



Rules of Conduct for Public Hearings

1. No person shall be disorderly, abusive, or disruptive of the orderly conduct of the hearing.
2. Persons shall not testify without first receiving recognition from the presiding officer and stating their full name and residence address.
3. No person shall present irrelevant, immaterial, or repetitious testimony or evidence.
4. There shall be no audience demonstrations such as applause, cheering, display of signs, or other conduct disruptive of the hearing.

PLANNING COMMISSION MEETING
Millersburg City Hall
4222 NE Old Salem Road, Albany OR 97321
Tuesday, May 19th, 2020
6:00 p.m.

Agenda

- A. CALL TO ORDER
- B. ROLL CALL
- C. MEETING MINUTE APPROVAL
 - 1) Planning Commission Meeting held on:
 - i. April 21st 2020 Planning Commission Meeting.
- D. QUASI-JUDICIAL PUBLIC HEARING
 - 1) File No: PA 20-01 Crooks Creek South Land Partition – Continuation
Proposal: The applicant is requesting approval to partition a 2.44-acre parcel into three lots of approximately 0.93 acres, 1.21 acres, and 0.30 acres with access from NE Senora Drive and NE Trask Lane.
- E. CITY PLANNER UPDATE
- F. ADJOURNMENT

Upcoming Meeting(s):

May 26, 2020 @ 4:00 p.m. – City Council Work Session

June 9, 2020 @ 6:30 p.m. – City Council Meeting

The location of the meeting is accessible to the disabled. If you have a disability that requires accommodation to attend or participate, please notify the Millersburg City Hall in advance by calling 458-233-6300.



CITY OF MILLERSBURG PLANNING COMMISSION MEETING

4222 NE Old Salem Road
Tuesday, April 21st, 2020
6:00 pm

Minutes

- A. CALL TO ORDER: Commission Chair Jimmie Kirkendall called the meeting to order at 6:05 pm.
- B. ROLL CALL:
Members Present: Jimmy Kirkendall, Connie Lepin, Dennis Gunner, Steve Vogler, Mark Raum, and Anne Peltier
Members Absent: Ryan Penning
Staff Present: Matt Straite, City Planner; Jake Gabell, Deputy City Recorder; Janelle Booth, Assistant City Manager/City Engineer; Kevin Kreitman, City Manager; and Forrest Reid, City Attorney
- C. MEETING MINUTE APPROVAL
1) March 3rd 10th meeting minutes
Action: Motion to accept the minutes as presented made by Commissioner Vogler; a second given by Commissioner Peltier.
Chair Kirkendall: Yes
Commissioner Gunner: Yes
Commissioner Lepin: Yes
Commissioner Peltier: Yes
Commissioner Raum: Yes
Commissioner Vogler: Yes
Motion Passed: 6/0
- D. Virtual meeting overview by City staff.
- E. LEGISLATIVE PUBLIC HEARINGS
1) Public hearing on Land Use File DC 20-02 opened by Commission Chair Kirkendall at 6:07 pm.

File No: DC 20-02 Accessory Dwelling Unit Code Text Change

Proposal: The proposed amendment responds to a State law mandate that Millersburg allow for Accessory Dwelling Units (ADU). This change would permit an ADU on any property that allows a single family home. The amendment also includes standards for ADUs. More specifically the amendment proposes an all new code section, Section 6.111, and small changes to all residential zones to allow ADUs.

- i. Staff report was presented by Matt Straite, City Planner.
 1. No public comments or testimony.
 2. Questions for staff by the Planning Commission.

- a. Commissioner Lepin asked clarifying questions about the Accessory Structure code changes made at the City Council meeting on March 10, 2020.
 - i. City Planner Matt Straite and Assistant City Manager/City Engineer Janelle Booth gave a summary of the changes made by the City Council.
 - b. Commissioner Peltier questioned the total number of ADUs being proposed in the draft new code.
 - i. City Planner Matt Straite explained that the limit is one ADU.
3. No questions from the public.

Public hearing closed at 6:43 pm by Chair Kirkendall.

- i. Deliberation of Planning Commissioners with questions for staff.

