

**PLANNING COMMISSION STAFF REPORT  
APPEAL OF MISC221-0002 MODIFICATION OF STREET RIGHT-OF-WAY AND  
IMPROVEMENT WIDTH - N ELLIOTT ROAD IMPROVEMENT PROJECT**

**HEARING DATE:** March 10, 2022

**FILE NO:** APL22-0001

**REQUEST:** Appeal of MISC221-0001 Modification of Street Right-of-Way and Improvement Width - N Elliott Road Improvement Project

**LOCATION:** N Elliott Road (E Portland Road to Newberg High School)

**TAX LOT:** The lots impacted by a reduced ROW width include R3217DB 06201, R3217DB 06200, R3217DB 06001, R3217DD 02501N/A

**APPLICANT:** Paul Chiu, City of Newberg

**OWNER:** N/A

**APPEALANT:** Dan D'hondt, and Rajiv Jain Managing Member of Cedar Terrace LLC, represented by Tyler Smith, Tyler Smith & Associates P.C.

**ZONE:** Low Density Residential District (R-1), High Density Residential (R-3)

**PLAN DISTRICT:** LDR (Low Density Residential), HDR (High Density Residential)

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**ATTACHMENTS:**

Planning Commission Order 2022-04 with:

Exhibit A: January 14, 2022, Community Development Director's Decision and Findings

Attachment 1: Appeal Application

Attachment 2: Community Development Director's Decision January 14, 2022

Attachment 3: Memorandum From Paul Chiu to Doug Rux, March 1, 2022

Attachment 4: Johnston v. City of Albany, 34 OR LUBA 32 (1998)

**A. DESCRIPTION OF APPEAL:**

NMC 15.100.090 requires proof that the property affected is in the exclusive ownership of the applicant, or the applicant has the consent of all owners. NMC 15.100.090. The City has not provided proof that it owns Mr. D'hondt's property at 807 N Elliot Rd. The City does not have the consent of Mr. D'hondt. Therefore the application does not contain proof that satisfies NMC 15.100.090(B). That is a violation of NMC and of the case law in Johnston v. City of Albany, 34 OR LUBA 32 (1998)

**B. DESCRIPTION OF APPLICATION**

The City of Newberg is working on the design for a transportation improvement to N Elliott Road from E Portland Road (Highway 99W) to Newberg High School. As part of the design for the transportation improvement, based on communications with residents along the transportation corridor when the project was initiated in May 2019 years, four properties were identified where there was a desire to narrow the right-of-way cross-section to a distance less than what is required by NMC 15.505.030(G) to reduce potential impacts. The Public Works Department, Engineering Division submitted an application requesting a determination if the right-of-way width could be reduced below the NMC 15.505.030(G) requirements as part of the overall design of the project to determine what amount of right-of-way and easements would need to be acquired.

The transportation improvement project would include right-of-way improvements for the N Elliott Road corridor from Highway 99W to Newberg High School. Proposed improvements include pavement, curb and gutter, sidewalk, ADA ramps, bicycle lanes, storm drainage, wastewater pipeline, water main, street lighting, conversion from aerial to underground power lines, traffic calming and roadway safety features, and landscape enhancements. Along the length of the roadway improvement the roadway would be narrowed below the 28.5' for a ½ street width improvement in front of four (4) parcels to address feedback from residents.

NMC 15.505.030(G) Street Width & Design Standards for Major Collector is 36' curb-to-curb (2-12' travel lanes, 2-6' bike lanes), 2-5' planter strips, 2-5' sidewalks → Total 56' of physical improvements. Typical sections show an additional 0.5' behind sidewalk to ROW. This gives a minimum ROW width of 57' as noted in NMC, or 28.5' for a ½ Street width.

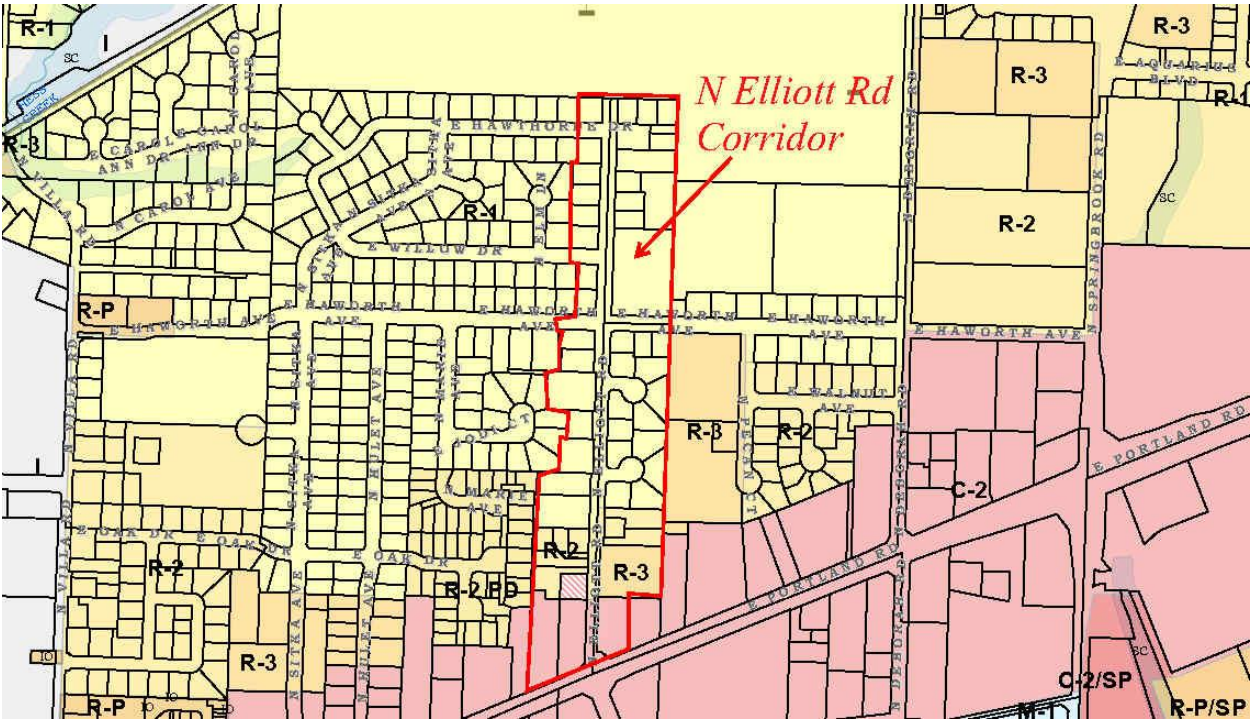
The Elliott Road Improvement Project is being designed to minimize right-of-way acquisition along the corridor resulting in four (4) identified parcels along the roadway to reduce the minimum right-of-way per NMC.

- File 7 – 807 N Elliott Road: Varies from 25.5' to 23.5' of Right-of-way with an additional 3' of Public Utility Easement.
- File 9 – 911 N Elliott Road: 23' of ROW with an additional 3' of Public Utility

Easement. This case has been resolved with the property owner.

- File 10 – 1007 N Elliott Road: 25’ of ROW with an additional 3’ of Public Utility Easement. This case has been resolved with the property owner.
- File 22 – 704 N Elliott Road: Varies from 25’ to 29’ of Right-of-way with an additional 4.5’ of Public Utility Easement. This case has been resolved with the property owner and is in escrow.

**C. LOCATION: N Elliott Road**



**D. SITE INFORMATION:**

1. Location: N Elliott Road corridor from E Portland Road (Highway 99W) north to Newberg High School
2. Size: Not applicable
3. Topography: Flat
4. Current Land Uses:  
807 N Elliott Road – Single Family Residence

911 N Elliott Road – Single Family Residence

1007 N Elliott Road – Multi-family Residential

704 N Elliott Road – Single Family Residence

5. Natural Features: There are trees, shrubs, and grass yards along the N Elliott Road corridor.

6. Adjacent Land Uses:

807 N Elliott Road

- a. North: Single-family Residential
- b. East: Single-family Residential
- c. South: Single-family Residential
- d. West: Single-family Residential

911 N Elliott Road

- a. North: Multi-family Residential and Single-family Residential
- b. East: Single-family Residential
- c. South: Single-family Residential
- d. West: Single-family Residential

1007 Elliott Road

- a. North: Multi-family Residential
- b. East: Single-family Residential
- c. South: Single-family Residential
- d. West: Single-family Residential

704 N Elliott Road

- a. North: Single-family Residential
- b. East: Commercial
- c. South: Commercial
- d. West: Commercial, Multi-family and Single-family Residential

7. Zoning: The following zoning districts are adjacent the subject properties for the right-of-way reduction width.

807 N Elliott Road

- a. North: R-1
- b. East: R-1
- c. South: R-1
- d. West: R-1

911 N Elliott Road

- a. North: R-1
- b. East: R-1
- c. South: R-1
- d. West: R-1

1007 Elliott Road

- a. North: R-1
- b. East: R-1
- c. South: R-1
- d. West: R-1

704 N Elliott Road

- a. North: R-2
- b. East: C-2
- c. South: C-2
- d. West: C-2/LU and R-2

8. Access and Transportation: Access to for all parcels along N Elliott Road is to N Elliott Road. The four residential lots where the right-of-way width is proposed to be reduced take access from N Elliott Road.

9. Utilities:

- a. Water: The City's GIS system shows there is an existing 8-inch water line in N Elliott Road.
- b. Wastewater: The City's GIS system shows there is an existing 8-inch wastewater line in N Elliott Road.
- c. Stormwater: The City's GIS system shows an intermittent stormwater system along the roadway corridor. Some areas have a stormwater system and other areas do not have a stormwater system.
- d. Overhead Lines: There are overhead utilities serving the properties along

N Elliott Road or running parallel to the property frontages. Any new connection to any of the properties including the four properties where the right-of-way is proposed to be narrowed will need to be undergrounded. See NMC 15.430.010 for exception provisions.

- E. PROCESS:** This Appeal request is a Type III application and follows the procedures in Newberg Development Code 15.100.160, 15.100.170, 15.100.180 and 15.100.190. The appeal period for the Director Decision ended on January 27, 2022, at 4:30 pm. The Planning Commission will hold a quasi-judicial public hearing (new hearing) on the application. The Commission will make a decision on the application based on the Appeal of a Type II decision must be based on the written comments raised prior to the expiration notice comment period pursuant to NMC 15.100.220. The Planning Commission's decision is final unless appealed. Important dates related to this application are as follows:

Important dates related to this application are as follows:

- a. 11/04/2021: The Community Development Director deemed the application complete.
- b. 11/17/2021: The applicant mailed notice to the property owners within 500 feet of the site.
- c. 12/01/2021: The 14-day public comment period ended.
- d. 1/14/2022: The Community Development Director issued a decision on the application.
- e. 1/25/22: Appeal was filed by Mr. Dan D'hondt, and Rajiv Jain Managing Member of Cedar Terrace LLC, represented by Tyler Smith, Tyler Smith & Associates P.C.
- f. 1/27/22: Appeal period ended at 4:30 pm.
- g. 2/23/22: The *Newberg Graphic* published notice of the Planning Commission hearing.
- h. 2/28/22: Notice mailed to property owners in the N Elliott Road corridor.
- i. 3/10/22: The Planning Commission will hold a quasi-judicial public hearing to consider the appeal application.

**F. AGENCY COMMENTS:** The original Public Works Department, Engineering Division application was routed to several public agencies and City departments for review and comment as part of MISC221-0002. Comments and recommendations from City departments are contained in Attachment 2.

**PUBLIC COMMENTS:** Public comments as part of MISC221-0002 are contained in Attachment 2.

**G. ANALYSIS:**

Mr. D'hondt, and Mr. Rajiv Jain Managing Member of Cedar Terrace LLC, through their representative Tyler Smith of Tyler Smith & Associates P.C. filed an appeal of the Community Development Director's decision (Attachment 2) that determined the right-of-way width for the proposed transportation improvement could be reduced at four (4) locations (Attachment 2).

Mr. D'hondt, and Rajiv Jain Managing Member of Cedar Terrace LLC, through Mr. Smith have raised the following issues:

- 1) Newberg Municipal Code requires the Owner of the real property in question to approve of the application or be the applicant. Rajiv Jain and Cedar Terrace, LLC as well as Dan Dhondt; own 704 N Elliot Rd, and 807 N Elliot Rd respectively. They are not the applicant, nor do they approve of land use actions covering their property.
- 2) Your application does not meet any of the criteria of NMC 15.505.030(h)

Mr. Smith further elaborates on his first issue below.

**1) Newberg Municipal Code 15.100.090 (b) bars this application from being approved.**

NMC 15.100.090 requires that land use application provide PROOF that the property affected by the application is in the exclusive ownership of the applicant, or otherwise have the consent of all owners of the property.

- a. Newberg does not have the consent of my clients Daniel Dhondt, nor Rajiv Jain who is the managing member of Cedar Terrace LLC. The property that they own as fee simple title owners is included as a part of your application. See Exhibit A-1 of your application packet shows the portion owned by Mr. Dhondt, and See Exhibit D-1 of your application, which shows the portion owned by Cedar Terrace LLC. Thus Mr. Chiu (the Applicant) nor the City of Newberg is the "exclusive owner" of the property, nor does the Applicant have the consent of these two owners. The application must therefore be denied under the NMC. Oregon law is clear on this point. Where a local code provision requires the

consent of all property owners affected by a land use application, a present owner must sign the application. Johnston v. City of Albany, 34 Or LUBA 32 (1998).

b. Furthermore, the application page itself, shows that no-owner has signed the application. Mr. Chiu apparently signed for the applicant on October 20,2021but he is neither the owner nor the owner's agent.

Staff Response:

15.100.090 Development permit application.

B. Proof that the property affected by the application is in the exclusive ownership of the applicant, or that the applicant has the consent of all owners of the affected property.

The City of Newberg is the road authority over N Elliott Road from E Portland Road (Highway 99W) to Newberg High School. ODOT has jurisdiction over the intersection of N Elliott Road and E Portland Road. The City of Newberg controls the existing right-of-way, and its improvements are subject to the requirements of NMC Chapter 15.505 PUBLIC IMPROVEMENTS STANDARDS, specifically regarding this action on the right-of-way width determination per NMC 15.505.030(G) and the criteria of NMC 15.505.030(H). The City has the authority to design right-of-way improvements per NMC Chapter 15.505 PUBLIC IMPROVEMENTS STANDARDS to determine if the improvements are feasible and under what circumstances the design may impact properties or not, and measures that are available to minimize and/or mitigate the potential impacts. The Public Works Department, Engineering Division filed an application as the road authority for N Elliott Road based on community feedback in preliminary designs that identified potential impacts to four (4) properties that the City is attempting to mitigate by reducing the right-of-way width. At this time there is no land use action (site design review) directly impacting Mr. D'hondt's property, thus no consent by Mr. D'hondt is necessary on an application. The City as the road authority filed an application to get a determination if a reduction of the right-of-way was feasible or not per NMC 15.505.030(H).

Based on the Appellant's comments staff requested the applicant prepare a timeline of activities related to the N Elliott Road project based on specific questions. Attachment 3 is a summary of the steps that have occurred and the interactions with property owners along the N Elliott Road corridor. Attachment 3, Question #4 indicates that Mr. D'hondt is the exclusive owner of 807 N Elliott Road and discussions and negotiations with Mr. D'hondt have occurred on that basis for preliminary design and possible acquisition of right-of-way and easements for the transportation improvement project. The N Elliott Road project file is incorporated by reference related to 807 N Elliott Road.

In addition, Mr. Rajiv Jain, Managing Member of Cedar Terrace LLC has reached a resolution with the City of Newberg and the title company (First American) is working with the Lender (Chase) to get Partial Release through escrow, which may take several



more weeks before payment is wired. Thus, Mr. Mr. Rajiv Jain, Managing Member of Cedar Terrace LLC has agreed to the reduced right-of-way width.

Mr. Smith raises the case of *Johnston v. City of Albany*, 34 Or LUBA 32 (1998). This case is included in Attachment 4. In this case, in summary, an application was submitted by a private development entity and private property owner for a site design review application for a manufactured home park that that questioned if they owned the property, they were submitting the design review application for. This question pivoted on property included in the application they did not own based on a prior real estate transaction between parties. LUBA determined that the private land ownership in the part of the property that had a provision for reconveyance back to the original seller and successor in interest of that portion of property to be reconveyed was based on timing for sanitary sewer connection is part of the development application without a signed statement indicating that intervenor has obtained the consent of the current property owner. The details in this issue can be found in Attachment 3, Pages 3 – 6. LUBA sustained that the portion of the site design review application that included the property to be reconveyed did not have the current property owner's consent.

The second issue in *Johnston v. City of Albany*, 34 Or LUBA 32 (1998) relates to land owned by the City of Albany, and land that was under public ownership without the public entity consenting that was part of the proposed development. LUBA concluded the City of Albany had not properly consented to the public property to be part of the site design review application (Attachment 3, Pages 6 – 8).

Staff's review in the case cited by Mr. Smith is materially different than a determination for a Modification of Street Right-of-way and Improvement Width as applied for by the City of Newberg Engineering Division. The City of Newberg has not submitted for a site design review application for a development. The City is in the design phase for the N Elliott Road Improvement Project to establish the necessary right-of-way width to finalize the design and acquire the necessary right-of-way and easements to construct the project. Mr. D'hondt has been actively engaged in the design discussions and has negotiated with the City of Newberg's Right-of-Way Agent (Universal Field Services) about possible right-of-way and easement acquisition based on preliminary design and feedback.

Under Mr. Smith's interpretation in his submitted appeal any design concepts for a transportation improvement along a transportation corridor would require any and/or all property owners along the transportation corridor to sign an application to allow a design concept to be advanced to determine the feasibility, or not, of a project, and what type of mitigation measures may be necessary for the transportation improvement. This interpretation in effect would stop all local government (city and county) transportation improvements outlined in Transportation System Plans and corresponding development regulations from occurring if one or more property owners did not sign an application. Again, this project is in the design phase to determine a final design concept to advance.

Once the impacts of the right-of-way design are known the City would negotiate with a property owner to acquire the necessary right-of-way and easements for the transportation improvements. In Mr. D'hondt's situation if the Engineering Division had not sought the MISC221-0002 determination the City would be bound to negotiate for the required right-of-way width per NMC 15.505.030(G) which is greater than what has been identified as necessary to mitigate the potential impacts to his property.

Mr. Smith further elaborates on his second issue below.

**2) Newberg Municipal Code 15.505.030(h) is not met here.**

NMC 15.505.030 is cited as the basis for this variance. Modification of Street Right-of-Way and Improvement Width. The director, pursuant to the Type II review procedures of Chapter 15.220 NMC, may allow modification to the public street standards of subsection (G) of this section, when the criteria in both subsections (H)(1) and (2) of this section are satisfied:

" The modification is necessary to provide design flexibility in instances where:

- a. Unusual topographic conditions require a reduced width or grade separation of improved surfaces; or
- b. Lot shape or configuration precludes accessing a proposed development with a street which meets the full standards of this section; or
- c. A modification is necessary to preserve trees or other natural features determined by the city to be significant to the aesthetic character of the area; or
- d. A planned unit development is proposed and the modification of street standards is necessary to provide greater privacy or aesthetic quality to the development."

Each of those four possible alternatives is not met.

(a) Here, there is no unusual topographic condition, the City is simply proposing to widening the street against the wishes of these owners. Proposing to enter onto these owners lots, take their property for public use and establish wider easements and rights of way over Cedar Terrace.

(b) The lot shape and configuration is not affective access at all since the access will exist either way and these properties are already street frontage properties.

(c) There have not yet been any findings nor assertions about which trees are being determined to be significant, but the opponents agree there are some important and significant trees that should not be disturbed by the proposed plan.

(d) No planned unit development is proposed.

## CONCLUSION

This application cannot be approved because the owners of at least some of the property in question are not the applicant, and have not consented to this application. This violates the NMC and Oregon law.

### Staff Response:

To begin this is not a variance request as identified by Mr. Smith. Variances are a separate process in the NMC under Chapter 15.215 VARIANCE PROCEDURES. The Applicant submitted their application under NMC 15.505.030(H) to seek a determination on Modification of Street Right-of-Way and Improvement Width.

There are four sub-criteria to NMC 15.505.030H.1. All four are not required to be met as the sentence structure identifies. One of the sub-criteria is sufficient to satisfy a determination for a reduced right-of-way width for the design of the N Elliott Road improvement. These are addressed in detail in Attachment 2 of the Findings. In summary:

- a. Attachment 2 in the Findings section indicates that topographic issues are not applicable the applicant's request for a modification to the right-of-way width.
- b. Attachment 2 indicates that this issue only applied to 704 N Elliott Road. Access will be maintained, and three parking spaces will be relocated on site per the negotiated settlement between the property owner and the City.

There were no issues identified for Mr. D'hondt's property at 807 N Elliott Road.

- c. Attachment 2 in the Findings indicates that at 807 N Elliott Road (D'hondt property) the narrowed right-of-way design would preserve two (2) existing palm trees which are unique to the neighborhood area.
- d. Attachment 2 in the Findings indicates that this criterion is not applicable as the transportation design proposal is not part of a planned unit development

Mr. Smith has also included information stating:

“There are other options, such as downgrading the street category of Elliot Rd., delaying this action, and reducing the impacts and condemnations of the owners' property that are preferred. While we appreciate this attempt to minimize the taking of private property for public use, nonetheless we oppose your attempts to condemn and take my client's private property for your preferred use and plan. My clients and other interested community members have suggested alternatives, and alternate plans.”

### Staff Response:

The Planning Commission's purview in this matter is narrowly focused on the issue of 15.505.030(G) and the criteria of 15.505.030(H) related to Modification of Street Right-of-Way and Improvement Width. It is not the Planning Commission's role to evaluate options (beyond a full width improvement or reduced width improvement along the frontage of the four identified properties), or delaying the proposed design and construction of the transportation improvement. The Planning Commission has no authority to condemn property and has no authority over the reference to suggested alternatives cited by Mr. Smith along the transportation corridor. These issues are for the City Council to consider and to provide direction to the Engineering Division.

- H. PRELIMINARY STAFF RECOMMENDATION:** The preliminary staff recommendation is made in the absence of public hearing testimony and may be modified subsequent to the close of the public hearing. At the time this report was drafted, staff recommends the following motion:

*Move to adopt Planning Commission Order 2022-04, which approves the January, 14, 2022  
Community Development Director Decision*



## **PLANNING COMMISSION ORDER 2022-04**

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### **AN ORDER APPROVING THE JANUARY 14, 2022, COMMUNITY DEVELOPMENT DIRECTOR DECISION MISC221-0002**

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#### **RECITALS**

1. Paul Chui, Senior Engineer, City of Newberg Public Works Department, Engineering Division applied for a Type II Modification of Street Right-of-Way and Improvement Width as part of the proposed N Elliott Road Improvement Project.
2. On January 14, 2022, the Community Development Director issued a decision on the submitted application for a determination on the Modification of Street Right-of-Way and Improvement Width.
3. On January 25, 2022, Mr. Dan D'hondt, and Mr. Rajiv Jain Managing Member of Cedar Terrace LLC, represented Mr. Tyler Smith of Tyler Smith & Associates P.C. filed an appeal of the decision.
4. The City of Newberg has reached agreement with the property owners on the right-of-way width for 911 N Elliott Road and 1007 N Elliott Road.
5. Mr. Rajiv Jain, Managing Member of Cedar Terrace LLC, a party to the submitted appeal, has reached a resolution with the City of Newberg on the design of the right-of-way width and is in escrow to close that right-of-way acquisition.
6. After proper notice, the Newberg Planning Commission held a public hearing on March 10, 2022, to consider the appeal. The Commission considered testimony and deliberated.
7. The Newberg Planning Commission finds that the application meets the applicable Newberg Municipal Code criteria as shown in the findings in Exhibit "A" of the January 14, 2022, Community Development Director Decision on MISC221-0002.

