

**Margot D. Seitz**  
Attorney

mseitz@fwwlaw.com

121 SW Morrison Street, Suite 600  
Portland, Oregon 97204  
tel 503.228.6044  
fax 503.228.1741  
www.fwwlaw.com

November 16, 2016

Beaverton Planning Commission  
c/o City of Beaverton Planning Division  
Community Development Department  
12725 SW Millikan Way  
Beaverton, OR 97076

**Re: Appeal of Preliminary Partition Decision**

*Project Name:* SW 155<sup>th</sup> Avenue 3-Lot Partition  
*Applicant:* ADTM Development, LLC  
*Case File No.:* LD2016-0002, TP2016-0003, FS2016-0001  
*Appeal No.:* APP2016-0003  
*Project Location:* 10510 SW 155<sup>th</sup> Avenue, Tax Lot 00100 of Washington  
County's Tax Assessor's Tax Map 1S132BD

Dear Members of the Beaverton Planning Commission:

As you will recall, this office represents Richard King, the owner of real property located at 15460 SW Heron Court, Beaverton, Oregon. This letter and the attached exhibits supplement the testimony and argument presented at the November 9, 2016 hearing (the "Hearing") with respect to ADTM Development, LLC's ("ADTM's") partition application for the subject property ("Property"). We thank you for your efforts regarding this matter and respectfully urge the Planning Commission to reverse the staff decision and deny ADTM's application.

**A. Code Interpretation & Lot Line Definitions.**

At the Hearing, an issue arose regarding the City's interpretation of the definition of "Front Lot Line" as provided in the Beaverton Development Code (the "Code" or "BDC"). See, BDC Chapter 90, p. DF-26. The planning staff suggested that the Code provides them "discretion" in defining lot lines. That is simply not the case. BDC Chapter 90 specifically states, the "following words and phrases shall be construed to have the specific meanings assigned to them by definition". BDC Chapter 90, p. DF-1 (emphasis supplied). The Code provides no discretion. Here, planning staff concluded that "Lot 1" is an "interior lot." The "front lot line," for that lot is, therefore, the line that "abuts the street" and was "determined at the time of initial construction." BDC, Ch. 90, p. DF-26. That is clearly the existing home's frontage on SW 155<sup>th</sup> Avenue ("155<sup>th</sup> Avenue"). Notably, that is the only "street" which the

Beaverton Planning Division  
November 16, 2016  
Page 2

Property currently “abuts”. Thus, it is the only possible “front lot line” for the Property in its current (undivided) configuration.

When interpreting this code section, the Planning Commission must use the well-established methodology set forth in *PGE v. Bureau of Labor and Industries*, 317 Or. 606, 610–12, 859 P.2d 1143 (1993). Pursuant to that methodology, you examine the text of the statute giving words of common usage “their plain, natural, and ordinary meaning.” *Id.* at 611, 859 P.2d 1143; *see also, Leupold & Stevens, Inc. v. City of Beaverton*, 206 Or. App. 368, 376, 138 P.3d 23, 28 (2006) (dictionary definitions applied to determine plain meaning). The “plain text” of the “front lot line” definition is straightforward and accomplishes two separate things. First, it instructs us *how* to determine the front lot line – *i.e.*, by looking to see which line “abuts a street.” BDC Chapter 90, p. DF-26. Second, it tells us *when* the front lot line is determined – *i.e.*, “at the time of initial construction.” *Id.* The only portion of the definition in dispute is the words “initial construction.” The planning staff and ATDM argue that the words “initial construction” can mean construction performed at any time. They would have the Planning Commission interpret “initial construction” to mean both the construction of the existing house in or around 1992 (24 years ago) and the subsequent construction of homes on two completely different lots (*i.e.*, Lots 2 and 3). That argument defies logic. According to the Merriam-Webster Dictionary, the word “initial” is defined as:

- occurring at the beginning of something,
- of or related to the beginning,
- placed at the beginning.

The word “construction” is defined as “the act or process of building something.” Clearly, the “initial construction” occurred in or around 1992 when the existing home was built. The front lot line was defined at that time. Not only is the Staff’s suggested interpretation not supported by the plain language of the Code, it is not supported by the facts of this situation. It is important to stress that no construction is being proposed with respect to the existing home or the proposed Lot 1. The Applicant and staff have indicated that the existing home will not be demolished. So, no additional construction is proposed or expected with respect to that home or the proposed Lot 1. The only construction with respect to Lot 1 is the “initial construction” which occurred in 1992. Per the definition, the front lot line at that time was where the Property abuts 155<sup>th</sup> Avenue.

The orientation of the house and its yards cannot be artificially changed twenty-four years later simply to allow the Applicant to skirt the setback rules and do away with the Code’s requirement that the property have a 20-foot rear yard directly behind the existing home.

Beaverton Planning Division  
November 16, 2016  
Page 3

**B. Setback Clarification.**

At the Hearing, and in our prior written submissions, we explained in detail how the Applicant has failed to follow the setback rules for the front yard calculations on both “Lot 1” and “Lot 2.” The exact same logic must be applied to the Applicant’s “shadow plat.” This simply clarifies that the Applicant has similarly failed to follow those exact same definitions/rules when showing the setbacks for its “shadow plat” on “Lot 1.” *See* Ex. 9 (shadow plat plans showing setback area per BDC definitions).

**C. The Storm Water System is Fatally Flawed and Limits the Ability to Save Trees.**

A few additional points should be stressed regarding the Applicant’s proposed storm water system. Elevation maps show a continuous downward slope from the Property onto 15460 SW Heron Court (“Lot 27”). *See* Ex. 1 attached hereto (updated version of prior elevation map showing location of rip rap outfall). Water also traditionally migrates from Lot 27 to 15430 SW Heron Court (“Lot 28”). The private driveway does not appear to contain water with the use of a traditional curb. Rather, “swales” are proposed. The storm water for this system which is not contained by those swales will run directly onto the neighboring properties. Additionally, all of the storm water collected from roofs, the private roadway, private sidewalks, and parking pads will be collected and ultimately directed to a rip rap outfall. *Id.*

One serious problem with this system is that the City will not be providing maintenance for this complex shared storm water system. Given the placement of the rip rap outfall and the slopes in this area, the proposed system presents an unreasonable risk to the surrounding homeowners.