ACTION

The following Motion was made by Commissioner Peltier:

Based upon the above finding of fact, the proposed text code amendment satisfies the applicable criteria and I move that the Planning Commission recommends the City Council approve Application No. DC 20-02 and adopt the Ordinance 171-20.

A second was given by Commissioner Gunner.

Chair Kirkendall: Yes
Commissioner Gunner: Yes
Commissioner Lepin: Yes
Commissioner Peltier: Yes
Commissioner Raum: Yes
Commissioner Vogler: Yes
Motion Passed: 6/0

F. QUASI-JUDICIAL PUBLIC HEARING

- 1) Public hearing on Land Use File PA 20-01 opened by Chair Kirkendall at 6:47 pm. Deputy City Recorder, Jake Gabell, read disclosures. Chair Kirkendall finished opening the hearing.

File No: PA 20-01 Crooks Creek South Land Partition

Proposal: The applicant is requesting approval to partition a 2.44-acre parcel into three lots of approximately 0.93 acres, 1.21 acres, and 0.30 acres with access from NE Senora Drive and NE Trask Lane.

- i. Commissioner Vogler made a site visit to the parcel, Commissioner Raum knows the applicant professionally; no other ex parte contact or potential conflicts of interest stated and no challenges to the jurisdiction of the Commission to hear the matter.
- ii. Staff report was presented by Matt Straite, City Planner.
 - 1. Questions for staff by the Planning Commission.
 - a. Commissioner Vogler asked clarifying questions about the location of the parcel.
 - b. Commissioner Gunner suggested that the Planning Commission require a public road on the property.

- c. Chair Kirkendall asked each member of the Commission their opinion requiring the road requirement; they discussed advantages and disadvantages of requiring the road.
- 2. Public comments or testimony.
 - a. Robert Allen of 6049 NE Chandra Court Albany Oregon 97321 expressed that he was not in favor of the application. He mentioned the future development, potential wetlands, and large trees on site.
 - b. Phyllis Hinshaw of 6105 NE Chandra Court Albany Oregon 97321 had concerns about the wildlife, wetlands, and development of the property.
 - c. Justin Goldman of 2825 NE Sonora Drive Albany Oregon 97321 had concerns about the wetlands on the property.
 - d. Commissioner Peltier asked clarifying questions about the potential legal ramifications of a non-remonstrance agreement. She also asked about the wildlife and wetlands concerns the citizens expressed.
 - i. City Attorney Forrest Reid stated that the City would not have any legal ramifications.
 - ii. Assistant City Manager/City Engineer Janelle Booth explained the condition of approval that was added in regard to wetlands.

Public hearing closed at 7:30 pm by Chair Kirkendall.

- i. Discussion of Planning Commissioners with questions for staff.
 - 1. Further discussion between staff and Planning Commissioners. Topics included wetlands and the map recording process, the road vs private driveway.

ACTION

The following Motion was made by Commissioner Raum:

Motion to approve the project with option two as stated in the staff report.

A second was given by Commissioner Vogler.

Chair Kirkendall:	No
Commissioner Gunner:	No
Commissioner Lepin:	No
Commissioner Peltier:	Yes
Commissioner Raum:	Yes
Commissioner Vogler:	Yes

Motion Failed: 3/3

After the failed motion Commissioner Gunner and Commissioner Vogler suggested a continuance of PA 20-01 due to the fact that Commissioner Penning was missing from the meeting.

ACTION

The following Motion was made by Commissioner Gunner:

Motion to continue PA 20-01 Crooks Creek Land Partition to the next regularly scheduled Planning Commission meeting, May 19 2020 at 6:00 pm.

A second was given by Commissioner Peltier.

Chair Kirkendall:	Yes
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Commissioner Gunner: Yes
Commissioner Lepin: Yes
Commissioner Peltier: Yes
Commissioner Raum: Yes
Commissioner Vogler: Yes
Motion Passed: 6/0

- 2) Public hearing on Land Use File PA 20-03 opened by Chair Kirkendall at 7:48 pm
Deputy City Recorder, Jake Gabell, read disclosures. Chair Kirkendall finished opening
the hearing.