#### **The Newberg Planning Commission orders as follows:**

1. The appeal application APL22-0001 is hereby denied.
2. The January 14, 2022, Community Development Director Decision on MISC221-0002 (Exhibit "A") is hereby approved. Exhibit "A" is hereby adopted and by this reference incorporated.
3. The findings shown in Exhibit "A" of the January 14, 2022, Community Development Director Decision on MISC221-0002 (Exhibit "A"). are hereby adopted. Exhibit "A" is

hereby adopted and by this reference incorporated.

4. This order shall be effective March 24, 2022.

**Adopted by the Newberg Planning Commission this 10<sup>th</sup> day of March 2022.**

ATTEST:

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Planning Commission Chair

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Planning Commission  
Secretary

List of Exhibits:

Exhibit "A": January 14, 2022, Community Development Director Decision and Findings

**Exhibit “A” to Planning Commission Order 2022-04  
January 14, 2022 Community Development Director Decision  
and Findings – File APL22-0001**



## Community Development

January 14, 2022

Mr. Paul Chiu  
City of Newberg  
414 E First Street  
Newberg, OR 97132

Parties Providing Comments: Gerry Avoilo, Miguel Gonzales, Brandy Crockett, James Talt, Tyler Smith

Dear Mr. Chiu,

The Newberg Community Development Director has provided a determination based on your application MISC221-0002 Elliott Road Improvement Project. The decision will become effective on January 28, 2022, unless an appeal is filed.

You may appeal this decision to the Newberg Planning Commission within 14 calendar days of this decision in accordance with Newberg Development Code 15.100.170. All appeals must be in writing on a form provided by the Planning Division. Anyone wishing to appeal must submit the written appeal form together with the required fee of \$550.20 to the Planning Division within 14 days of the date of this decision.

**The deadline for filing an appeal is 4:30 pm on January 27, 2022**

If you have any questions, please contact me at [doug.rux@newbergoregon.gov](mailto:doug.rux@newbergoregon.gov) or 503-537-1212.  
Sincerely,

A handwritten signature in blue ink, which appears to read "Doug Rux", is enclosed in a thin black rectangular box.

Doug Rux, AICP  
Community Development Director

Attachment



<p style="text-align: center;"><b>STAFF REPORT</b> <b>Determination – N Elliott Road – MISC221-0002</b></p>
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**FILE NO:** MISC221-0002

**REQUEST:** Reduce the right-of-way width design for four properties for improvements to N Elliott Road

**LOCATION:** N Elliott Road (Highway 99W to Newberg High School)

**TAX LOT(S):** The lots impacted by a reduced ROW width include R3217DB 06201, R3217DB 06200, R3217DB 06001, R3217DD 02501

**APPLICANT:** Paul Chiu, City of Newberg

**OWNER:** N/A

**ZONE:** Low Density Residential District (R-1), High Density Residential (R-3)

**PLAN DISTRICT:** LDR (Low Density Residential), HDR (High Density Residential)

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## CONTENTS

Section I: Application Information  
Section II: Exhibit A Findings

### Attachments:

1. Application
2. Public Comments

## Section I: Application Information

### A. DESCRIPTION OF APPLICATION:

The development would include right of way improvements for the N Elliott Road corridor from Highway 99W to Newberg High School. Proposed improvements include pavement, curb and gutter, sidewalk, ADA ramps, bicycle lanes, storm drainage, wastewater pipeline, water main, street lighting, conversion from aerial to underground power lines, traffic calming and roadway safety features, and landscape enhancement. Along the length of the roadway improvement the roadway would be narrowed below the 28.5' for a ½ street width improvement in front of four (4) parcels.

NMC 15.505.030(G) Street Width & Design Standards for Major Collector is 36' curb-to-curb (2-12' travel lanes, 2-6' bike lanes), 2-5' planter strips, 2-5' sidewalks → Total 56' of physical improvements. Typical sections show an additional 0.5' behind sidewalk to ROW. This gives a minimum ROW width of 57' as noted in NMC, or 28.5' for a ½ Street width.

The Elliott Road Improvement Project is minimizing Right-of-way acquisition along the corridor resulting in four (4) parcels requiring less than the minimum right-of-way per NMC.

- File 7 – 807 N Elliott Road: Varies from 25.5' to 23.5' of Right-of-way with an additional 3' of Public Utility Easement.
- File 9 – 911 N Elliott Road: 23' of ROW with an additional 3' of Public Utility Easement.
- File 10 – 1007 N Elliott Road: 25' of ROW with an additional 3' of Public Utility Easement.
- File 22 – 704 N Elliott Road: Varies from 25' to 29' of Right-of-way with an additional 4.5' of Public Utility Easement.

### B. SITE INFORMATION:

1. Location: N Elliott Road corridor from Highway 99W north to Newberg High School
2. Size: Not applicable
3. Topography: Flat
4. Current Land Uses:  
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5. Natural Features: There are trees, shrubs, and grass yard along the N Elliott Road corridor.

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- a. North: Multi-family Residential and Single-family Residential
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- a. North: Single-family Residential
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- c. South: Commercial
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7. Zoning: The following zoning districts are adjacent the subject properties for the right-of-way reduction width.

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- b. East: R-1
- c. South: R-1
- d. West: R-1

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- a. North: R-1
- b. East: R-1
- c. South: R-1
- d. West: R-1

1007 Elliott Road

- a. North: R-1
- b. East: R-1
- c. South: R-1
- d. West: R-1

704 N Elliott Road

- a. North: R-2
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- c. South: C-2
- d. West: C-2/LU and R-2

8. Access and Transportation: Access to for all parcels along N Elliott Road is to N Elliott Road. The four residential lots where the right-of-way width is proposed to be reduced take access from N Elliott Road.

9. Utilities:

- a. Water: he City's GIS system shows there is an existing 8-inch water line in N Elliott Road.
- b. Wastewater: The City's GIS system shows there is an existing 8-inch wastewater line in N Elliott Rad.
- c. Stormwater: The City's GIS system shows an intermittent stormwater system along the roadway corridor. Some areas have a stormwater system and other areas do not have a stormwater system.
- d. Overhead Lines: There are overhead utilities serving the properties along

N Elliott Road or running parallel to the property frontages. Any new connection to any of the properties including the four properties where the right-of-way is proposed to be narrowed will need to be undergrounded. See NMC 15.430.010 for exception provisions.

- C. PROCESS:** The Determination is a Type II application and follows the procedures in Newberg Development Code 15.100.030. Following a 14-day public comment period, the Community Development Director makes a decision on the application based on the criteria listed in the attached findings. The Director's decision is final unless appealed.

Important dates related to this application are as follows:

- a. 11/04/2021: The Community Development Director deemed the application complete.
- b. 11/17/2021: The applicant mailed notice to the property owners within 500 feet of the site.
- c. 12/01/2021: The 14-day public comment period ended.
- d. 1/14/2022: The Community Development Director issued a decision on the application.

- D. AGENCY COMMENTS:** The application was routed to several public agencies for review and comment (Attachment 1). Comments and recommendations from city departments have been incorporated into the findings and conditions. As of the writing of this report, the city received the following agency comments:

City Manager: Reviewed, no conflict

Finance: Reviewed, no conflict

Police: Reviewed, no conflict

Public Works Maintenance: Reviewed, no conflict.

Public Works Superintendent: Reviewed, no conflict.

Public Works Director: Reviewed, no conflict

Public Works Wastewater Treatment Plant: Reviewed, no conflict

- E. PUBLIC COMMENTS:**

Public comments (summarized) were received from the following parties and are included in full Attachment 2.

1. Gerry Avoilo: Provided four comments. 1) Surprised by the extent of the work and the cost of over \$3M to dress up a road to the high school. 2) Understands and supports the need for sidewalks on both sides of Elliott Road for safety and convenience of pedestrians. To do so would require a part of his front yard. 3) He walks every week and notes any streets do not have sidewalks on both sides, some street with no sidewalks, some streets with sidewalks on only one side, and many sidewalks are in need of repair. He comments that if the N Elliott Road project was to only install sidewalks that excess funds should be used to repair old sidewalk in the city. 4) He was informed that widening the road was necessary to help reduce traffic speed. He inquired about permeant speed camera installation to reduce the speeding problem.

*Staff Response:* 1) The Applicant's request is to address a narrower right-of-way width from the required Code requirement along the frontage of four properties. The comment does not address the criteria of 15.505.030H.1.a.-d. The cost of the project should be addressed directly to the Public Works Engineering Division. 2) Mr. Avoilo's property is one of the properties where the applicant has requested a narrower right-of-way width for the N Elliott Road improvements. The Applicant is working to acquire right-of-way for the improvements which will include a sidewalk. 3) The Applicant's request is to address a narrower right-of-way width from the required Code requirement along the frontage of four properties. The comment does not address the criteria of 15.505.030H.1.a.-d. This comment will be forwarded to the applicant for consideration in the sign of the N Elliott Road improvement. 4) The Applicant's request is to address a narrower right-of-way width from the required Code requirement along the frontage of four properties. The comment does not address the criteria of 15.505.030H.1.a.-d. This comment will be forwarded to the applicant for consideration in the sign of the N Elliott Road improvement.

2. Miguel Gonzales: Provided comments in response to the process being utilized. 1) He does approve the Type II application. 2) The owner of the property must approve the application and sign the application. 3) the city does not meet the requirements of 15.505.030(h) because owners did not sign the application. 4) Attached section of the Code he believes are applicable. 5) The city has not made serious efforts to address concerns raised by residents.

*Staff Response:* NMC 15.505.030H.1.a.-d. and 2 are applicable to the applicant's request. Specifically, "H. Modification of Street Right-of-Way and Improvement Width. The director, pursuant to the Type II review procedures of Chapter 15.220 NMC, may allow modification to the public street standards of subsection (G) of this section, when the criteria in both subsections (H)(1) and (2) of this section are satisfied: ..." The Applicant submitted an application to address a modification to the design for the right-of-way width for the N Elliott Road project to reduce the right-of-way width along the frontage of four properties. As the Road Authority the City of Newberg is designing a future transportation improvement. This design will determine the right-of-way necessary to acquire where insufficient right-of-way exists for a future transportation improvement. The application did not require property owner signature for the Applicant to request a determination if a reduced right-of-way width is feasible to minimize impacts along the transportation corridor. Without the application request by the Applicant the transportation design would have to meet the requirements of NMC 15.505.030 G. Street Width and Design Standards requiring more right-of-way than may be necessary. Any right-of-way acquisition would be negotiated. 2) As noted above the property owner was not required to sign the application as the

Applicant is requesting a determination to reduce the right-of-way width along the frontage of four properties. 3) The Applicant submitted an application to determine if a narrower right-of-way width can be approved following the procedures laid out in NMC 15.505.030H.1.a.-d. and 2. 5) The Applicant's request is to address a narrower right-of-way width from the required Code requirement along the frontage of four properties. The comment does not respond the criteria of 15.505.030H.1.a.-d. This comment will be forwarded to the applicant for consideration in the design of the N Elliott Road improvement.

3. Brandy Crockett: Provided comments in response to 1) Opposition to bike lanes on N Elliott Road. 2) Point 1 is to the actual number of people that will use the bike lanes. Point 2 is the City Council wants bike lanes for students to commuting to school but the number of bikes in racks at the High School is low. Point 3 is that most bike users don't use bike lanes and ride with traffic or children use the sidewalk. Point 4 is the 10 year plan to take away street parking for bike lanes from Haworth and Deborah to make connecting bike lanes to Elliott Road.

*Staff Response:* The Applicant's request is for a determination of the necessary right-of-way related to four properties along N Elliott Road. The general comment of opposition to bike lanes and to the 4 points raised do not respond to the requirements of NMC 15.505.030H.1.a.-d. and 2. The comments will be forwarded to the applicant for consideration in the design of the N Elliott Road improvement.

4. James Talt: Mr. Talt provided comments requesting modifications to the Type II Land Use Application based on four requests. A) Fast track the completion of bike lanes on Deborah Road from 99W to Haworth and designate both sides as no parking. B) Reclassify Elliott Road from a Major Collector to a Local Residential Street. Add needed road improvements for safety, accessibility, ADA, drainage, etc. and with no-street parking and shared land markings for bikes from Haworth south to 99W. C) Omit Plater strips. D) Add road improvements per (B) above and create bike lanes from Haworth north to the High School. Designate no street parking on this one block stretch.

*Staff Response:* The submitted application is specific to a modification to the right-of-way width along N Elliott Road related to four property frontages. The submitted comments do not respond to the criteria of NMC 15.505.030H.1.a.-d. and 2. The comments will be forwarded to the applicant for consideration in the design of the N Elliott Road improvement.

5. Tyler Smith: Mr. Smith provided comments indicating 1) Newberg Municipal Code requires the Owner of the real property in question to approve of the application or be the applicant. Rajiv Jain and Cedar Terrace, LLC as well as Dan Dhondt, own 704 N Elliot Rd, and 807 N Elliot Rd respectively. They are not the applicant, nor do they approve of land use actions covering their property. 2) Your application does not meet any of the criteria of NMC 15.505.030(h)

*Staff Response:* The Applicant submitted an application to address a modification to the design for the right-of-way width for the N Elliott Road project to reduce the right-of-way width along the frontage of four properties. As the Road Authority the City of Newberg is designing a future transportation improvement. This design will determine the right-of-way necessary to acquire where insufficient right-of-way exists for a future transportation improvement. The application did not require property owner signature for the Applicant to request a determination if a reduced

right-of-way width is feasible to minimize impacts along the transportation corridor. Without the application request by the Applicant the transportation design would have to meet the requirements of NMC 15.505.030 G. Street Width and Design Standards requiring more right-of-way than may be necessary. Any right-of-way acquisition would be negotiated.

Mr. Smith's comments regarding NMC 15.505.030(h) are addressed below in the findings section of this report.



**Section II: Findings – File MISC221-0002  
Determination – N Elliott Road**

*15.505.030 Street standards.*

*H. Modification of Street Right-of-Way and Improvement Width. The director, pursuant to the Type II review procedures of Chapter 15.220 NMC, may allow modification to the public street standards of subsection (G) of this section, when the criteria in both subsections (H)(1) and (2) of this section are satisfied:*

*1. The modification is necessary to provide design flexibility in instances where:*

*a. Unusual topographic conditions require a reduced width or grade separation of improved surfaces; or*

**Finding:** Not applicable.

*b. Lot shape or configuration precludes accessing a proposed development with a street which meets the full standards of this section; or*

**Finding:** The Applicant indicates the property at 704 N Elliott Road requires a 6-inch narrower street right-of-way from the 60-foot full width at the north corner of the existing multi-dwelling development to preserve the loss of an existing parking spaces and to minimize impact to the existing lot configuration according to subsection (H)(1)(b). The south portion of this lot does not have a right-of-way issue. Three parking spaces would be relocated as part of the roadway improvement to another relocation of the 704 N Elliott Road site as mitigation.

Staff concurs with the applicant because of the effort to minimize the displacement of parking at on the north side of the access point into the development.

*c. A modification is necessary to preserve trees or other natural features determined by the City to be significant to the aesthetic character of the area; or*

**Finding:** The applicant indicates the properties at 807 N Elliott Road and 911 N Elliott Road requires modification of street right-of-way width because of the necessity to preserve existing trees and to minimize impact to the green features of the N Elliott Road corridor according to subsection (H)(1)(c). At 807 N Elliott Rod the narrowed right-of-way design would preserve two (2) existing palm trees which are unique to the neighborhood area. At 911 NE Elliott Road the narrowed right-of-way design preserves five (5) deciduous trees which is part of the neighborhood character.

The property at 1007 N Elliott Road requires transition of the narrower street right-of-way to full width to the north as a result of preserving existing trees to the south according to subsection (H)(1)(c).

Staff concurs with the applicant because narrowing the right-of-way design preserve trees and allows for transitions to occur from where the right-of-way is narrowed back to its full width required by NMC 15.505.030 G.

*d. A planned unit development is proposed and the modification of street standards is necessary to provide greater privacy or aesthetic quality to the development.*

**Finding:** Not applicable as the proposal is not part of a planned unit development .

*2. Modification of the standards of this section shall only be approved if the director finds that the specific design proposed provides adequate vehicular access based on anticipated traffic volumes.*

**Finding:** The narrowed right-of-way design at four (4) locations provides adequate vehicular access based on anticipated traffic volumes for N Elliott Road. The design includes travel lanes, bike lanes, and sidewalk to allow for multi-modal access along the transportation corridor.

***Type II Review Procedures of Chapter 15.220  
15.220.020 Site design review applicability.***

*A. Applicability of Requirements. Site design review shall be required prior to issuance of building permits or commencement of work for all improvements noted below. Site design review permits shall be processed as either Type I or Type II, as noted below.*

***2. Type II.***

*a. Any new development or remodel which is not specifically identified within subsection (A)(1) of this section.*

*b. Telecommunications facilities.*

**Finding:** The requested determination is not new development or remodel which is not specifically identified within subsection (A)(1) of this section and is not a telecommunications facility. These criteria do not apply.

***15.220.030 Site design review requirements.***

***B. Type II. The following information is required to be submitted with all Type II applications for site design review:***

***1. Site Development Plan. A site development plan shall be to scale and shall indicate the following as appropriate to the nature of the use:***

- a. Access to site from adjacent right-of-way, streets and arterials;*
- b. Parking and circulation areas;*
- c. Location and design of buildings and signs;*
- d. Orientation of windows and doors;*
- e. Entrances and exits;*
- f. Private and shared outdoor recreation spaces;*
- g. Pedestrian circulation;*
- h. Outdoor play areas;*
- i. Service areas for uses such as mail delivery, trash disposal, above-ground utilities, loading and delivery;*
- j. Areas to be landscaped;*
- k. Exterior lighting;*
- l. Special provisions for handicapped persons;*
- m. Other site elements and spaces which will assist in the evaluation of site development;*
- n. Proposed grading, slopes, and proposed drainage;*
- o. Location and access to utilities including hydrant locations; and*
- p. Streets, driveways, and sidewalks.*

**2. Site Analysis Diagram.** *A site analysis diagram shall be to scale and shall indicate the following characteristics on the site and within 100 feet of the site:*

- a. Relationship of adjacent lands;*
- b. Location of species of trees greater than four inches in diameter at four feet above ground level;*
- c. Existing and proposed topography;*

*d. Natural drainage and proposed drainage and grading;*

*e. Natural features and structures having a visual or other significant relationship with the site.*

**3. Architectural Drawings.** *Architectural drawings shall be prepared which identify floor plans and elevations.*

**4. Landscape Plan.** *The landscape plan shall indicate:*

*a. The size, species and approximate locations of plant materials to be retained or placed on the site together with a statement which indicates the mature size and canopy shape of all plant materials;*

*b. Proposed site contouring; and*

*c. A calculation of the percentage of the site to be landscaped.*

**5. Special Needs for Handicapped.** *Where appropriate, the design review plan shall indicate compliance with handicapped accessibility requirements including, but not limited to, the location of handicapped parking spaces, the location of accessible routes from the entrance to the public way, and ramps for wheelchairs.*

**6. Existing Features and Natural Landscape.** *The plans shall indicate existing landscaping and existing grades. Existing trees or other features intended to be preserved or removed shall be indicated on the plans.*

**7. Drives, Parking and Circulation.** *Proposed vehicular and pedestrian circulation, parking spaces, parking aisles, and the location and number of access points shall be indicated on the plans. Dimensions shall be provided on the plans for parking aisles, back-up areas, and other items as appropriate.*

**8. Drainage.** *The direction and location of on- and off-site drainage shall be indicated on the plans. This shall include, but not be limited to, site drainage, parking lot drainage, size and location of storm drain lines, and any retention or detention facilities necessary for the project.*

**9. Buffering and Screening.** *Buffering and screening of areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking and similar accessory areas and structures shall be shown on the plans.*

**10. Signs and Graphics.** *The location, colors, materials, and lighting of all exterior signs, graphics or other informational or directional features shall be shown on the plans.*

***11. Exterior Lighting.*** Exterior lighting within the design review plan shall be indicated on the plans. The direction of the lighting, size and type of fixtures, and an indication of the amount of lighting shall be shown on the plans.

***12. Trash and Refuse Storage.*** All trash or refuse storage areas, along with appropriate screening, shall be indicated on the plans. Refuse storage areas must be constructed of brick, concrete block or other similar products as approved by the director.

***13. Roadways and Utilities.*** The proposed plans shall indicate any public improvements that will be constructed as part of the project, including, but not limited to, roadway and utility improvements.

***14. Traffic Study.*** A traffic study shall be submitted for any project that generates in excess of 40 trips per p.m. peak hour. This requirement may be waived by the director when a determination is made that a previous traffic study adequately addresses the proposal and/or when off-site and frontage improvements have already been completed which adequately mitigate any traffic impacts and/or the proposed use is not in a location which is adjacent to an intersection which is functioning at a poor level of service. A traffic study may be required by the director for projects below 40 trips per p.m. peak hour where the use is located immediately adjacent to an intersection functioning at a poor level of service. The traffic study shall be conducted according to the City of Newberg design standards.

**Finding:** The submitted application is not a site design review per NMC 15.220.020A.2. and is not applicable. The application request is for a determination per NMC 15.505.030H.1.a.-d. and 2 if a narrower right-of-way width can be utilized than required per NMC 15.505.030 G for a minor collector roadway. At 704 N Elliott Road 3 parking spaces will be relocated as litigation to another relocation on the site. At 807 N Elliott Road the reduced right-of-way width would maintain setbacks to the structure of 23-24 feet and to the garage of 24 feet which exceeds the requirements of NMC 15.410.020A1 and 15.410.020A.

***15.220.050 Criteria for design review (Type II process).***

***B. Type II.*** The following criteria are required to be met in order to approve a Type II design review request:

***1. Design Compatibility.*** The proposed design review request incorporates an architectural design which is compatible with and/or superior to existing or proposed uses and structures in the surrounding area. This shall include, but not be limited to, building architecture, materials, colors, roof design, landscape design, and signage.

**Finding:** The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Design Compatibility is not applicable

because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220.

***2. Parking and On-Site Circulation. Parking areas shall meet the requirements of NMC 15.440.010. Parking studies may be required to determine if adequate parking and circulation are provided for uses not specifically identified in NMC 15.440.010. Provisions shall be made to provide efficient and adequate on-site circulation without using the public streets as part of the parking lot circulation pattern. Parking areas shall be designed so that vehicles can efficiently enter and exit the public streets with a minimum impact on the functioning of the public street.***

**Finding:** The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Parking and On-Site Circulation is not applicable because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220 on the design to reduce the right-of-way width at selected locations.

***3. Setbacks and General Requirements. The proposal shall comply with NMC 15.415.010 through 15.415.060 dealing with height restrictions and public access; and NMC 15.405.010 through 15.405.040 and 15.410.010 through 15.410.070 dealing with setbacks, coverage, vision clearance, and yard requirements.***

**Finding:** The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Setbacks and General Requirements is not applicable because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220 on the design to reduce the right-of-way width at selected locations.

***4. Landscaping Requirements. The proposal shall comply with NMC 15.420.010 dealing with landscape requirements and landscape screening.***

**Finding:** The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Landscaping Requirements is not applicable because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220 on the design to reduce the right-of-way width at selected locations.

***5. Signs. Signs shall comply with NMC 15.435.010 et seq. dealing with signs.***

**Finding:** The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Signs are not applicable because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220 on the design to

reduce the right-of-way width at selected locations.

