Beaverton
OREGON

STAFF REPORT

HEARING DATE:	November 09, 2016
TO:	Planning Commission
STAFF:	Elena Sasin, Assistant Planner
PROPOSAL:	**APP2016-0002** and **APP2016-0003** Appeals of a Director's decision to approve three case files associated with the three lot partition proposal. The subject site is approximately 0.75 acres.
SUMMARY:	The subject lot is located at 10510 SW 155th Avenue. The applicant, ADTM Development, LLC, has submitted a Preliminary Partition application for a 3-Lot Partition in the R5 Residential Urban Standard Density District. The proposal includes Tree Plan 2 approval to remove 18 Community Trees from the subject site and approval of a Flexible Setback for a Proposed Residential Land Division which would reduce the rear yard requirement for the proposed Lot 3.
APPELLANTS:	**Murrayhill Owner's Association** (APP2016-0002) 11010 SW Teal Boulevard, Beaverton OR 97007 **Richard King** (APP2016-0003) 15460 SW Heron Court, Beaverton, OR 97007
APPLICANT:	**ADTM Development, LLC** 32070 SW Willamette Way East, Willamette, OR 97070
DECISION CRITERIA:	Appeal of the Planning Commission's decision is reviewed under Section 50.65 and Sections 50.80 through 50.83 of the Development Code. Preliminary Partition approval criteria are identified in Section 40.45.15.4.C of the Beaverton Development Code. Tree Plan 2 approval criteria are identified in Section 40.90.15.2.C of the Beaverton Development Code. Flexible Setback for a Proposed Residential Land Division approval criteria are identified in Section 40.30.15.3.C in the Beaverton Development Code. Facilities Review approval criteria are identified in Section 40.03.
RECOMMENDATION:	Affirm the Planning Director's decision to approve with conditions as stated in the Notice of Decision issued September 22, 2016, within amendment that modifies one condition identified herein.

APP2016-0002 & 0003 – SW 155th 3-Lot Partition Appeal
(LD2016-0002, TP2016-0003 and FS2016-0001)

Background

On September 22, 2016, the Planning Director issued an approval for a three lot partition at 10510 SW 155th Avenue. The existing home on the property is proposed to remain. The three land use applications include:

1. Preliminary Partition (case file LD2016-0002),
2. Tree Plan 2 (case file TP2016-0003) and
3. Flexible Setback for a Proposed Residential Land Division (case file FS2016-0001)

After issuing the Notice of Decision the City received two appeals, the first from the Murrayhill Owner's Association. The second appeal was received from Richard King, an abutting property owner. On October 10, 2016, the Community Development Director determined both appeals to be valid having submitted the requirements identified in Section 50.65.2 of the Development Code. Notice of appeal was issued on Thursday, October 20, 2016 in accordance with the procedure identified in Section 50.65 of the Development Code.

Hearing Type

Pursuant to Section 50.65.4 of the Development Code, the appellate decision making authority on appeal of Type 2 decisions shall be the Planning Commission. The appeal hearing for Type 2 decisions shall be *de novo*, which means new evidence and argument can be introduced in writing, orally, or both. The hearing of the appeal shall be conducted in the manner specified in Sections 50.80. through 50.83. The decision of the appellate decision making authority for appeal of Type 2 decisions shall be the final decision and shall not be subject to further appeal to the City Council.

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ANALYSIS AND FINDINGS
APP2016-0002 & APP2016-0003 SW 155th Ave 3-Lot Appeal

In considering the matter of appeal, Section 50.65.2.E.of the Development Code (Item E) instructs the appellant to identify the specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error.

The appellants' contentions are identified in the appeal forms and written statements received. **Exhibit 1** is the Appeal Form and Statement from Murrayhill Owner's Association date stamped October 04, 2016. **Exhibit 2** is the Appeal Form and Statement from Richard King dated October 04, 2016. Below are eight contentions that staff found in review of both statements as received:

Contention No.1 – Decision lacks explanation as to how Director determined the Front, Side and Rear lot lines.

Contention No. 2 – Flexible Setback proposal is incompatible with the surrounding neighborhood.

Contention No. 3 – Storm drainage system inadequately prevents channelized flow of storm water from exiting the property and violates both state and local law.

Contention No. 4 – Tree removal proposal will add to the storm drainage concern and is also inconsistent with the surrounding area.