Additionally, it appears that the storm water system, as designed, will prevent the Applicant from saving trees 26, 27, and 28. *See* Ex. 2. Mr. Safestrom indicated that he could save those trees using a boring method to install the storm water system below (without destroying their root systems). However, as designed, the storm sewer line runs at a depth of less than 1.5 feet at that location. *See* Applicant’s Plans p. 10 (showing storm water profile at that location). It seems unlikely that the Applicant will be able to save those trees. Although we appreciate his willingness to save trees, this information brings the accuracy of Mr. Safestrom’s statements into serious question. *See* Ex. 2 (for tree location relative to rip rap outfall), and Applicant Plans, p. 10 (for storm sewer profile). If the rip rap location is moved northward in order to save those trees, it will result in channelized flow directly onto Mr. King’s property. Again, the proposed system presents a serious risk of channelized flow being directed onto Mr. King’s property (as well as onto Lot 28).

**D. Outstanding Traffic Safety Issues.**

Traffic safety at this location is very important since the sidewalk in front of the subject property is routinely used by children walking to school and people utilizing the boarding recreational area. At the Hearing, Commissioner Wilson noted she visited the site and observed a traffic safety/vision problem with respect to the driveway and its slope. She sought some clarifying information from Mr. Safstrom regarding whether the proposed retaining wall would help correct this issue. In response, Mr. Safstrom indicated that a retaining wall will be installed along the driveway which would help mitigate its steepness and improve traffic safety. Unfortunately, that assumption is simply not true. According to the plans provided, the retaining wall would be constructed along the driveway to lower the private street an additional 1.5 feet along its length, which could only further diminish visibility and exacerbate this traffic safety problem. *See* Ex. 3 (note that “TW” refers to the top of wall height and “BW” refers to the bottom of wall height.) The retaining wall height (circled on exhibit) and the elevation lines clearly show the change in slope increasing.

The property has more extensive visibility problems which are set out in the Staff’s Report. There are large bushes and other vegetation on the neighboring property which diminish visibility. *See* Ex. 4 (photo of said vegetation on neighboring property). The planning Staff proposed to alter two conditions of approval which were originally intended to address this unsafe condition. *See* Staff Report, TA-15 (Conditions of Approval No. 21 and 44). As described at the Hearing, the Staff originally was requiring trimming or removal of vegetation to provide a clear sight line. However, it was discovered that much of the offending vegetation is on a neighboring property.

Staff indicated at the Hearing that the neighboring property owner is willing to work with the Applicant and trim that vegetation. This is not the case. That property owner opposes the development. Although he did not appeal the Initial Planning Decision, his opposition is part of the public comment record. *See* Decision, Appeal Ex. 3.13.

Moreover, the sight lines are simply inadequate. Associate Transportation Planner Ken Rencher presented a Pre-Application Review Memorandum to Scott Whyte, Senior Planner, regarding the Property. *See* Ex. 5. In that Memorandum, he indicated that the application should address all applicable criteria found in BDC 60.55.35, standards in the Beaverton Engineering Design Manual (“EDM”), and other criteria. Rencher goes on to state:

60.55.36 Access Standards: At the intersection of driveways with [sic]155th Ave., the applicant’s plans will need to show that the landscaping is designed to keep the vision clearance triangle - 15 feet along the sidewalk and 15 feet along the driveway - clear of obstacles.

Beaverton Planning Division  
November 16, 2016  
Page 5

The EDM includes a diagram which shows how this 15-foot clearance triangle functions. *See* Exhibit 6. It also defines the vertical limits required for the “sight clearance area”. The City subsequently omitted the 15-foot access standard/vision requirement. (It is not mentioned in the Decision.) That is likely because that standard cannot be met on this site. Mr. King has analyzed the site and concluded that in order to meet this requirement, all vegetation in the site line would need to be removed or trimmed down to a height of approximately four inches. Again, note that the adjacent property owner submitted comments in opposition to the proposed development. Appeal Exhibit 3.13.

The City should make findings of fact regarding how the above standard is met by the Applicant. As it stands, the Applicant simply has not shown how it can meet this required standard and keep pedestrians, bicyclists, and other motorists safe.

Lastly, it should be noted that the City’s traffic modeling regarding use of 155<sup>th</sup> Avenue is inconsistent with everyday use of this street. Simply put, 155<sup>th</sup> Avenue is commonly used as a thoroughfare to travel out of the Murrayhill neighborhood. The city has based its safety analysis on 155<sup>th</sup> Avenue being defined as a “neighborhood route.” Neighborhood routes have lower use and, thus, are subject to lower safety requirements. They are seen as routes used inside a neighborhood, as opposed to routes used to collect neighborhood traffic and direct it out of the neighborhood. Contrary to the City’s current assumptions, 155<sup>th</sup> Avenue is more properly considered a main “collector route” within the Murrayhill development. A large number of homes utilize that street to enter and exit the neighborhood.

In order for 155<sup>th</sup> Avenue to be a “neighborhood route,” the majority of traffic leaving the neighborhood would be required to turn left at the intersection of 155<sup>th</sup> Avenue and 160<sup>th</sup> Avenue, another collector route within Murrayhill. *See* Ex. 7 (map). The City has installed a sign and speed bumps along 155<sup>th</sup> Avenue past that intersection to encourage drivers to turn left on 160<sup>th</sup> Avenue (to continue on to Weir Road). *See* Ex. 8 (photo of intersection). Mr. King and surrounding home owners have observed that drivers generally do not follow the expected or encouraged traffic pattern. Rather, the vast majority of drivers continue driving on 155<sup>th</sup> Avenue, and cross in front of the subject property on their way to Weir Road.