***6. Manufactured Dwelling, Mobile Home and RV Parks. Manufactured dwelling and mobile home parks shall also comply with the standards listed in NMC 15.445.075 through 15.445.100 in addition to the other clear and objective criteria listed in this section. RV parks also shall comply with NMC 15.445.170 in addition to the other criteria listed in this section.***

**Finding:** The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Manufactured Dwelling, Mobile Home and RV Parks are not applicable because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220 on the design to reduce the right-of-way width at selected locations.

***7. Zoning District Compliance. The proposed use shall be listed as a permitted or conditionally permitted use in the zoning district in which it is located as found in NMC 15.305.010 through 15.336.020. Through this site review process, the director may make a determination that a use is determined to be similar to those listed in the applicable zoning district, if it is not already specifically listed. In this case, the director shall make a finding that the use shall not have any different or more detrimental effects upon the adjoining neighborhood area than those specifically listed.***

**Finding:** The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Transportation facilities and improvements are a permitted use per 15.305.010. The N Elliott Road transportation corridor is in the C-2 (Community Commercial), R-1 (Low Density Residential), R-2 (Medium Density Residential) and R-3 (High Density Residential) zones.

***8. Subdistrict Compliance. Properties located within subdistricts shall comply with the provisions of those subdistricts located in NMC 15.340.010 through 15.348.060.***

**Finding:** The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. The N Elliott Road transportation corridor is in the Airport Overlay (Airport Transition Surface and Airport Inner Horizontal Surface). The northern portion of N Elliott Road is in the Marijuana Exclusion area.

***9. Alternative Circulation, Roadway Frontage Improvements and Utility Improvements. Where applicable, new developments shall provide for access for vehicles and pedestrians to adjacent properties which are currently developed or will be developed in the future. This may be accomplished through the provision of local public streets or private access and utility easements. At the time of development of a parcel, provisions shall be made to develop the adjacent street frontage in accordance with city street standards and the standards contained in the transportation plan. At the***

*discretion of the city, these improvements may be deferred through use of a deferred improvement agreement or other form of security.*

**Finding:** The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. No new developments are proposed by the application request. N Elliott Road does provide access to existing commercial and residential development along the transportation corridor. No development of a parcel is proposed.

*10. Traffic Study Improvements. If a traffic study is required, improvements identified in the traffic study shall be implemented as required by the director.*

**Finding:** The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. No traffic study was required or prepared for the design of improvements to N Elliott Road.

**CONCLUSION:**

The proposed determination request to narrow the right-of-way cross-section at four locations along the N Elliott Road corridor satisfies the approval and is approved.



## **Attachment 1: Application Material**



# TYPE II APPLICATION – LAND USE

File #: \_\_\_\_\_

**TYPES – PLEASE CHECK ONE:**

- Design review
- Tentative Plan for Partition
- Tentative Plan for Subdivision
- Type II Major Modification
- Variance \_\_\_\_\_
- Other: (Explain) \_\_\_\_\_

**APPLICANT INFORMATION:**

APPLICANT: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 EMAIL ADDRESS: \_\_\_\_\_  
 PHONE: \_\_\_\_\_ MOBILE: \_\_\_\_\_ FAX: \_\_\_\_\_  
 OWNER (if different from above): \_\_\_\_\_ PHONE: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 ENGINEER/SURVEYOR: \_\_\_\_\_ PHONE: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_

**GENERAL INFORMATION:**

PROJECT NAME: \_\_\_\_\_ PROJECT LOCATION: \_\_\_\_\_  
 PROJECT DESCRIPTION/USE: \_\_\_\_\_ PROJECT VALUATION: \_\_\_\_\_  
 MAP/TAX LOT NO. (i.e.3200AB-400): \_\_\_\_\_ ZONE: \_\_\_\_\_ SITE SIZE: \_\_\_\_\_ SQ. FT.  ACRE   
 COMP PLAN DESIGNATION: \_\_\_\_\_ TOPOGRAPHY: \_\_\_\_\_  
 CURRENT USE: \_\_\_\_\_  
 SURROUNDING USES:  
 NORTH: \_\_\_\_\_ SOUTH: \_\_\_\_\_  
 EAST: \_\_\_\_\_ WEST: \_\_\_\_\_

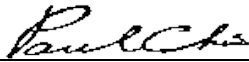
**SPECIFIC PROJECT CRITERIA AND REQUIREMENTS ARE ATTACHED**

**General Checklist:**  Fees  Public Notice Information  Current Title Report  Written Criteria Response  Owner Signature

**For detailed checklists, applicable criteria for the written criteria response, and number of copies per application type, turn to:**

**Design Review** .....p. 12  
**Partition Tentative Plat** .....p. 14  
**Subdivision Tentative Plat** .....p. 17  
**Variance Checklist** .....p. 20

The above statements and information herein contained are in all respects true, complete, and correct to the best of my knowledge and belief. Tentative plans must substantially conform to all standards, regulations, and procedures officially adopted by the City of Newberg. All owners must sign the application or submit letters of consent. Incomplete or missing information may delay the approval process.

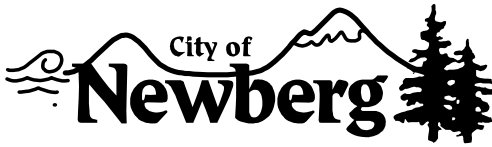
 10/20/21  
 \_\_\_\_\_  
 Applicant Signature Date

\_\_\_\_\_  
 Owner Signature Date

Paul Chiu  
 \_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Print Name

CITY OF NEWBERG TYPE II  
SAMPLE MAILED NOTICE



Community Development Department

P.O. Box 970 ▪ 414 E First Street ▪ Newberg, Oregon 97132  
503-537-1240. Fax 503-537-1272 [www.newbergoregon.gov](http://www.newbergoregon.gov)

**WE WANT YOUR COMMENTS ON A PROPOSED NEW  
DEVELOPMENT IN YOUR NEIGHBORHOOD**

The Elliott Road project manager submitted an application to the City of Newberg for Type II Determination. See below for details. You are invited to take part in the City's review of this project by sending in your written comments. You also may request that the Planning Commission hold a hearing on the application. The applicable criteria used to make a decision on this application for preliminary subdivision plan approval are found in Newberg Development Code 15.235.050(A). For more details about giving comments, please see the back of this sheet.

The development would include (*briefly describe what the project number of lots, size of lots, new streets created, etc.*)

APPLICANT: ***Paul Chiu (Elliott Road Project Manager)***  
TELEPHONE: ***(503) 554-1751***

PROPERTY OWNER: ***City of Newberg (Elliott Road right-of-way)***

LOCATION: ***Elliott Road from Hwy 99W to Newberg High School***

TAX LOT NUMBER: ***Yamhill County TL 3217DB-06201, TL 3217DB-06200, TL 3217DB-06100,  
and TL 3217DD-02501 (Elliott Road residential)***



We are mailing you information about this project because you own land within 500 feet of the proposed new project. We invite you to send any written comments for or against the proposal within 14 days from the date this notice is mailed. You also may request that the Newberg Planning Commission hold a hearing on the application by sending a written request during this 14-day period and identifying the issues you would like the Planning Commission to address.

If you mail your comments to the City, please put the following information on the outside of the envelope:

Written Comments: File No.XX  
City of Newberg  
Community Development  
PO Box 970  
Newberg, OR 97132

**(City staff will give you the file number for your project at the time of application)**

All written comments must be turned in by 4:30 p.m. on ***enter date two weeks from date you mailed notice***. Any issue which might be raised in an appeal of this case to the Land Use Board of Appeals (LUBA) must be submitted to the City in writing before this date. You must include enough detail to enable the decision maker an opportunity to respond. The applicable criteria used to make a decision on this application for preliminary subdivision plan approval are found in Newberg Development Code 15.235.050(A).

You can look over all the information about this project or drop comments off at Newberg City Hall, 414 E. First Street. You can also buy copies of the information for a cost of 25 cents a page. If you have any questions about the project, you can call the Newberg Planning Division at 503-537-1240.

The Community Development Director will make a decision at the end of a 14-day comment period. If you send in written comments about this project, you will be sent information about any decision made by the City relating to this project.

Date Mailed: ***Date notice is mailed***

PLANNING DIVISION FILE #: \_\_\_\_\_

**CITY OF NEWBERG  
AFFIDAVIT OF NOTICING**

**REFERENCE ATTACHED LIST(S)/NOTICE(S)**

I, Paul Chiu (Elliott Rd Prj Mgr) do hereby certify that the attached Notice of Land Use Action was:

- a) mailed to the following list of property owners, by United States mail, postage prepaid  
on \_\_\_\_\_;  
(date)
  
- b) posted on the site according to standards established in Newberg Development Code §15.100.260  
on N/A \_\_\_\_\_.  
(date)

I acknowledge that failure to mail the notice in a timely manner constitutes an agreement by the applicant to defer the 120-day process limit and acknowledge that failure to mail will result in the automatic postponement of a decision on the application *15.100.210.(D)(2)* \_\_\_\_\_.  
(date)

\_\_\_\_\_  
Signature Date

Paul Chiu  
Print name

**Date:** 10/20/21

**RE: Elliott Road Improvement Project**  
**WRITTEN STATEMENT FOR TYPE II DETERMINATION**

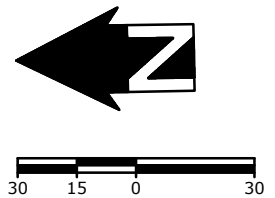
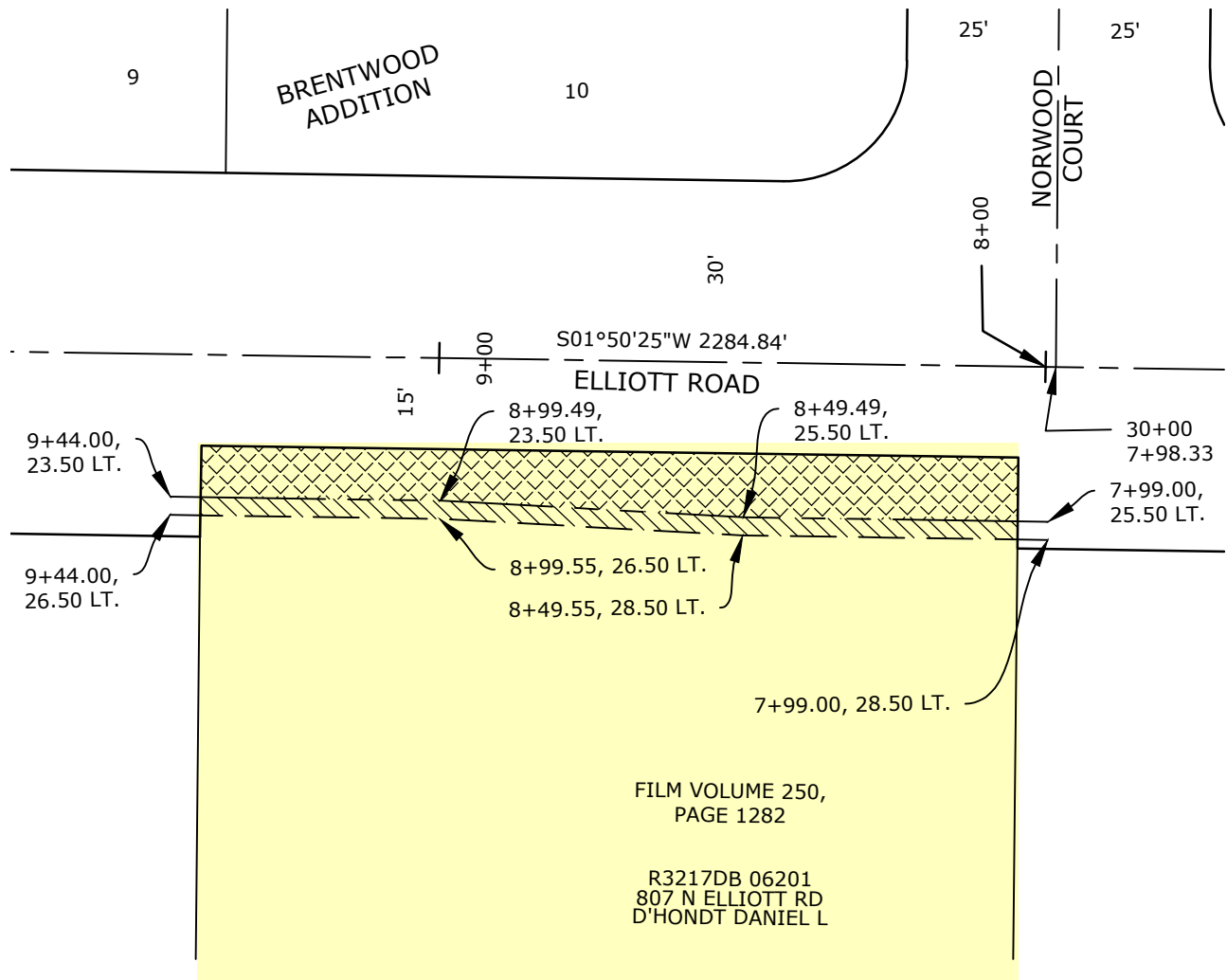
**Given the following:**


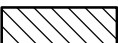
- NMC Section 15.505 applies to this Elliott Road Improvement Project, a capital improvement project.
- NMC 15.505.030(G) Street Width & Design Standards for Major Collector is 36' curb-to-curb (2-12' travel lanes, 2-6' bike lanes), 2-5' planter strips, 2-5' sidewalks → Total 56' of physical improvements. Typical sections show an additional 0.5' behind sidewalk to ROW. This gives a minimum ROW width of 57' as noted in NMC, or 28.5' ½ Street width.
- The Elliott Road Improvement Project is minimizing Right-of-way acquisition along the corridor resulting in four (4) parcels acquiring less than the minimum per NMC.
  - o File 7 – 807 Elliott Road: Varies from 25.5' to 23.5' of Right-of-way with an additional 3' of Public Utility Easement.
  - o File 9 – 911 Elliott Road: 23' of ROW with an additional 3' of Public Utility Easement.
  - o File 10 – 1007 Elliott Road: 25' of ROW with an additional 3' of Public Utility Easement.
  - o File 22 – 704 Elliott Road: Varies from 25' to 29' of Right-of-way with an additional 4.5' of Public Utility Easement.
- NMC 15.505.030(H): Modification of Street Right-of-Way Width requires a Type II application to the Planning Director.
  - o a. Unusual topographic conditions require a reduced width or grade separation of improved surfaces; or
  - o b. Lot shape or configuration precludes accessing a proposed development with a street which meets the full standards of this section; or
  - o c. A modification is necessary to preserve trees or other natural features determined by the City to be significant to the aesthetic character of the area; or
  - o d. A planned unit development is proposed and the modification of street standards is necessary to provide greater privacy or aesthetic quality to the development.

**Reasons for Request for Variance:**

- Federal Relocation Act: Right-of-way acquisition for this project must follow the Federal Uniform Relocation Act, codified by ORS 35.235.
  - o ORS35.235 Agreement for compensation; status of resolution or ordinance of public condemner; status of action of private condemner; agreement effort not prerequisite.
    - (1) Subject to ORS 758.015 and 836.050, whenever in the judgment of the condemner it is necessary to acquire property for a purpose for which the condemner is authorized by law to acquire property, the condemner shall, after first declaring by resolution or ordinance such necessity and the purpose for which it is required, attempt to agree with the owner with respect to the compensation to be paid therefor, and the damages, if any, for the taking thereof.
    - (2) The resolution or ordinance of a public condemner is presumptive evidence of the public necessity of the proposed use, that the property is necessary therefor and that the proposed use, that is the improvements or the project, is planned or located in a manner which will be most compatible with the *greatest public good and the least private injury*.
- If any of these properties were to redevelop in the future, the City would condition them to dedicate the ultimate ½ street ROW.

**EXHIBIT A-1**



-  1. RIGHT-OF-WAY DEDICATION  
1,285 SQ. FT. MORE OR LESS
-  2. PERMANENT UTILITY EASEMENT  
404 SQ. FT. MORE OR LESS

ELLIOTT ROAD  
N. HWY.99 W. TO NEWBERG HIGH SCHOOL

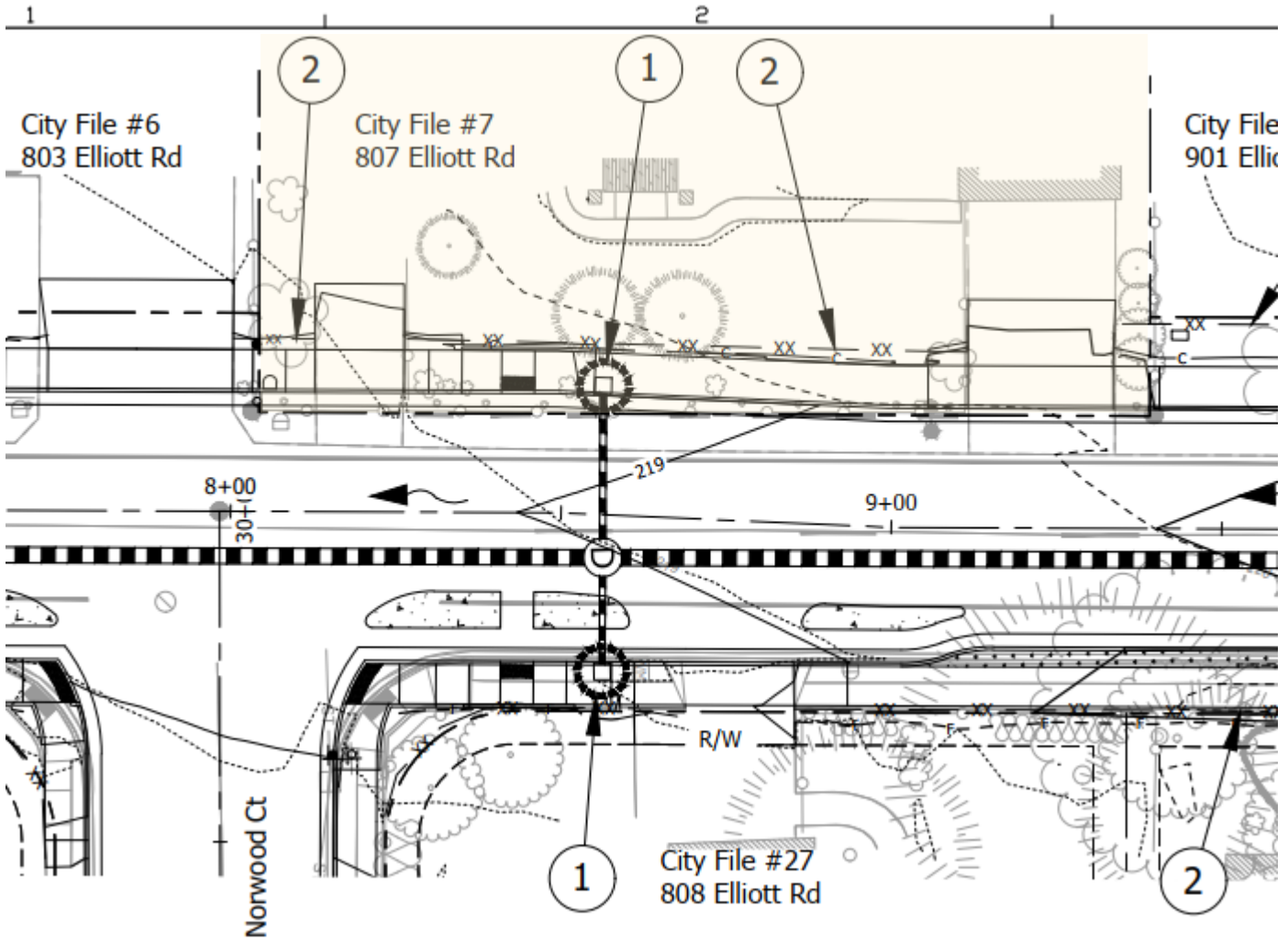
**CES | NW**

13190 SW 68th Parkway, Suite 150  
Tigard, Oregon 97223  
503.968.6655 www.cesnw.com

FILE NUMBER: 07	SUBMITTAL DATE: 9/03/2020
TAX LOT: 06201	REVISED DATE: 9/10/2020
TAX MAP: 3 2 17DB	REVISED DATE:
ADDRESS: 807 ELLIOTT ROAD	

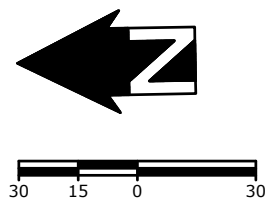
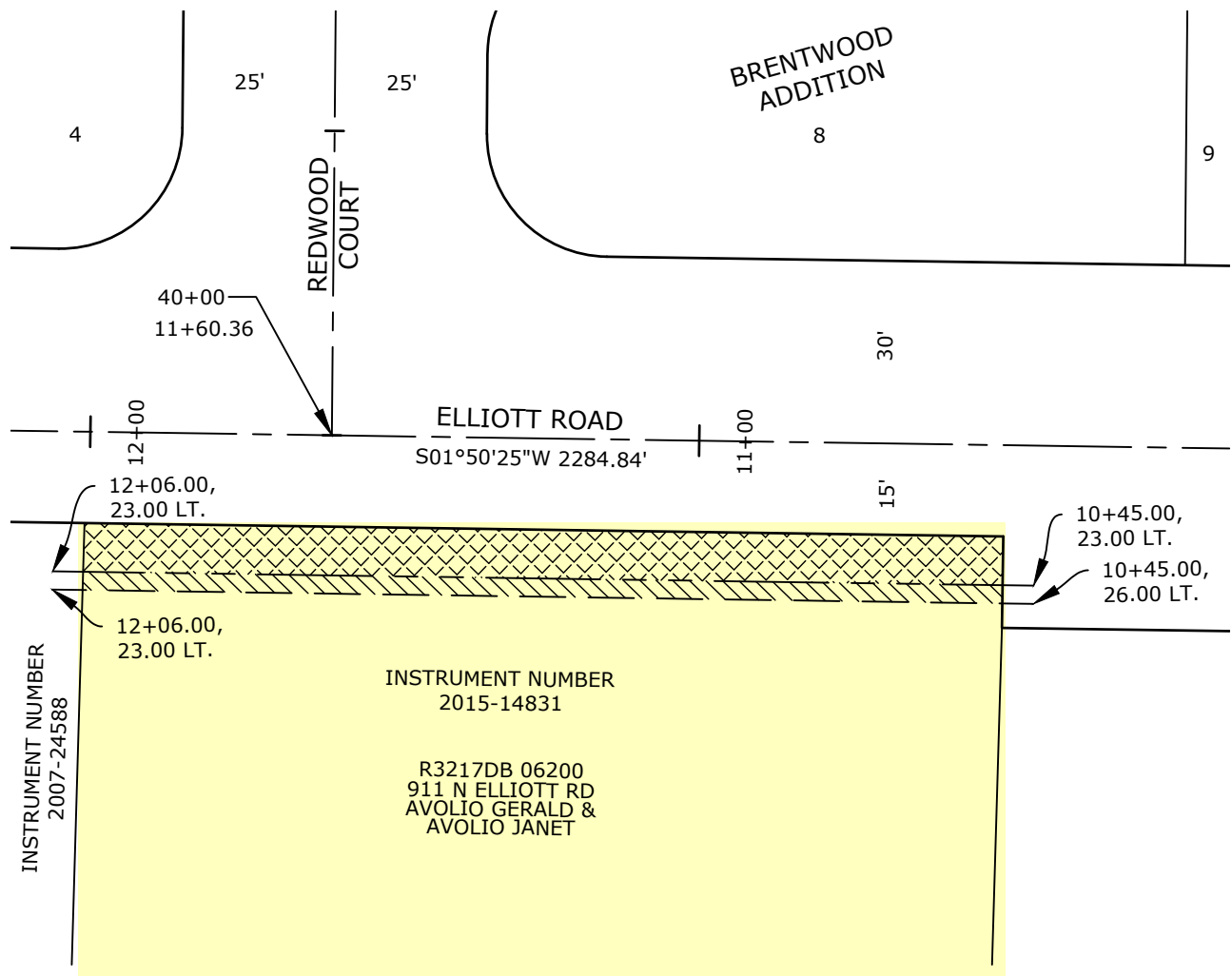
**EXHIBIT A-2**