Contention No. 5 – Traffic safety analysis was not conducted and the applicant did not demonstrate how there is adequate sight distance.

Contention No. 6 – Conditions of approval are not enough to mitigate the impacts of the proposal.

Contention No. 7 – Applicant's written narrative erroneously states "M & T Development LLC, c/o Mike Safstrom" as the property owner. The owner currently on the title is ADTM.

Contention No. 8 – Legal access to the property does not exist according to Murrayhill Plat No. 18 therefore the existing access should not be enlarged with this proposal.

Staff extracted specific statements from the appellants' documents referred to above. Following the contention is the staff response thereto.

Appellant Contention No. 1 – Decision lacks explanation as to how Director determined the Front, Side and Rear lot lines.

The appeal statements (exhibits 1 and 2), received from both Murrrayhill Owner's Association (referred to herein as MOA) and Richard King (referred to herein as King), raise concerns about the determination of the proposed lot lines. Specifically, the appellants question how the determination was made as to which property line should be the "front lot line", "rear lot line" and "side lot line". Both statements also indicate that the findings did not identify if the proposed lots are considered a "corner", "interior" or "flag" lots. Additionally, both appeal statements questioned if "Tract A" was considered a "street" or not. Below is a summary list of identified appeal statements received from both the King and the MOA appeals.

Summary:
In part, the appeal statements received from the MOA and King, found on page 3 of the King appeal and page 2 of the MOA appeal, read:

> "The Decision under appeal is not supported by adequate findings which explain how the determination was made as to which lot lines constituted 'front lot line', 'side lot lines', and 'rear lot lines,' as defined in Chapter 90 of the Beaverton Development Code ('BDC') and made applicable to this decision via BDC 20.05.15. Nor does it explain how the City identified and measured the front, side, and rear yards and associated setbacks, as shown on the plat."

For reference, below are the definitions from Chapter 90 of the Beaverton Development Code (referred to herein as BDC) of "front lot line," "rear lot line" and "side lot line" found on page DF-26:

> ***Front Lot Line.*** *For an interior lot, the lot line abutting a street; for a corner lot, a lot line abutting either street, as determined by the Director at the time of initial construction; for flag lots, the line determined by the Director at the time of initial construction which shall then govern the designation of side and rear lot lines. [ORD 3293; November, 1982.)*
>
> ***Rear Lot Line.*** *A lot line which is opposite to and most distant from the front lot line. In the case of a corner lot, the Director shall determine the rear lot line. In the case of an irregular or triangular-shaped lot, a lot line ten feet (10') in length within the lot parallel to and at the maximum distance from the front lot line. In the case of a through lot, each street has a front lot line. [ORD 4071; November 1999]*
>
> ***Side Lot Line.*** *Any lot line which is not a front or rear lot line.*

In response to the definition of "front lot line" the appellants also added (page 3 of the King appeal and page 2 of the MOA appeal) that there are categories of "lots" which were not identified in the findings:

> "The Code definition of front lot line presumes that any lot is either an 'interior lot,' 'corner lot,' or 'flag lot.' The findings do not identify which of these three categories of 'lot' applies to each of the three proposed lots."

Both appeal statements also mention the existing structure located on the site and that the proposal would alter the previously established lot line determination. In part, the appeal statements on page 3 of the King appeal and page 2 of the MOA appeal read:

> "...The decision under appeal does not explain how that determination can be changed retroactively, even though the determination is supposed to be made at 'initial construction.' If the time of initial construction (~1992) is used as the milestone for the existing dwelling on proposed Lot 1, then, as proposed, the 'rear lot' does not meet the 20-foot setback."

Staff Response to Contention No. 1

Given the irregular shape of these lots, as produced within the triangular shape of the parent parcel, the Planning Director applied discretion afforded by the Lot Line definitions found in the BDC of Chapter 90. In this case, the Director designated lot lines for consistency with the definitions, but also sought to apply the most comparable yard designation in review of abutting properties..

Past practice in determining the rear and side lot lines, is to match existing yards of abutting properties where possible and appropriate. In this case, abutting properties located to the east have rear yards abutting the project side. Staff refer to exhibit 7 provided to this report that further shows the yard designations of abutting properties, comparable to proposed yards of the applicant's partition. The exhibit shows the side yard of proposed Lot 1 to abut the side yard of proposed Lot 2. Both Lots 1 and 2 have proposed rear yards along the eastern property boundary and this will match the rear yards of abutting properties. For proposed Lot No. 3, a rear yard is not shown to match the rear yard of the abutting property. However, staff observes the 20 foot public utility easement that will be recorded with this partition and how the easement will preclude home construction. At 20 feet in width, the easement essentially serves as a rear yard setback, thereby matching the same rear yard applied on the abutting property to the east.