File No: PA 20-03 Land Partition

*Proposal: The applicant is requesting approval to partition 0.76-acre parcel on
Millersburg Drive into two parcels of approximately 13,800 square feet and 18,900
square feet.*

- i. Commissioner Vogler made a site visit to the parcel; no other ex parte
contact or potential conflicts of interest stated and no challenges to the
jurisdiction of the Commission to hear the matter.
- ii. Staff report was presented by Matt Straite, City Planner.
 1. Questions for staff and the applicant by the Planning Commission.
 - a. Commissioner Vogler asked clarifying questions about the
existing house and the access.
 - b. Steve Smith, the applicant, had concerns about the "shared
cost" connections fees charged by the City.
 - i. Assistant City Manager/City Engineer Janelle Booth
gave an overview of the connection fees to the
Planning Commission.
 2. Commissioner Vogler asked questions about cutting Millersburg Drive
to add the public services.
 3. No public comments or testimony.

Public hearing closed at 8:15 pm by Chair Kirkendall.

- ii. Deliberation of Planning Commissioners with questions for staff.
 1. Further discussion between staff and Planning Commissioners. Topics
included lot future driveway ownership, and legal access.
 2. City Attorney Forrest Reid requested that the Planning Commission
disregard the comments made by Commissioner Vogler in regard to
the previous Alexander Drive partition and not consider those
comments when voting on a motion tonight item. All Commissioners
agreed to the request.

ACTION

The following Motion was made by Commissioner Vogler:

Based upon the findings of fact, and the conditions of approval, the proposed
project satisfies the applicable criteria, and I motion the Planning Commission
approve Partition Application No. PA 20-03.

A second was given by Commissioner Raum.

Chair Kirkendall: Yes
Commissioner Gunner: Yes
Commissioner Lepin: Yes
Commissioner Peltier: Yes

Commissioner Raum: Yes
Commissioner Vogler: Yes
Motion Passed: 6/0

G. City Planner and Staff Updates

- 1) City Planner Matt Straite gave an update on the new Land Use Development Code with the updates staff is working on.

H. Meeting adjourned by Commission Chair Kirkendall at 8:28 pm.

Respectfully submitted:

Jake Gabell
Deputy City Recorder

Reviewed by:

Matt Straite
City Planner

DRAFT



The following Staff Report was drafted by Wally Lien and Matt Straite.

I. Additional Information

After the last Planning Commission meeting, the City received a letter from the applicant's attorney. Because the Record was closed at the conclusion of the last meeting, in order to consider this letter, a motion would have to be made to reopen the Record and accept the letter. At that point, you then may close the Record again, and continue your deliberations.

Because the applicant will have the ability to enter the letter into the Record by filing an appeal of whatever decision the Planning Commission makes, it is the staff recommendation that the letter be accepted. A motion to that effect is as follows:

I move to reopen the Record in Case Number PA 20-01 for the single purpose of accepting a letter from the applicant's attorney dated May 5, 2020, and upon entry of that letter in this Record, the Record should then be again closed so we may deliberate.

Should this motion pass, staff will provide each of you a copy of the May 5, 2020 letter for your consideration.

II. Staff Recommendation

Upon careful review of this matter, staff is concerned that not enough consideration has been paid to the Needed Housing Act, and its application to the decision on whether or not to require a roadway at this time.

You may recall from prior cases, the Needed Housing Act provides considerable restrictions on conditions the City may impose on projects that involve land needed for housing. Since the City does not yet have a Needed Housing Analysis, the law assumes all residential lands in the City are for "needed housing." Where there is the ability to exercise discretion on a criteria or proposed condition of approval, the Needed Housing Act does not allow that criteria or condition to add time or expense to the proposed project.

In this case, staff has previously recommended that Section 2.328(6) is complied with without the requirement for the construction of a new street based on the following factors:

- Parcel 1 is the only parcel that is proposed to take access from Sonora Drive.
- Parcels 2 and 3 are proposed by the applicant to use a shared driveway on an access easement from Trask Lane to the south.
- The easement is shown to accommodate a future street should one be needed upon further division of Parcel 2.

- Given that the code allows for a private shared driveway for up to three lots, staff felt the applicant's proposal is appropriate and no street has been required.
- Parcel 2 could potentially further divide into five more lots, theoretically. Should a future applicant propose that, a street would be required at that time.
- With the requirement that no more than three parcels can share a private driveway, staff felt that a safeguard was in place to prevent a future partition from avoiding a requirement to build a street.