**File 7\_807 Elliott Road  
Proposed grading**





**EXHIBIT B-1**



-  1. RIGHT-OF-WAY DEDICATION  
1,027 SQ. FT. MORE OR LESS
-  2. PERMANENT UTILITY EASEMENT  
453 SQ. FT. MORE OR LESS

ELLIOTT ROAD  
N. HWY.99 W. TO NEWBERG HIGH SCHOOL

**CES | NW**

13190 SW 68th Parkway, Suite 150  
Tigard, Oregon 97223  
503.968.6655 www.cesnw.com

FILE NUMBER: 09	SUBMITTAL DATE: 09/10/2020
TAX LOT: 06200	REVISED DATE:
TAX MAP: 3 2 17DB	REVISED DATE:
ADDRESS: 911 N ELLIOTT ROAD	

**EXHIBIT B-2**  
**File 9\_911 Elliott Road**  
**Proposed grading**

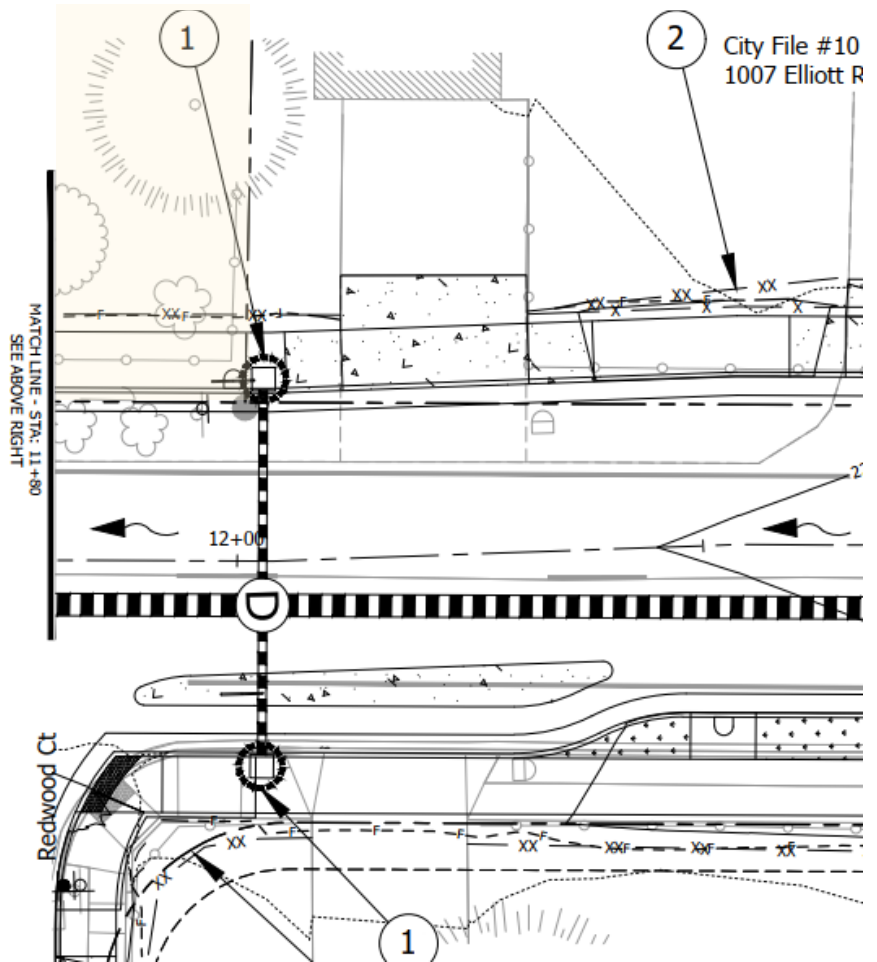
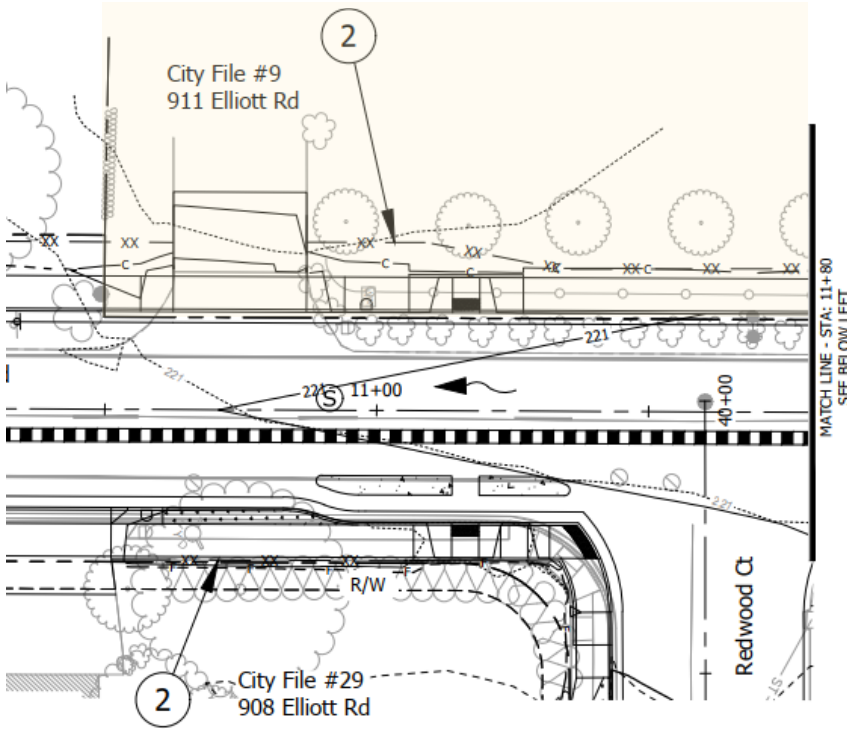
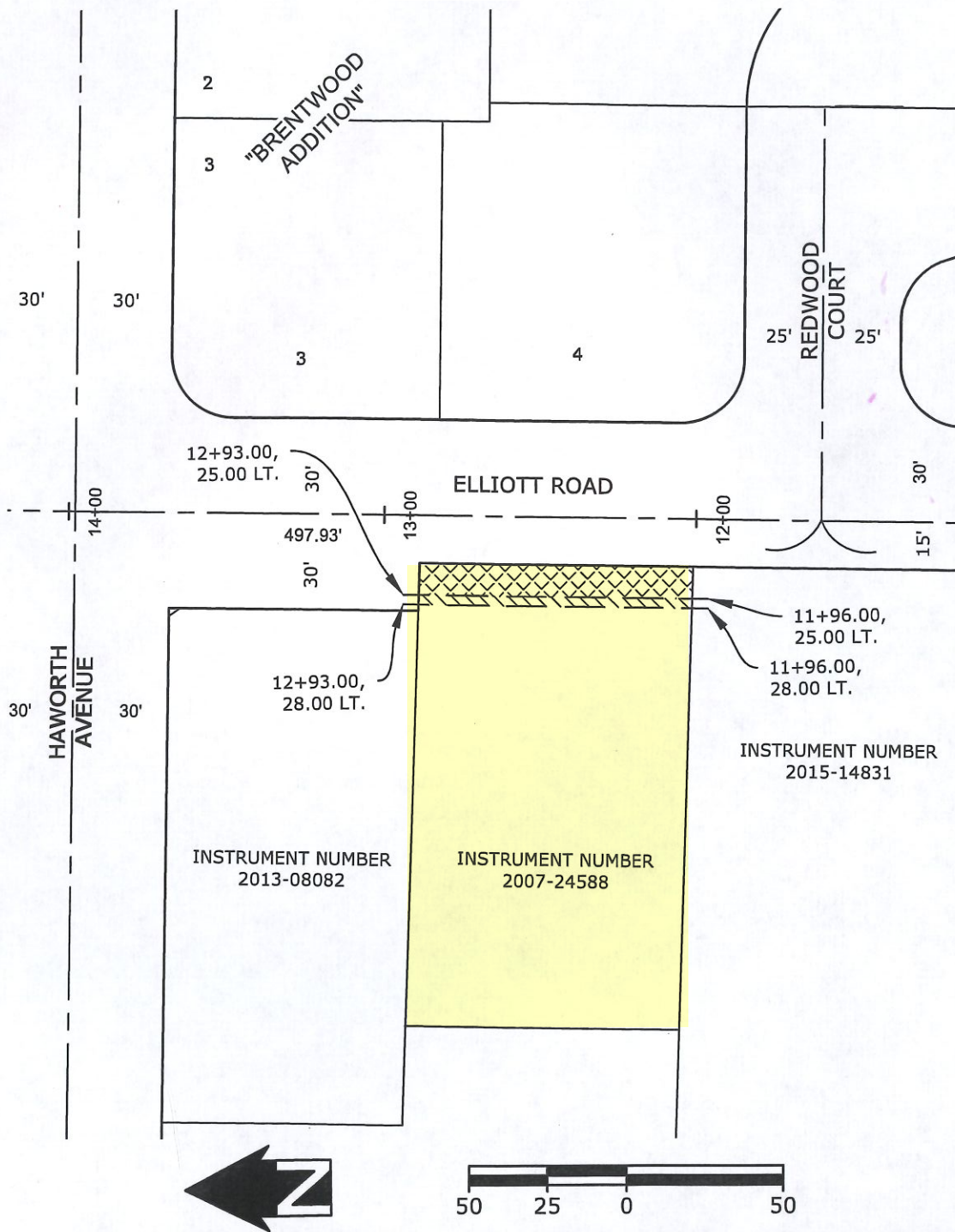




EXHIBIT C-1



-  1. RIGHT-OF-WAY DEDICATION  
876 SQ. FT. MORE OR LESS
-  2. PERMANENT UTILITY EASEMENT  
262 SQ. FT. MORE OR LESS

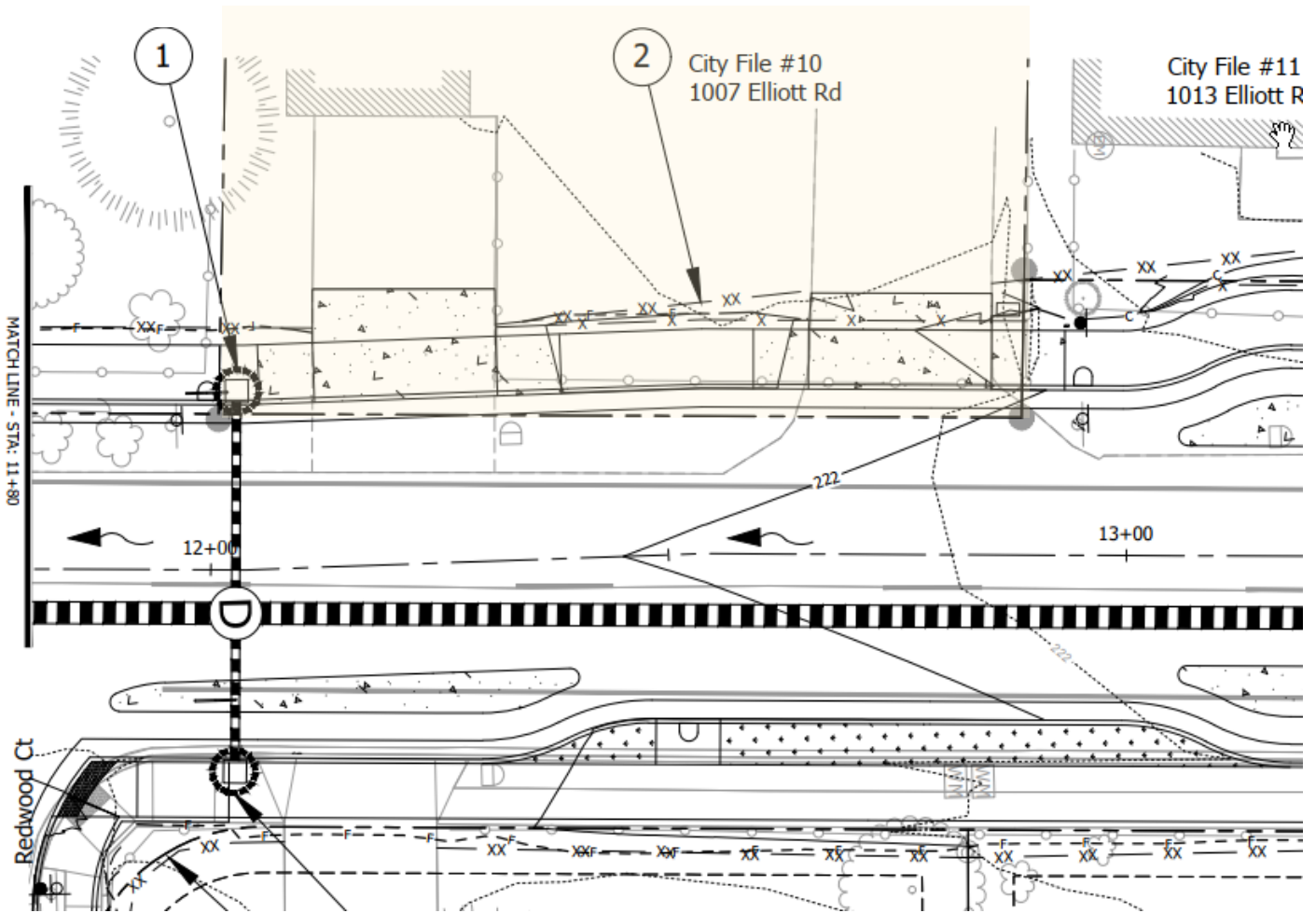
ELLIOTT ROAD  
N. HWY.99 W. TO NEWBERG HIGH SCHOOL

**CES | NW** 13190 SW 68th Parkway, Suite 150  
Tigard, Oregon 97223  
503.968.6655 www.cesnw.com

FILE NUMBER: 10	SUBMITTAL DATE: 7/14/2021
TAX LOT: 06100	REVISED DATE:
TAX MAP: 3 2 17DB	REVISED DATE:
ADDRESS: 1007 N ELLIOTT ROAD	

**EXHIBIT C-2**

**File 10\_1007 Elliott Road  
Proposed grading**



**EXHIBIT D-1**

R3217DD 02501  
704 N ELLIOTT RD 9-12  
CEDAR TERRACE LLC

P06-20

2

5+28.00,  
29.50 RT.

4+20.42,  
29.50 RT.

3+30.91,  
31.71 RT.

3+08.00,  
33.87 RT.

5+28.00,  
25.00 RT.

4+20.36,  
25.00 RT.

3+30.64,  
27.21 RT.

3+08.00,  
29.35 RT.

5+00

ELLIOTT ROAD

S01°50'25"W 2284.84'

4+00

30'



1. RIGHT-OF-WAY DEDICATION  
2,258 SQ. FT. MORE OR LESS



2. PERMANENT UTILITY EASEMENT  
947 SQ. FT. MORE OR LESS

ELLIOTT ROAD  
N. HWY.99 W. TO NEWBERG HIGH SCHOOL

**CES | NW**

13190 SW 68th Parkway, Suite 150  
Tigard, Oregon 97223  
503.968.6655 www.cesnw.com

FILE NUMBER: 22

SUBMITTAL DATE: 09/10/2020

TAX LOT: 02501

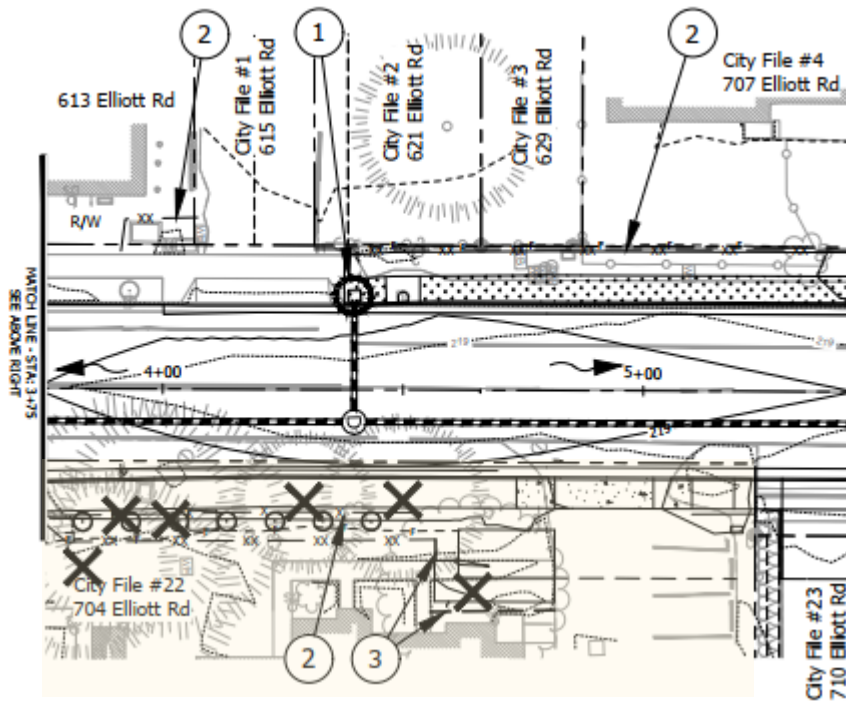
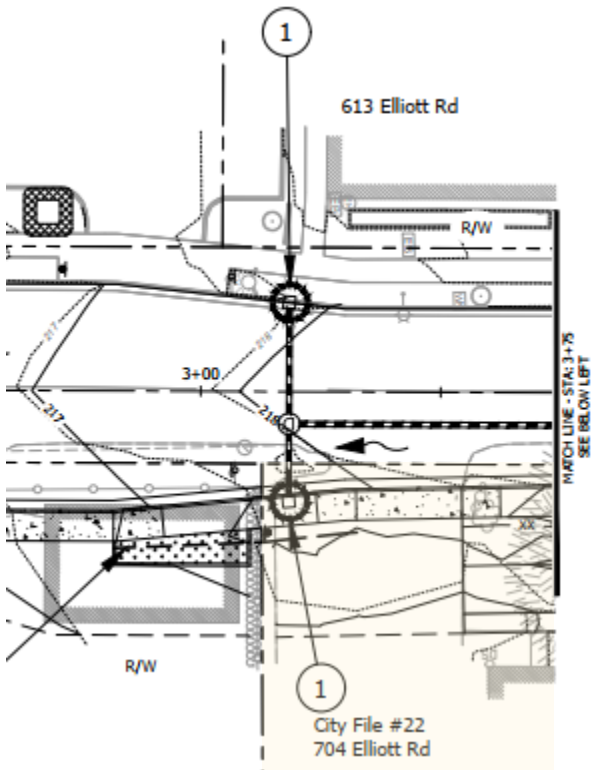
REVISED DATE:

TAX MAP: 3 2 17DD

REVISED DATE:

ADDRESS: 704 N ELLIOTT ROAD

**EXHIBIT D-2**  
**File 22\_704 Elliott Road**  
**Proposed grading**





### ELLIOTT ROAD - TYPE II NOTIFICATION LIST

MapTaxlot	SITUS1	SITUSCITY	SITUSZIP	OWNER1	OWNER2	MAILADD1	MAILCITY	MAILSTATE	MAILZIP
R3217DA 00802	1204 N ELLIOTT RD	NEWBERG	97132	SIMPSON ROBERT J	SIMPSON SHARON L	1204 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 03600	808 N ELLIOTT RD	NEWBERG	97132	REAB AMANDA	REAB BENJAMIN	808 N ELLIOTT RD	NEWBERG	OR	97132
R3217DC 00300	707 N ELLIOTT RD	NEWBERG	97132	BLACK GARRY L		707 N ELLIOTT RD	NEWBERG	OR	97132
R3217DB 06114	901 N ELLIOTT RD	NEWBERG	97132	HARRIMAN WILLIAM E		901 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 03400	908 N ELLIOTT RD	NEWBERG	97132	MITCHELL BRIAN A		1203 SITKA AVE	NEWBERG	OR	97132
R3217DA 00400	2500 HAWTHORNE DR	NEWBERG	97132	J & R EQUITIES		478 17TH ST	SANTA MONICA	CA	90402
R3217DA 00700	1210 N ELLIOTT RD	NEWBERG	97132	SOLORZANO ANTONIO S		1210 N ELLIOTT RD	NEWBERG	OR	97132
R3217DB 01600	1205 N ELLIOTT RD	NEWBERG	97132	VAN BERGEN JEFFREY	VAN BERGEN CONTONA S	1205 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 02501	704 N ELLIOTT RD 9-12	NEWBERG	97132	CEDAR TERRACE LLC		13489 NW TREVINO ST	PORTLAND	OR	97229
R3217DA 00803	1202 N ELLIOTT RD	NEWBERG	97132	BYNON DEVIN R &	BYNON REGINA M	1202 ELLIOTT RD	NEWBERG	OR	97132
R3217DC 00200	713 N ELLIOTT RD	NEWBERG	97132	GONZALEZ ANITA		713 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 02602	710 N ELLIOTT RD	NEWBERG	97132	LUCKY DOG PROPERTIES LLC		5250 ROGUE RIVER HWY	GRANTS PASS	OR	97527
R3217DB 06002	1013 N ELLIOTT RD	NEWBERG	97132	KOCH MICHAEL		19490 S FERGUSON TERRACE	OREGON CITY	OR	97045
R3217DA 00900	2505 HAWORTH AVE	NEWBERG	97132	CHURCH OF CHRIST		2503 HAWORTH AVE	NEWBERG	OR	97132
R3217DA 00300	1300 N ELLIOTT RD	NEWBERG	97132	J & R EQUITIES		478 17TH ST	SANTA MONICA	CA	90402
R3217DB 01500	1207 N ELLIOTT RD	NEWBERG	97132	SPENCER THOMAS K	SPENCER WANDA C	1207 ELLIOTT RD	NEWBERG	OR	97132
R3217DA 00801	1206 N ELLIOTT RD	NEWBERG	97132	WOOLEN NORMAN A	WOOLEN STEFFANIE	1705 GEMINI LN	NEWBERG	OR	97132
R3217DB 06201	807 N ELLIOTT RD	NEWBERG	97132	D'HONDT DANIEL L		807 N ELLIOTT RD	NEWBERG	OR	97132
R3217DC 00500	609 N ELLIOTT RD	NEWBERG	97132	CFT NV DEVELOPMENTS LLC		1683 WALNUT GROVE AVE	ROSEMEAD	CA	91770
R3217DD 02900	2500 HAWORTH AVE	NEWBERG	97132	BROWN TYLER	PAUL KASIE	2500 HAWORTH AVE	NEWBERG	OR	97132
R3217DB 06001	1007 N ELLIOTT RD	NEWBERG	97132	PARKS JON H	PARKS GRACE L	20032 SORRENTO PL	BEND	OR	97702
R3217DC 00402	613 N ELLIOTT RD UNIT 101	NEWBERG	97132	KCK PARTNERS LLC		11483 SE AMITY-DAYTON HWY	DAYTON	OR	97114
R3217DB 05908	2409 HAWORTH AVE	NEWBERG	97132	BROWN MARCIA S TRUSTEE	BROWN MARCIA TRUST	2409 HAWORTH AVE	NEWBERG	OR	97132
R3217DD 04000	2500 NORWOOD CT	NEWBERG	97132	RINGSETH JAMES A	RINGSETH KATIE L	2500 NORWOOD CT	NEWBERG	OR	97132
R3217DB 01700	1203 N ELLIOTT RD	NEWBERG	97132	MULCAHY SHAUN P	MULCAHY KARRIE M	1203 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 03000	1004 N ELLIOTT RD	NEWBERG	97132	ANDERSON NICHOLAS	ANDERSON STACY	1004 N ELLIOTT RD	NEWBERG	OR	97132
R3217DB 03900	2408 WILLOW DR	NEWBERG	97132	WOOLDRIDGE ELMER & BRENDA L		2408 WILLOW DR	NEWBERG	OR	97132
R3217DD 02502	2501 NE PORTLAND RD B	NEWBERG	97132	VEATCH ROGER A & CAROL E TRUSTEES FOR	VEATCH FAMILY TRUST	18450 NE HILLSIDE DR	NEWBERG	OR	97132
R3217DC 00303	621 N ELLIOTT RD E	NEWBERG	97132	ELLIOTT ESTATES LLC		17370 SW 108TH PL	TUALATIN	OR	97062
R3217DC 00400	615 N ELLIOTT RD	NEWBERG	97132	ELLIOTT ESTATES LLC		17370 SW 108TH PL	TUALATIN	OR	97062
R3217DB 06200	911 N ELLIOTT RD	NEWBERG	97132	AVOLIO GERALD &	AVOLIO JANET	911 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 03500	900 N ELLIOTT RD	NEWBERG	97132	CHILD KATHLEEN		PO BOX 396	NEWBERG	OR	97132
R3217DD 02600	720 N ELLIOTT RD	NEWBERG	97132	SHUCKEROW PATRICK C	SHUCKEROW KATHERINE M	PO BOX 253	NEWBERG	OR	97132
R3217DD 02601	714 N ELLIOTT RD	NEWBERG	97132	THOMPSON EMILY		710 N ELLIOTT RD	NEWBERG	OR	97132
R3217DC 00301	629 N ELLIOTT RD	NEWBERG	97132	ELLIOTT ESTATES LLC		17370 SW 108TH PL	TUALATIN	OR	97062
R3217DB 01800	2409 WILLOW DR	NEWBERG	97132	REDWINE GARY D &	REDWINE CHERI	2409 WILLOW DR	NEWBERG	OR	97132
R3217DB 01400	1209 N ELLIOTT RD	NEWBERG	97132	KWIESELEWICZ NATHALIE		1209 N ELLIOTT RD	NEWBERG	OR	97132
R3217DC 00100	803 N ELLIOTT RD	NEWBERG	97132	CROCKETT WESLEY	CROCKETT BRANDY	803 N ELLIOTT RD	NEWBERG	OR	97132
R3217DB 00100	2409 HAWTHORNE DR	NEWBERG	97132	MARSHALL THOMAS L & TERESA		2409 HAWTHORNE DR	NEWBERG	OR	97132

