



Summary: The Tentative Decision was distributed for public review between April 12, 2023 and April 28, 2023. The City received a comment letter from the Albany Fire Department. No other letters were received. All recommended conditions of approval were added. The conditions of approval and analysis below have been revised to reflect the input provided from the comment. All revised conditions and analysis are shown in italics.

Staff has approved the partition subject to the revised conditions of approval, finding that all criteria and standards were met with conditions of approval based on the accepted facts shown below. Staff relied on facts from the Staff Report, the applicant's materials, the City's Comprehensive Plan, State Rules and Statutes, City Codes and Ordinances provisions for the basis of the decision. This final decision can be appealed within 15 days to the Planning Commission.

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City Planner

Proposal: The application proposes to divide 53.11 acres into 2 parcels, parcel 1 is proposed to be 27.79 acres and parcel 2 is proposed to be 25.32 acres. No development is proposed though a project was recently approved, but not built yet, on proposed parcel 2.

I. BACKGROUND

- A. Applicant: City of Millersburg
- B. Project Location: The property has no address, it is located southerly of Conser Road and westerly of the railroad tracks. Township 10 South; Range 3 West; Section 29; Tax Lot 00203
- C. Review Type: Table 5.01.030 of the Millersburg Development Code explains that a partition requires a Type II review, which is a staff level review with a 14-day notice provided to the neighbors.
- D. Public Notice: Notice has been provided pursuant to Chapter 5.07 and 5.18 of the Millersburg Development Code. Notice was provided to all neighbors within at least 100 feet on April 12, 2023, and all responsible agencies on April 12, 2023. The notice provided 14 days to respond.
- E. Review Criteria: Chapter 5.07.060 Partitions

F. Current Zoning: General Industrial (GI)

G. Proposed Zoning: N/A

H. Property Size: 53.11 Acres

I. Background: The property is currently under City ownership. The southern portion of the property was recently leased to Wilber-Ellis who processed a land use application (SP 22-04 and CUP 22-01) for a fertilizer storage and distribution facility. This proposed tentative partition is intended to create an actual lot/parcel for the 'portion' of the property that will be used by Wilber-Ellis, and create a second parcel to allow the City to sell or lease.

This has nothing to do with the recent City attempt to change the Urban Growth Boundary. That concerned neighboring property to the west and north, but not the property that is part of this application. The parcel for this application has been zoned General Industrial since the City was formed.

II. AFFECTED AGENCY, PUBLIC NOTICE, AND PUBLIC COMMENTS

Agencies:

The project was transmitted to the following agencies/departments on April 12, 2023: City of Albany, Albany Fire Department, City of Millersburg Engineer, Pacific Power, Linn County Planning and Building Department, Northwest Natural Gas, and PacifiCorp. Any comments received will be addressed in the final decision.

Public:

Notice of this tentative decision was sent out to neighbors of the site on April 12, 2023. The notice was mailed to all property owners within 100 feet of the property. Any comments received will be addressed in the final decision.

III. CRITERION

CITY OF MILLERSBURG DEVELOPMENT CODE

Chapter 5

Section 5.07.060 Partition Decision Criteria

Approval of a partition shall be subject to the following decision criteria:

- (1) **Each parcel shall satisfy the dimensional standards of the applicable zone, unless a variance from these standards is approved.**

ANALYSIS: The proposed partition is in the General Industrial (GI) Zone. The GI zone does not have a lot minimum requirement unless it is located next to residentially zoned property, which is not the case on this site. There are no specific dimensions

required in the GI zone. An access strip is shown on Parcel 1 that will allow access to the parcel through Parcel 1. All zone standards are met. Setbacks are not something that is possible to evaluate at the partition stage, but the design of the parcels will be able to accommodate setbacks. Additionally, there are no setbacks required unless the property is located adjacent to residentially zoned property, which this is not.

FINDING: Based on the analysis above, the project meets the criterion.