Given the addition of the Needed Housing Analysis, and the use of discretion in selecting a condition of approval when the criteria can otherwise be met without that requirement, the staff strongly encourages adoption of the Option 2 condition language as set forth in the previous staff report, and repeated here as follows:

A private driveway, meeting all fire apparatus access requirements for width, structural pavement section, turn-around, and signage shall be constructed within the 52' easement, along with a waiver of remonstrance recorded for both Parcels 2 and 3. The waiver of remonstrance shall require Parcels 2 and 3 to participate in future road construction costs. Public water and sewer lines must be extended within the private driveway, within dedicated public utility easements, in accordance with Millersburg Engineering Standards and City of Albany Standard Construction Specifications.

Failure to adopt Option 2 will place the City in jeopardy of being found in violation of the Needed Housing Act. This would involve the applicant potentially appealing the Planning Commission Decision to the City Council, and on to LUBA, where the chance of having the decision affirmed is very slim. Should the case get to LUBA, and it is determined the City violated the Needed Housing Act, it is likely the City will be assessed all attorney fees incurred by the applicant.

In summary, staff believes approval of this application, with the Option 2 condition included, complies with all the mandatory approval criteria, and satisfies the Needed Housing Act. As such, the conditional approval will satisfy the concerns included in the May 5, 2020 letter from the applicant's attorney.

The following motion would accomplish the staff recommendation:

I move approval of Partition Application Number PA 20-01, based on the findings of fact and conclusions in the April 14, 2020 Staff Report, subject to the conditions of approval set forth below (which supercede the proposed conditions listed in the April 14 Staff Report) including General Condition 4 which does not require the construction of a new road to serve the proposed lots.

In addition to the modification to General Condition 4, staff recommends the following conditions of approval, which have been modified to include a post-construction stormwater quality facility, as required per ordinance adopted in December 2019, and clarification of timing for required improvements:

General Conditions

1. Development and construction on the site shall conform substantially to the tentative partition development plans submitted by the applicant and included in this staff report, except as modified in the conditions below, and shall conform specifically to final construction plans reviewed and approved by the City Engineer and the Building Official (Linn County). All plans shall comply with the applicable building, planning, engineering, and fire protection codes of the City of Millersburg.
2. Copies of any federal or state permits that may be required shall be filed in the Record File of this application.
3. All required public improvement plans shall be approved by the City prior to beginning construction. All utilities shall remain uncovered until inspected and approved by the City. All required public improvements shall be completed and approved by the City prior to approval of the Final Plat.
4. Access and public utilities: A private driveway, meeting all fire apparatus access requirements for width, structural pavement section, turn-around, and signage shall be constructed within the 52' easement, along with a waiver of remonstrance recorded for both Parcels 2 and 3. The waiver of remonstrance shall require Parcels 2 and 3 to participate in future road construction costs.

Prior to Approval of the Final Plat

5. Public water and sewer lines must be extended within the private driveway, within dedicated public utility easements, in accordance with Millersburg Engineering Standards and City of Albany Standard Construction Specifications.
6. The applicant shall provide evidence to the City that all requirements shown in the Albany Fire letter (Exhibit F) dated March 19, 2020 have been met.
7. The Final Plat shall be submitted for review by City staff prior to recording said plat with the County. The plat shall be drawn by a licensed land surveyor.
8. LUDC Section 5.126(7) states, "Stormwater runoff rates for new developments shall not exceed bare land runoff rates" and 5.126(7)(g) states, "Runoff from impervious surfaces must be collected and transported to a natural or public drainage facility with sufficient capacity to accept the discharge."

The developer is required to provide a site-specific drainage and a post-construction stormwater quality facility plan. The site-specific drainage plan, shall include means to detain peak flows so that runoff rates for the new development do not exceed bare land runoff rates, along with supporting calculations to collect, route, and discharge stormwater to an approved discharge point. The post-construction stormwater quality facility shall be designed in accordance with the City of Millersburg Engineering Standards. The drainage

plan and post-construction stormwater quality design must be approved by the City Engineer prior to recording the final plat. The drainage plans shall conform to the Albany Engineering Design Standards, to the satisfaction of the City Engineer.