R3217DA 00802  
SIMPSON ROBERT J  
1204 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DB 06114  
HARRIMAN WILLIAM E  
901 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DA 00700  
SOLORZANO ANTONIO S  
1210 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DA 00803  
BYNON DEVIN R &  
1202 ELLIOTT RD  
NEWBERG, OR 97132

R3217DB 06002  
KOCH MICHAEL  
19490 S FERGUSON TERRACE  
OREGON CITY, OR 97045

R3217DB 01500  
SPENCER THOMAS K  
1207 ELLIOTT RD  
NEWBERG, OR 97132

R3217DC 00500  
CFT NV DEVELOPMENTS LLC  
1683 WALNUT GROVE AVE  
ROSEMEAD, CA 91770

R3217DC 00402  
KCK PARTNERS LLC  
11483 SE AMITY-DAYTON HWY  
DAYTON, OR 97114

R3217DB 01700  
MULCAHY SHAUN P  
1203 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DD 02502  
VEATCH ROGER A & CAROL E  
18450 NE HILLSIDE DR  
NEWBERG, OR 97132

R3217DD 03600  
REAB AMANDA  
808 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DD 03400  
MITCHELL BRIAN A  
1203 SITKA AVE  
NEWBERG, OR 97132

R3217DB 01600  
VAN BERGEN JEFFREY  
1205 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DC 00200  
GONZALEZ ANITA  
713 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DA 00900  
CHURCH OF CHRIST  
2503 HAWORTH AVE  
NEWBERG, OR 97132

R3217DA 00801  
WOOLEN NORMAN A  
1705 GEMINI LN  
NEWBERG, OR 97132

R3217DD 02900  
BROWN TYLER  
2500 HAWORTH AVE  
NEWBERG, OR 97132

R3217DB 05908  
BROWN MARCIA S TRUSTEE  
2409 HAWORTH AVE  
NEWBERG, OR 97132

R3217DD 03000  
ANDERSON NICHOLAS  
1004 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DC 00303  
ELLIOTT ESTATES LLC  
17370 SW 108TH PL  
TUALATIN, OR 97062

R3217DC 00300  
BLACK GARRY L  
707 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DA 00400  
J & R EQUITIES  
478 17TH ST  
SANTA MONICA, CA 90402

R3217DD 02501  
CEDAR TERRACE LLC  
13489 NW TREVINO ST  
PORTLAND, OR 97229

R3217DD 02602  
LUCKY DOG PROPERTIES LLC  
5250 ROGUE RIVER HWY  
GRANTS PASS, OR 97527

R3217DA 00300  
J & R EQUITIES  
478 17TH ST  
SANTA MONICA, CA 90402

R3217DB 06201  
D'HONDT DANIEL L  
807 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DB 06001  
PARKS JON H  
20032 SORRENTO PL  
BEND, OR 97702

R3217DD 04000  
RINGSETH JAMES A  
2500 NORWOOD CT  
NEWBERG, OR 97132

R3217DB 03900  
WOOLDRIDGE ELMER & BRENDA L  
2408 WILLOW DR  
NEWBERG, OR 97132

R3217DC 00400  
ELLIOTT ESTATES LLC  
17370 SW 108TH PL  
TUALATIN, OR 97062



R3217DB 06200  
AVOLIO GERALD &  
911 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DD 02601  
THOMPSON EMILY  
710 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DB 01400  
KWIESELEWICZ NATHALIE  
1209 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DD 03500  
CHILD KATHLEEN  
PO BOX 396  
NEWBERG, OR 97132

R3217DC 00301  
ELLIOTT ESTATES LLC  
17370 SW 108TH PL  
TUALATIN, OR 97062

R3217DC 00100  
CROCKETT WESLEY  
803 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DD 02600  
SHUCKEROW PATRICK C  
PO BOX 253  
NEWBERG, OR 97132

R3217DB 01800  
REDWINE GARY D &  
2409 WILLOW DR  
NEWBERG, OR 97132

R3217DB 00100  
MARSHALL THOMAS L & TERESA  
2409 HAWTHORNE DR  
NEWBERG, OR 97132



November 8, 2021

Doug Rux  
Community Development  
City of Newberg  
PO Box 970  
Newberg, OR 97132

Re: MISC221-0002 – Elliott Road

Dear Mr. Rux:

This letter is a response to your notice dated November 2, 2021, in particular the narrative response for Newberg Municipal Code 15.505.030(H):

Properties 807 N Elliott Road and 911 N Elliott Road requires modification of street right-of-way width because of the necessity to preserve existing trees and to minimize impact to the green features of the Elliott Road corridor according to subsection (H)(1)(c).

Property 1007 N Elliott Road requires transition of the narrower street right-of-way to full width to the north as a result of preserving existing trees to the south according to subsection (H)(1)(c).

Please refer to Exhibits E-1, E-2 and E3 for the reasons due to the tree impact.

Property 704 N Elliott Road requires a 6-inch narrower street right-of-way from the 60-foot full width at the north corner of the existing multi-dwelling development to preserve the loss of an existing parking space and to minimize impact to the existing lot configuration according to subsection (H)(1)(b). The south portion of this lot does not have a right-of-way issue.

Please also note that the City Council authorized Resolution No. 2020-3681 on June 15, 2020 that they selected “The Buffered Bike Lane” design as the preferred alternative. This alternative specifically directed project staff to proceed with the narrower right-of-way design in some areas of the Elliott Road corridor.

With this additional information, please review this Type II application. Please also advise me when to mail the Neighborhood Notice. If you have any further questions, please do not hesitate to contact me.

Sincerely,

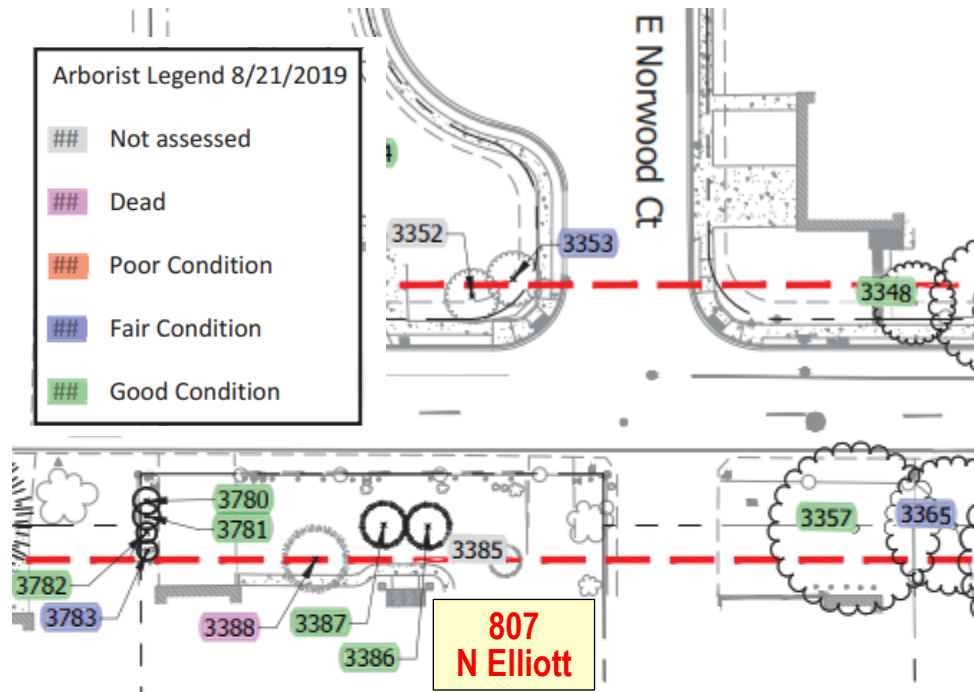
Paul Chiu, PE  
Project Manager

Attachments as noted above

## EXHIBIT E-1

Date of Response to CDD Notice (via email): 11/8/2021

RE: 807 N Elliott  
Tree Survey (8-21-19)



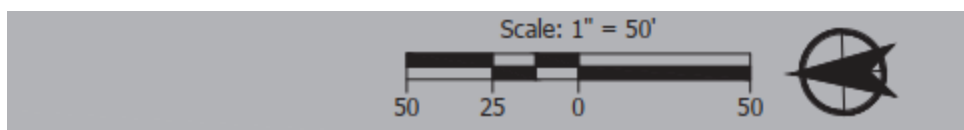
No.	Location	Type	Common Name	Species Name	DBH <sup>1</sup>	C-Rad <sup>2</sup>	Cond <sup>3</sup>	Comments	Treatment
3385	Priv Prop	Con						Not assessed - below 6" diameter	
3386	Priv Prop	Con	palm	<i>Arecaceae</i> spp.	*9	8	G		
3387	Priv Prop	Con	palm	<i>Arecaceae</i> spp.	*9	8	G		
3388	Priv Prop	Con	spruce	<i>Picea</i> spp.	*23	0	D	Completely dead	
3780	Priv Prop	Dec	apple	<i>Malus</i> spp.	6	5	G	Diameter measured at lower trunk below codominant stem juncture	
3781	Priv Prop	Dec	apple	<i>Malus</i> spp.	7	6	G	Diameter measured at lower trunk below codominant stem juncture	
3782	Priv Prop	Dec	apple	<i>Malus</i> spp.	8	6	G	Diameter measured at lower trunk below codominant stem juncture	
3783	Priv Prop	Dec	apple	<i>Malus</i> spp.	6	4	F	Diameter measured at lower trunk below codominant stem juncture	

<sup>1</sup>DBH is tree diameter at breast height measured 4.5-feet above ground level in inches; codominant stems originating below 4.5-feet are separated by a common or indicated as quantity x size. Where noted, diameter was measured below 4.5-feet. \*Asterisk indicates limited visual tree assessment due to access limitations on private properties; size was visually estimated and observations were limited to public rights of way only.

<sup>2</sup>C-Rad is the average crown radius measured in feet.

<sup>3</sup>Cond is an arborist assigned rating to generally describe the condition of individual trees as follows-

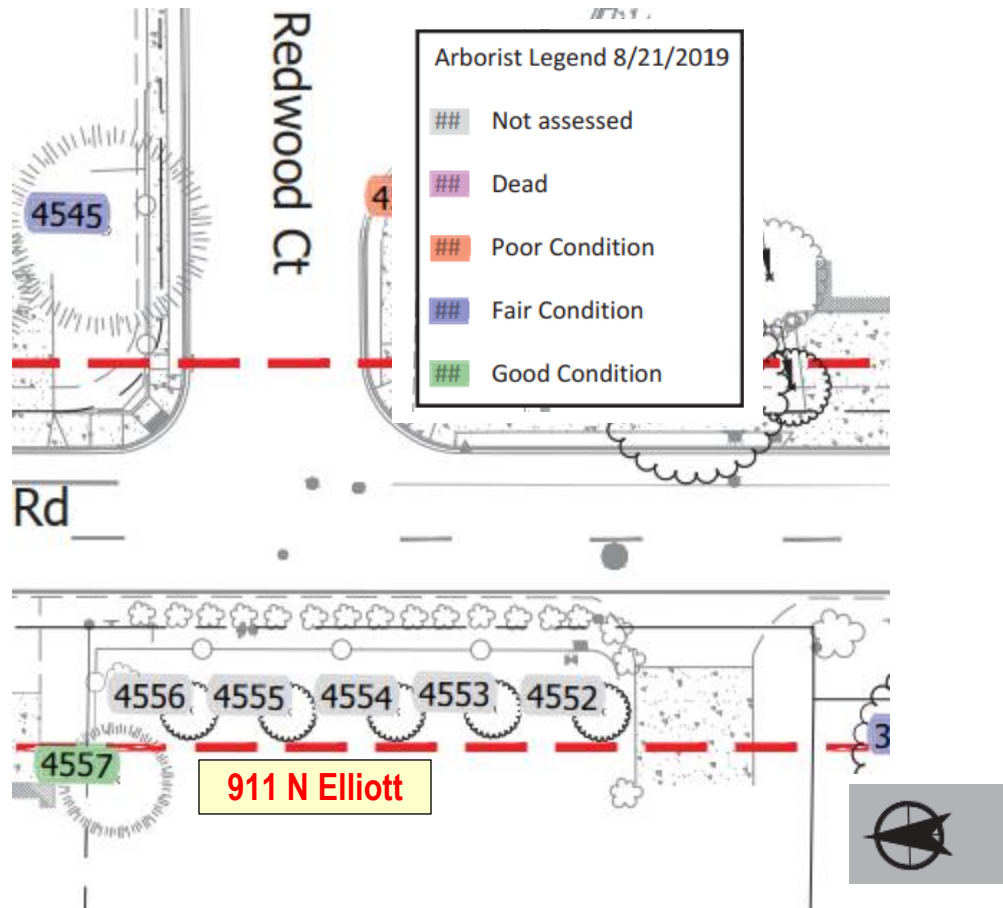
- D: Dead
- P: Poor Condition
- F: Fair Condition



## EXHIBIT E-2

Date of Response to CDD Notice (via email): 11/8/2021

RE: 911 N Elliott  
Tree Survey (8-21-19)



No.	Location	Type	Common Name	Species Name	DBH <sup>1</sup>	C-Rad <sup>2</sup>	Cond <sup>3</sup>	Comments	Treatment
4552	Priv Prop	Dec						Not assessed - below 6" diameter	
4553	Priv Prop	Dec						Not assessed - below 6" diameter	
4554	Priv Prop	Dec						Not assessed - below 6" diameter	
4555	Priv Prop	Dec						Not assessed - below 6" diameter	
4556	Priv Prop	Dec						Not assessed - below 6" diameter	
4557	Priv Prop	Con	blue spruce	<i>Picea pungens</i>	*11	14	G	Long live crown	

<sup>1</sup>DBH is tree diameter at breast height measured 4.5-feet above ground level in inches; codominant stems originating below 4.5-feet are separated by a common or indicated as quantity x size. Where noted, diameter was measured below 4.5-feet. \*Asterisk indicates limited visual tree assessment due to access limitations on private properties; size was visually estimated and observations were limited to public rights of way only.

<sup>2</sup>C-Rad is the average crown radius measured in feet.

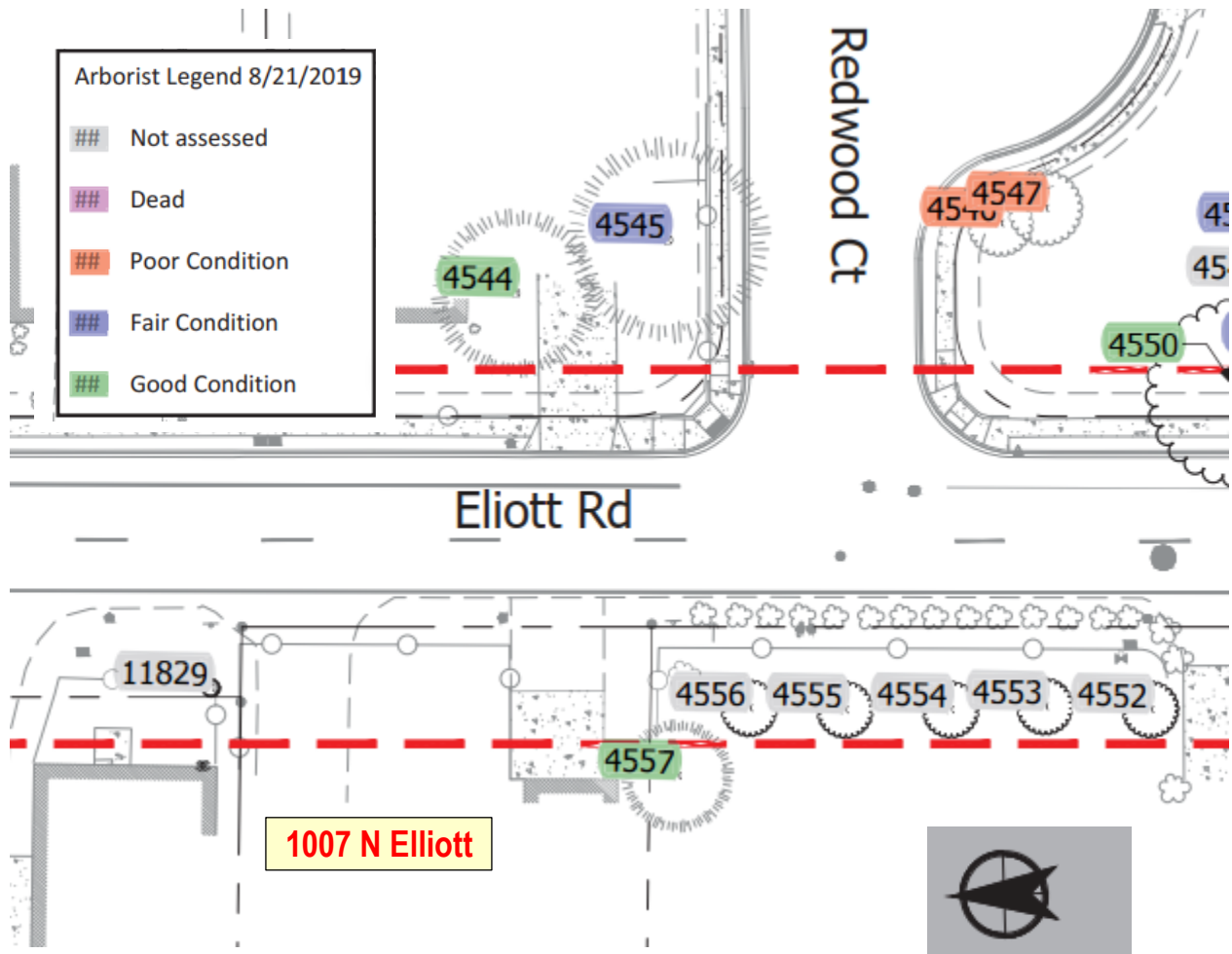
<sup>3</sup>Cond is an arborist assigned rating to generally describe the condition of individual trees as follows-

- D: Dead
- P: Poor Condition
- F: Fair Condition
- G: Good Condition

### EXHIBIT E-3

Date of Response to CDD Notice (via email): 11/8/2021

RE: 1007 N Elliott  
Neighboring Tree Survey (8-21-19)



No.	Location	Type	Common Name	Species Name	DBH <sup>1</sup>	C-Rad <sup>2</sup>	Cond <sup>3</sup>	Comments	Treatment
4557	Priv Prop	Con	blue spruce	<i>Picea pungens</i>	*11	14	G	Long live crown	
11829	ROW	Con						Not assessed - below 6" diameter	

<sup>1</sup>DBH is tree diameter at breast height measured 4.5-feet above ground level in inches; codominant stems originating below 4.5-feet are separated by a common or indicated as quantity. Where noted, diameter was measured below 4.5-feet. \*Asterisk indicates limited visual tree assessment due to access limitations on private properties; size was visually estimated and observations were limited to public rights of way only.

<sup>2</sup>C-Rad is the average crown radius measured in feet.

<sup>3</sup>Cond is an arborist assigned rating to generally describe the condition of individual trees as follows-

- D: Dead
- P: Poor Condition
- F: Fair Condition
- G: Good Condition

## **Attachment 2: Public Comments**

Find messages, documents, photos or people



Home

Compose

To Mr. Paul CHIU

CC / BCC

19

Inbox

999

Unread

Starred

Drafts

240

Sent

Archive

Spam

Trash

Less

Views

Hide

Photos

Documents

Subscriptions

Deals

Groceries

Receipts

Travel

Folders

Show

Elliott Rd. Project Comments

Good morning Mr. Chiu:

Thank you for the opportunity to submit comments on the proposed Elliott Road Project. My comments follow:

- 1) I am surprised at the extensive work planned , which I understand will cost in excess of \$3,000,000 to dress a road to a high school parking lot.
- 2) I very much do understand and support the need for sidewalks on both sides of Elliott Road for the safety and convenience of pedestrians As you know this would require the City acquiring part of my front yard.
- 3) Every week I walk many miles of Newberg City streets. Many streets here have sidewalks on only one side of the street. Many streets do not have sidewalks on either side. I also have noticed many, many sidewalks in the city are in bad need of extensive repair work. May I suggest , if only sidewalks were installed on Elliott Rd. any excess funds could/should be used installing new and repairing old sidewalks in the City.
- 4) I was told by one of your staff that the Elliott Rd. Project requires widening the road because widening the road will help reduce the speed of traffic.. I believe permanent speed cameras would immediatly solve the speed problem at a much reduced cost.

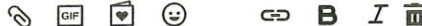
Bst Rgds

RECEIVED

NOV 22 2021

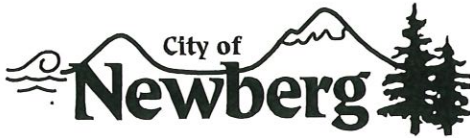
Initial: \_\_\_\_\_

Send



Good morning Mr Chiu:  
 I sent comments per your  
 Request by e mail as  
 detailed in this cc.  
 Thank you for the opportunity  
 to submit comments on the  
 Elliott Rd. Project  
 Best Rgds  
 G. Avolio  
 [Signature]

CITY OF NEWBERG TYPE II  
MAILED NOTICE



Community Development Department

P.O. Box 970 • 414 E First Street • Newberg, Oregon 97132  
503-537-1240. Fax 503-537-1272 [www.newbergoregon.gov](http://www.newbergoregon.gov)

**WE WANT YOUR COMMENTS ON A PROPOSED NEW  
DEVELOPMENT IN YOUR NEIGHBORHOOD**

The Elliott Road project manager submitted an application to the City of Newberg for Type II Determination. See below for details. You are invited to take part in the City's review of this project by sending in your written comments. The applicable criteria used to make a decision on this application are found in Newberg Development Code 15.505.030(H). For more details about giving comments, please see the back of this sheet.

