code.

Minimum residential density is based on the number of dwelling units per Net Area. Net Area is defined as: “Total area of a parcel or site (usually expressed in acres), excluding existing public street rights-of-way, public parks and other areas permanently precluded from development due to development constraints, conservation easements, or other legal restrictions. Planned streets shall not be excluded from the net area.”

The applicant asserts that the dedication of tracts are for parks and thus the determination of Net Area excludes all four tracts. The problem is Tract D must be used for the extension of Macy Street and if dedicated to the city before constructed the burden for the improvement rests with the city or some future developer. There is no evidence in the record that the project will still comply with the minimum required residential density if any of the tracts are needed for planned streets.

**Article VII.A.4.b Minimum Lot Dimensions (TR)
Article VII.B.3.b Minimum Lot Dimensions (TMR)**

The subdivision lacks a requirement that the final subdivision plat indicate what lots are zoned TMR and the number of allowed dwellings per lot.

Lots 1 through 5 only comply with the minimum lot width and lot area requirements for land zoned Traditional Medium Residential (TMR). These five lots contain a total of 0.58 acres which is very close to the 0.59 acres City staff calculated as being the portion of the site zoned TMR. The remainder of the lots are zoned Traditional Residential (TR) and comply with the minimum lot width and lot area requirements for standard lots and flag lots.

The Coburg Zoning Map shows TMR zoning in a rectangle shape in an east-west orientation near the northern edge of the site. Refer to Exhibit A – Coburg Zoning Map. The Subdivision Lots 1 through 5 require the TMR zoning to comply with lot dimensions standards but these lots do not align with the Coburg Zoning Map and are instead located in a rectangle shape in a north-south configuration on the west edge. The Planning Commission’s decision did not impose a Condition of Approval to clarify the land zoned TMR or take steps to amend the Coburg Zoning Map. The Coburg Development Code requires the classification of zoning districts to be shown on the official Zoning Map. We do not object to the general subdivision or a master planned development process being allowed to determine the location of the TMR zoning allocated to the site. We do believe any subdivision for this site needs to include a note on the final plat indicating the lots zoned TMR and the minimum and maximum allowed number of dwellings per lot. Ideally, the official Zoning Map is also amended. If these steps are not taken it will cause confusion for the building official, property appraisers, future lot owners, lenders, and anyone seeking to verify applicable zoning on the site.

Applicant Response: A note can be placed on the final plat that indicates lots 1 – 5 are zoned TMR. The allowable dwelling units per lot is determined by the Coburg Code.

Appellant Response: We concur that the final plat should include a note indicating the lots zoned TMR.

However, there is no evidence authorizing the Planning Commission to change the location of the TMR zoning through a standard subdivision process and without public notice to surrounding property owners. We acknowledge that the boundary of the TMR zoning is unclear due to the lack of existing streets or tax lot lines around the boundary. Article VI provides clear rules for interpretation of zoning district boundaries. The Planning Commission did not follow these rules and it remains unclear how the official Zoning Map is being amended.

Article VIII.E.1. Dedication of Street ROW / Street Design Standards

The subdivision does not comply with street dedication and improvement standards – E Van Duyn and Macy Streets within the subdivision need to be improved.

Per Article VIII.E.1:

“Improvements to City streets shall conform to the standards as set forth in this section.

- a. Dedication of Street Right-of-Way. City may require dedication of additional public right-of-way in order to meet street standards.***
- b. Street Design Standards for public streets and the current and future functional classification plan for all streets within Coburg, including those owned by Lane County.***
 - (i) Street Design Standards Table VIII.E(1)(b)(i): Coburg Street Design Standards...”***

E Van Duyn Street

The subdivision did not include any dedication of public right-of-way for E Van Duyn Street. A section of E Van Duyn adjacent to the subdivision contains a 30-foot public ROW. The minimum local street standards require at least a 45-foot public ROW. The subdivision also did not include the dedication, extension, and improvement of E Van Duyn between N Skinner and Coleman Streets. See Exhibit B – TSP Street Classification and Future Street Plan.

Macy Street

The subdivision did not include any dedication of public ROW or street improvements in alignment with the existing section of Macy Street near the west edge of the subdivision. The applicant's proposal to deed Tract D to the City places the burden to design and construct this street segment on the City. Furthermore, Tract D was proposed for park and recreation use which conflicts with the orderly development of the transportation network, as required in code approval criteria Article XII.C.2.c.(1)(5) and as further discussed later in this document. The subdivider is responsible for the dedication and improvement of Macy Street within the subdivision and should not attempt to deed the area needed for the street dedication to the City for a park. See Exhibit B – TSP Street Classification and Future Street Plan.

The importance of providing east-west connectivity is also described in the Coburg Comprehensive Plan; every effort must be made to preserve the limited options still available within the current UGB.

N Skinner Street / Coleman Street

N Skinner Street between E Van Duyn and E Locust is classified as a Local Street which requires a minimum 45-foot public right-of-way with 20 feet of pavement. This section of N Skinner only has a 30-foot public ROW and 12 feet of pavement. Coleman Street is classified as a Local Street and a "bike boulevard". Although it contains a 50-foot public ROW, portions of the street only have 12 feet of pavement.

The Planning Commission approved the subdivision with the following conditions:

CONDITION 4: As part of the public improvement process, the applicant shall improve the offsite roadway access points to a width of 16 feet. Improvements shall include but not be limited to pavement widening pavement on-street parking restrictions.

CONDITION 5: Any street improvements as part of the new subdivision or adjacent street connection improvements shall be a minimum of 20ft unobstructed width, 16ft travel surface and 13ft 6 inch vertical clearance.

Conditions #4 and #5 are not clear and objective requiring discretion as to the extent of street improvements required after the close of the public hearing. The conditions do not state where the 16-foot street improvements start or stop. Assuming that the conditions apply to the N Skinner Street access point south to E Locust and to the Coleman Street access point south to Mill Street, these street improvements will not conform to city street standards as shown on Exhibit C – Coburg Street Design Standards.