Google maps and similar navigation programs direct drivers to do just that. *See* Ex. 7 (showing Google Maps’ selection for the best route to take through the neighborhood to get to City Hall.) That route passes directly in front of the subject property. Drivers also do not take the SW 160<sup>th</sup> Avenue route because it is particularly hilly. Given all of the above, the appellant requests that the City conduct a traffic study at the intersection of 155<sup>th</sup> Avenue and SW 160<sup>th</sup> Avenue to verify actual driver behavior, and determine if the classification of 155<sup>th</sup> Avenue as a “neighborhood route” is accurate.

FARLEIGH WADA WITT

Beaverton Planning Division

November 16, 2016

Page 6

Safety concerns in this area are particularly important given the proximity of Nancy Riles Elementary School, which is located to the west of the property. With the particular street configuration, resulting pedestrian traffic is channeled across 155<sup>th</sup> Avenue and pedestrian traffic is expected to be higher than average at the subject property. There is a current traffic safety hazard at the subject Property (as set out in the public comments on the Application). The proposed development will exacerbate this problem and represents an unreasonable safety risk. At a minimum, additional study should be conducted and remediation put in place to mitigate this risk.

We sincerely appreciate your attention to this matter and respectfully request that the Planning Commission reverse its Initial Decision regarding the Application.

Yours Truly,



Margot D. Seitz

MDS/mb

Enclosures

cc: Richard King (w/o encl.)

P:\DOCS\KINGRI29298\LTR\3PA9111.DOCX



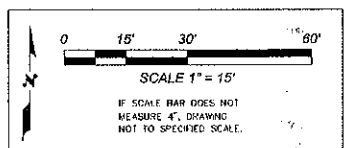
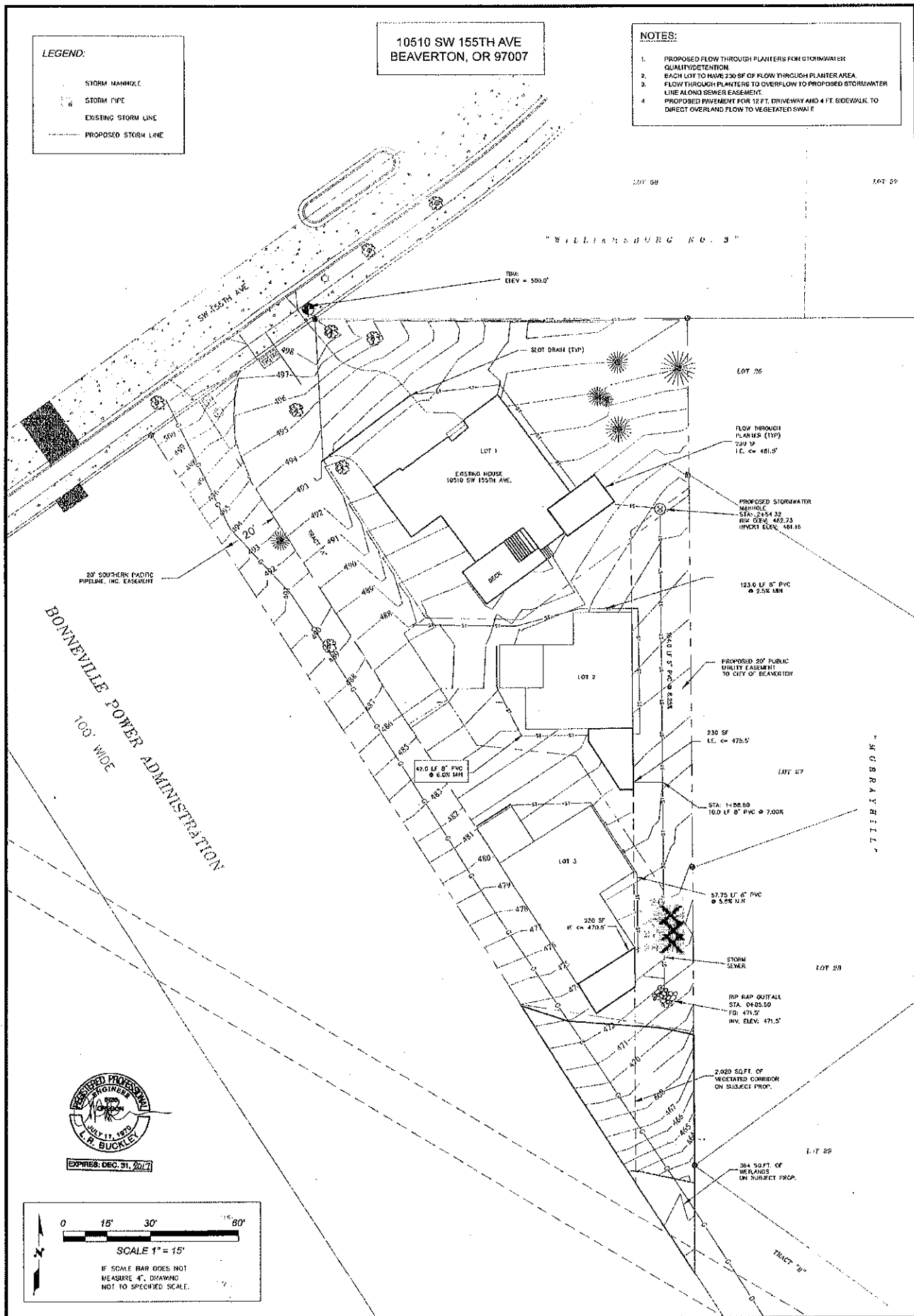
**LEGEND:**

- STORM MANHOLE
- STORM PIPE
- EXISTING STORM LINE
- PROPOSED STORM LINE

10510 SW 155TH AVE  
BEAVERTON, OR 97007

**NOTES:**

1. PROPOSED FLOW THROUGH PLANTERS FOR STORMWATER QUALITY DETENTION
2. EACH LOT TO HAVE 230 SF OF FLOW THROUGH PLANTER AREA.
3. FLOW THROUGH PLANTERS TO OVERFLOW TO PROPOSED STORMWATER LINE ALONG SEWER EASEMENT.
4. PROPOSED DRIVEWAY FOR 12 FT. DRIVEWAY AND 4 FT. SIDEWALK TO DIRECT OVERLAND FLOW TO VEGETATED SWALE