The BDC provides definitions (Chapter 90, page DF-26) of only two "types" of lots; a corner lot and interior lot.

> ***Lot, Corner.*** *A lot located at the intersection of two or more streets. A lot abutting on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than 135 degrees.*
>
> ***Lot, Interior.*** *A lot other than a corner lot, with frontage only on one street.*

There is no definition for flag lot. Both Lots 1 and 3, as shown, abut a portion of land that will be graded and paved for vehicle access. This area will be located in a tract of land, the boundary of which is shown to the applicant's site plan. The tract of land, with new pavement to benefit all three lots will function the same as a street and can therefore be considered the new front line for proposed Lots 1 and 2. Despite meeting the definition of "interior lot", Lot 3 is seen as a flag lot because of the long 20 foot wide pipeline easement that is part of Lot 3, representing the "pole" of the "flag" lot. Lot 2 is the only lot which does not abut a street, however, because access to Lot 2 is provided through a relatively narrow, long access way (Tract A), it too is most comparable to a

flag lot. In addition, the definition of "lot" (BDC, Chapter 90, page DF-25) does not include any "type":

> ***Lot.*** *Any continuous area, tract or parcel of land owned by or under the lawful control and in the lawful possession of one distinct ownership undivided by a dedicated street or alley or another ownership. An abutting "platted lot" or property described by metes and bounds in the same ownership shall be considered a part of such "lot". See also "Parcel". [ORD 4584; June 2012]*

Conclusion:
The Director applied discretion afforded by the BDC definitions when determining if the proposed lot lines met the code. There is no requirement that the Decision explain how lot lines were determined. The Decision applies past practice of matching side to side yard, and rear to rear yard, as much as possible while ensuring that the proposed lot lines are consistent with the BDC definitions. For the reasons stated above, staff finds the appellants' contentions do not show how an error occurred as a matter of fact law or both.

Appellant Contention No. 2 - Flexible Setback proposal is incompatible with the surrounding neighborhood.

Both appeal statements refer to the decision issued by the city for Flexible Setback approval and claim the findings in response to approval criterion 3 are inadequate. The King appeal statements states the following:

> "...In order to obtain such approval, the applicant must satisfy the requirements set out in BDC 40.30.15.3.C (*i.e.,* flexible setback application in conjunction with a land division). In this case the Applicant has not met that burden and, as a result, the findings of fact in the Decision are inadequate. Specifically, an applicant must present evidence establishing that..."

The King appeal restates approval criterion 3, found on page AP-53 of the BDC:

> "The proposal is compatible with the surrounding area regarding topography, vegetation, building character, and site design. In determining compatibility, consideration shall be given to harmony in: scale, bulk, lot coverage, density, rooflines, and building materials. [ORD 4473; March 2008]"

The MOA appeal suggests that unless the applicant can demonstrate compatibility with all the criteria above, approval of the Flexible Setback request should not be granted.

Both appeals identified that the Decision did not define "surrounding area" and suggest that "...at a minimum, the four (4) houses on SW Herron Court and one house on SW 155th Avenue" should be included in the identification of the surrounding area of this proposal.

Both appeal statements also identify ways in which the proposed development is "incompatible" with the surrounding area and therefore does not satisfy all of the approval criteria for a Flexible Setback. The size of the proposed building envelopes, the setbacks, irregular lots, and lack of design details are some of the concerns raised in the appeal statements.

Additionally, the King appeal states (page 5):

> "Lastly is should be noted that the findings also rely on the MOA to insure that the rooflines and building materials are consistent with the surrounding areas. However, the MOA has taken the position that the proposed development is fundamentally inconsistent with the surrounding area. The MOA cannot resolve this issue by restricting building materials or rooflines."

Staff Response to Contention No. 2

In response to the appellants' claim that the proposal is incompatible with the surrounding area, staff notes that the "compatibility" criterion is only applicable to the Flexible Setback application, and only applicable to the rear yard for Lot 3 (exhibit 7).

At this point, no building(s) are proposed for Lots 2 and 3 and the applicant is not required to provide home plans for evaluating the approval criteria.