Furthermore, the conditions conflict with each other. Condition #4 requires "pavement on-street parking restrictions" thus implying that parking will continue to be permitted off the pavement along the side of the street. However Condition #5 requires "minimum of 20ft unobstructed width." Since Condition #4 only requires the paved widths to increase

to 16 feet an additional four feet beyond the pavement will have parking restrictions to meet Coburg Rural Fire standards. These parking restrictions will have a negative impact on adjacent property owners especially those that rely on street parking. The City did not provide any notice to property owners about the location and extent of parking restrictions and Conditions #4 and #5 only add to the uncertainty. It will be very confusing and difficult to enforce no parking for two feet on either side of the pavement, four feet on one side or any other combination to be determined during the future public improvement process.

Applicant Response:

E. Van Duyn Street:

The TSP Street Classification and Future Street Plan has not been adopted by the City, so therefore it is not a code requirement and is open for revisions. The extension of E. Van Duyn Street from N. Skinner Street to Coleman Street is essentially accomplished via the proposed Sarah Street and provides the east-west connectivity. No additional east-west street is needed.

Article VIII.E.1a states "...City may require dedication of additional public right-of-way..."(emphasis added). The key word is "may". The dedication of additional right-of-way is discretionary. The widening of E. Van Duyn Street is not essential to maintain satisfactory levels of existing and ultimate traffic movement in the area as stated in the Traffic Impact Analysis prepared by Sandow Engineering. Any future extension of E. Van Duyn Street is problematic due to existing structures along the alignment. An exception to street alignments can be granted due to limitations of topography which includes existing structures.

Appellant Response: The City Council and Lane County Board adopted the October 2013 TSP including the Future Street Plan. Following adoption, the decision was appealed to LUBA. There is no evidence in the record as to the outcome of the litigation and the subsequent action, if any, by the City Council to remedy the legal issues.

On September 11, 2018, the City Council adopted an updated system development charge methodology for parks, transportation, water, and wastewater. Regarding transportation, the adopted methodology states, "The improvement fee cost basis is based on a specific list of planned capacity increasing capital improvements." The list of projects includes:

"East-west connectivity in town- construct new east-west Collector street from the east end of Van Duyn Road to Sarah lane through to Coburg Industrial Way."

It is irrefutable that Van Duyn Road is planned as an east-west connection and with clear Council action provide a basis for the SDC Transportation fees. Approval of the subdivision failed to require the dedication and improvement of Van Duyn

Road. The subdivision's new east-west street between N. Skinner and Coleman limits east-west movements to one block.

Macy Street:

Applicant Response: Tract D was set aside for the future extension of Macy Street. The applicant has offered to pay the full amount of the park fees to offset the potential impact of Tract D in the event it is used for the future Macy Street right-of-way.

Appellant Response: The Planning Commission findings do not support the Applicant's assertion that a portion of Tract D was "set aside" for the extension of Macy Street. In a letter from the applicant's attorney dated July 7 it states, "The four tracts to be donated can be developed into an attractive and beneficial community asset for recreational purposes." In addition, the extension of Macy Street to the western edge of the subdivision must be shown on the subdivision plan to ensure the street section is constructed by the developer and the cost is not later a burden for the city.

N. Skinner Street/ Coleman Street:

Applicant Response: The current access points of Skinner Street and Coleman Street and their respective configuration have been reviewed by the City Engineer, Public Works Director, Fire Department and a traffic engineer. The access points have been determined to be satisfactory in providing proper ingress and egress to the site. Both streets will be designed and improved to the satisfaction of the City to ensure compliance.

Appellant Response: The code states, "Improvements to city streets shall conform to the standards..." The code sets forth the minimum standards for local streets. There are no provision in the standard subdivision process for a developer to opt out of full compliance with required improvements conforming to standards. The code does not say "to the extent possible" or "to the extent practicable" improvements to city streets shall conform to the standards. It is appropriate for the City Engineer, Public Works Director, and Fire Department to review a proposed subdivision and to recommend the Planning Commission require reasonable off-site improvements proportional to the impacts of the development.

If N Skinner and Coleman Street do not currently provide safe ingress and egress one or both need to be fully improved to local street standards. The Planning Commission did not have the authority to require improvements that did not conform to city standards. The developer has options. He can voluntarily offer to pay for such improvements including any needed additional public right-of-way or wait until such time as improved access is available to the site

Article VIII.E.1.f(2) Street Connectivity

The subdivision does not provide a temporary dead-end street in alignment with the existing and planned extension of Macy Street.

Per Article VIII.E.1.f(2):

“Streets that are planned to connect through when adjacent developments are constructed may temporarily dead-end, provided a “hammer-head” or equivalent turn-around, built to fire code, is provided in the interim period.”

The proposed subdivision contains temporary dead-end streets to provide for future north-south street connectivity if the Coburg UGB is expanded and adjacent land is annexed. We have no objections to these streets. The subdivision does not however, provide for any future east-west connectivity allowing for adjacent developments to be assured access and for an orderly transportation system. Exhibit B – TSP Street Classification and Future Street Plan

Applicant Response: Tract D was set aside for the future extension of Macy Street. The applicant has offered to pay the full amount of the park fees to offset the potential impact of Tract D being used for future Macy Street right-of-way.

Appellant Response: The extension of Macy Street to the western edge of the Subdivision must be shown on the plan with the developer responsible for the street improvements.

Previously we had no objections to the street stubs to the north. Upon closer review, it is uncertain when and if the Coburg UGB will extend to the north in this particular location. Instead of prematurely constructing the three street stubs, a preferred alternative is for the subdivision to include a dedication of the land to the city until such time as the UGB and city limits are extended and the existing access constraints on the site are fully addressed.

Article VIII.E.3.c Blocks

The subdivision contains new local streets that do not comply with the minimum required block length.