(2) The parcels shall meet the Development Standards for Land Division of Chapter 4.02.

ANALYSIS: The Development Code includes standards for lot/parcel designs from Article 4; these are covered below in more detail in section IV of this staff report. All Article 4 standards are met with conditions of approval.

FINDING: Based on the analysis above, with conditions of approval, the project meets the criterion.

(3) Existing structures and accessory structures shall comply with the setback requirements of the applicable zone, including accessory structures which have a setback established by the building size, unless a variance from the requirements is approved.

ANALYSIS: There are no structures on either of the proposed parcels. It should be noted that there is an approved land use entitlement on proposed parcel 2. This is the primary reason for this subsequent partition, so that the project can be on its own legal lot (parcel). The approved project will be consistent with all setbacks as designed.

FINDING: Based on the analysis above, the project meets the criterion.

(4) Adequate public facilities, including access, shall be available to serve the existing and newly created parcels. If adjacent properties are undeveloped or landlocked, extending appropriate access to those properties will be required in accordance with adopted City policy.

ANALYSIS: The property is currently vacant. The access to the site requires the construction of a new road or easement (private access), connecting to Conser Road NE. The new access road was fully approved as part of the SP 22-04, the Wilber-Ellis fertilizer facility. However, the proposed partition must not rely on previous entitlements, because those entitlements may not ever be constructed. Therefore, this partition must stand on its own. The map shows an access easement for both parcels that extends through an off-site lot, onto parcel 1 and through parcel 1 to connect to parcel 2. The exhibit calls this out as an easement, however, this can be done through an access easement or a dedication to the City as a public street. Conditions of approval have been added to assure that adequate access exists prior to the map recording.

It should be further noted that the access would not be fully located within the City, a small portion is located within unincorporated Linn County. The applicant for SP 22-04, Wilber-Ellis, has secured approval for a Conditional Use Permit (CUP) through Linn County for the road/access easement alone. The County approval of the CUP will only permit the single user, Wilber Ellis. Any further development of parcel 1 (or parcel 2 should Wilber Ellis never get constructed) will require a similar CUP for access through the County and will only be permitted for agricultural uses.

Regarding secondary access, this need varies depending on the use. A partition does not establish or allow a specific use. Therefore, secondary access is not reviewed at this time, that will come when a development is proposed on the property. SP 22-04 secured secondary access for emergency vehicles going to the south of the property. The secondary access road exists but will need to be improved. The Wilber-Ellis project was conditioned to build primary and secondary access. This partition would only be required to construct primary access unless Albany Fire requests otherwise. Conditions for primary access will be added to this project (just in case the SP is never built), but once the access is fully constructed it will satisfy the conditions for both the SP/CUP and the partition.

Water and sewer are both existing near the site on the east side of the railroad tracks and would need to be extended to the west side. The City of Millersburg will work with the railroad to extend services across the tracks and onto the site at the time development is proposed. The Millersburg Development Code does not require that a partition connect, rather, it requires that the utilities are available near the site, which they are. It should be noted that while these utilities will cross the rail road tracks, which are not within the City of Millersburg, there is no need for separate land use permitting through the County for these actions. Building and safety permits may be needed through the County Building Department, but no land use permits are needed.

FINDING: Based on the analysis above, with conditions of approval, the project meets the criterion.

CONDITIONS OF APPROVAL:

- Prior to the City approval of the final plat, the applicant shall either:
 - record an accesses easement separately,
 - include an easement on, and part of, the final plat,
 - separately dedicate a public street on the final plat, or
 - any combination of these- to the satisfaction of the City Engineer.Likewise, another method can also be used as long as it secures long term access to the two properties, public or private.

- Prior to the City approval of the final plat, all required primary access shall be fully constructed, or fully bonded for, or as approved by the City Engineer.

(5) Adjoining land can be developed or is provided access that will allow its

development in accordance with the Code.