The applicant has proposed minimal grading which meets the BDC's grading differential standards (Section 60.15.3) as shown on page 4 of 17 on the applicant's plans. By maintaining a topography similar to what exists on the site now, the proposal satisfies that part of Criterion 3 in determining compatibility with the surrounding area. Below is the staff response to specific components of Approval Criterion No. 3 that appellants have identified.

In response to:

> "The proposal is compatible with the surrounding area regarding topography..."

Staff finds applicant has proposed minimal grading which meets the BDC's grading differential standards (Section 60.15.3) as shown on page 4 of 17 on the applicant's plans. By maintaining a topography similar to what exists on the site now, the proposal satisfies that part of Criterion No. 3 in determining compatibility with the surrounding area.

In response to:

> "The proposal is compatible with the surrounding area regarding...vegetation..."

The applicant is proposing to remove 18 community trees from the subject site. To avoid damaging the trees located on abutting properties, the applicant has proposed boring instead of trenching in the Public Utility Easement. Boring is the method preferred by both the City Arborist and the applicant's Arborist, Morgan Holen for installing utilities (exhibit 8). The applicant has not proposed mitigation trees and the BDC does not require mitigation for Community Trees, however, the applicant is required by Clean Water Services (CWS) to enhance the vegetated corridor, also known as "Tract B", which is approximately 2,477 square feet. The applicant has provided a CWS approved enhancement plan (page 17 of 17 on the applicant's plans) which includes the planting of 25 trees and 125 shrubs.

In response to:

> "The proposal is compatible with the surrounding area regarding...building character and site design..."

Single-family homes in residential zones are exempt from Design Review (BDC, 40.20.10.3.A and B). Building character, site design, scale, bulk, rooflines and building materials are all reviewed through Design Review, which in this case does not apply to single-family homes. Staff also understands that the Murrayhill Homeowners Association has covenants, conditions and restrictions (CC&Rs) in place that are applicable to future home construction. If these CC&Rs identify architectural standards, the future home builder of Lots 2 and 3 will need to obtain design approval from the MOA.

In response to:

> "In determining compatibility, consideration shall be given to harmony in: ...bulk..."

The BDC only defines "bulk" in regard to Bulk Fuel Dealerships and Bulk Retail Use. Code standards that regulate the amount of building intensity (e.g. Floor Area Ratio) do not apply to single family lots.

In response to:

> "In determining compatibility, consideration shall be given to harmony in: ...lot coverage..."

In single family residential zones, no minimum or maximum lot coverage standard applies. Lot coverage is addressed through setbacks. In this case, the applicant's Flexible Setback proposal will not reduce the setback applicable to abutting properties because the proposed easement and "Tract B" abutting the affected yard are unbuildable and will act as a yard which meets the standard 20 feet for a rear yard in an R5 zone.

In response to:

> "In determining compatibility, consideration shall be given to harmony in: ...density..."

The density requirement for the R5 Residential Urban Standard Density District is 5,000 square feet per dwelling unit (BDC, Chapter 20, Section 20.02.15.A). Each proposed lot is shown to exceed the minimum standard for lot size.

In response to:

> "In determining compatibility, consideration shall be given to harmony in: ...rooflines, and building materials..."

Design Review is not applied to single-family homes in residential zones and a Preliminary Partition does not require that the same applicant build the homes. However, any home built on these lots will be subject to the Development Standards found in Chapter 20, Section 20.02.15 of the BDC, which include minimum yard setbacks and maximum height restrictions. Staff understands that because the subject property is encompassed within the MOA, it would be subject to the CC&rRs imposed by the MOA.

Conclusion:
The Flexible Setback request is for the rear property line of proposed Lot 3. This yard abuts the proposed vegetated corridor which is to be set aside as an unbuildable tract of land and will be enhanced. In addition, both the proposed 20 foot Public Utility Easement and existing 20 foot pipeline easement will ensure that no structures are erected closer than 20 feet to the abutting properties to the east or west. The flexible setback will only affect a setback internal to the parent parcel. Aside from the rear lot line of Lot 3, all other setbacks meet the standard requirements for the zone. Though the applicant is not proposing to build homes on the lots, the Flexible Setback would provide a larger building area, which is more like the surrounding homes, while still maintaining the greatest distance required in the zone from adjacent properties. Staff finds that the Flexible Setback request meets all approval criteria, including compatibility with the surrounding area.