Per Article VIII.E.3.c:

- “(1) General. The length, width, and shape of blocks shall take into account the need for adequate building site size and street width and shall recognize the limitations of the topography.**
- (2) Size. Minimum block length for new local streets is 400 feet and maximum block length is 600 feet, unless topographic or environmental constraints are present.”**

The proposed new street segments for N Skinner, N Emerald and Coleman are about 250 feet in length and do not comply with the minimum block length of 400 feet. As designed, the short block lengths will result in no homes facing these street sections and the view along the street being primarily side yard fences. The site is relatively flat and contains no topographic or environmental constraints. If the first east-west street within the subdivision was the improvement and extension of E Van Duyn Street as stated earlier, the block lengths would be changed and might achieve compliance.

Applicant Response: The site has a north-south dimension of about 436 feet. Any east-west street located on the site will have a minimum right-of-way width of 45 feet. This will automatically create block lengths of less than 400 feet. An exception per Article VIII.E.3.c(2) states “Size. Minimum block length for new local streets is 400 feet and maximum block length is 600 feet, unless topographic or environmental constraints are present.” Clearly the overall boundary width presents a topographic constraint that will not allow a north-south block length of 400 feet with the creation of an east-west street. An east-west street is required to efficiently map the lots and meet density and connectivity requirements.

Appellant Response: Designing the east-west streets in alignment with Van Duyn and Macy streets would better meet the minimum block length standard. If not, the appropriate way to address site constraints is through Master Planned Development process.

The trouble with classifying the subdivision boundary as “topography” (the lay of the land) and then claiming a variance or exception can be granted due to the dimensions of the subdivision is that then every land use applicant who has parcel dimensions (everyone) can get out of all manner of dimensional/distance code requirements, by simply claiming, “My parcel is narrow, so topography, so rules don’t apply to me.”

It’s possible there are one or more different arguments that could be used to argue the block length requirements don’t apply to this subdivision or are met in some way, however, whatever they are, they need to call out something unique enough about this particular parcel that they don’t inadvertently render the development code moot. In other words, the reasons for granting the exception need to be sound enough that we would be willing to grant the same exception for any other applicant that comes along and can demonstrate the same set of circumstances.

Article VIII.E.3.e Reserve Strips

The subdivision contains three new local streets that dead-end at the north boundary with no reserve strips adjacent to the agricultural land outside the Coburg UGB.

Per Article VIII.E.3.e:

“Reserve strips. Reserve strips or street plugs controlling access to streets will not be approved unless necessary for the protection of the public welfare or of substantial property rights, and in these cases may be required. The control and dispersal of the land comprising such strips shall be placed within the jurisdiction of the City under the conditions approved by the Planning Official.”

The north boundary of the subdivision is the Coburg UGB and City limits. Property to the north is zoned Lane County EFU allowing continued agricultural use. To protect the public welfare of people living in the new subdivision and to preserve the condition of the new streets, reserve strips are needed at the terminus of the three dead-end streets. The adjacent property owner would be prevented from driving farm equipment on and off the property using the new local streets. The City would control the reserve strips. If the Coburg UGB and City limits is expanded to include land north of the subdivision, the City could keep the reserve strips in place until the new area annexed is approved for development, the dead-end streets are extended and a new east-west street connection is complete.

Applicant Response: Reserve strips will be placed on the final plat for the three street stubs to the north.

Appellant Response: A better approach is to create a green belt along the entire northern boundary of the subdivision. It is premature to assume the Coburg UGB and city limits will extend further north of the subdivision. If the land is dedicated to the City of Coburg the decision on whether to retain as open space or use for public street extensions can be made at a later time.

Article VIII.E.3.h. Alignment

The subdivision does not create new public streets within the subdivision that align with existing and planned public streets – E Van Duyn and Macy Street. Further, the subdivision does not meet minimum standards for “T” intersections.

Per Article VIII.E.3.h:

“Alignment. As far as is practical, streets other than minor streets shall be in alignment with existing streets by continuations of the center lines thereof, staggered street alignment resulting in “T” intersections shall, whenever practical, leave a minimum distance of 200 feet between the center lines of streets having approximately the same direction and, in no case, shall be less than 125 feet.” (Emphasis mine)

As discussed previously, the new public streets within the subdivision do not align with either the existing E Van Duyn Street or existing Macy Street, preventing their planned extensions. See Exhibit B – TSP Street Classification and Future Street Plan.

The proposed extension of N Skinner Street north of E Van Duyn Street will create a “T” intersection. The distance between the center line of E Van Duyn Street and Sarah Street is 140 feet – less than the minimum distance of 200 feet. The applicant asserts the distance complies, *“Due to the density requirements, a different design is simply impractical.”* We disagree.

First, the code calculates density based on the number of dwellings per acre – not the number of lots. The TR zoning allows duplexes on corner lots and cottage housing. These dwelling types can help achieve the minimum required densities and allow compliance with this code standard. **A decision by the applicant to only build detached single family homes, even though a portion of the site is zoned TMR, is a self-imposed hardship and should not be the basis for determining that it is not practical to comply with City street standards.**

Second, as discussed previously, the minimum residential density could be found not applicable due to access limitations. A decrease in density would provide greater design flexibility to help meet required street connections (extending Van Duyn and Macy streets), minimum block lengths, and intersection alignments while also providing a parcel suitable for park and recreation use.

Applicant Response: The proposed street have been aligned as far as it is practical to ensure an efficient and logical mapping of the lots. Because we are at the minimum density the code allows, realignment of the current proposed street configuration would result in fewer lots and therefore not be in compliance with the density requirements.

Article VIII.E.3.h states” Alignment. As far as is practical, streets other than minor streets shall be in alignment with existing streets by continuations of the center lines thereof, staggered street alignment resulting in “T” intersections shall, whenever practical, leave a minimum distance of 200 feet between the center lines of streets having approximately the same direction and, in no case, shall be less than 125 feet.”

(emphasis added) Again, the proposed streets were configured “as far as is practical” to satisfy as much of the code as possible. Article VIII.E.3.h allows the distance between centerlines to be as little as 125 feet. The proposed configuration has 140 feet between centerlines and therefore complies.