CHECKED BY: *AWP*  
 DRAWN BY: *AWP*  
**EMS**  
**ENVIRONMENTAL MANAGEMENT SYSTEMS, INC.**  
 4000 SW International Way, Suite 8112  
 Beaverton, OR 97005  
 Phone: 503-325-9999  
 Fax: 503-325-9999  
 Toll Free: 800-325-9999  
 Website: www.emsinc.com

Tract "A" & 3-Lot Partition-10510 SW 155th Ave  
 T: 1S, R: 1W, Sec: 32BD, TL: 100 (EMS 15-0057)  
 Stormwater Sewer Plan

PAGE 8 of 17  
 13 Jul 2016  
 SCALE: 1"=15'

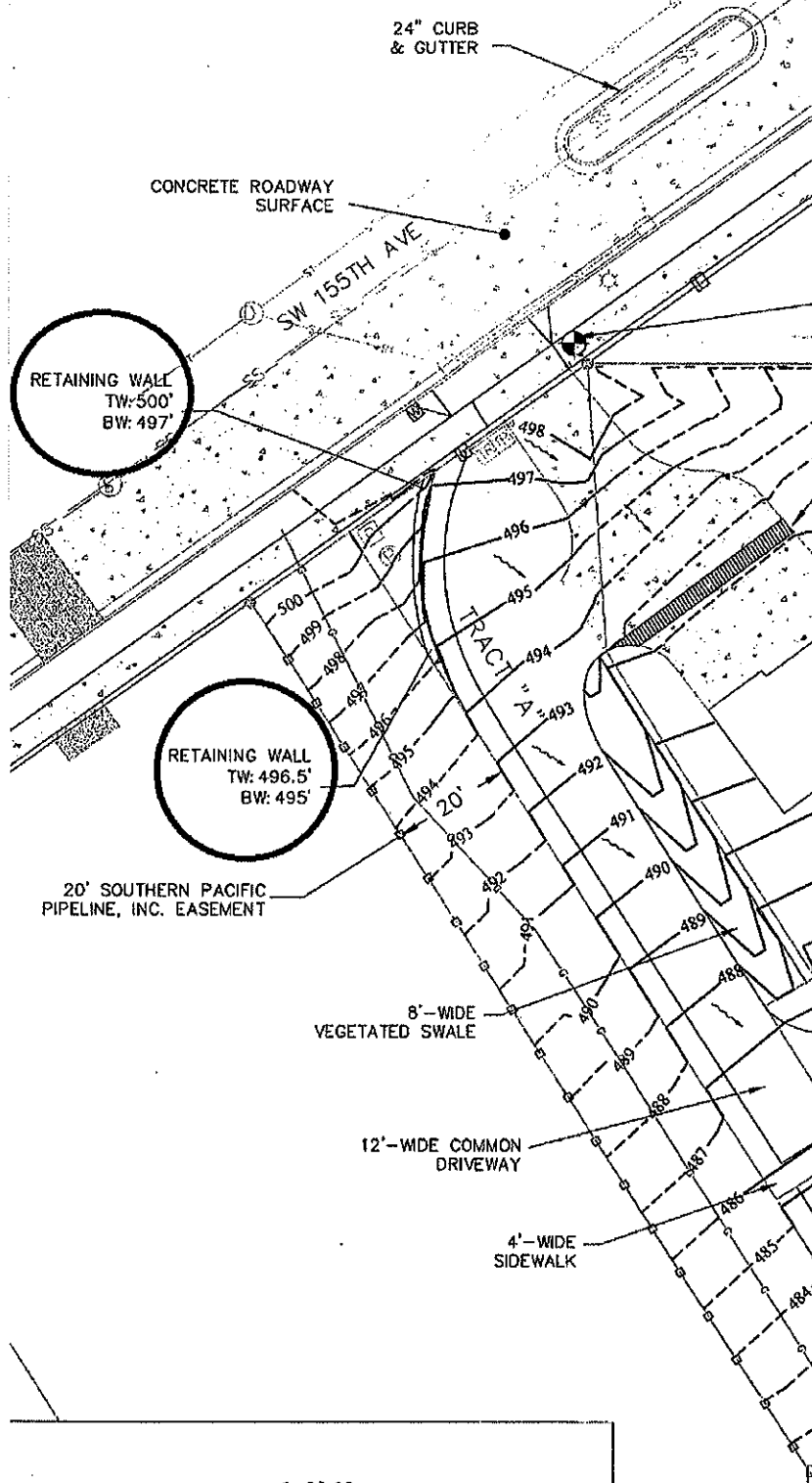
Ex. 2

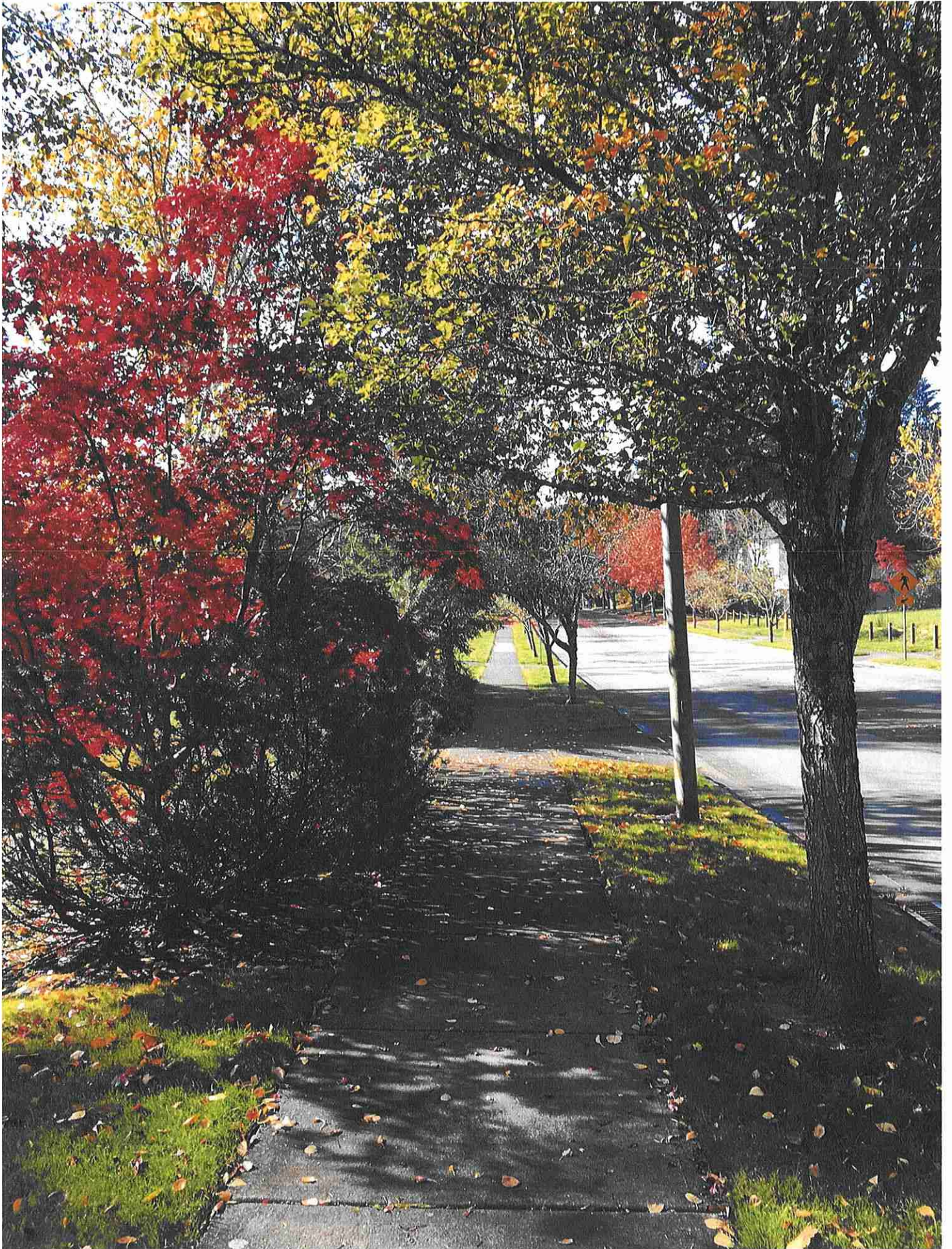


**LEGEND:**

- STORM SEWER MANHOLE
- CATCH BASIN
- TEMPORARY SILT FENCE
- ▶— FLOW ARROW
- 100 - ORIGINAL GRADE
- 100 - FINISHED GRADE
- STRAW WATTLES

SW 155th PDF Scan 8.16.16  
24" CI X  
& GUT





Ex. 4



## MEMORANDUM

### Community Development

To: Scott Whyte, Senior Planner  
From: Ken Rencher, Associate Transportation Planner  
Date: April 8, 2015  
Subject: PA2015-0015 ADTM Partition at 10510 SW 155th, Pre-Application Review

---

This memo includes important transportation-related items that should be addressed in the materials submitted for the proposal noted above. All comments provided here are based solely on the pre-application materials provided. Other issues, applications, or analysis may be identified and or required upon review of the application(s).

**General note:** The application should address all applicable transportation related criteria found in *Beaverton Development Code (BDC)* Sections 40.03 Facilities Review, 60.15 Land Division Standards, and 60.55 Transportation Facilities; and standards included in *Beaverton Engineering Design Manual (EDM)* Chapter 2 Streets, Chapter 7 Bicycle and Pedestrian Facilities, and the Standard Drawings. System Development Charges, including the Transportation Development Tax, may apply.

#### Summary of existing transportation infrastructure

The site is bordered by SW 155<sup>th</sup> Ave., a Neighborhood Route with parking on both sides. SW 155<sup>th</sup> Ave. appears to have adequate right-of-way width, and is fully improved with curbs, gutters, planter strips, and sidewalks. Both the curbs and sidewalks appear to be in good condition currently.

There is no transit service directly to the site, but SW Teal Blvd. has limited commuter bus service hours, and is located within walking distance (0.3 - 0.4 miles to the south).