9. Water and sewer connection permits are required for connections to public water and sewer. System Development Charges (SDCs) are due at the time of connection.
10. All roof drains and yard drainage must be piped or trenched to an approved discharge point. Improved lots may not drain onto neighboring properties. Applicant must provide proposed drainage plan for approval.
11. The Final Plat shall include any required access or utility easements.
12. Prior to the approval of the final plat the applicant shall provide a tree study indicating:
 - the size, species and location of each tree on the property
 - homesite locations showing all trees required to be removed
 - the study shall place homesites in such a way to preserve the largest amount of wooded areas on the property, to the satisfaction of staff mitigation plans for the actual construction of the future homes and removal of the trees, including use of orange construction fencing around protected trees that could be impacted by construction activities.

Prior to Occupancy of Any Homes

13. All drainage facilities included in the drainage plans shall be constructed prior to occupancy of any home.

III. NOTICES TO THE APPLICANT

The applicant should also be aware of the following standards and processes that are required for development. These are not part of the decision on this land use case and are provided as a courtesy to the applicant. Please contact City Hall with any questions.

1. A Private Construction of Public Infrastructure (PCPI) permit is required for all construction of public infrastructure.
2. Proposed Parcels 1, 2, and 3 must connect to city water and sewer mains. Applicant shall be responsible for all costs associated with making utility connections.
3. A right-of-way permit is required for any work in the public right-of-way, including utility connections, sidewalks, and driveways. All pavement patching work shall conform to the City of Millersburg Trench Backfill and Pavement Patching Standards. All work within the public right-of-way shall be performed by a licensed contractor and conform to the Albany

Standard Construction Specifications, except as modified by the City of Millersburg Pavement Patching Standards.

4. Driveways shall conform to Section 5.120 of the Millersburg Development Code, with individual driveway slopes not exceeding a grade of 14%.
5. Decks, fences, sheds, building additions, and other site improvements shall not be located within any easement unless otherwise authorized in writing by the City Engineer.
6. The Final Plat shall include any required access or utility easements.
7. All agreements required as conditions of this approval must be signed and recorded.
8. This approval does not negate the need to obtain permits, as appropriate from other local, state, or federal agencies, even if not specifically required by this decision.
9. Compliance with the Conditions of Approval is the responsibility of the developer or its successor in interest.
10. **This approval is valid for a period of two (2) years from the date of the decision notice.** Extensions may be granted by the City as afforded by the Millersburg Development Code.
11. The continual operation of the property shall comply with the applicable requirements of the Millersburg Development Code.
12. If required, any existing wells, septic systems, and underground storage tanks shall be abandoned in accordance with Oregon state law, inspected by Linn County, and provide verification of such to the City Engineer.
13. The submittal by the applicant for Final Plat review and approval shall include but not be limited to the following: a Final Plat application; Final Plat review fee; narrative identifying how the required conditions of approval have or will be met; three copies of the Final Plat; and any other materials required to demonstrate compliance with the conditions of approval.
14. The Final Plat shall show the City Manager as the City's approving authority within the signature block of the Final Plat and all private access easements, utility easements, and/or special use easements as required for the development of the site. A plat note shall reference an easement and maintenance agreement or similar document, to be recorded with the plat, for the joint maintenance of any common private utility lines, common driveway improvements, or other common amenity or perimeter fencing. The language of such plat note, and associated document, shall be reviewed and approved by the City Planner.
15. Prior to issuance of building permits, an electronic version of the Final Plat must be submitted to the City Planner.

16. Dust shall be controlled within the development during construction and shall not be permitted to drift onto adjacent properties.
17. Noise shall be kept at the minimum level possible during construction. The developer shall agree to aggressively ensure that all vehicles working in the development shall have adequate and fully functioning sound suppression devices installed and maintained at all times.
18. All construction sites shall be maintained in a clean and sanitary condition at all times. Construction debris, including food and drink waste, shall be restricted from leaving the construction site through proper disposal containers or construction fencing enclosures. All construction equipment and materials shall not be stored in public right-of-way. Failure to comply with this condition may result in a "Stop Work" order until deficiencies have been corrected to the satisfaction of the City.
19. Wetlands and FEMA floodplain may be present on the site. Work within wetlands and floodplain is subject to the requirements of the Authority Having Jurisdiction (AHJ).