The proposed project complies with the density requirements using single family homes. Building multi-family units does not fit the character of the neighborhood and the neighbors have also indicated they would prefer to see owner occupied housing on the property instead of multi-family buildings.

Appellant Response: We concur that neighbors in Coburg have expressed preference over the years for owner occupied housing, over multi-family, and appreciate the thoughtfulness. However, the applicant's decision to prioritize single family homes exclusively, instead of including a small number of multi-family dwellings, ignores three things: the applicant's assertion they are having difficulty meeting density - which would be much easier to achieve with a few attractively designed duplexes or homes with accessory units (which by the way are highly desired by families with elderly parents or young adults); the fact that it would be relatively simple to receive a waiver from the density requirement due to issues particular to this site; and finally, the overwhelming public comments concerning transportation issues, not housing type.

Article XII.B.13 Through Lots and Parcels

The subdivision includes interior lots that front onto two streets – these “through lots” could be avoided with an alternative design.

Per Article XII.B.13:

“Through lots and parcels shall be avoided except where they are essential to provide separation of residential development from major traffic arterials or adjacent non-residential activities or to overcome specific disadvantages of topography and orientation.”

The subdivision has about 280 feet of frontage on E Van Duyn street. Lots 6, 7, and 8 are through lots with one frontage on Sarah St and the other on E Van Duyn. The site has no specific disadvantages with regard to topography or orientation, and there are no nearby arterials, thus this criterion is not met.

The subdivision justified the through lots ignoring the required extension and improvement of E Van Duyn stating the public street can be treated like a private driveway. E Van Duyn is not a “driveway” as the applicant asserts, it is a public street. Given the significant deviance from TSP documentation (like Exhibit B) and the conflicts this creates with code criteria like dedication of ROW, street connectivity, an orderly transportation network, and not adversely affecting development of adjoining land, the City Council needs to deliberate the merits of this assertion. It is not appropriate to delegate such significant decision authority to an applicant or staff.

Applicant Response: The site presents a unique boundary constraint issue due to its narrow north-south dimension. This constraint would fall under 'topography'. In order to meet the density requirements, the streets have been configured, as far as is practical, to create an efficient lot layout and meet the minimum density requirements. Placing a one-foot reserve strip along the southerly property lines of lots 6, 7 and 8 will prevent access to E. Van Duyn and avoid any through lots.

Appellant Response: Placing a one-foot reserve strip on Lots 6, 7, and 8 does not change the lots from being considered through lots. An alternative subdivision design that included the dedication of additional right-of-way and the extension of E. Van Duyn would have caused these lots to face an existing street instead of treating the street like a back alley. A reserve strip would likely result in a backyard fences along the north side of the street decreasing public safety and creating a physical barrier between the older established neighborhood and the new homes.

Article XII.B.19 Park/Park Recreation Acquisitions

The subdivision decision allows the developer to pay money to the city park acquisition fund without demonstrating no land within the subdivision is suitable for a park. Further, the four Tracts to be deeded to the City for open space are bisected by streets, intended primarily for stormwater drainage and unsuitable for park and recreation purposes.

Per Article XII.B.19:

“Within or adjacent to a subdivision of land into 10 or more lots, a parcel of land of not less than six percent of the gross area of the subdivision shall be set aside and dedicated to the public by the subdivider. The parcel shall be approved by the Planning Commission as being suitable and adaptable for park and recreation use. In the event no such area is suitable for park and recreation purposes, or for a subdivision of land into less than 10 lots, the subdivider shall, in lieu of setting aside land, pay into a public land acquisition fund a sum of money equal to one percent ARTICLE XII 140 Coburg Development Code of the gross sale price of each lot in the subdivision, which sum of money shall be paid at the time each lot is developed or sold, whichever occurs first.” (Emphasis mine.)

The standard above requires “a parcel of land” to be dedicated to the public for park and recreation use. The standard only provides a fee payment option, “In the event no such area is suitable for park and recreation purposes”.

The applicant's original proposal was to dedicate 4 Tracts to the public to satisfy the above standard. First, the code requires a single parcel to be dedicated – not four separate parcels bisected by streets. Second, the applicant's Concept Plan for Park and Recreation Use dated July 7, 2020 does not demonstrate that the Tracts are suitable for park and recreation purposes.

The Concept Plan shows Tract D being improved with playground equipment. Due to the size and location of Tract D this type of active recreation use would cause conflicts for the adjacent homes. Would you want a public playground within twenty feet of your backyard fence? In addition, a substantial portion of Tract D needs to be improved as a public street to allow for the future connection to Macy Street. Tracts B and C are intended to provide for stormwater runoff. The Concept Plan does not show any recreation amenities within these tracts. Instead, the adjacent new local street shows a jogging trail in the soft shoulder within the street ROW. Tract A is 3,662 square feet with only 36 feet of street frontage. The narrow configuration and limited public visibility make it unsuitable for recreation uses.

Applicant Response: Article XII.B.19 does not state that the "parcel of land" needs to be a single parcel. As in many parts of the code, the configuration of the "parcel of land" is discretionary. The suitability of the tracts of land for park and recreation purposes is subjective. The applicant has offered to also pay the park fee in the event those areas are not deemed suitable to satisfy the code as allowed by the code. Any conceptual plan for the park areas is just that, conceptual. It was not meant to be an approvable design, it was simply a possible idea on how the tracts could be developed. By using the above mentioned park fee, a design could be done, in coordination with the neighbors, to achieve a beneficial space.

Appellant Response: The word "parcel" is singular. The code does not state, "one or more parcels".

A preferred approach would be the creation of a single "parcel of land" along the north side of the subdivision that combined Tract A, Tract B, Tract C, and Tract D and the area shown for the street stubs to the north. This single parcel would have been dedicated to the city primarily for open space. The area in Tract D needed for Macy Street to extend would be removed and clearly shown as a street stub to be improved by the developer. The single parcel of land would create a continuous greenbelt along the north boundary of the subdivision and a small separation between city development and county farmland. Dashed lines could be shown on the subdivision to reflect potential street extensions to the north and any improvements to the land being dedicated for park and recreation uses could take this into account.