The development would include right of way improvements for the N Elliott Road corridor from Highway 99W north to Newberg High School. Proposed improvements include pavement, curb and gutter, sidewalk, ADA ramps, bicycle lanes, storm drainage, wastewater pipeline, water main, street lighting, conversion from aerial to underground power line, traffic calming and roadway safety features, and landscape enhancement.

APPLICANT: *Paul Chiu (Elliott Road Project Manager)*  
TELEPHONE: *(503) 554-1751*

PROPERTY OWNER: *City of Newberg (Elliott Road right-of-way)*

LOCATION: *Elliott Road from Hwy 99W to Newberg High School*

TAX LOT NUMBER: *Yamhill County TL 3217DB-06201, TL 3217DB-06200, TL 3217DB-06100,  
and TL 3217DD-02501 (Elliott Road residential)*



Site map with project location (N Elliott Road) highlighted as shown above (arrows pointing to properties for Type II determination)



**From:**  
Miguel Gonzales  
713 N Elliott Road  
Newberg, OR 97132

November 30, 2021

RECEIVED

DEC - 1 2021

**To:**  
City of Newberg  
Community Development Department  
PO Box 970  
Newberg, OR 97132

Initial: \_\_\_\_\_

**Subject:** City Of Newberg File No. MISC221-0002 Type II Application -Land Use

I, Miguel Gonzales, do NOT approve of the subject Type II application.

It is fundamental, and a part of land use law and the city's own code that the Owner must approve of the application, even approve of and sign the land use application.

The City does NOT meet the provisions of NMC 15.505.030(h) because you have failed to have the owners sign the land use application.

Below is the relevant code and key case examples below in **Yellow**

Additionally, and

of equal or GREATER IMPORTANCE the city has made no serious effort to address the many concerns and suggestions of Elliott Road residents including those presented at the Newberg City Council Meeting on 3/15/2016.



Miguel Gonzales

CC: Attorney - Tyler Smith

Via US Mail (1st class) and hand delivered

Via email (courtesy of Daniel DHondt) to all City Council members

### **15.100.030 Type II procedure.**

A. Type II development actions shall be decided by the [director](#).

B. Type II actions include, but are not limited to:

1. Site design review.
2. [Variances](#).
3. [Manufactured dwelling parks](#) and [mobile home parks](#).
4. [Partitions](#).
5. Subdivisions, except for subdivisions with certain conditions requiring them to be processed using the Type III process, pursuant to NMC [15.235.030\(A\)](#).

C. The [applicant](#) shall provide notice pursuant to the requirements of NMC [15.100.200](#) et seq.

D. The [director](#) shall make a decision based on the information presented and shall issue a [development permit](#) if the [applicant](#) has complied with all of the relevant requirements of this [code](#). The [director](#) may add conditions to the permit to ensure compliance with all requirements of this [code](#).

E. Appeals may be made by an affected party, Type II, in accordance with NMC [15.100.160](#) et seq. All Type II development action appeals shall be heard and decided by the [planning commission](#).

F. If the [director](#)'s decision is appealed as provided in subsection (E) of this section, the [hearing](#) shall be conducted pursuant to the Type III [quasi-judicial hearing](#) procedures as identified in NMC [15.100.050](#).

G. The decision of the [planning commission](#) on any appeal may be further appealed to the [city council](#) by an affected party, Type III, in accordance with NMC [15.100.160](#) et seq. and shall be a review of the record supplemented by written or oral arguments relevant to the record presented by the parties.

H. An [applicant](#) shall have the option to request at the time the [development permit](#) application is submitted that the proposal be reviewed under the Type III procedure. [Ord. [2813](#) § 1 (Exh. A § 3), 9-5-17; Ord. [2747](#) § 1 (Exh. A § 4), 9-6-11; Ord. [2451](#), 12-2-96. Code 2001 § 151.022.]

## 15.100.090 Development permit application.

Applications for [development permits](#) shall be submitted upon forms established by the [director](#). An application shall consist of all materials required by this [code](#), including the following information:

- A. A completed [development permit](#) application form.
- B. Proof that the property affected by the application is in the exclusive ownership of the [applicant](#), or that the [applicant](#) has the consent of all [owners](#) of the affected property.
- C. Other information required by this [code](#).
- D. The applicable fees. [Ord. [2451](#), 12-2-96. Code 2001 § 151.040.]

---

### Relevant Cases:

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. A local government does not err in failing to require an easement holder to sign or authorize the landowner's permit application, where the code requires only the "owner" to sign and the code defines "owner" to refer only to the owner of record, not easement holders. *Kane v. City of Beaverton*, 56 Or LUBA 240 (2008).

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. Any error in a hearings officer's conclusion that the terms of an easement allow a public utility to file a land use application without the property owner's signature is harmless, where the code allows a public utility with condemnation authority to sign land use applications, and there is no dispute that the applicant is a public utility with condemnation powers under applicable statutes. *Cyrus v. Deschutes County*, 46 Or LUBA 703 (2004)

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. Where the applicant is a general partnership, a code requirement that the application bear the signature of the applicant is satisfied if the record indicates the person who signed the application is a general partner. *BCT Partnership v. City of Portland*, 27 Or LUBA 278 (1994)

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. Where a local code provision requires the consent of all property owners affected by a land use application, a present owner must sign the application, notwithstanding an agreement obligating the present owner to convey the property in the future to a party who signed the application. *Johnston v. City of Albany*, 34 Or LUBA 32 (1998)

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. A county errs in deferring the requirement to obtain the signatures of all property owners to a subsequent administrative proceeding, in which staff are granted the discretion to determine whether the county signature

requirement is preempted or rendered invalid under federal law. Citizens Against LNG v. Coos County, 63 Or LUBA 162 (2011).

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. A county errs in deferring a county code requirement to obtain the signatures of all property owners to a subsequent administrative proceeding that does not provide notice or opportunity for public input, in which staff is granted the discretion to determine whether a circuit court order condemning an easement or less-than-fee interest in property “obviates” the need to obtain the signature of the fee owner. Citizens Against LNG v. Coos County, 63 Or LUBA 162 (2011).

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. Where the purpose of a zoning code requirement that a permit application be initiated in one of six specified ways is to ensure that the current property owner or purchaser of the affected property knows about and agrees with the application, and the record establishes that the current property owner agrees with the application, the county’s procedural error in allowing the permit application to be initiated in other than one of the six ways specified in the zoning code could not prejudice a permit opponent’s rights and provides no basis for reversal or remand. Womble v. Wasco County, 54 Or LUBA 68 (2007).

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. Where the county code requires the signature of all owners of the property, and to ensure compliance with respect to a proposed pipeline crossing multiple properties the county imposes a condition requiring that the approval becomes effective only when the utility provider supplies all required signatures, an ambiguity in the condition regarding whether all signatures of all property owners are required for the approval to become effective is not a basis to remand the decision, where it is reasonably clear from the condition and findings that the county intended that all signatures of all owners be obtained before the approval becomes effective and Page 2 of 11 building permits for any part of the pipeline can be obtained. Citizens Against LNG v. Coos County, 63 Or LUBA 162 (2011).

25.2 Local Government Procedures – Authority to Act. A county has authority or jurisdiction to deny a permit application on its merits, where the permit applicant fails to demonstrate he was authorized to submit the permit application but the code limitations on who can submit permit applications do not impose a “jurisdictional” requirement. Base Enterprises, Inc. v. Clackamas County, 38 Or LUBA 614 (2000).

25.2 Local Government Procedures – Authority to Act. The absence of relevant or even essential information in an application does not preclude consideration by the city, although it may result in a denial of the application. Sullivan v. City of Woodburn, 31 Or LUBA 192 (1996).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A provision in a local subarea plan allowing submittal of master plan application without the consent of all owners of property subject to the application does not violate ORS 227.175(1). Lowery v. City of Keizer, 48 Or LUBA 568 (2005)

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Where intervenors filed a conditional use permit application as an agent of the property owner, there is no violation of the provision in ORS 215.416(1) stating that an owner of property may apply for a permit. Silani v. Klamath County, 22 Or LUBA 735 (1992)

12/01/2021

## Elliott Road Development Resident Comment

File No MISC221-0002

Dear City Council & Paul Chiu,

As a landowner along Elliott Rd, I am writing to state that I am in opposition to the bike lanes included in the Elliott Road Improvement Project.

I continue to be opposed to adding bike lanes on Elliott Road by way of taking homeowners property. Here are my reasons why:

1. The number of people that will actually use bike lanes on this road is low. We have low bike traffic in all of Newberg and extremely low bike traffic on this road.
2. A big reason City Council wants bike lanes is for the students locally commuting to school, particularly for Newberg High School Students. However, the number of bikes on the bike racks at this school are low.
3. Most bikers don't use bike lanes anyways and will either ride with traffic on the street if they are a regular/confident biker or the less confident bikers (children) will use sidewalks. As a mother, I know, even with bike lanes I would still ask my kids to ride on the sidewalk which is safer for children.
4. The 10 year plan of taking street parking from Haworth and Deborah to make connecting bike lanes from Elliott Rd. is incredibly faulty. Both Haworth and Deborah have a significant number of cars parked on the street every single day, especially in front of Multi-Family Housing Complexes. The reality is, these complexes need that overflow parking and to take it away for rarely used bike lanes is going to negatively impact these families.

Simply stated, I do not agree that the number of possible bikers that might use the bike lanes on Elliott Rd. will outweigh the impact this proposed road expansion will have on the property owners of Elliott Rd. or the impact bike lanes will have on the residents of Haworth and Deborah in the coming years.

Sincerely,  
Brandy Crockett  
803 N Elliott Rd  
Newberg OR 97132

RECEIVED

DEC - 1 2021

Initial: \_\_\_\_\_

James A Talt  
201 Crestview Dr  
Newberg, OR 97132  
(503) 554 5461

November 29, 2021 Page 1/3

City of Newberg  
Community Development Department  
PO Box 970  
Newberg, OR 97132

RECEIVED

DEC - 1 2021

Initial: \_\_\_\_\_

**Subject:** Elliott Road Improvement

**Reference:** City Of Newberg File No. MISC221-0002 Type II Application -Land Use

Attention Newberg City and City Council Members,

This letter documents requested modifications to the Type II Land Use Application described in the referenced file. The proposed modifications herein will achieve the cities goals of sidewalks, curbs, gutters, ADA compliance, improved lighting and safety on Elliott Road while also preserving the home environments of the Elliott Rd citizenry and their needed on-street parking. The proposals save annex compensation money and also provide immediate inexpensive improvements to current bike routes to the Newberg school and sport complexes located on Deborah Road.

**Proposed Modifications**

- A) **'Fast track' the completion of bike lanes on Deborah Rd from 99W to Haworth and designate both sides as No Parking. (See photo 1)** This will immediately improve bike access and safety to the Newberg schools and sport complexes and reduces a need for bike lanes on Elliott Rd. There are no residences on that portion of Deborah Rd and the business have ample *on-site* parking so there is no demand for *on-street* parking. Newberg's Transportation Safety Plan (TSP) currently lists Deborah Rd as both a Critical Bicycle Route and a Minor Collector (ref TSP pages 26 & 37) and it does not yet have its bike lanes! The TSP refers to this as a **Bike Lane Gap** (ref TSP page 29)
  
- B) **Reclassify Elliott Rd from a Major Collector to a Local Residential street. Add needed road improvements for Safety, Accessibility, ADA, Drainage, etc. and with on-street parking and Shared Lane Markings for bikes from Haworth south to 99W.** This will preserve the approx. 25 on-street parking spots in daily use by residents that will otherwise be lost in the current plan (Where are

they to park?). The TSP repeatedly states that high priority be given to providing on-street residential parking availability (ref TSP page 47).

**C) Omit Planter Strips.** The city plan removes Green Space from the yards of residents to create Green Spaces in planter strips. Leave the Green Space with the residents where, daresay, it will be better maintained. Also, Elliott Rd south of 99W does not have planter strips so this proposal results in a street design consistent with existing Elliott Rd segments (see photo 2).

**D) Add road improvements per (B) above and create bike lanes from Haworth north to the High School. Designate no street parking on this one block stretch.** The proposed changes will provide safe access for bikes traveling south to Haworth from the Hawthorne and Willow neighborhoods and from there East to the schools, or the Aquatic Center to the West. There is currently no parking on either side of that portion of Elliott because of drainage ditches and no residences front onto Elliott.

Though the TSP designates N. Elliot Rd a Major Collector (TSP page 37), it is a **Major Collector in name only**. It is only two blocks long and has only 3 intersecting streets. The adjacent neighborhoods south of Haworth have their own residential street access to 99W and do not use Elliott Rd. 90% of Haworth traffic continues East-West on Haworth to Villa or Springbrook. This is also true of the high school drivers who are only in attendance 180 days per year. Traffic on Elliott is low and so is the speed limit. Additionally, the portion of Elliott Rd from Haworth to 99W fails the various setback requirements for a Major Collector (TSP page 40). Overall, it is much easier to envision Elliott Rd as a Residential Street than a Major Collector.



**Photo 1:** Deborah Road leading from 99W towards Newberg Schools and sports complexes. Classified as a Minor Collector. Needs dedicated bike lanes. Has no need of on-street parking. Note that it does not have planter strips.



**Photo 2: Elliott Road south of 99W.  
No planter strips.**

## **Conclusion**

The reference city plan will totally change the yard and home environments of the N. Elliott Road residents and does NOT address their repeatedly expressed concerns for on-street parking (ref Council Mtg 3/15/21).

City Planning has made no serious effort to address these issues directly face-to-face with Elliott residents.

Proposed herein are workable alternatives to Newberg's Type II Land Use request. They represent one of several different solutions that could be explored if only the City Council will vote to reopen the Elliott Road project and not allow Newberg City to **steamroll Elliott residents** using outside consultants that produce fancy videos and claim that they have produced a net gain in parking (ref Council Mtg 3/15/21).

Please vote NO on the cities Type II application and then vote to revisit the whole plan and make this a model for how the many future city projects should be developed thereby proving that we are truly Better Together.

Regards,

Jim Talt



## Tyler Smith

---

**From:** Tyler Smith  
**Sent:** Wednesday, December 1, 2021 9:55 AM  
**To:** Paul Chiu; Doug Rux  
**Cc:** Tyler Smith; Dan Dhondt  
**Subject:** Comments, objections and legal arguments about File No. MISC221-0002

(Via US Mail and e-mail)  
City of Newberg  
Community Development  
PO Box 970  
Newberg Oregon 97132

RECEIVED

DEC - 6 2021

Initial: \_\_\_\_\_

File No. MISC221-0002 (Elliot Road Variance Request)

Dear Community Development Director, Newberg City Council and Staff:

I write to you today to note a few legal reasons why your proposed Application must be denied. As you are aware our law firm represents Mr. Daniel Dhondt and Cedar Terrace, LLC in relation to their property rights.

- 1) Newberg Municipal Code requires the Owner of the real property in question to approve of the application or be the applicant. Rajiv Jain and Cedar Terrace, LLC as well as Dan Dhondt, own 704 N Elliot Rd, and 807 N Elliot Rd respectively. They are not the applicant, nor do they approve of land use actions covering their property.
- 2) Your application does not meet any of the criteria of NMC 15.505.030(h)

There are other options, such as downgrading the street category of Elliot Rd., delaying this action, and reducing the impacts and condemnations of the owners' property that are preferred. While we appreciate this attempt to minimize the taking of private property for public use, nonetheless we oppose your attempts to condemn and take my client's private property for your preferred use and plan. My clients and other interested community members have suggested alternatives, and alternate plans.

This application was just discovered by my clients so this is a rushed response. However points 1 and 2 above are elaborated as follows:

**1) Newberg Municipal Code 15.100.090 (b) bars this application from being approved.**

NMC 15.100.090 requires that land use application provide PROOF that the property affected by the application is in the exclusive ownership of the applicant, or otherwise have the consent of all owners of the property.

- a. Newberg does not have the consent of my clients Daniel Dhondt, nor Rajiv Jain who is the managing member of Cedar Terrace LLC. The property that they own as fee simple title owners is included as a part of your application. See Exhibit A-1 of your application packet shows the portion owned by Mr. Dhondt, and See Exhibit D-1 of your application, which shows the portion owned by Cedar Terrace LLC. Thus Mr. Chiu (the Applicant) nor the City of Newberg is the

“exclusive owner” of the property, nor does the Applicant have the consent of these two owners. The application must therefore be denied under the NMC. Oregon law is clear on this point. Where a local code provision requires the consent of all property owners affected by a land use application, a present owner must sign the application. *Johnston v. City of Albany*, 34 Or LUBA 32 (1998).

- b. Furthermore, the application page itself, shows that no-owner has signed the application. Mr. Chiu apparently signed for the applicant on October 20, 2021 but he is neither the owner nor the owner’s agent.

**2) Newberg Municipal Code 15.505.030(h) is not met here.**

NMC 15.505.030 is cited as the basis for this variance. Modification of Street Right-of-Way and Improvement Width. The director, pursuant to the Type II review procedures of Chapter 15.220 NMC, may allow modification to the public street standards of subsection (G) of this section, when the criteria in both subsections (H)(1) and (2) of this section are satisfied:

“ The modification is necessary to provide design flexibility in instances where:

- a. Unusual topographic conditions require a reduced width or grade separation of improved surfaces; or
- b. Lot shape or configuration precludes accessing a proposed development with a street which meets the full standards of this section; or
- c. A modification is necessary to preserve trees or other natural features determined by the city to be significant to the aesthetic character of the area; or
- d. A planned unit development is proposed and the modification of street standards is necessary to provide greater privacy or aesthetic quality to the development.”

Each of those four possible alternatives is not met

(a) Here, there is no unusual topographic condition, the City is simply proposing to widening the street against the wishes of these owners. Proposing to enter onto these owners lots, take their property for public use and establish wider easements and rights of way over Cedar Terrace.

(b) The lot shape and configuration is not affective access at all since the access will exist either way and these properties are already street frontage properties.

(c) There have not yet been any findings nor assertions about which trees are being determined to be significant, but the opponents agree there are some important and significant trees that should not be disturbed by the proposed plan.

(d) No planned unit development is proposed.

**CONCLUSION**

**This application cannot be approved because the owners of at least some of the the property in question are not the applicant, and have not consented to this application. This violates the NMC and Oregon law.**

-----  
Tyler Smith | Owner and Founding Attorney  
Tyler Smith & Associates P.C.  
503-266-5590 (work) | 503-266-5594 (work)  
503-212-6392 (fax)

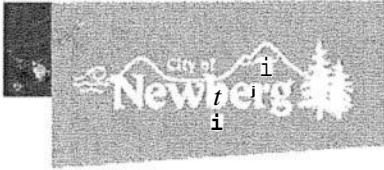
tyler@ruralbusinessattorneys.com

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Our Law Firm: <http://www.RuralBusinessAttorneys.com>

The information contained in this e-mail is confidential and may also be attorney-client privileged. This information is intended only for the use of the individual or entity to whom it is addressed. If you have received this communication and are not the intended recipient, please delete this message and contact our office immediately.

## **Attachment 1: Appeal Application**



# APPEAL APPLICATION 2021

FILE # MISC221-0002

**TYPE - PLEASE CHECK ONE:**

- Appeal of a Type I Decision (i.e. Design Review for a Duplex, Sign, or Single Family Residence)
- Appeal of a Type II Decision (i.e. Variance, or Design Review, Subdivision)
- Appeal of a Type III Decision (i.e. Conditional Use Permit)
- Appeal of Peddler, Solicitor, or Temporary Merchant
- Other (explain): \_\_\_\_\_

**APPLICANT INFORMATION:**

APPLICANT: Paul Chiu - Appellant and Property owner is Dan Dhondt

ADDRESS: Appellant's Address is 807 N Elliot Rd

PHONE: 503-266-5590 MOBILE: \_\_\_\_\_ FAX: \_\_\_\_\_

CO-APPLICANT (if applicable): \_\_\_\_\_ PHONE \_\_\_\_\_

ADDRESS: \_\_\_\_\_

**GENERAL INFORMATION:**

PROJECT NAME: N Elliot Road

FILE NUMBER OF PROJECT BEING APPEALED: MISC221-0002

PROJECT LOCATION: N Elliot Rd

PROJECT DESCRIPTION / USE: Residential/Street

**BRIEFLY DESCRIBE THE REASON FOR YOUR APPEAL:**

This determination is a Type II application. See decision Section I (C). Type II applications for development permits require all of the materials required by the Newberg Code 15.100.090.

NMC 15.100.090 requires proof that the property affected is in the exclusive ownership of the applicant, or the applicant has the consent of all owners. NMC 15.100.090. The City has not provided proof that it owns Mr. Dhondt's property at 807 N Elliot Rd. The City does not have the consent of Mr. Dhondt. Therefore the application does not contain proof that satisfies NMC 15.100.090(B). That is a violation of NMC and of the case law in Johnston v. City of Albany, 34 OR LUBA 32 (1998)

**SPECIFIC APPEAL REQUIREMENTS ARE ATTACHED**

General Checklist:  Fees  Notice Information  Written Response Supporting Appeal.

THE ABOVE STATEMENTS AND INFORMATION HEREIN CONTAINED ARE IN ALL RESPECTS TRUE, COMPLETE, AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I AFFIRM THAT I WAS PARTY TO THE INITIAL PROCEEDINGS.

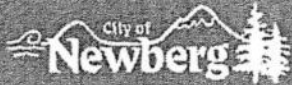
Applicant Signature \_\_\_\_\_ Date \_\_\_\_\_

Owner Signature

DUKX

Print Name \_\_\_\_\_

Print Name



## Community Development

January 14, 2022

Mr. Paul Chiu  
City of Newberg  
414 E First Street  
Newberg, OTR 97132

Parties Providing Comments: Gerry Avoilo, Miguel Gonzales, Brandy Crockett, James Talt, Tyler Smith

Dear Mr. Chiu,

The Newberg Community Development Director has provided a determination based on your application MISC221-0002 Elliott Road Improvement Project. The decision will become effective on January 28, 2022, unless an appeal is filed.

You may appeal this decision to the Newberg Planning Commission within 14 calendar days of this decision in accordance with Newberg Development Code 15.100.170. All appeals must be in writing on a form provided by the Planning Division. Anyone wishing to appeal must submit the written appeal form together with the required fee of \$550.20 to the Planning Division within 14 days of the date of this decision.

The deadline for filing an appeal is 4:30 pm on January 27, 2022

If you have any questions, please contact me at [doug.rux@newbergoregon.gov](mailto:doug.rux@newbergoregon.gov) or 503-537-1212.  
Sincerely,

Doug Rux, AICP  
Community Development Director

Attachment

## Tyler Smith

---

**From:** Tyler Smith  
**Sent:** Wednesday, December 1, 2021 9:55 AM  
**To:** Paul Chiu; Doug Rux  
**Cc:** Tyler Smith; Dan Dhondt  
**Subject:** Comments, objections and legal arguments about File No. MISC221-0002

(Via US Mail and e-mail)  
City of Newberg  
Community Development  
PO Box 970  
Newberg Oregon 97132

RECEIVED

Off. - 6 2021

Initial: \_\_\_\_\_

File No. MISC221-0002 (Elliot Road Variance Request)

Dear Community Development Director, Newberg City Council and Staff:

I write to you today to note a few legal reasons why your proposed Application must be denied. As you are aware our law firm represents Mr. Daniel Dhondt and Cedar Terrace, LLC in relation to their property rights.