Appellant Contention No. 3 – Storm drainage system inadequately prevents channelized flow of storm water from exiting the property and violates both state and local law.

Both appeal statements reference BDC 40.03.1.A which states the following:

> "All critical facilities and services related to the proposed development have, or can be improved to have, adequate capacity to serve the proposed development at the time of its completion."

Both appeal statements also site BDC 40.03.1.J which states:

> "Grading and contouring of the development site is designed to accommodate the proposed use and to mitigate adverse effect(s) on neighboring properties, public right-of-way, surface drainage, water storage facilities, and the public storm drainage system."

The appeals claim that the proposed storm drainage system would not adequately prevent channelized flow of storm water onto neighboring properties. The appeals (MOA page 4 and King page 5), in part, state:

> "...the proposed storm drainage system is proposed to have an 'outfall' 'at the southernmost portion of proposed Lot No. 3.' This outfall is not adequate to prevent channelized flow of stormwater from exiting the property, in violation of both state and local law."

The appeal statements also claim, on page 6 of the King appeal and page 5 of the MOA appeal, that the proposed additional hardscape:

> "...will capture water which I currently absorbed into the ground over a broad area, and will instead concentrate and accelerate these surface waters into channelized flows. The use of a rip rap outfall will greatly increase channelized flow onto neighboring properties, in violation of BDC 40.03.1.J. This application does not adequately define how the proposed partition and development will diffuse water to prevent erosion and impact downstream water quality."

Staff Response to Contention No. 3

As shown on the applicant's plans, on page 8 of 17, and addressed in the Decision, the applicant has proposed the use of flow-through planters for all three proposed lots. The flow-through planters are designed to help offset the amount of water that reaches the storm sewer and ultimately the outfall. As part of the materials submitted, the applicant has provided a Preliminary Storm Water Report prepared by Environmental Management Systems, Inc. (exhibit 6). As stated in the Decision, the Storm Water Report was reviewed by the City's Site Development Senior Engineer, Jim Duggan, who found that the proposal met the requirements at this stage but provided multiple conditions of approval to ensure full compliance with City's and State's requirements. The appellants have not provided information, reports or specific details which explained how the applicant's proposal failed to meet State and/or local requirements.

Conclusion:
The contention is unsubstantiated by professional analysis to support any claim that the proposed storm drainage system is inadequate. For the reasons stated above, staff finds the appellants' contentions do not show how an error occurred as a matter of fact law or both.

Appellant Contention No. 4 - Tree removal proposal will add to the storm drainage concern and is also inconsistent with the surrounding area.

Both appeal statements claim that the proposed removal of trees is "aggressive" (King, page 6 and MOA, page 5) and proposes to remove trees which are not located within proposed building envelopes. The appeal statements, in part, claim:

> "Trees marked 3,7,8,9,10,26,27, and 28 are not with the proposed building envelopes, and are marked for removal for intended grading and extensive hardscape on this steep lot, which also is not consistent with the surrounding area..."

The appellants are also concerned with the potential effect the tree removal will have on stormwater drainage, stating that the removal of trees on the subject site:

> "...will push extra water onto neighboring lots, especially Murrayhill lots 28 and 29, creating liability for neighbors and downstream fish habitats, which also violates Metro's objectives. Additionally, trees #20 (34" dbh) and #25 (33" dbh) are large trees more than 75' tall, which take in huge amounts of water per day...and, therefore, their intended removal will further exacerbate drainage and compatibility issues."

Staff Response to Contention No. 4

The removal of these trees is permitted because the applicant has met the approval criteria for Tree Plan 2. Criterion No 4 reads:

> "If applicable, removal of any tree is necessary to accommodate physical development where no reasonable alternative exists" (BDC, Chapter 40, Section 40.90.15.2.C.4).

In an email sent to staff dated September 10, 2016 (exhibit 9), the applicant explained that when Kinder Morgan was made aware of the development plans on the subject site, they sent a letter to the applicant which included "a list of their 'Guidelines of Design and Construction' near the pipeline" which stated that "planting of shrubs and trees is not permitted on the KM pipeline easement" (exhibit 10). Kinder Morgan is the current owner of the pipeline which goes through the subject site along the western property boundary. Therefore the trees located on the pipeline easement are to be removed although they are not within the hypothetical building envelope.