City Council should reject the way the subdivision tries to address the Park/Park Recreation Acquisitions standard.

We acknowledge there are circumstances that might prevent any area in a subdivision from being suitable for park and recreation use. Factors might include: 1) presence of toxic or hazardous soils, 2) irregular shaped lot, 3) planned industrial use incompatible for a public park, or 4) known high value wetlands or archeological resources requiring protection. In this case, there are none of these physical or legal constraints. The site is over 10 acres in size providing design flexibility, the land is relatively flat and does not contain any known hazardous soils, wetlands, or archeological resources. In addition, the subdivision is for residential use and residents will directly benefit by the future public park and recreation uses.

The applicant has not provided a basis for being able to opt out of dedicating a suitable area for park and recreation use. The code text does not provide the subdivider an automatic exception to the requirement for land dedication. The applicant asserts there are no alternative subdivision plans that will achieve the minimum required density and comply with other code standards. We respectfully disagree.

Applicant Response: We are not opting out. On the contrary, we are proposing to do both the dedication and the fee. The proposed plan does provide more than the required six percent area for park and recreation area as stated in Article XII.B.19. Article XII.B.19 also does state "In the event no such area is suitable for park and recreation purposes, or for a subdivision of land into less than 10 lots, the subdivider shall, in lieu of setting aside land, pay into a public land acquisition fund a sum of money equal to one percent ARTICLE XII 140 Coburg Development Code of the gross sale price of each lot in the subdivision, which sum of money shall be paid at the time each lot is developed or sold, whichever occurs first." There are no qualifiers on the word "suitable" in this code section and refers to the proposed park configuration and not the overall site area. If the City deems the area we proposed for the park and recreation area is not suitable, then the park fee applies.

Appellant Response: Simply put, the applicant can not find any suitable parcel for park and recreation uses because of a self-imposed constraint to create 46 detached single family homes. We present the option of a single parcel along the north boundary of the subdivision primarily for park and recreation uses and, if the UGB expands in this location, the extension of the three local streets.

Article XII.C.2.c(1) Compliance with Code Provisions

The subdivision does not comply with several zoning code provisions including street standards and required public improvements.

Per Article XII.C.2.c.(1):

"The proposed tentative subdivision plan complies with the applicable zoning code provisions and all other applicable ordinances and

regulations, including but not limited to lot standards, street standards (ARTICLE VIII.E), required public improvements (ARTICLE VIII.F) and any special development standards.”

Information demonstrating why the subdivision does not comply with this approval criterion is discussed in other sections of this statement including those related to Article III.E and Article III.F and summarized in Exhibit G – Code Analysis Summary.

The code section above refers to a subdivision needing to comply with “applicable ordinances”. Please also refer to a discussion of Comprehensive Plan policies at the end of this written statement.

Applicant Response: The proposed subdivision does comply with the City Code as discussed in the Planning Commission Decision and the City staff report.

Appellant Response: The findings adopted by the Planning Commission do not demonstrate compliance with the code.

Article XII.C.2.c(5) Orderly Transportation System

The subdivision does not contribute to the orderly development of the City’s transportation network and places an unsafe burden on narrow, substandard streets south of the subdivision.

Per Article XII.C.2.c(5):

“Proposal contributes to the orderly development of the City’s area transportation network of roads, bikeways, and pedestrian facilities, and allows for continuation and expansion of existing public access easements within or adjacent to the subdivision.”

The subdivision does not contribute to the orderly development of the City’s transportation system. The subdivision relies exclusively upon the new development being accessed from N Skinner and Coleman Streets. These two streets are substandard and do not have the minimum pavement width to safely accommodate additional traffic. The streets are narrow in places with widths as low as 12 feet and being shared by motor vehicles, bicyclists, and pedestrians. In addition, Condition #4 requires the applicant to increase the pavement width to 16 feet and prohibit any parking on the pavement. Condition #5 increases the parking restriction to a minimum of 20 feet in width, essentially removing parking from both sides of the streets.

According to the traffic study conducted for the applicant, 32% of the traffic from the subdivision will travel on East Locust to and from Willamette Street. Almost half of this section of East Locust has only 12 feet of pavement width.

The subdivision street layout does not provide for public street improvement to allow for the extension of E Van Duyn Street and Macy Street. The subdivision includes a new local street about 140 feet north and parallel to the existing section of E Van Duyn Street contrary to the need for orderly development. The use of Tract D for long-term open space prevents Macy Street from ever being extended. Tract D should have been dedicated as public ROW and improved as a street in alignment with Macy Street and of sufficient width to accommodate a bike/pedestrian connection to the school.

Applicant Response: The proposed subdivision does contribute to the orderly development by connecting to the two existing streets that were purposely stubbed to the property.

E. Van Duyn Street:

Article VIII.E.1a states "...City may require dedication of additional public right-of-way..."(emphasis added). The key word is "may". The dedication of additional right-of-way is discretionary. The widening of E. Van Duyn Street is not essential to maintain satisfactory levels of existing and ultimate future traffic movement in the area as stated in the Traffic Impact Analysis prepared by Sandow Engineering. Any future extension of E. Van Duyn Street is problematic due to existing structures along the alignment. An exception to street alignments can be granted due to limitations of topography which includes existing structures. In addition, the proposed Sarah Street provides the connection between Skinner Street and Coleman Street, thus satisfying any connectivity issues.

Macy Street:

Tract D was set aside for the future extension of Macy Street. The applicant has offered to pay the full amount of the park fees to offset the potential impact of Tract D being used for future Macy Street right-of-way.

N. Skinner Street/ Coleman Street:

The current access points of Skinner Street and Coleman Street and their respective configuration have been reviewed by the City Engineer, Public Works Director, Fire Department and a traffic engineer. The access points have been determined to be satisfactory in providing proper ingress and egress to the site. Both streets will be designed and improved to the satisfaction of the City to ensure compliance with safety and transportation requirements..