This segment of SW 155<sup>th</sup> Ave. is a designated low-traffic bike route and is adjacent to the THPRD's Westside Trail in the Murrayhill Powerline Park.

#### PLEASE NOTE THE FOLLOWING:

##### **In regard to BDC 40.03 Facilities Review Committee:**

**40.03.1:** This section requires transportation facilities related to the proposed development to be installed and available at the time of the development's completion, meaning prior to the approval or signature of the final plat. Transportation facilities are defined as critical facilities. Pedestrian and bicycle facilities, as well as transit facilities are

defined as essential facilities. Essential facilities are expected to be provided prior to occupancy of the new units.

**In regard to BDC 60.15 Land Division Standards:**

60.15.15.6: Street trees: This subsection requires street trees to be planted along the public street frontages of all land divisions. For this development, the developer will need to pay a fee to the City of \$200 per tree, with trees required every 30 feet. The street tree fee is set by City Council and can be changed or increased by them.

Where existing on-site trees provide shade and storm water flow attenuation benefits for the public right-of-way, they may be counted as street trees. The applicant will receive credit for any existing street trees that can be retained through construction. The City Engineer will determine the number and location of required street trees, if any, that will be required along SW 155th Ave. This determination will happen as part of the review of the Preliminary Partition Land Division application.

**In regard to BDC 60.55 Transportation Facilities:**

60.55.25 Street and Bicycle and Pedestrian Circulation: Each of the new houses will be expected to have a walkway that connects it to the surrounding public sidewalk system. At a minimum, internal walkways will need 4 feet of unobstructed width. The driveway serving the two new houses proposed will need to be at least 16 feet wide (plus 3-foot wings at the street). Residential driveways are allowed to be up to 30 feet wide (plus 3-foot wings). If the applicant chooses to provide access to the proposed houses using the existing driveway curb cut, the applicant's submittal package shall include plans that show that adequate room is provided for all necessary vehicle turning movements.