To: Millersburg Planning Commission

From: Matt Straite, Forest Reid, and Wally Lien

Date: May 12, 2020

Re: New process for Partitions and Subdivisions

Limited Land Use Decision

Section 2.320 of the current version of the Millersburg Development Code (MDC) regulates the process and procedures for Partitions and Subdivisions. This section explains:

- (1) *The Planning Commission shall be the deciding authority for all Land Partition and Subdivision Tentative Plans under the provisions of this Code unless combined with another request requiring City Council approval, or if appealed to the City Council. In the event that a consolidated application requires more than one decision, the highest deciding authority will make all decisions requested in the application.*
- (2) *The Planning Commission shall hold a Limited Land Use Review for all Partition and Subdivision Tentative Plans requests in conformance with **Section 3.400** or may hold a Quasi-judicial Public Hearing in conformance with **Section 3.510** to receive additional public comment on significant proposals. A consolidated request including a Variance shall also require a Quasi-judicial Public Hearing in conformance with **Section 2.600**.*

However, in light of additional information provided to staff, these processes appear to be in conflict with existing State Statutes. The proper procedure to process a partition is dictated by State Statute and requires the City to process a residential subdivision or partition exclusively as a ministerial Limited Land Use Decision with no option for a Quasi-Judicial Planning Commission hearing.

The Non-Conforming Issues

There are two issues.

“Option” for quasi-judicial review:

The MDC currently allows the *option* of a full quasi-judicial hearing. Oregon Revised Statutes (ORS) 197.015(12) provides a definition for a “Limited Land Use Decision.” This definition explains that a Limited Land Use decision:

*means a final decision or determination made by a local government pertaining to a site within an urban growth boundary that concerns the approval or denial of a **tentative subdivision or partition plan**. (emphasis added)*

This makes it clear that residential tentative subdivisions and partitions can only be processed as Limited Land Use decisions. Commercial and industrial land divisions can continue to follow the existing MDC. The MDC allowing them to be processed with a hearing changes the nature of the review. Adding the option for a hearing elevates the action to a quasi-judicial hearing. That’s where the first inconsistency occurs. All land divisions (partitions and subdivisions) must use the Limited Land Use Review only.

The reviewing body:

The MDC states that the reviewing body is the Planning Commission. The City attorney has clarified that all Limited Land Use decisions must be made by City staff.¹

The Correction

All land divisions will be processed at the staff level and acted on by staff. Any appeal would go to the Planning Commission as a quasi-judicial review.

Therefore, the City will proceed as if the MDC read:

- (1) ~~The Planning Commission~~ **City Staff** shall be the deciding authority for all Land Partition and Subdivision Tentative Plans under the provisions of this Code unless combined with another request requiring City Council approval, or if appealed to the ~~Planning Commission~~ **or City Council**. In the event that a consolidated application requires more than one decision, the highest deciding authority will make all decisions requested in the application.
- (2) ~~The Planning Commission~~ **City Staff** shall hold a Limited Land Use Review for all Partition and Subdivision Tentative Plans requests in

¹ Meaning the City Manager, with such responsibility typically delegated to the City Planner.

conformance with **Section 3.400** ~~or may hold a Quasi-judicial Public Hearing in conformance with **Section 3.510** to receive additional public comment on significant proposals. A consolidated request including a Variance shall also require a Quasi-judicial Public Hearing in conformance with **Section 2.600.**~~

ORS 197.195 will guide the process for Limited Land Use reviews.

Section 3.400 explains how a Limited Land Use Decision is processed. Once the decision is made, that decision is circulated to the notification area and to the Planning Commission, with the opportunity to file an appeal to the Planning Commission if the decision is objectionable. The Commission will get a copy of the decision at the next Commission meeting. It should be noted that section 3.400(3) would also not apply to residential subdivisions.

No formal change is planned to the MDC to correct this procedure, as they will be addressed in the new code. Further, the State Statutes trump our Code with or without any change to the MDC. Therefore, no change is needed at this time.