- 1) Newberg Municipal Code requires the Owner of the real property in question to approve of the application or be the applicant. Rajiv Jain and Cedar Terrace, LLC as well as Dan Dhondt; own 704 N Elliot Rd, and 807 N Elliot Rd respectively. They are not the applicant, nor do they approve of land use actions covering their property.
- 2) Your application does not meet any of the criteria of NMC 15.505.030(h)

There are other options, such as downgrading the street category of Elliot Rd., delaying this action, and reducing the impacts and condemnations of the owners' property that are preferred. While we appreciate this attempt to minimize the taking of private property for public use, nonetheless we oppose your attempts to condemn and take my client's private property for your preferred use and plan. My clients and other interested community members have suggested alternatives, and alternate plans.

This application was just discovered by my clients so this is a rushed response. However points 1 and 2 above are elaborated as follows:

- 1) Newberg Municipal Code 15.100.090 (b) bars this application from being approved. NMC 15.100.090 requires that land use application provide PROOF that the property affected by the application is in the exclusive ownership of the applicant, or otherwise have the consent of all owners of the property.
  - a. Newberg does not have the consent of my clients Daniel Dhondt, nor Rajiv Jain who is the managing member of Cedar Terrace LLC. The property that they own as fee simple title owners is included as a part of your application. See Exhibit A-█ of your application packet shows the portion owned by Mr. Dhondt, and See Exhibit D-█ of your application, which shows the portion owned by Cedar Terrace LLC. Thus Mr. Chiu (the Applicant) nor the City of Newberg is the

"exclusive owner" of the property, nor does the Applicant have the consent of these two owners. The application must therefore be denied under the NMC. Oregon law is clear on this point. Where a local code provision requires the consent of all property owners affected by a land use application, a present owner must sign the application. *Johnston v. City of Albany*, 34 Or LUBA 32 (1998).

- b. Furthermore, the application page itself, shows that no-owner has signed the application. Mr. Chiu apparently signed for the applicant on October 20, 2021 but he is neither the owner nor the owner's agent.

2} Newberg Municipal Code 15.505.030(h) is not met here.

NMC 15.505.030 is cited as the basis for this variance. Modification of Street Right-of-Way and Improvement Width. The director, pursuant to the Type II review procedures of Chapter 15.220 NMC, may allow modification to the public street standards of subsection (G) of this section, when the criteria in both subsections (H)(1) and (2) of this section are satisfied:

" The modification is necessary to provide design flexibility in instances where:

- a. Unusual topographic conditions require a reduced width or grade separation of improved surfaces; or
- b. Lot shape or configuration precludes accessing a proposed development with a street which meets the full standards of this section; or
- c. A modification is necessary to preserve trees or other natural features determined by the city to be significant to the aesthetic character of the area; or
- d. A planned unit development is proposed and the modification of street standards is necessary to provide greater privacy or aesthetic quality to the development."

Each of those four possible alternatives is not met

(a) Here, there is no unusual topographic condition, the City is simply proposing to widening the street against the wishes of these owners. Proposing to enter onto these owners lots, take their property for public use and establish wider easements and rights of way over Cedar Terrace.

(b) The lot shape and configuration is not affective access at all since the access will exist either way and these properties are already street frontage properties.

(c) There have not yet been any findings nor assertions about which trees are being determined to be significant, but the opponents agree there are some important and significant trees that should not be disturbed by the proposed plan.

(d) No planned unit development is proposed.

## CONCLUSION

This application cannot be approved because the owners of at least some of the the property in question are not the applicant, and have not consented to this application. This violates the NMC and Oregon law.

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Tyler Smith | Owner and Founding Attorney  
Tyler Smith & Associates P.C.  
503-266-5590 (work) | 503-266-5594 (work)  
503-212-6392 (fax)



**Attachment 2: January 14, 2022, Community Development Director Decision**



## Community Development

January 14, 2022

Mr. Paul Chiu  
City of Newberg  
414 E First Street  
Newberg, OR 97132

Parties Providing Comments: Gerry Avoilo, Miguel Gonzales, Brandy Crockett, James Talt, Tyler Smith

Dear Mr. Chiu,

The Newberg Community Development Director has provided a determination based on your application MISC221-0002 Elliott Road Improvement Project. The decision will become effective on January 28, 2022, unless an appeal is filed.

You may appeal this decision to the Newberg Planning Commission within 14 calendar days of this decision in accordance with Newberg Development Code 15.100.170. All appeals must be in writing on a form provided by the Planning Division. Anyone wishing to appeal must submit the written appeal form together with the required fee of \$550.20 to the Planning Division within 14 days of the date of this decision.

**The deadline for filing an appeal is 4:30 pm on January 27, 2022**

If you have any questions, please contact me at [doug.rux@newbergoregon.gov](mailto:doug.rux@newbergoregon.gov) or 503-537-1212.  
Sincerely,

A handwritten signature in blue ink, which appears to read "Doug Rux", is enclosed in a thin black rectangular box.

Doug Rux, AICP  
Community Development Director

Attachment

<p style="text-align: center;"><b>STAFF REPORT</b> <b>Determination – N Elliott Road – MISC221-0002</b></p>
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**FILE NO:** MISC221-0002

**REQUEST:** Reduce the right-of-way width design for four properties for improvements to N Elliott Road

**LOCATION:** N Elliott Road (Highway 99W to Newberg High School)

**TAX LOT(S):** The lots impacted by a reduced ROW width include R3217DB 06201, R3217DB 06200, R3217DB 06001, R3217DD 02501

**APPLICANT:** Paul Chiu, City of Newberg

**OWNER:** N/A

**ZONE:** Low Density Residential District (R-1), High Density Residential (R-3)

**PLAN DISTRICT:** LDR (Low Density Residential), HDR (High Density Residential)

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## CONTENTS

Section I: Application Information  
Section II: Exhibit A Findings

### Attachments:

1. Application
2. Public Comments

## Section I: Application Information

### A. DESCRIPTION OF APPLICATION:

The development would include right of way improvements for the N Elliott Road corridor from Highway 99W to Newberg High School. Proposed improvements include pavement, curb and gutter, sidewalk, ADA ramps, bicycle lanes, storm drainage, wastewater pipeline, water main, street lighting, conversion from aerial to underground power lines, traffic calming and roadway safety features, and landscape enhancement. Along the length of the roadway improvement the roadway would be narrowed below the 28.5' for a ½ street width improvement in front of four (4) parcels.

NMC 15.505.030(G) Street Width & Design Standards for Major Collector is 36' curb-to-curb (2-12' travel lanes, 2-6' bike lanes), 2-5' planter strips, 2-5' sidewalks → Total 56' of physical improvements. Typical sections show an additional 0.5' behind sidewalk to ROW. This gives a minimum ROW width of 57' as noted in NMC, or 28.5' for a ½ Street width.

The Elliott Road Improvement Project is minimizing Right-of-way acquisition along the corridor resulting in four (4) parcels requiring less than the minimum right-of-way per NMC.

- File 7 – 807 N Elliott Road: Varies from 25.5' to 23.5' of Right-of-way with an additional 3' of Public Utility Easement.
- File 9 – 911 N Elliott Road: 23' of ROW with an additional 3' of Public Utility Easement.
- File 10 – 1007 N Elliott Road: 25' of ROW with an additional 3' of Public Utility Easement.
- File 22 – 704 N Elliott Road: Varies from 25' to 29' of Right-of-way with an additional 4.5' of Public Utility Easement.

### B. SITE INFORMATION:

1. Location: N Elliott Road corridor from Highway 99W north to Newberg High School
2. Size: Not applicable
3. Topography: Flat
4. Current Land Uses:  
807 N Elliott Road – Single Family Residence

911 N Elliott Road – Single Family Residence

1007 N Elliott Road – Multi-family Residential

704 N Elliott Road – Single Family Residence

5. Natural Features: There are trees, shrubs, and grass yard along the N Elliott Road corridor.

6. Adjacent Land Uses:

807 N Elliott Road

- a. North: Single-family Residential
- b. East: Single-family Residential
- c. South: Single-family Residential
- d. West: Single-family Residential

911 N Elliott Road

- a. North: Multi-family Residential and Single-family Residential
- b. East: Single-family Residential
- c. South: Single-family Residential
- d. West: Single-family Residential

1007 Elliott Road

- a. North: Multi-family Residential
- b. East: Single-family Residential
- c. South: Single-family Residential
- d. West: Single-family Residential

704 N Elliott Road

- a. North: Single-family Residential
- b. East: Commercial
- c. South: Commercial
- d. West: Commercial, Multi-family and Single-family Residential

7. Zoning: The following zoning districts are adjacent the subject properties for the right-of-way reduction width.

807 N Elliott Road

- a. North: R-1
- b. East: R-1
- c. South: R-1
- d. West: R-1

911 N Elliott Road

- a. North: R-1
- b. East: R-1
- c. South: R-1
- d. West: R-1

1007 Elliott Road

- a. North: R-1
- b. East: R-1
- c. South: R-1
- d. West: R-1

704 N Elliott Road

- a. North: R-2
- b. East: C-2
- c. South: C-2
- d. West: C-2/LU and R-2

8. Access and Transportation: Access to for all parcels along N Elliott Road is to N Elliott Road. The four residential lots where the right-of-way width is proposed to be reduced take access from N Elliott Road.

9. Utilities:

- a. Water: he City's GIS system shows there is an existing 8-inch water line in N Elliott Road.
- b. Wastewater: The City's GIS system shows there is an existing 8-inch wastewater line in N Elliott Rad.
- c. Stormwater: The City's GIS system shows an intermittent stormwater system along the roadway corridor. Some areas have a stormwater system and other areas do not have a stormwater system.
- d. Overhead Lines: There are overhead utilities serving the properties along

N Elliott Road or running parallel to the property frontages. Any new connection to any of the properties including the four properties where the right-of-way is proposed to be narrowed will need to be undergrounded. See NMC 15.430.010 for exception provisions.

- C. PROCESS:** The Determination is a Type II application and follows the procedures in Newberg Development Code 15.100.030. Following a 14-day public comment period, the Community Development Director makes a decision on the application based on the criteria listed in the attached findings. The Director’s decision is final unless appealed.

Important dates related to this application are as follows:

- a. 11/04/2021: The Community Development Director deemed the application complete.
- b. 11/17/2021: The applicant mailed notice to the property owners within 500 feet of the site.
- c. 12/01/2021: The 14-day public comment period ended.
- d. 1/14/2022: The Community Development Director issued a decision on the application.

- D. AGENCY COMMENTS:** The application was routed to several public agencies for review and comment (Attachment 1). Comments and recommendations from city departments have been incorporated into the findings and conditions. As of the writing of this report, the city received the following agency comments:

City Manager: Reviewed, no conflict

Finance: Reviewed, no conflict

Police: Reviewed, no conflict

Public Works Maintenance: Reviewed, no conflict.

Public Works Superintendent: Reviewed, no conflict.

Public Works Director: Reviewed, no conflict

Public Works Wastewater Treatment Plant: Reviewed, no conflict

- E. PUBLIC COMMENTS:**

Public comments (summarized) were received from the following parties and are included in full Attachment 2.

1. Gerry Avoilo: Provided four comments. 1) Surprised by the extent of the work and the cost of over \$3M to dress up a road to the high school. 2) Understands and supports the need for sidewalks on both sides of Elliott Road for safety and convenience of pedestrians. To do so would require a part of his front yard. 3) He walks every week and notes any streets do not have sidewalks on both sides, some street with no sidewalks, some streets with sidewalks on only one side, and many sidewalks are in need of repair. He comments that if the N Elliott Road project was to only install sidewalks that excess funds should be used to repair old sidewalk in the city. 4) He was informed that widening the road was necessary to help reduce traffic speed. He inquired about permeant speed camera installation to reduce the speeding problem.

*Staff Response:* 1) The Applicant's request is to address a narrower right-of-way width from the required Code requirement along the frontage of four properties. The comment does not address the criteria of 15.505.030H.1.a.-d. The cost of the project should be addressed directly to the Public Works Engineering Division. 2) Mr. Avoilo's property is one of the properties where the applicant has requested a narrower right-of-way width for the N Elliott Road improvements. The Applicant is working to acquire right-of-way for the improvements which will include a sidewalk. 3) The Applicant's request is to address a narrower right-of-way width from the required Code requirement along the frontage of four properties. The comment does not address the criteria of 15.505.030H.1.a.-d. This comment will be forwarded to the applicant for consideration in the sign of the N Elliott Road improvement. 4) The Applicant's request is to address a narrower right-of-way width from the required Code requirement along the frontage of four properties. The comment does not address the criteria of 15.505.030H.1.a.-d. This comment will be forwarded to the applicant for consideration in the sign of the N Elliott Road improvement.

2. Miguel Gonzales: Provided comments in response to the process being utilized. 1) He does approve the Type II application. 2) The owner of the property must approve the application and sign the application. 3) the city does not meet the requirements of 15.505.030(h) because owners did not sign the application. 4) Attached section of the Code he believes are applicable. 5) The city has not made serious efforts to address concerns raised by residents.

*Staff Response:* NMC 15.505.030H.1.a.-d. and 2 are applicable to the applicant's request. Specifically, "H. Modification of Street Right-of-Way and Improvement Width. The director, pursuant to the Type II review procedures of Chapter 15.220 NMC, may allow modification to the public street standards of subsection (G) of this section, when the criteria in both subsections (H)(1) and (2) of this section are satisfied: ..." The Applicant submitted an application to address a modification to the design for the right-of-way width for the N Elliott Road project to reduce the right-of-way width along the frontage of four properties. As the Road Authority the City of Newberg is designing a future transportation improvement. This design will determine the right-of-way necessary to acquire where insufficient right-of-way exists for a future transportation improvement. The application did not require property owner signature for the Applicant to request a determination if a reduced right-of-way width is feasible to minimize impacts along the transportation corridor. Without the application request by the Applicant the transportation design would have to meet the requirements of NMC 15.505.030 G. Street Width and Design Standards requiring more right-of-way than may be necessary. Any right-of-way acquisition would be negotiated. 2) As noted above the property owner was not required to sign the application as the



Applicant is requesting a determination to reduce the right-of-way width along the frontage of four properties. 3) The Applicant submitted an application to determine if a narrower right-of-way width can be approved following the procedures laid out in NMC 15.505.030H.1.a.-d. and 2. 5) The Applicant's request is to address a narrower right-of-way width from the required Code requirement along the frontage of four properties. The comment does not respond the criteria of 15.505.030H.1.a.-d. This comment will be forwarded to the applicant for consideration in the design of the N Elliott Road improvement.

3. Brandy Crockett: Provided comments in response to 1) Opposition to bike lanes on N Elliott Road. 2) Point 1 is to the actual number of people that will use the bike lanes. Point 2 is the City Council wants bike lanes for students to commuting to school but the number of bikes in racks at the High School is low. Point 3 is that most bike users don't use bike lanes and ride with traffic or children use the sidewalk. Point 4 is the 10 year plan to take away street parking for bike lanes from Haworth and Deborah to make connecting bike lanes to Elliott Road.

*Staff Response:* The Applicant's request is for a determination of the necessary right-of-way related to four properties along N Elliott Road. The general comment of opposition to bike lanes and to the 4 points raised do not respond to the requirements of NMC 15.505.030H.1.a.-d. and 2. The comments will be forwarded to the applicant for consideration in the design of the N Elliott Road improvement.

4. James Talt: Mr. Talt provided comments requesting modifications to the Type II Land Use Application based on four requests. A) Fast track the completion of bike lanes on Deborah Road from 99W to Haworth and designate both sides as no parking. B) Reclassify Elliott Road from a Major Collector to a Local Residential Street. Add needed road improvements for safety, accessibility, ADA, drainage, etc. and with no-street parking and shared land markings for bikes from Haworth south to 99W. C) Omit Plater strips. D) Add road improvements per (B) above and create bike lanes from Haworth north to the High School. Designate no street parking on this one block stretch.

*Staff Response:* The submitted application is specific to a modification to the right-of-way width along N Elliott Road related to four property frontages. The submitted comments do not respond to the criteria of NMC 15.505.030H.1.a.-d. and 2. The comments will be forwarded to the applicant for consideration in the design of the N Elliott Road improvement.

5. Tyler Smith: Mr. Smith provided comments indicating 1) Newberg Municipal Code requires the Owner of the real property in question to approve of the application or be the applicant. Rajiv Jain and Cedar Terrace, LLC as well as Dan Dhondt, own 704 N Elliot Rd, and 807 N Elliot Rd respectively. They are not the applicant, nor do they approve of land use actions covering their property. 2) Your application does not meet any of the criteria of NMC 15.505.030(h)

*Staff Response:* The Applicant submitted an application to address a modification to the design for the right-of-way width for the N Elliott Road project to reduce the right-of-way width along the frontage of four properties. As the Road Authority the City of Newberg is designing a future transportation improvement. This design will determine the right-of-way necessary to acquire where insufficient right-of-way exists for a future transportation improvement. The application did not require property owner signature for the Applicant to request a determination if a reduced

right-of-way width is feasible to minimize impacts along the transportation corridor. Without the application request by the Applicant the transportation design would have to meet the requirements of NMC 15.505.030 G. Street Width and Design Standards requiring more right-of-way than may be necessary. Any right-of-way acquisition would be negotiated.

Mr. Smith's comments regarding NMC 15.505.030(h) are addressed below in the findings section of this report.

**Section II: Findings – File MISC221-0002  
Determination – N Elliott Road**

*15.505.030 Street standards.*

*H. Modification of Street Right-of-Way and Improvement Width. The director, pursuant to the Type II review procedures of Chapter 15.220 NMC, may allow modification to the public street standards of subsection (G) of this section, when the criteria in both subsections (H)(1) and (2) of this section are satisfied:*

*1. The modification is necessary to provide design flexibility in instances where:*

*a. Unusual topographic conditions require a reduced width or grade separation of improved surfaces; or*

**Finding:** Not applicable.

*b. Lot shape or configuration precludes accessing a proposed development with a street which meets the full standards of this section; or*

**Finding:** The Applicant indicates the property at 704 N Elliott Road requires a 6-inch narrower street right-of-way from the 60-foot full width at the north corner of the existing multi-dwelling development to preserve the loss of an existing parking spaces and to minimize impact to the existing lot configuration according to subsection (H)(1)(b). The south portion of this lot does not have a right-of-way issue. Three parking spaces would be relocated as part of the roadway improvement to another relocation of the 704 N Elliott Road site as mitigation.

Staff concurs with the applicant because of the effort to minimize the displacement of parking at on the north side of the access point into the development.

*c. A modification is necessary to preserve trees or other natural features determined by the City to be significant to the aesthetic character of the area; or*

**Finding:** The applicant indicates the properties at 807 N Elliott Road and 911 N Elliott Road requires modification of street right-of-way width because of the necessity to preserve existing trees and to minimize impact to the green features of the N Elliott Road corridor according to subsection (H)(1)(c). At 807 N Elliott Rod the narrowed right-of-way design would preserve two (2) existing palm trees which are unique to the neighborhood area. At 911 NE Elliott Road the narrowed right-of-way design preserves five (5) deciduous trees which is part of the neighborhood character.

The property at 1007 N Elliott Road requires transition of the narrower street right-of-way to full width to the north as a result of preserving existing trees to the south according to subsection (H)(1)(c).

Staff concurs with the applicant because narrowing the right-of-way design preserve trees and allows for transitions to occur from where the right-of-way is narrowed back to its full width required by NMC 15.505.030 G.

*d. A planned unit development is proposed and the modification of street standards is necessary to provide greater privacy or aesthetic quality to the development.*

**Finding:** Not applicable as the proposal is not part of a planned unit development .

*2. Modification of the standards of this section shall only be approved if the director finds that the specific design proposed provides adequate vehicular access based on anticipated traffic volumes.*

**Finding:** The narrowed right-of-way design at four (4) locations provides adequate vehicular access based on anticipated traffic volumes for N Elliott Road. The design includes travel lanes, bike lanes, and sidewalk to allow for multi-modal access along the transportation corridor.

***Type II Review Procedures of Chapter 15.220  
15.220.020 Site design review applicability.***

*A. Applicability of Requirements. Site design review shall be required prior to issuance of building permits or commencement of work for all improvements noted below. Site design review permits shall be processed as either Type I or Type II, as noted below.*

***2. Type II.***

*a. Any new development or remodel which is not specifically identified within subsection (A)(1) of this section.*

*b. Telecommunications facilities.*

**Finding:** The requested determination is not new development or remodel which is not specifically identified within subsection (A)(1) of this section and is not a telecommunications facility. These criteria do not apply.

***15.220.030 Site design review requirements.***

***B. Type II. The following information is required to be submitted with all Type II applications for site design review:***

***1. Site Development Plan. A site development plan shall be to scale and shall indicate the following as appropriate to the nature of the use:***

- a. Access to site from adjacent right-of-way, streets and arterials;*
- b. Parking and circulation areas;*
- c. Location and design of buildings and signs;*
- d. Orientation of windows and doors;*
- e. Entrances and exits;*
- f. Private and shared outdoor recreation spaces;*
- g. Pedestrian circulation;*
- h. Outdoor play areas;*
- i. Service areas for uses such as mail delivery, trash disposal, above-ground utilities, loading and delivery;*
- j. Areas to be landscaped;*
- k. Exterior lighting;*
- l. Special provisions for handicapped persons;*
- m. Other site elements and spaces which will assist in the evaluation of site development;*
- n. Proposed grading, slopes, and proposed drainage;*
- o. Location and access to utilities including hydrant locations; and*
- p. Streets, driveways, and sidewalks.*

**2. Site Analysis Diagram.** *A site analysis diagram shall be to scale and shall indicate the following characteristics on the site and within 100 feet of the site:*

- a. Relationship of adjacent lands;*
- b. Location of species of trees greater than four inches in diameter at four feet above ground level;*
- c. Existing and proposed topography;*

*d. Natural drainage and proposed drainage and grading;*

*e. Natural features and structures having a visual or other significant relationship with the site.*

**3. Architectural Drawings.** *Architectural drawings shall be prepared which identify floor plans and elevations.*

**4. Landscape Plan.** *The landscape plan shall indicate:*

*a. The size, species and approximate locations of plant materials to be retained or placed on the site together with a statement which indicates the mature size and canopy shape of all plant materials;*

*b. Proposed site contouring; and*

*c. A calculation of the percentage of the site to be landscaped.*

**5. Special Needs for Handicapped.** *Where appropriate, the design review plan shall indicate compliance with handicapped accessibility requirements including, but not limited to, the location of handicapped parking spaces, the location of accessible routes from the entrance to the public way, and ramps for wheelchairs.*

**6. Existing Features and Natural Landscape.** *The plans shall indicate existing landscaping and existing grades. Existing trees or other features intended to be preserved or removed shall be indicated on the plans.*

**7. Drives, Parking and Circulation.** *Proposed vehicular and pedestrian circulation, parking spaces, parking aisles, and the location and number of access points shall be indicated on the plans. Dimensions shall be provided on the plans for parking aisles, back-up areas, and other items as appropriate.*

**8. Drainage.** *The direction and location of on- and off-site drainage shall be indicated on the plans. This shall include, but not be limited to, site drainage, parking lot drainage, size and location of storm drain lines, and any retention or detention facilities necessary for the project.*

**9. Buffering and Screening.** *Buffering and screening of areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking and similar accessory areas and structures shall be shown on the plans.*

**10. Signs and Graphics.** *The location, colors, materials, and lighting of all exterior signs, graphics or other informational or directional features shall be shown on the plans.*

***11. Exterior Lighting.*** Exterior lighting within the design review plan shall be indicated on the plans. The direction of the lighting, size and type of fixtures, and an indication of the amount of lighting shall be shown on the plans.