Trees marked 7 and 9 are within proposed "Tract A" which serves as the private driveway for all three proposed lots. The applicant has not proposed a wider driveway than the minimum width required by the City.

Trees marked 26, 27 and 28 are located within the proposed Public Utility Easement. During a meeting held on September 7th, the City Site Development Engineer, Jim Duggan, informed the applicant that vegetation over 20 feet in height is not permitted within utility easements. Therefore, trees numbered 23, 26, 27, and 28 warrant removal.

Conclusion:
For the reasons stated above, staff finds the appellants' contentions do not show how an error occurred as a matter of fact law or both.

Appellant Contention No. 5 – Traffic safety analysis was not conducted and the applicant did not demonstrate how there is adequate sight distance.

King appeal (page 6) states (in part):

> "*The decision dismisses concerns regarding traffic safety, by simply stating that a traffic impact study is not required…*"

Both the King appeal (page 6) and the MOA appeal (page 5) claim that the applicant has not provided a sight distance study. The following is an excerpt from the King appeal (page 6):

> "…the Applicant has not demonstrated that the approach road has adequate sight distance to *not* create a safety issue for the 85-percentile speed of traffic which uses SW 155th Avenue. The applicant has not provided a sight distance study, as required by BDC 60.55.35(1)."

Both appellants raise concerns about the "steep an angled approach" (King, p. 6 and MOA, p. 5) to SW 155th:

> "Neighbors have commented about previous accidents near where the proposed side street will access SW 155th Avenue, and there is some concerns about some sight-line issues, especially turning left out of a steep and angled approach to 155th street, potentially putting vehicular traffic and pedestrians at risk" (MOA, p. 5).

Staff Response to Contention No. 5

The proposed development will result in a net addition of two single-family residences which is anticipated to generate no more than 20 additional vehicle trips per day. A Traffic Impact Analysis is required when the development proposal is expected to generate 200 trips or more per day.

In response to the "sight distance study" requirement, staff refer to the referenced section of the BDC:

> "60.55.35. Access Standards. [ORD 4302; June 2004] 1. The development plan shall include street plans that demonstrate how safe access to and from the proposed development and the street system will be provided. The applicant shall also show how public and private access to, from, and within the proposed development will be preserved" (BDC, Chapter 60, Section 60.55.35.1, p.SR-235).

A sight distance study is not required for the proposed development.
As stated in the Decision, page 10, "[t]he City Transportation Engineer has reviewed the access proposal in response to additional standards provided in Section 60.55.35 of the Development Code. Staff observed certain shrubs along the street frontage of SW 155th Avenue that partially hinder view of on-coming vehicles as seen within the subject property. These shrubs should be trimmed to provide better visibility. If the shrubs are located on the applicant's property, a conditional of approval requires removal.
Currently, the existing driveway serves one single family home which is likely accessed by driving in head on but exiting by backing out onto SW 155th Avenue, affecting the driver's visibility. The applicant is proposing a plan that would allow all three lots to turn around before safely exiting onto SW 155th Avenue head on.

The subject site is also located between two speed humps, 20 feet to the west from the western property line and approximately 200 feet to the east, from the eastern property line. The City has also installed reflectors on the curb near the intersection of SW 155th Avenue and SW Nightingale Court to alert drivers of the upcoming curve.

Conclusion:
For the reasons stated above, staff finds the appellants' contentions do not show how an error occurred as a matter of fact law or both.

Contention No. 6 – Conditions of approval are not enough to mitigate the impacts of the proposal.

King appeal (page 6) states (in part):

> *"Under BDC 10.65.1, the City 'cannot approve applications the impacts of which cannot be mitigated through reasonable roughly proportional conditions of approval.' The proposed partition poses a significant risk of harm to Mr. King and the surrounding homeowners."*

The King appeal statement claims (page 6) that the conditions of approval are "not sufficient" and at the same time too onerous:

> "However, given the investment required, it is possible that no builder will be interested in taking on this project and completing the conditions of approval."

Also on page 6 of the King appeal:

> "...the proposed development is constrained by a vegetated corridor and wetlands which require special facilities to mitigate contaminated runoff from impacting a tributary of Summer Creek. Substantial water control measures are necessary to protect against erosion and drainage issues."

Page 7 of the King appeal states (in part):

> "Temporary erosion and water control measures could easily fail if the buildout is not completed. In order to 'mitigate' the 'impact' of the proposal, the Decision should require the owner to establish that all improvements designed to protect the surrounding properties (*i.e.,* water management systems, erosion control measures, etc.) can will be funded and timely completed before tree removal and site grading begins."