ANALYSIS: See analysis above. The lot proposed to be divided is surrounded by property that is not likely to further developed and does not require any additional access from or through the property. To the west the property is no longer in the City and is within a FEMA designated flood way. To the east is a railroad track. It is highly unlikely that any more crossings will be permitted, which is why access is proposed from Conser Road NE. To the south is a lake. To the north it is possible that the property will develop, but that property has access to the proposed access on this map.

FINDING: Based on the analysis above, the project meets the criterion.

IV. STANDARDS

The proposed land partition design complies with all the specifications and design requirements of Article 3 and 4 of the Millersburg Development Code. Areas that require additional conditions of approval to fully comply or Code standards that require analysis to explain how they meet the requirements are shown below.

Section 3.01.030 Application of Public Facility Standards

This section explains the general improvements required for partitions/subdivisions. More specifically the Code requires the following, as shown in Table 11:

Land Use Activity	Fire Hydrant	Street Improvements	Water Hookup	Sewer Hookup	Storm Drain	Street Lights	Bike & Ped
Partition (w/o utilities)	No, unless required by Fire Code	C-2	C-3	C-3	No, must accommodate drainage on-site	No	No

- C-2: Street Improvements for Single-family Dwellings and Partitions:
 - New single-family dwellings on an existing parcel less than 2.5 acres in size and fronting an existing street which does not have a full street improvement including sidewalks, as required in the City's most recently adopted engineering standards and Chapter 3.02, shall dedicate the needed right-of-way and shall install the full improvement along a parcel's frontage.
 - If there is no adjacent improvement, a street frontage fee, in accordance with the City's adopted connection fees, will be required in lieu of constructing the improvement.
 - If a street extension to serve the residence is necessary, the owner must provide the necessary right-of-way dedication and street improvement to City street standards along the full frontage of the parcel.
 - A partition creating parcels of 2.5 acres or larger does not require street improvements.
- C-3: Septic systems. In the RU zone, well and septic systems are allowed. In the RL and RM zones, connection to public utilities is required.

ANALYSIS: The table above explains that street improvement requirements are determined by the City Engineer, as footnote C-2 applies to residential uses only.

Water and sewer connections are not required for the map only, but will be required whenever development occurs. This is because the need for utilities is driven by uses, no use is proposed. As discussed below in more detail, there is no requirement for water, sewer or storm drain facilities on the property based on the partition.

FINDING: Based on the analysis above, the project meets the standard.

Section 3.02.030 General Provisions & Section 3.02.040 Access Standards

ANALYSIS: This section contains requirements for streets and/or private access. These will apply at the time the street/easement is constructed. Conditions of approval have been added for the construction of the access.

FINDING: Based on the analysis above, with conditions of approval, the project meets the standard.

Section 3.02.070 Sidewalks

ANALYSIS: This section requires sidewalks, but allows them to be differed at the discretion of the City, and when there are no improvements on either side (meaning neighbors who may have already built street improvements, specifically, if there are no sidewalks next to the site, it may make sense to postpone the construction of sidewalks to prevent a sidewalk in the middle of no other sidewalks). In this case there are no neighboring sidewalks as the street does not exist yet. Based on discussions with the City Engineer, sidewalks are planned for this area. The City is differing the requirement at this time.

FINDING: Based on the analysis above the project is consistent with the code standard.

Section 3.02.100 Private Access Easement

ANALYSIS: This section regulates private easements used for access. The exhibit shows a planned private access easement to be used for primary access to the site. Part of this access is within the City limits, part is outside the City. This section requires the access to be at least 25 feet wide, the exhibit shows a 60-foot access width. Pavement width is not specified in the code, as all required pavement widths in Section 3.02.100(1) are for residential only. Therefore, it will be at the discretion of the City Engineer and consistent with the options outlined in the Code and the Transportation System Plan. The Code requires that all setbacks are taken from the easement, which will not be an issue because there are no setbacks in the GI zone when not next to residential zoning. All easement improvements are required to comply with this section.