Appellant Response: The Traffic Impact Analysis prepared by Sandow Engineering contains the assumption that Skinner Street and Coleman Street are 14-16 feet in

width. This error resulted in the conclusion that the existing width is sufficient to allow safe firetruck access. The TIA states, "...while the existing street widths do not meet the standards, they can operate safely and efficiently as long as there is opportunity to pull into parking areas to allow vehicles to pass." (emphasis mine)

The problem with the conclusion with the Sandow Engineering report is twofold. First, Skinner Street and Coleman Street only have paved widths of 12 feet. Second, the TIA did not account for pedestrians sharing the road with motor vehicles and the Planning Commission decision to impose conditions eliminating on-street parking.

The TIA refers to newer subdivisions in Eugene with 18-foot wide local streets. What the TIA fails to acknowledge is Eugene always requires sidewalks for pedestrians. If two vehicles approach, one can pull over letting the other vehicle pass. What happens if pedestrians are walking in the street?

Furthermore, as stated previously the Planning Commission did not have the authority to impose a condition that the developer construct off-site streets improvements to N. Skinner and Coleman that did not comply with city standards. The code does not state "in some cases" improvements to streets shall comply with city standards. The subdivision decision can only impose a condition of approval to require improvements that comply with city street standards.

The subdivision adversely affects development of adjoining land, creates public safety concerns, hampers public acquisition of open space for recreation needs, and hinders safe bicycle and pedestrian access to nearby commercial uses, the school and the Norma Pfeiffer Park.

Article XII.C.2.c(7) Adjacent Land Impacts / Public Safety / Access

Per Article XII.C.2.c(7):

"If the proposal involves the creation of a public street, all of the following criteria also apply:

- (aa) The proposal will not impede the future use of the remainder of the property under the same ownership or adversely affect the development of the remainder of any adjoining land or access thereto.***
- (bb) The proposed partition [subdivision] will:***
 - 1. Not result in significant risk of fire, flood, geological hazards, or other public health and safety concerns;***
 - 2. Provide adequate transportation systems, water supply, sewage disposal, drainage, and other public utilities;***

3. ***Not hamper the adequate provision of publicly owned open space for recreation needs.***
4. ***The proposed partition [subdivision] provides direct bicycle and pedestrian access to nearby and adjacent residential areas, transit stops, neighborhood activity centers, commercial areas, and employment and industrial areas, and provides safe, convenient and direct transit circulation, provided the City makes findings to demonstrate consistency with constitutional requirements. "Nearby" means uses within ¼ mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can be reasonably expected to be used by bicyclists."***

The subdivision adversely affects the access and future development of underdeveloped large lots immediately to the south of the subdivision. However, if E Van Duyn were extended east to Coleman St, it would eliminate the adverse effect.

The subdivision creates a significant safety concern for residents living south of the new development on narrow streets not designed or improved for the additional traffic. These streets includes N Skinner, E Locust and Coleman.

The subdivision does not provide direct bicycle or pedestrian access to nearby commercial areas, or the school, and adversely impacts bike and pedestrian safety along Norma Pfeiffer Park. However, if Macy St. were extended to the west edge of the subdivision, that would allow the City the option to complete a much more direct pedestrian access flowing west to the school and commercial areas.

The Planning Commission's Final Order did not include findings addressing subsection (bb) above. City staff advised the Planning Commission that the provision was not applicable because it referred to a proposed "partition". We believe reference to "partition" is based on a minor editing mistake or scrivener's error. Subsection (bb) is under the main heading "Subdivisions (non phased)". Furthermore, the sentence preceding sections (aa) and (bb) states the criteria are applicable "if the proposal involves creation of a public street," which this proposal does, and most of the content of (bb) wouldn't make sense for most partitions, but does make sense for a subdivision. It would be disingenuous to ignore subsection (bb) when it is clearly an applicable approval criterion for a subdivision.

Applicant Response: Any future extension of E. Van Duyn Street is problematic due to existing structures along the alignment. An exception to street alignments can be granted due to limitations of topography which includes existing structures. The creation of Sarah Street provides the connection between Skinner Street and Coleman Street.

Subsection (bb) does reference "partition" and to say the word is a typo and arbitrarily change the language of the code is improper.

Appellant Response: There is no evidence in the record of structures being the way of extending Van Duyn Street from the east end to at least Coleman Street. As stated previously the creation of Sarah Street does not provide any access to the east or west of Skinner Street and Coleman Street. One alternative subdivision design would have at least provided a connection between the new Sarah Street and the existing section of Van Duyn immediately adjacent to the subdivision.

The “partition” issue is a textbook scrivener’s error, and we re-assert: ignoring subsection (bb) is disingenuous, to put it mildly.

Definition: Clerical error or Scrivener’s error is an error due to a minor mistake or inadvertence and not one that occurs from judicial reasoning or determination. It can be a mistake made in a letter, paper, or document that changes the meaning of the same. Typographical errors or the unintentional addition or omission of a word, phrase, or figure in writing or copying something on the record are all examples of clerical or scrivener’s error.

In this case, Coburg Development Code, Article XII. Land Divisions and Property Line Adjustments, C.Tentative Approval, 1. **Partitions**, contains sections a. through d. and includes the following under c.Approval Criteria), (1)General Approval Criteria:

(vii): If the proposal involves the creation of a public street, all of the following criteria also apply:

(aa) The proposal will not impede the future use of the remainder of the property under the same ownership or adversely affect the development of the remainder or any adjoining land or access thereto.

(bb) The proposed partition will:

1. Not result in significant risk of fire, flood, geological hazards, or other public health and safety concerns; 2. Provide adequate transportation systems, water supply, sewage disposal, drainage, and other public utilities; 3. Not hamper the adequate provision of publicly owned open space for recreation needs. 4. The proposed partition provides direct bicycle and pedestrian access to nearby and adjacent residential areas, transit stops, neighborhood activity centers, commercial areas, and employment and industrial areas, and provides safe, convenient and direct transit circulation, provided the City makes findings to demonstrate consistency with constitutional requirements. “Nearby” means uses within 1/4 mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can be reasonably expected to be used by bicyclists.