60.55.30 Minimum Street Widths: SW 155th Ave. appears to have sufficient right-of-way width to meet current standards. If the proposed development damages or destroys the public sidewalk, the applicant will be responsible for replacing it.

60.55.35 Access Standards: At the intersection of any driveways with SW 155th Ave., the applicant's plans will need to show that the landscaping is designed to keep the Vision Clearance triangle—15 feet along the sidewalk and 15 feet along the driveway—clear of obstacles.

---

**SUPPLEMENTAL INFORMATION & RESOURCES**

**System Development Charges, including the Transportation Tax, may apply:**

The Washington County Transportation Development Tax (TDT) may be due for this development prior to issuance of building permits, in addition to other System Development Charges. The SDC charges are not assessed or evaluated through the land use application review process.

The tax is based on Measure No. 34-164, which was approved by the citizens of Washington County in 2008. The TDT is based on the estimated traffic generated by each type of development. All revenue is dedicated to transportation capital improvements designed to accommodate growth. The TDT is collected prior to the issuance of a building permit; or in cases where no building permit is required (such as for golf courses

or parks), prior to final approval of a development application. Options exist, however, for payment of the tax over time, or in certain cases, deferral of payment until occupancy.

To estimate the tax please use the TDT Self Calculation Form (see web address below). For more information please contact Jabra Khasho, City of Beaverton Transportation Engineer, at (503) 526-2221 or [jkhasho@BeavertonOregon.gov](mailto:jkhasho@BeavertonOregon.gov). For information regarding sanitary sewer, storm sewer, water, park, Metro construction excise, School District construction excise, and other applicable fees please see the Building Division web address below or contact Brad Roast, City of Beaverton Building Official, at (503) 526-2493 or [cddmail@BeavertonOregon.gov](mailto:cddmail@BeavertonOregon.gov).

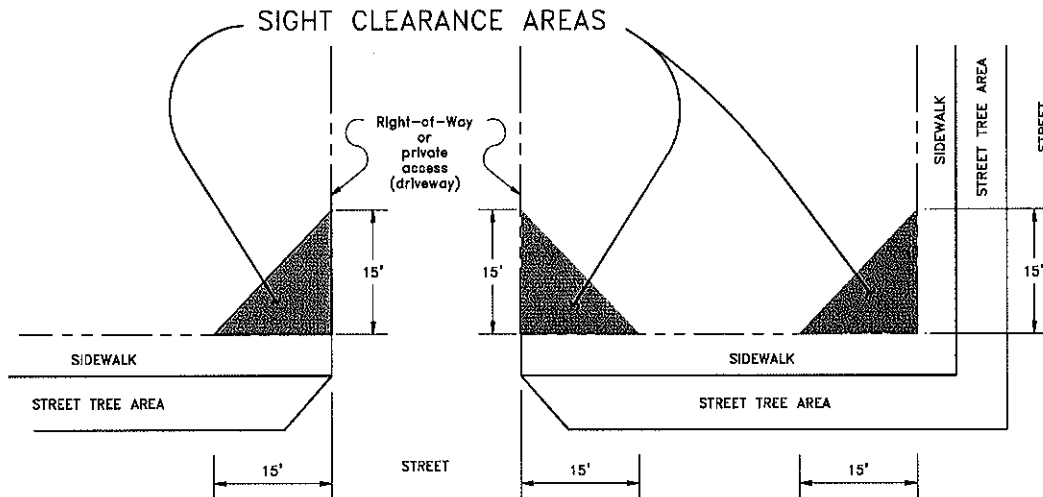
**Online resources:**

- A. Beaverton Development Code: [www.BeavertonOregon.gov/dc](http://www.BeavertonOregon.gov/dc)
- B. Beaverton Engineering Design Manual: [www.BeavertonOregon.gov/edm](http://www.BeavertonOregon.gov/edm)
- C. SDC Fee Schedule: [www.BeavertonOregon.gov/Building](http://www.BeavertonOregon.gov/Building)  
<http://www.beavertonoregon.gov/DocumentCenter/Home/View/605>
- D. Washington County TDT:  
[www.co.washington.or.us/LUT/Divisions/LongRangePlanning/PlanningPrograms/TransportationPlanning/transportation-development-tax.cfm](http://www.co.washington.or.us/LUT/Divisions/LongRangePlanning/PlanningPrograms/TransportationPlanning/transportation-development-tax.cfm)
- E. Traffic Impact Analysis Requirements:  
<http://www.beavertonoregon.gov/documentcenter/view/1570>

### 210.10.1 Visibility at Intersections

All work within the public right-of-way and adjacent to public streets and accessways shall comply with the standards of this section.

1. Except as otherwise provided in this section, no fence, berm, wall, commercial sign, vehicle, hedge, off-street parking space, or other planting or structure shall be erected, planted, placed, or maintained within a sight clearance area. If the relation of the surface of the lot to the streets is such that visibility is already obscured, nothing shall be done to reduce visibility within the sight clearance area.
  - a. The horizontal limits of the sight clearance area shall be a triangular area measuring 15 feet along the right-of-way or private access, as shown in the following diagram. The edge of the hard surfaced area of the private access, be it roadway, curb, or sidewalk, shall be treated as the right-of-way line in determining the site clearance areas.