Also on page 7 of the King appeal:

> "Here, ADTM proposes to donate a portion of the Property for a public purpose – i.e., preservation of wetlands. It appears that ADTM purchased the Property for $337,000 in January of 2016 with a mortgage from Veristone MTG, LLC for the full purchase price. Not only is lender consent required, but this also suggests the owner is overleveraged with respect to this property. The surrounding properties will be damaged if the property is prepared for a final partition plat (*i.e.,* tree removal, grading, etc.) and the plat cannot be completed due to lack of lender consent. The City should use its discretion under BDC 10.65.1 to expand the security requirements in the Decision to ensure that the property is not prepared for development unless and until the plat can be completed as proposed and the development completed."

Staff Response to Contention No. 6

As part of the required submittal materials, the applicant obtained a Service Provider Letter from Clean Water Services. The Service Provider Letter includes 21 conditions of approval for the protection of water quality.

As part of the Site Development permit process, the applicant will have to demonstrate compliance with the conditions of approval provided by Clean Water Services.

Conclusion:
For the reasons stated above, staff finds the appellants' contentions do not show how an error occurred as a matter of fact law or both.

Contention No. 7 – Applicant's written narrative erroneously states "M & T Development LLC, c/o Mike Safstrom" as the property owner. The owner currently on the title is ADTM.

The King appeal (page 7) states (in part):

> "Under BDC 40.45.15.4.D, a partition application can only be made by the property owner or its authorized agent. Some factual errors in the Application raise concerns about whether the appropriate party has actually submitted the application. The application lists the property owner as "M & T Development LLC, c/o Mike Safstrom."

Staff Response to Contention No. 7

An error was made on page 1 of the applicant's written narrative, stating "M & T Development LLC, c/o Mike Safstrom" as the property owner. All land use application forms submitted by the applicant correctly state "ADTM Development, LLC" as the property owner and applicant. M & T Development, LLC is the applicant's representative. The applicant sent an email dated October 24, 2016 (exhibit 11) to staff which states, in part:

> "Mike Safstrom is an authorized agent and partial owner."

Conclusion: Staff finds the appellants' contentions do not show how an error occurred as a matter of fact law or both. The contention has no correlation to the approval criteria.

Contention No. 8 – Legal access to the property does not exist according to Murrayhill Plat No. 18 therefore the existing access should not be enlarged with this proposal.

Page 8 of the King appeal states (in part):

> "The decision erroneously states that the City of Beaverton released the restriction on access from Lot 108 in Murrayhill Plat No.18 in a letter. The letter provided by the City does not release the restriction which is clearly noted on Plat No. 18 (outlines in detail in Mr. King's original comments). Rather that letter is simply a request from a prior developer regarding access. It appears the access restriction from Plat No. 18 may have simply been missed. Access should not be enlarged now."

Staff Response to Contention No. 8

Staff refer to the findings in the Decision, on page SR-10 of the report, which explain (in part):

> "...The City Attorney finds the existing access to be legally obtained despite objections raised in written testimony concerning a note shown to the recorded subdivision plat for Murrayhill No. 3."

As explained in the Decision, the plat note from Murrayhill No. 3 (exhibit 12) states that Lot 108 (the subject property) does not have legal public access as required. The same note also acknowledges that public access can be obtained. On plat Murrayhill No. 3, in the second

sentence, it reads: "Until such public access is provided Lot 108 shall be considered a part of Lot 113 and shall not be conveyed separately from Lot 113." Staff observes the need for a plat note of this type at the time of recording the Murrayhill No. 3 plat (in 1988) because road improvements to that portion of SW 155th Avenue along property frontage were inadequate for access purposes. Necessary road improvements to this portion of SW 155th Avenue were constructed in a later phase of the Murrayhill development. The plat recorded for Murrayhill No. 18 (in 1992) shows continuation of the SW 155th Avenue right-of way up to and along the frontage of Lot 108. In a letter dated June 12, 1992, (exhibit 13) the City of Beaverton released the restriction of access as shown on Murrayhill No. 3 plat. The same letter acknowledges the new plat of Murrayhill No. 18 where Lot 108 is identified and is also absent any note that restricts access to SW 155th Avenue for Lot 108. Staff also acknowledges a Building Permit issued for the existing dwelling on Lot 108, also in the year 1992. The existing driveway access to SW 155th Avenue was constructed as part of that permit.