Next, Coburg Development Code, Article XII.Land Divisions and Property Line Adjustments, C.Tentative Approval, 2. **Subdivisions (non-phased)**, contains sections a. through d. and includes the following under c.Approval Criteria), (1)General Approval Criteria:

(7): If the proposal involves the creation of a public street, all of the following criteria also apply:

(aa) The proposal will not impede the future use of the remainder of the property under the same ownership or adversely affect the development of the remainder or any adjoining land or access thereto.

(bb) The proposed partition will:

- 1. Not result in significant risk of fire, flood, geological hazards, or other public health and safety concerns;**
- 2. Provide adequate transportation systems, water supply, sewage disposal, drainage, and other public utilities;**
- 3. Not hamper the adequate provision of publicly owned open space for recreation needs.**
- 4. The proposed partition provides direct bicycle and pedestrian access to nearby and adjacent residential areas, transit stops, neighborhood activity centers, commercial areas, and employment and industrial areas, and provides safe, convenient and direct transit circulation, provided the City makes findings to demonstrate consistency with constitutional requirements. “Nearby” means uses within 1/4 mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can be reasonably expected to be used by bicyclists.**

This is clearly an example of a simple copy/paste error. Both the Partition and Subdivision (non-phased) sections are very similar, which makes sense since both are land divisions. To assert that the obviously inadvertent copy/paste repeat of the word “partition” under the Subdivision sections, in this context, was due to intentional reasoning or determination, when there is a separate partition section immediately above, with the exact same language, makes no sense. On the contrary, asserting that the development code intentionally refers to a partition in the subdivision section under these circumstances, appears to be nothing other than an attempt to subvert the development code. It is disturbing that the city’s own planning staff would advocate for ignoring the context, in favor of tunnel vision, with such critical criteria on the line.

Article X.C. Type III Procedures

The City did not provide proper legal notice per ORS 197.195(3) and Coburg Zoning Ordinance No. A-200-1, Article X.C.

At the Planning Commission level, appellants raised concerns regarding inadequate notice, confusion due to the applicant’s submittal of a revised subdivision plan after the initial public notice was mailed, and insufficient time to provide public testimony.

The Planning Commission received a request by the appellants to continue the June 17 Planning Commission public hearing. The request was denied. The Planning

Commission closed the public hearing except for rebuttal testimony addressing one area of concern.

Please refer to Exhibit F – Facts Regarding Public Notice Procedures.

Compliance with Comprehensive Plan

The subdivision does not comply with the Coburg Comprehensive Plan including the need to provide for parks, a safe transportation system, and the preservation of existing neighborhoods, especially those with historic features.

Staff will correctly inform you that the Comprehensive Plan does not contain approval criteria, and thus cannot be used as the basis for “findings of fact.” Nonetheless it is of utmost relevance in providing context for making decisions regarding the development code approval criteria and should not be brushed off as irrelevant.

Key Plan policies applicable to the subdivision are listed below in ***bold italics*** followed by brief findings demonstrating the subdivision does not comply.

Developers of new subdivision shall be required to provide for the recreational needs of their residents as defined in the Subdivision Ordinance. (Goal 8: Recreational Needs, Policy 7)

According to the adopted City of Coburg Parks and Open Space Master Plan¹:

With a projected population of 3,327 by the year 2025, the analysis determined that the City would need an additional six acres of neighborhood park land, one acre of mini park land, and 26.6 acres of community park land. That translates into approximately two additional neighborhood parks, two to three additional mini parks, and a single community park.

The area north of the subdivision includes areas identified as desirable for a proposed new community park and a northside neighborhood park. Refer to Exhibit D – Coburg Proposed Parks and Open Spaces. The 10-acre subdivision is large enough to be the location for a mini park similar to the Jacob Spores Park.

The subdivision contains 4 Tracts set aside as non-buildable areas. Unfortunately, the two largest tracts (Tract C and Tract B) are needed for stormwater drainage and Tract D

¹ Adopted by Ordinance A-194.

is needed as part of the extension of Macy Street. Tract A may be available for park and recreation use but due to the size and location has limited public visibility and options for park amenities. The Final Order does not provide sufficient findings demonstrating that the subdivision will provide for the recreational needs of new residents.

The City shall ensure that new housing is compatible with the small town, historic character of the community. (Goal 10: Housing, Policy 18)

The City shall promote livability and community in existing and future neighborhoods. (Goal 10: Housing, Policy 19)

The City shall encourage the preservation of existing housing, particularly housing with historic value and features. (Goal 10: Housing, Policy 23)

The three Plan policies above all address the desire to preserve the viability of existing neighborhoods, especially those with historic values. Significant portions of the proposed subdivision are immediately adjacent to areas with significant historic resources. Refer to Exhibit E – Coburg Zoning Overlay Districts. Proposed new development needs to be sensitive to the surrounding neighborhoods with efforts made to retain their livability or at least mitigate any potential adverse impacts.

Of utmost concern is the potential traffic impacts and uncertainty regarding future street paving improvements to N Skinner Street and N Coleman Street and the extent existing on-street parking will be prohibited. Further, traffic on N Skinner will funnel to E Locust, past Coburg's "Central Park," Norma Pfeiffer Park, with its heavy pedestrian traffic creating an unsafe conditions for pedestrians. It is imperative that the City Council consider how to safeguard the quality of existing housing, preserve historic resources, and promote pedestrian safety.