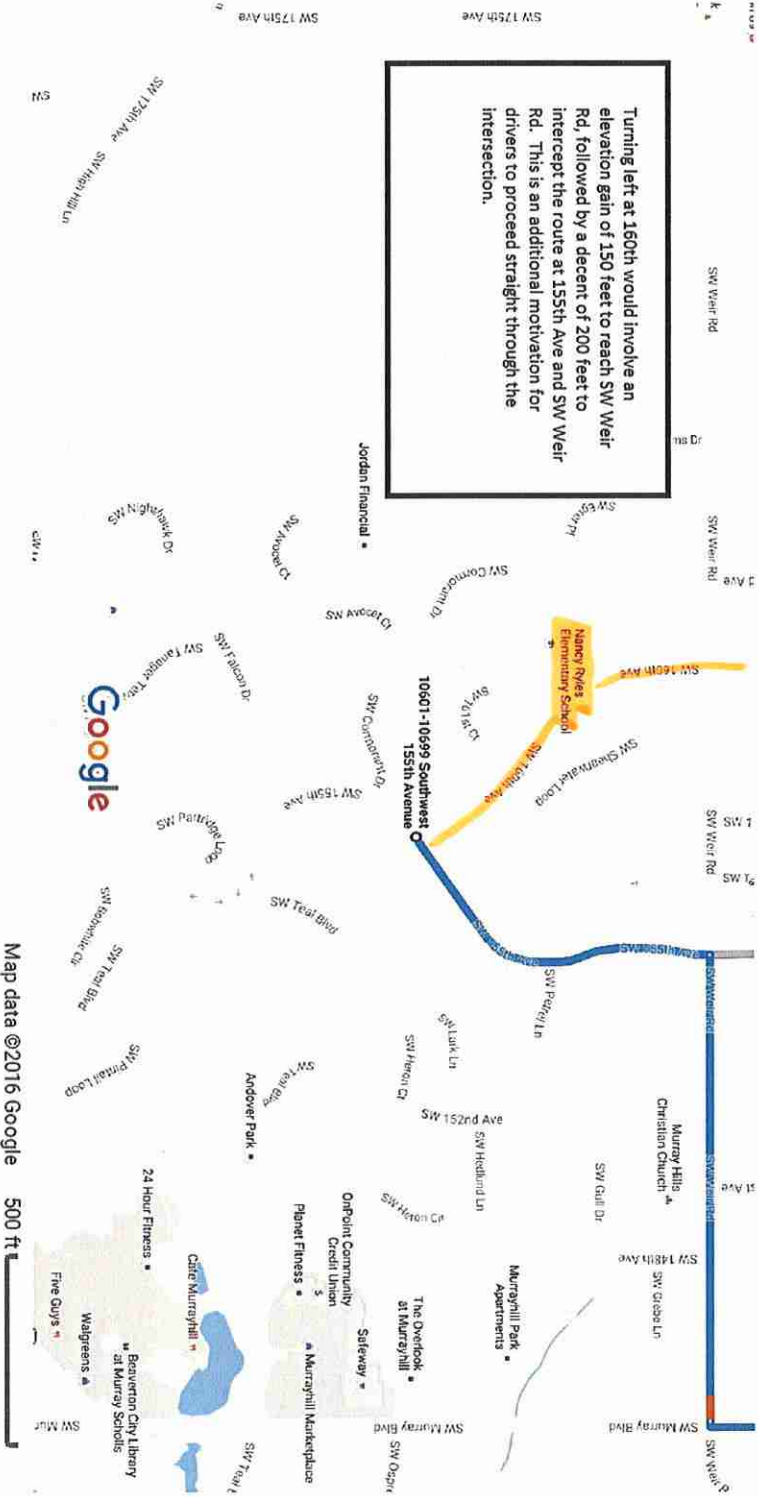


- b. The vertical limits of the sight clearance area shall be two planes. The lower plane shall intersect the right-of-way line at points three (3) feet above the elevation of the centerline of the adjoining street. The upper plane shall intersect the right-of-way line at points ten (10) feet above the elevation of the centerline of the adjoining street.



10601-10699 Southwest 155th Avenue, Beaverton, Drive 4.8 miles, 14 min  
OR 97007 to 12725 SW Millikan Way, Beaverton, OR

Turning left at 160th would involve an elevation gain of 150 feet to reach SW Weir Rd, followed by a descent of 200 feet to intercept the route at 155th Ave and SW Weir Rd. This is an additional motivation for drivers to proceed straight through the intersection.



Map data ©2016 Google

500 ft

Export PDF

Adobe Export PDF

Convert PDF files to Word or Excel Online

Select PDF file

route to city hall 2.pdf

Convert to

Microsoft Word (\*.docx)

Document Language:

English (US) Change

Convert

Create PDF

Edit PDF

Comment

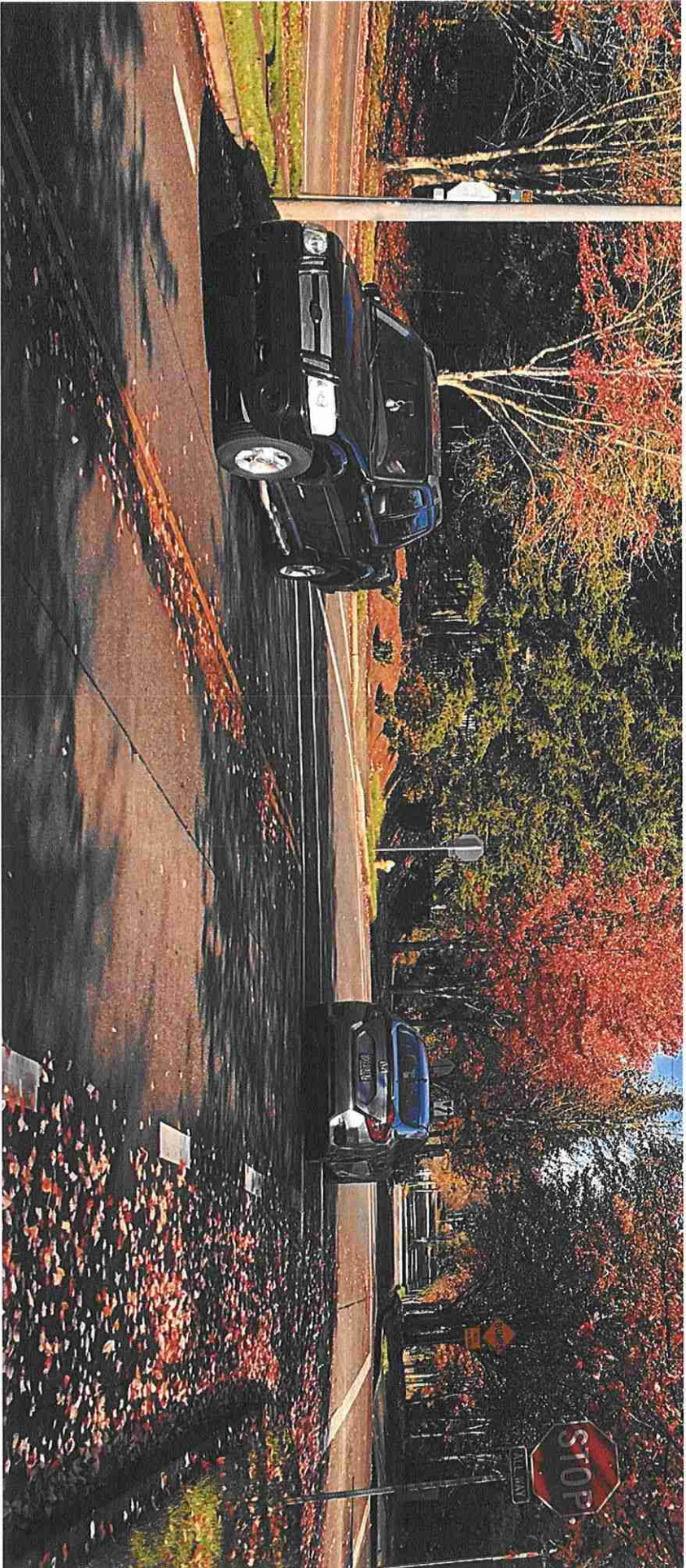
Store and share files in the Document Cloud