FINDING: Based on the analysis above, with conditions of approval, the project

meets the standard.

Section 3.02.110 Lots and Parcels Served by Private Streets and Access Easements.

ANALYSIS: This section explains that the minimum lot size must be able to meet the zoning requirements apart from the easement. This section does not apply because of the zone, which does not require setbacks or lot-to-width requirements. Parcel size cannot include the access strip, however, in this case there is no access strip and there are no parcel size requirements.

FINDING: This section does not apply.

Section 3.04 Storm Drainage and Grading

All development in the City is required to provide for storm drainage. A partition is considered development.

ANALYSIS: The applicant did not provide details regarding drainage. A drainage plan will need to be submitted.

FINDING: Based on the analysis above, with conditions of approval, the project meets the standard.

CONDITIONS OF APPROVAL:

- Prior to City approval of the final plat, the applicant shall submit for approval a drainage plan that meets all the requirements of the Millersburg Development Code Chapter 3.04, to the satisfaction of the City Engineer.
- Prior to City approval of the final plat, the applicant shall construct all required drainage facilities, or provide bonding (or similar) for all improvements approved by the City.

Section 4.02.030 Standards for Lots or Parcels

This section includes many standards for partitions. These include:

- Lot to depth requirements – though these only apply to residential.
- All new lots shall provide at least 40 feet of frontage.
- Flag lots must have an access strip of at least 25 feet in width with an improved surface, and the access strip cannot exceed 150 feet in length without a turnaround.
- Through lots shall be avoided.
- Lot lines shall run at right angles when possible.
- Utility easements may need to be provided.

ANALYSIS: The project proposes two parcels. There is no lot area requirement in the GI zone, no lot to width minimum is required outside residential zones. The access requirements of subsection (3) do not apply because the applicant is proposing a shared private access easement that does not connect to a street

within the City limits. This requirement could be interpreted to mean that each parcel shall have 40 feet of frontage on the easement, in this case they both do. The parcels would not be considered flag lots, though they comply with all requirements regardless. No through parcels are proposed (meaning dual street frontage). The property lines do not use right angles, however, that is not possible based on the existing lot line configuration and natural boundaries. The code says these are only required when practicable. It is not clear if the easement shown is for access and utilities, though they are required. A condition of approval has been added to have this clarified on the final plat. All other requirements of section 4.02.030 do not apply.

FINDING: Based on the analysis above, the project meets the standards.

CONDITION OF APPROVAL: The final plat shall include utility easements for each parcel. These can be shared with the access easement if applicable.

Section 4.02.050 Improvement Requirements - Partition.

ANALYSIS: Each requirement is described below.

Frontage improvements. The project proposes to use a private easement that will connect to Conser Road NE outside the City limits. Street or easement improvement plans are required to be reviewed and approved by staff prior to construction. Said plans must comply with this section of the Code.

Section 4.02.050 lists the street improvement requirements for a partition, which include requirements specific to a public street. These include curb, gutter, sewers, storm system, water lines, and everything else called for in master plans. However, the code specifies that these are only required where master plans call for specific improvements. For this specific site, no utility master plans call for specific improvements in this area. Additionally, at this time, the access is proposed to be a private easement. The access, however, must be paved. The applicant has included enough width in the easement to become a future right of ways should that be needed.

Sewer and water. Subsection (2)c.iii specifies that storm sewers, sewers, and water lines be constructed. This conflicts with section 3.01.030 and 4.02.050(2).ii, and 4.02.050(3) which explain that requirements are not required for a partition, or that the City has the discretion to not require them. The City has elected not to require water or sewer improvements for the proposed parcels for a host of reasons. First, most sections explain that utilities are not required for this partition, or provide the City discretion. Second, these two proposed parcels will be developed for very specific industrial uses, which will have very specific utility requirements. To have them constructed now without knowing what the users will be may find result in them being removed and replaced again in the future. Lastly, it appears that Section 4.02.050 was drafted primarily with residential divisions in mind (though it does not specify that), while section 3.01.030 was drafted to more widely apply to different kinds of development, including land divisions for industrial uses.