The letter (exhibit 14), mentioned above and on page 8 of the King appeal, was addressing a condition of approval which was intended to restrict access onto "major collector routes". The portion of SW 155th Avenue that is adjacent to the subject property is classified as neighborhood route. SW 155th Avenue turns into a "major collector route" at the intersection of SW 155th Avenue and SW 160th Avenue which corresponds to the boundaries of Plat No. 18. The plat notes of Murrayhill Plat No. 18 are not applicable to Lot 108 which is part of Murrayhill Plat No. 3.

Conclusion:
For the reasons stated above, staff finds the appellants' contentions do not show how an error occurred as a matter of fact law or both.

SUMMARY

For the reasons explained herein, staff disagrees with contentions expressed by both appellants in response to the applicant's proposed lot lines and setbacks. Staff finds the development proposal to be consistent with the definitions found in Chapter 90 of the Beaverton Development Code.

For the reasons explained above, staff finds that the proposed Flexible Setback for a Proposed Residential Land Division, for the rear lot line of proposed Lot 3, meets all of the approval criteria, including criterion 3 which addresses "compatibility with the surrounding area". Staff disagrees with contentions expressed by both appellants that the Flexible Setback request fails to meet the Flexible Setback requirements.

Both appellants claimed that the proposed stormwater drainage system is inadequate and does not protect neighboring properties from channelized flow. However, these claims are unsubstantiated by professional analysis therefore for this reason, and reasons previously stated herein, staff disagrees with the contentions expressed by both appellants in response to the proposed stormwater drainage system.

Through a Type Two Tree Plan, the Beaverton Development Code permits any number of Community Trees to be removed from a site within one calendar year. The trees being proposed for removal are Community Trees and no other tree removal has occurred on this site within the calendar year. The trees being proposed for removal are either within a proposed building envelope, within a proposed development area or on the pipeline easement. Both appellants claim that the removal of trees will exacerbate the stromwater flow. Professional analysis was not provided to support these claims therefor staff disagrees with the contentions expressed by both appellants in response to the proposed tree removal plan.

The proposal includes the net addition of two single-family lots which will use an existing driveway that currently serves one single-family home. The estimated additional trips do not meet the threshold required to request a Traffic Impact analysis. The City Transportation reviewed the proposal and did not see a need for a sight-distance study. However, staff proposes to modify two of the conditions of approval that were part of the Notice of Decision issued September 22, 2016 regarding the removal of shrubs located along the right-out-way to eliminate any potential visual obstacles.

RECOMMENDATION

Staff recommends that Planning Commission affirm the Planning Director's decision to approve the Preliminary Partition, Tree Plan Two, and Flexible Setback for a Proposed Residential Land Division for SW 155th 3-Lot Partition with conditions as stated in the Notice of Decision dated September 22, 2016.

After the Decision was issued on September 22nd, 2016, staff were notified by the abutting property owner of 10450 SW 155th Avenue, who stated that the shrubs subject to removal were located on his property. The abutting property is not subject to these conditions of approval. For this reason staff recommend that the Planning Commission amend the Notice of Decision by amending the conditions of approval 21, on page SR-36, and 44, on page SR-39, regarding shrubs located not on the subject site. To clarify the intentions of the conditions of approval, staff suggests making the following changes in **bold**:

Conditions of Approval issued with the Notice of Decision on September 22, 2016:

21. Show the removal of shrubs along the street frontage of SW 155th Avenue that appear to impede vision of on-coming vehicles and pedestrians when exiting the street access. Show the location of tree protection fencing placed in proximity to all trees to be saved on-site prior to construction activities.

44. Have shrubs removed along the street frontage of SW 155th Avenue to the satisfaction of the City Transportation Engineer to ensure appropriate vision clearance at the existing access.

Proposed changes to the Conditions of Approval:

21. **On the subject property**, show the removal of shrubs along the street frontage of SW 155th Avenue that appear to impede vision of on-coming vehicles and pedestrians when exiting the street access. Show the location of tree protection fencing placed in proximity to all trees to be saved on-site prior to construction activities.

44. **On the subject property**, have shrubs removed along the street frontage of SW 155th Avenue to the satisfaction of the City Transportation Engineer to ensure appropriate vision clearance at the existing access.