Learn More

Ask me anything



Ex. 7

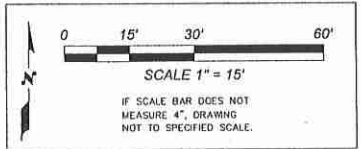
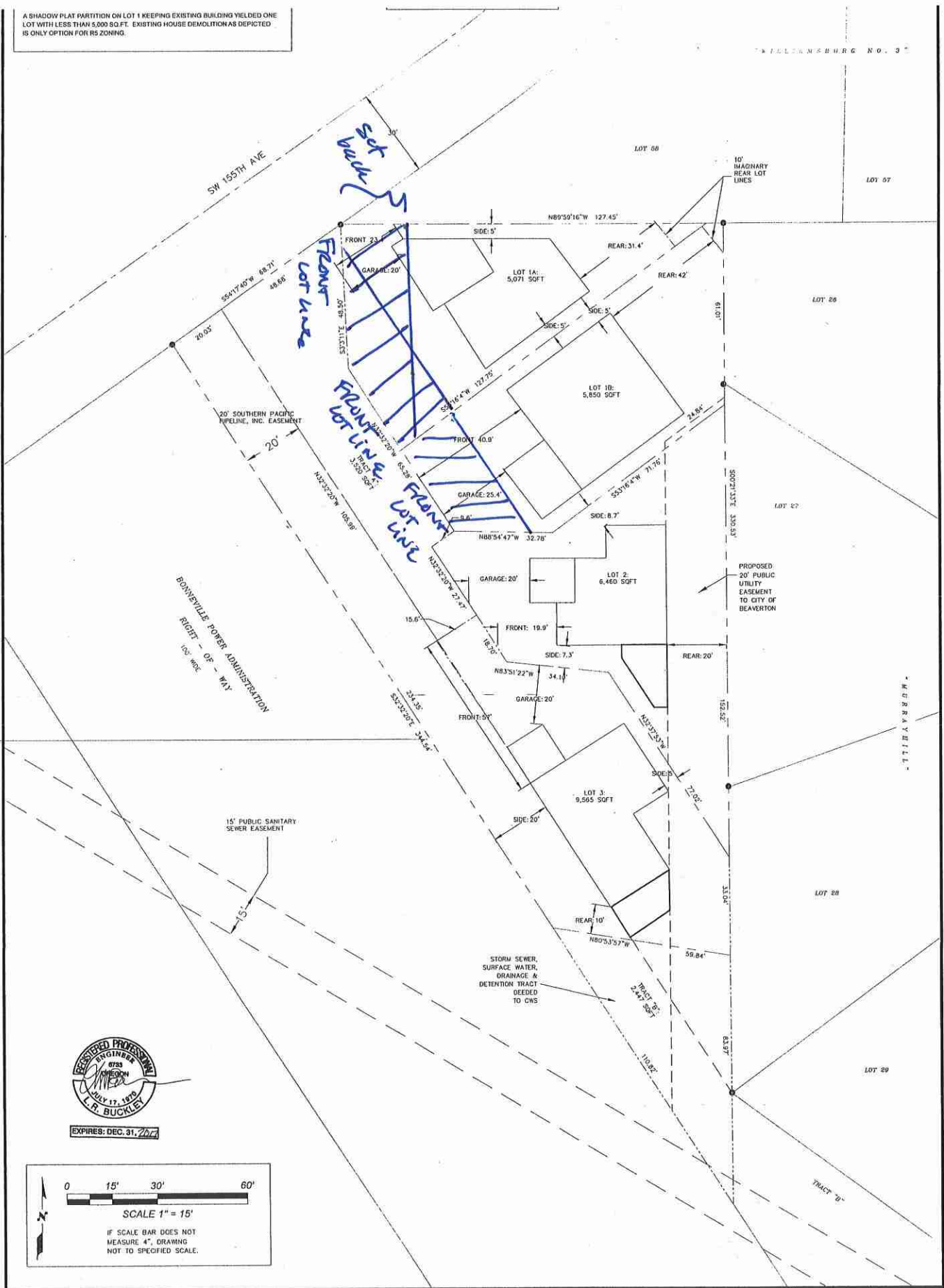


Ex. 8



A SHADOW PLAT PARTITION ON LOT 1 KEEPING EXISTING BUILDING YIELDED ONE LOT WITH LESS THAN 5,000 SQ.FT. EXISTING HOUSE DEMOLITION AS DEPICTED IS ONLY OPTION FOR R5 ZONING.

DAVIDSONSBURG NO. 3



4080 SE 11th  
MIDLAND  
ENGINEERING  
MANAGEMENT

Tract "A" & 3-Lot Partition-10510 SW 155th Ave

PAGE 3 of 17

Ex. 9