Sidewalks. Sidewalks have been discussed previously. Sidewalks are not required because there is no private street. Should the City elect to dedicate the easement as a public street as part of the final plat, which is permitted, sidewalks would then be required, but could be differed at the discretion of the City Engineer.

FINDING: Based on the analysis above, with conditions of approval discussed previously, the project meets the standards.

V. ACTION

Based on the above findings of fact, and the conditions of approval, the proposed project satisfies the applicable criteria and staff approves the Partition Application No. PA 23-02 pursuant to the conditions of approval listed below.

VI. CONDITIONS OF APPROVAL

General Conditions

1. Development and construction on the site shall conform substantially to the tentative partition development plans submitted by the applicant dated 1/25/23 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 and Linn County where applicable.
2. Copies of any federal or state permits that may be required shall be filed in the Record File of this application.

Prior to Approval of the Final Plat

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. Prior to City approval of the Final Plat, the applicant shall submit for approval a storm drainage plan for the site, including public infrastructure, that meets all the requirements of the Millersburg Development Code Chapter 3.04, to the satisfaction of the City Engineer.
5. The applicant shall provide evidence to the City that all requirements shown in the Albany Fire letter dated *April 12, 2023* have been met.

6. 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.
 7. The Final Plat shall include any required access or utility easements.
 8. Prior to City approval of the Final Plat, the applicant shall construct all required drainage facilities, or provide bonding (or similar) for all improvements approved by the City.
 9. Prior to the City approval of the final plat, the applicant shall either:
 - o record an accesses easement separately,
 - o include an easement on, and part of, the final plat,
 - o separately dedicate a public street on the final plat, or
 - o any combination of these- to the satisfaction of the City Engineer.Likewise, another method can also be used as long as it secures long term access to the two properties, public or private.
 10. Prior to the City approval of the final plat, all required primary access shall be fully constructed, or fully bonded for, or as approved by the City Engineer.
 11. The final plat shall include utility easements for each parcel. These can be shared with the access easement if applicable.
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VIII. 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. Driveways shall conform to Chapter 3.02 of the Millersburg Development Code, with individual driveway slopes not exceeding a grade of 15%.
3. 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.
4. The Final Plat shall include any required access or utility easements.
5. All agreements required as conditions of this approval must be signed and recorded.
6. 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.
7. Compliance with the Conditions of Approval is the responsibility of the developer or its successor in interest.

8. **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.
9. The continual operation of the property shall comply with the applicable requirements of the Millersburg Development Code.
10. 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.
11. The submittal by the applicant for Final Plat review and approval shall include but not be limited to the following: a Final Plat application; 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.
12. 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.
13. An electronic version of the Final Plat must be submitted to the City Planner.
14. Dust shall be controlled within the development during construction and shall not be permitted to drift onto adjacent properties.
15. 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.
16. 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.
17. Wetlands and FEMA floodplain are present on the site. Work within wetlands and floodplain is subject to the requirements of the Authority Having Jurisdiction (AHJ). Wetlands are shown on both proposed parcels. At the time a building or sitework is

proposed on either lot avoidance is the preferred alternative. If wetland delineated areas are effected (see wetland delineation WD2019-0363) a permit is required from the Department of State Lands if more than 50 cubic feet of material is affected.

IX. EXHIBITS

- A. Vicinity Map
- B. Zoning Map
- C. Applicant's Tentative Map dated January 25, 2023
- D. Easement diagram January 25, 2023
- E. Comment Letter from the Albany Fire Department dated April 12, 2023
- F. Notice