Develop a street network system that evenly distributes traffic throughout the community, lessening traffic impacts on residential streets, and identifying a system of arterials for moving people, goods, and services safely and efficiently... (Goal 12: Transportation, Policy 1)

Take a long-range view in approving street patterns for new development...Protect the function of existing and planned transportation systems...When making a land use decision, the City shall consider the impact on the existing and planned transportation facilities. (Goal 12: Transportation, Policy 2)

Establish a safe bicycle and pedestrian system that provides for connections and minimizes conflict to and from the local school and other significant activity areas...Align and interconnect new streets to reduce travel distance, promote the use of alternative modes, efficiently provide

utilities and emergency services, and evenly disperse traffic. (Goal 12: Transportation, Policy 5)

Provide a transportation system that is safe, convenient, accessible, environmentally responsible, efficient, responsive to community needs, and considerate of neighborhood impacts, particularly in the National Historic District. (Goal 12: Transportation, Policy 46)

The four Plan policies above all address the need for a transportation system that recognizes all modes of travel and considers the impacts on existing and future neighborhoods.

According to the Coburg Transportation System Plan (TSP), local streets in Coburg are generally 16 to 20 feet wide with gravel or grass shoulders and no sidewalks. The adopted TSP establishes local street standards. Refer to Exhibit B – TSP Local Street Standards.

The Final Order approving the subdivision states there is sufficient public right-of-way (ROW) on N Skinner Street with Condition #4 requiring the applicant to increase the pavement width to 16 feet and establish pavement parking restrictions. However, the TSP classifies N Skinner as a Local Street which requires a minimum 45-foot public ROW. The portion of N Skinner abutting the subdivision only has a 30-foot public ROW.

The TSP classifies N Coleman north of Mill Street as Local Street and a “bike boulevard”. Although it contains a 50-foot ROW, Condition #4 will not result in a pavement width in compliance with city standards nor adequate for encouraging bikes to share the road with motor vehicles.

In north Coburg, the TSP contemplated a traditional street system with public streets being extended in both east-west and north-south directions concurrent with growth. The subdivision hinders east-west street connections and is not consistent with the TSP. Refer to Exhibit B – TSP Street Classifications and Future Street Plan.

The City shall promote land use and development patterns that sustain and improve quality of life, are compatible with mass transit, maintain the community’s identity, protect significant natural and historic resources, and meet the needs of existing and future residents for housing, employment, and parks and open spaces. (Goal 14: Urbanization, Land use and Development Patterns, Policy 39)

The Plan designates the subject property for residential development. The City Council has discretion on whether the subdivision appropriately balances competing city policies and addresses code standards. If the City Council believes conditions can be imposed that will allow the subdivision to comply with the approval criteria, the conditions must be clear and objective.

In closing, this is not a case where the City Council can affirm the Planning Commission's decision. The Final Order adopted by the Planning Commission does not contain factual information demonstrating compliance with the code. The subdivision design needs to be changed beyond what can be done through clear and objective conditions of approval. An alternative subdivision design could comply with code standards.

Applicant Response: The City Council can affirm the Planning Commission's decision since the Final Order does demonstrate compliance with the code. The code allows for variances due to a variety of conditions. Satisfying some code requirements created conditions allowing exceptions to other conditions. The proposed subdivision was design in collaboration with the City Planner, City Engineer, Public Works Director and the Fire Marshal. The finish product was the result of months of this collaboration to achieve a workable product. The proposed subdivision represents, as far as is practical, the best solution to meet the code requirements. We have yet to see an alternative design from the appelland that would even come close to complying with the code standards. We highly advise the City Council to confirm the Planning Commission's approval of the proposed subdivision.

Below are several paragraphs from a letter dated July 7, 2020 to the Planning Commission from Kelly Beckley. These paragraphs also articulate the need for the City Council to approve the proposed subdivision.

There is a general recognition in the Coburg Comprehensive Plan (Ordinance No. A-199-H), that there will be inevitable conflicts between various planning goals and regulations. The Plan states in relevant part "the City recognizes there are apparent conflicts and inconsistencies between and among some goals, objectives, and policies. When making decisions based on the Plan, not all of the goals, objectives, and policies can be met to the same degree in every instance. Use of the Plan requires a 'balancing' of its various components on a case-by-case basis, as well as a selection of those goals, objectives, and policies most pertinent to the issue at hand."

The proposed Coburg Creek Subdivision squarely meets every applicable ordinance and regulation including lot standards, street standards, required public improvements, and any special development standards. This is no mean fete. It is the result of careful and thoughtful planning. It is not an overstatement to say that BWCH has made Herculean efforts to address every planning goal in the Coburg Creek Subdivision. And, it has been successful in doing so.

Ms. Bishow, although acknowledging that there are many factors that may limit or even prevent the donation of land for park and recreation purposes, omits to mention the one major factor affecting the ability to donate land in a certain dimension or shape so that it may be deemed more suitable. That factor is the Development Code. The development by law must meet many code requirements for minimum lot density, minimum and maximum lot width, minimum and maximum lot size, block lengths, existing street

connectivity, minimum lot frontage, and future street connectivity, just to name a few. By the time these requirements are all factored in the layout is basically predetermined and does not leave the flexibility to donate land in a uniform square or rectangular configuration. The existing layout is extremely efficient and meets all these stringent and legally required code provisions. The development cannot be laid out in any other manner and still meet all of the Code requirements. Therefore, these many restricting factors also provide the legal basis for allowing for the payment of the park fee in lieu of donating what someone else might wish for as a more "suitable" piece of land.

Appellant Response: We sincerely appreciate the applicant's efforts to meet the code. Although the code does allow for variances, unfortunately the decision making body – the Planning Commission – did not grant any variances or exceptions to the code violations or code concerns, and so these concerns are still outstanding. Appellants are not responsible for designing a site plan, and certainly not free of charge, however the public have provided ample feasible suggestions for a path to compliance.

We urge the City Council to reverse the Planning Commission and deny the proposed subdivision.

Please include the appellants on the interested parties list to receive mailed notice of the City Council's decision.

Thank you.

Sincerely,

Teresa Bishow

Teresa Bishow, AICP

cc: clients

Exhibits

- A. Coburg Zoning Map
- B. TSP Street Classification and Future Street Plan
- C. Coburg Street Design Standards
- D. Coburg Proposed Park and Open Space
- E. Coburg Zoning Overlay Districts
- F. Facts Regarding Public Notice Procedures
- G. Code Analysis Summary