***12. Trash and Refuse Storage.*** All trash or refuse storage areas, along with appropriate screening, shall be indicated on the plans. Refuse storage areas must be constructed of brick, concrete block or other similar products as approved by the director.

***13. Roadways and Utilities.*** The proposed plans shall indicate any public improvements that will be constructed as part of the project, including, but not limited to, roadway and utility improvements.

***14. Traffic Study.*** A traffic study shall be submitted for any project that generates in excess of 40 trips per p.m. peak hour. This requirement may be waived by the director when a determination is made that a previous traffic study adequately addresses the proposal and/or when off-site and frontage improvements have already been completed which adequately mitigate any traffic impacts and/or the proposed use is not in a location which is adjacent to an intersection which is functioning at a poor level of service. A traffic study may be required by the director for projects below 40 trips per p.m. peak hour where the use is located immediately adjacent to an intersection functioning at a poor level of service. The traffic study shall be conducted according to the City of Newberg design standards.

**Finding:** The submitted application is not a site design review per NMC 15.220.020A.2. and is not applicable. The application request is for a determination per NMC 15.505.030H.1.a.-d. and 2 if a narrower right-of-way width can be utilized than required per NMC 15.505.030 G for a minor collector roadway. At 704 N Elliott Road 3 parking spaces will be relocated as litigation to another relocation on the site. At 807 N Elliott Road the reduced right-of-way width would maintain setbacks to the structure of 23-24 feet and to the garage of 24 feet which exceeds the requirements of NMC 15.410.020A1 and 15.410.020A.

***15.220.050 Criteria for design review (Type II process).***

***B. Type II.*** The following criteria are required to be met in order to approve a Type II design review request:

***1. Design Compatibility.*** The proposed design review request incorporates an architectural design which is compatible with and/or superior to existing or proposed uses and structures in the surrounding area. This shall include, but not be limited to, building architecture, materials, colors, roof design, landscape design, and signage.

**Finding:** The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Design Compatibility is not applicable

because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220.

***2. Parking and On-Site Circulation. Parking areas shall meet the requirements of NMC 15.440.010. Parking studies may be required to determine if adequate parking and circulation are provided for uses not specifically identified in NMC 15.440.010. Provisions shall be made to provide efficient and adequate on-site circulation without using the public streets as part of the parking lot circulation pattern. Parking areas shall be designed so that vehicles can efficiently enter and exit the public streets with a minimum impact on the functioning of the public street.***

**Finding:** The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Parking and On-Site Circulation is not applicable because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220 on the design to reduce the right-of-way width at selected locations.

***3. Setbacks and General Requirements. The proposal shall comply with NMC 15.415.010 through 15.415.060 dealing with height restrictions and public access; and NMC 15.405.010 through 15.405.040 and 15.410.010 through 15.410.070 dealing with setbacks, coverage, vision clearance, and yard requirements.***

**Finding:** The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Setbacks and General Requirements is not applicable because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220 on the design to reduce the right-of-way width at selected locations.

***4. Landscaping Requirements. The proposal shall comply with NMC 15.420.010 dealing with landscape requirements and landscape screening.***

**Finding:** The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Landscaping Requirements is not applicable because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220 on the design to reduce the right-of-way width at selected locations.

***5. Signs. Signs shall comply with NMC 15.435.010 et seq. dealing with signs.***

**Finding:** The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Signs are not applicable because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220 on the design to



reduce the right-of-way width at selected locations.

***6. Manufactured Dwelling, Mobile Home and RV Parks. Manufactured dwelling and mobile home parks shall also comply with the standards listed in NMC 15.445.075 through 15.445.100 in addition to the other clear and objective criteria listed in this section. RV parks also shall comply with NMC 15.445.170 in addition to the other criteria listed in this section.***

**Finding:** The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Manufactured Dwelling, Mobile Home and RV Parks are not applicable because the application is not a design review. Notification to property owners along the N Elliott Road corridor was provided to allow for public comment per NMC 15.100.140, 15.100.210 and 15.100.220 on the design to reduce the right-of-way width at selected locations.

***7. Zoning District Compliance. The proposed use shall be listed as a permitted or conditionally permitted use in the zoning district in which it is located as found in NMC 15.305.010 through 15.336.020. Through this site review process, the director may make a determination that a use is determined to be similar to those listed in the applicable zoning district, if it is not already specifically listed. In this case, the director shall make a finding that the use shall not have any different or more detrimental effects upon the adjoining neighborhood area than those specifically listed.***

**Finding:** The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. Transportation facilities and improvements are a permitted use per 15.305.010. The N Elliott Road transportation corridor is in the C-2 (Community Commercial), R-1 (Low Density Residential), R-2 (Medium Density Residential) and R-3 (High Density Residential) zones.

***8. Subdistrict Compliance. Properties located within subdistricts shall comply with the provisions of those subdistricts located in NMC 15.340.010 through 15.348.060.***

**Finding:** The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. The N Elliott Road transportation corridor is in the Airport Overlay (Airport Transition Surface and Airport Inner Horizontal Surface). The northern portion of N Elliott Road is in the Marijuana Exclusion area.

***9. Alternative Circulation, Roadway Frontage Improvements and Utility Improvements. Where applicable, new developments shall provide for access for vehicles and pedestrians to adjacent properties which are currently developed or will be developed in the future. This may be accomplished through the provision of local public streets or private access and utility easements. At the time of development of a parcel, provisions shall be made to develop the adjacent street frontage in accordance with city street standards and the standards contained in the transportation plan. At the***

*discretion of the city, these improvements may be deferred through use of a deferred improvement agreement or other form of security.*

**Finding:** The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. No new developments are proposed by the application request. N Elliott Road does provide access to existing commercial and residential development along the transportation corridor. No development of a parcel is proposed.

*10. Traffic Study Improvements. If a traffic study is required, improvements identified in the traffic study shall be implemented as required by the director.*

**Finding:** The submitted application is not a site design review per NMC 15.220.020A.2. but is following the process referenced in NMC 15.505.030H. No traffic study was required or prepared for the design of improvements to N Elliott Road.

**CONCLUSION:**

The proposed determination request to narrow the right-of-way cross-section at four locations along the N Elliott Road corridor satisfies the approval and is approved.

## **Attachment 1: Application Material**



# TYPE II APPLICATION – LAND USE

File #: \_\_\_\_\_

**TYPES – PLEASE CHECK ONE:**

- Design review
- Tentative Plan for Partition
- Tentative Plan for Subdivision
- Type II Major Modification
- Variance \_\_\_\_\_
- Other: (Explain) \_\_\_\_\_

**APPLICANT INFORMATION:**

APPLICANT: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 EMAIL ADDRESS: \_\_\_\_\_  
 PHONE: \_\_\_\_\_ MOBILE: \_\_\_\_\_ FAX: \_\_\_\_\_  
 OWNER (if different from above): \_\_\_\_\_ PHONE: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 ENGINEER/SURVEYOR: \_\_\_\_\_ PHONE: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_

**GENERAL INFORMATION:**

PROJECT NAME: \_\_\_\_\_ PROJECT LOCATION: \_\_\_\_\_  
 PROJECT DESCRIPTION/USE: \_\_\_\_\_ PROJECT VALUATION: \_\_\_\_\_  
 MAP/TAX LOT NO. (i.e.3200AB-400): \_\_\_\_\_ ZONE: \_\_\_\_\_ SITE SIZE: \_\_\_\_\_ SQ. FT.  ACRE   
 COMP PLAN DESIGNATION: \_\_\_\_\_ TOPOGRAPHY: \_\_\_\_\_  
 CURRENT USE: \_\_\_\_\_  
 SURROUNDING USES:  
 NORTH: \_\_\_\_\_ SOUTH: \_\_\_\_\_  
 EAST: \_\_\_\_\_ WEST: \_\_\_\_\_

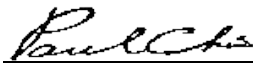
**SPECIFIC PROJECT CRITERIA AND REQUIREMENTS ARE ATTACHED**

**General Checklist:**  Fees  Public Notice Information  Current Title Report  Written Criteria Response  Owner Signature

**For detailed checklists, applicable criteria for the written criteria response, and number of copies per application type, turn to:**

**Design Review** .....p. 12  
**Partition Tentative Plat** .....p. 14  
**Subdivision Tentative Plat** .....p. 17  
**Variance Checklist** .....p. 20

The above statements and information herein contained are in all respects true, complete, and correct to the best of my knowledge and belief. Tentative plans must substantially conform to all standards, regulations, and procedures officially adopted by the City of Newberg. All owners must sign the application or submit letters of consent. Incomplete or missing information may delay the approval process.

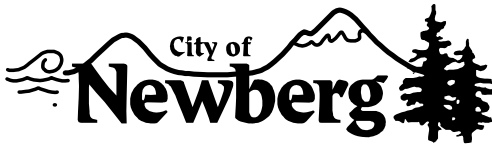
 10/20/21  
 \_\_\_\_\_  
 Applicant Signature Date

\_\_\_\_\_  
 Owner Signature Date

Paul Chiu  
 \_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Print Name

CITY OF NEWBERG TYPE II  
SAMPLE MAILED NOTICE



Community Development Department

P.O. Box 970 ▪ 414 E First Street ▪ Newberg, Oregon 97132  
503-537-1240. Fax 503-537-1272 [www.newbergoregon.gov](http://www.newbergoregon.gov)

**WE WANT YOUR COMMENTS ON A PROPOSED NEW  
DEVELOPMENT IN YOUR NEIGHBORHOOD**

The Elliott Road project manager submitted an application to the City of Newberg for Type II Determination. See below for details. You are invited to take part in the City's review of this project by sending in your written comments. You also may request that the Planning Commission hold a hearing on the application. The applicable criteria used to make a decision on this application for preliminary subdivision plan approval are found in Newberg Development Code 15.235.050(A). For more details about giving comments, please see the back of this sheet.

The development would include *(briefly describe what the project number of lots, size of lots, new streets created, etc.)*

APPLICANT: ***Paul Chiu (Elliott Road Project Manager)***  
TELEPHONE: ***(503) 554-1751***

PROPERTY OWNER: ***City of Newberg (Elliott Road right-of-way)***

LOCATION: ***Elliott Road from Hwy 99W to Newberg High School***

TAX LOT NUMBER: ***Yamhill County TL 3217DB-06201, TL 3217DB-06200, TL 3217DB-06100,  
and TL 3217DD-02501 (Elliott Road residential)***



We are mailing you information about this project because you own land within 500 feet of the proposed new project. We invite you to send any written comments for or against the proposal within 14 days from the date this notice is mailed. You also may request that the Newberg Planning Commission hold a hearing on the application by sending a written request during this 14-day period and identifying the issues you would like the Planning Commission to address.

If you mail your comments to the City, please put the following information on the outside of the envelope:

Written Comments: File No.XX  
City of Newberg  
Community Development  
PO Box 970  
Newberg, OR 97132

**(City staff will give you the file number for your project at the time of application)**

All written comments must be turned in by 4:30 p.m. on ***enter date two weeks from date you mailed notice***. Any issue which might be raised in an appeal of this case to the Land Use Board of Appeals (LUBA) must be submitted to the City in writing before this date. You must include enough detail to enable the decision maker an opportunity to respond. The applicable criteria used to make a decision on this application for preliminary subdivision plan approval are found in Newberg Development Code 15.235.050(A).

You can look over all the information about this project or drop comments off at Newberg City Hall, 414 E. First Street. You can also buy copies of the information for a cost of 25 cents a page. If you have any questions about the project, you can call the Newberg Planning Division at 503-537-1240.

The Community Development Director will make a decision at the end of a 14-day comment period. If you send in written comments about this project, you will be sent information about any decision made by the City relating to this project.

Date Mailed: ***Date notice is mailed***

PLANNING DIVISION FILE #: \_\_\_\_\_

**CITY OF NEWBERG  
AFFIDAVIT OF NOTICING**

**REFERENCE ATTACHED LIST(S)/NOTICE(S)**

I, Paul Chiu (Elliott Rd Prj Mgr) do hereby certify that the attached Notice of Land Use Action was:

- a) mailed to the following list of property owners, by United States mail, postage prepaid  
on \_\_\_\_\_;  
(date)
  
- b) posted on the site according to standards established in Newberg Development Code §15.100.260  
on N/A \_\_\_\_\_.  
(date)

I acknowledge that failure to mail the notice in a timely manner constitutes an agreement by the applicant to defer the 120-day process limit and acknowledge that failure to mail will result in the automatic postponement of a decision on the application *15.100.210.(D)(2)* \_\_\_\_\_.  
(date)

\_\_\_\_\_  
Signature Date

Paul Chiu  
Print name

**Date:** 10/20/21

**RE: Elliott Road Improvement Project**  
**WRITTEN STATEMENT FOR TYPE II DETERMINATION**

**Given the following:**

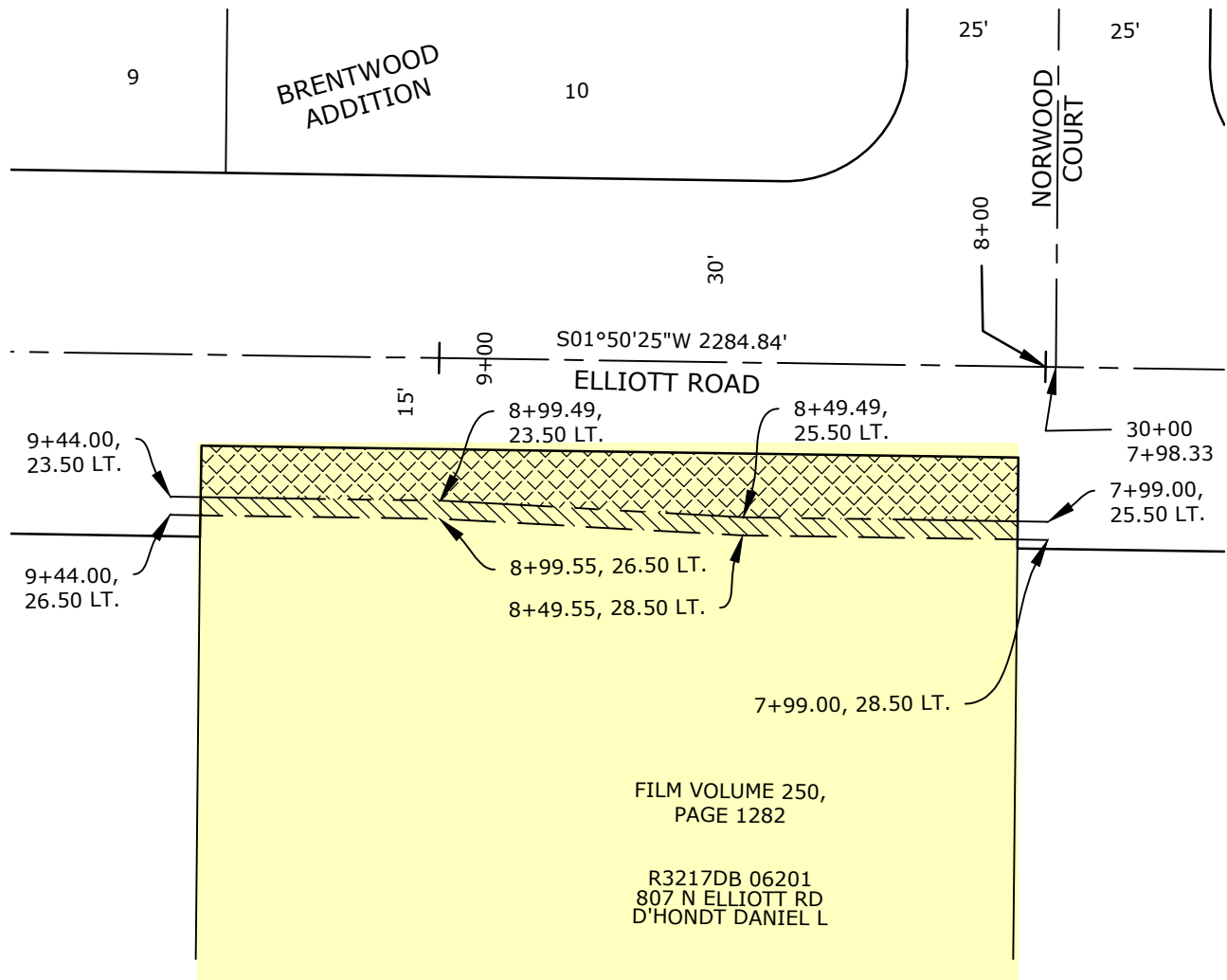
- NMC Section 15.505 applies to this Elliott Road Improvement Project, a capital improvement project.
- NMC 15.505.030(G) Street Width & Design Standards for Major Collector is 36' curb-to-curb (2-12' travel lanes, 2-6' bike lanes), 2-5' planter strips, 2-5' sidewalks → Total 56' of physical improvements. Typical sections show an additional 0.5' behind sidewalk to ROW. This gives a minimum ROW width of 57' as noted in NMC, or 28.5' ½ Street width.
- The Elliott Road Improvement Project is minimizing Right-of-way acquisition along the corridor resulting in four (4) parcels acquiring less than the minimum per NMC.
  - o File 7 – 807 Elliott Road: Varies from 25.5' to 23.5' of Right-of-way with an additional 3' of Public Utility Easement.
  - o File 9 – 911 Elliott Road: 23' of ROW with an additional 3' of Public Utility Easement.
  - o File 10 – 1007 Elliott Road: 25' of ROW with an additional 3' of Public Utility Easement.
  - o File 22 – 704 Elliott Road: Varies from 25' to 29' of Right-of-way with an additional 4.5' of Public Utility Easement.
- NMC 15.505.030(H): Modification of Street Right-of-Way Width requires a Type II application to the Planning Director.
  - o a. Unusual topographic conditions require a reduced width or grade separation of improved surfaces; or
  - o b. Lot shape or configuration precludes accessing a proposed development with a street which meets the full standards of this section; or
  - o c. A modification is necessary to preserve trees or other natural features determined by the City to be significant to the aesthetic character of the area; or
  - o d. A planned unit development is proposed and the modification of street standards is necessary to provide greater privacy or aesthetic quality to the development.

**Reasons for Request for Variance:**

- Federal Relocation Act: Right-of-way acquisition for this project must follow the Federal Uniform Relocation Act, codified by ORS 35.235.
  - o ORS35.235 Agreement for compensation; status of resolution or ordinance of public condemner; status of action of private condemner; agreement effort not prerequisite.
    - (1) Subject to ORS 758.015 and 836.050, whenever in the judgment of the condemner it is necessary to acquire property for a purpose for which the condemner is authorized by law to acquire property, the condemner shall, after first declaring by resolution or ordinance such necessity and the purpose for which it is required, attempt to agree with the owner with respect to the compensation to be paid therefor, and the damages, if any, for the taking thereof.
    - (2) The resolution or ordinance of a public condemner is presumptive evidence of the public necessity of the proposed use, that the property is necessary therefor and that the proposed use, that is the improvements or the project, is planned or located in a manner which will be most compatible with the *greatest public good and the least private injury*.
- If any of these properties were to redevelop in the future, the City would condition them to dedicate the ultimate ½ street ROW.

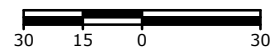
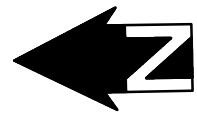




**EXHIBIT A-1**



FILM VOLUME 250,  
PAGE 1282

R3217DB 06201  
807 N ELLIOTT RD  
D'HONDT DANIEL L



-  1. RIGHT-OF-WAY DEDICATION  
1,285 SQ. FT. MORE OR LESS
-  2. PERMANENT UTILITY EASEMENT  
404 SQ. FT. MORE OR LESS

ELLIOTT ROAD  
N. HWY.99 W. TO NEWBERG HIGH SCHOOL

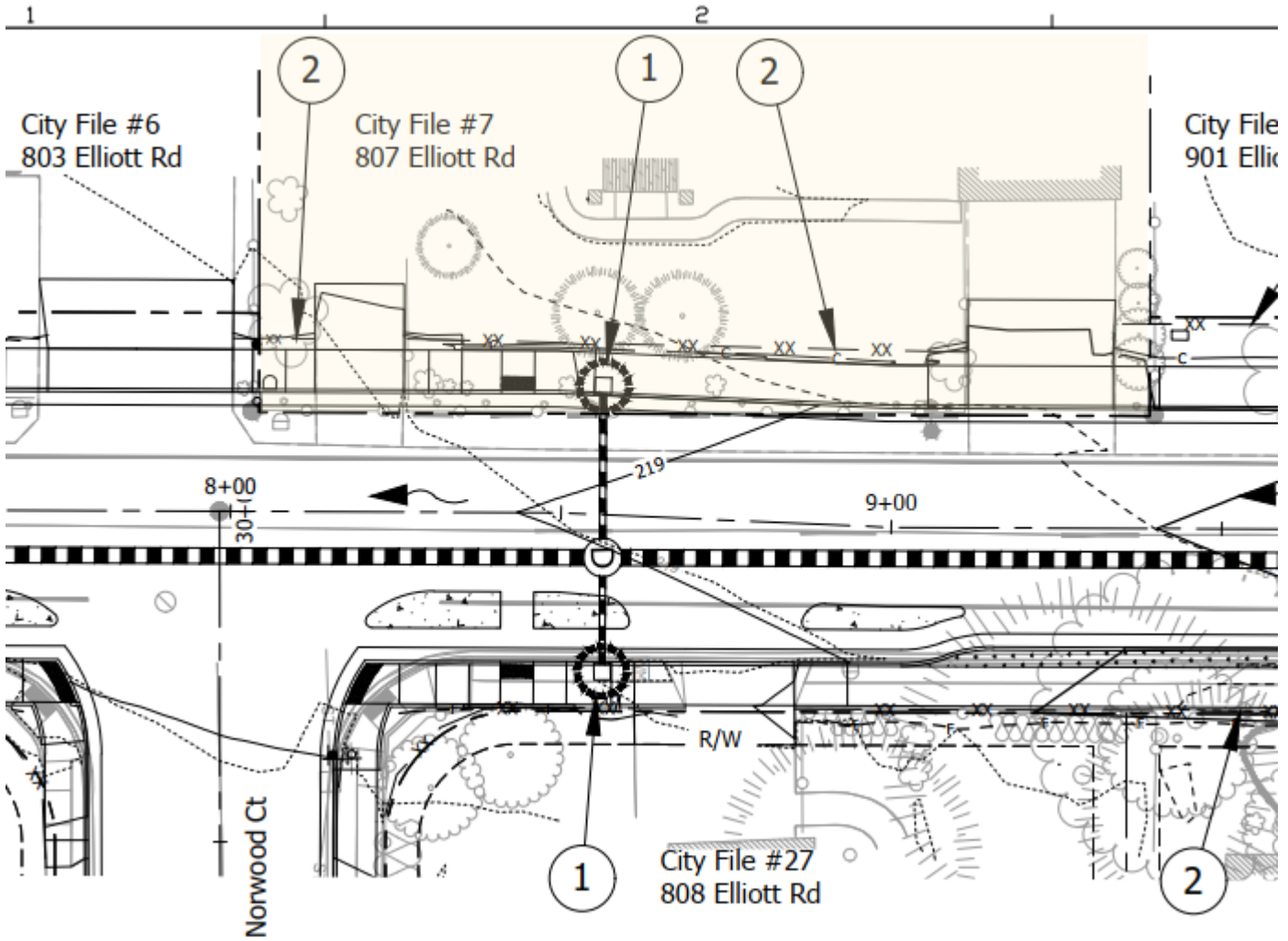
**CES | NW**

13190 SW 68th Parkway, Suite 150  
Tigard, Oregon 97223  
503.968.6655 www.cesnw.com

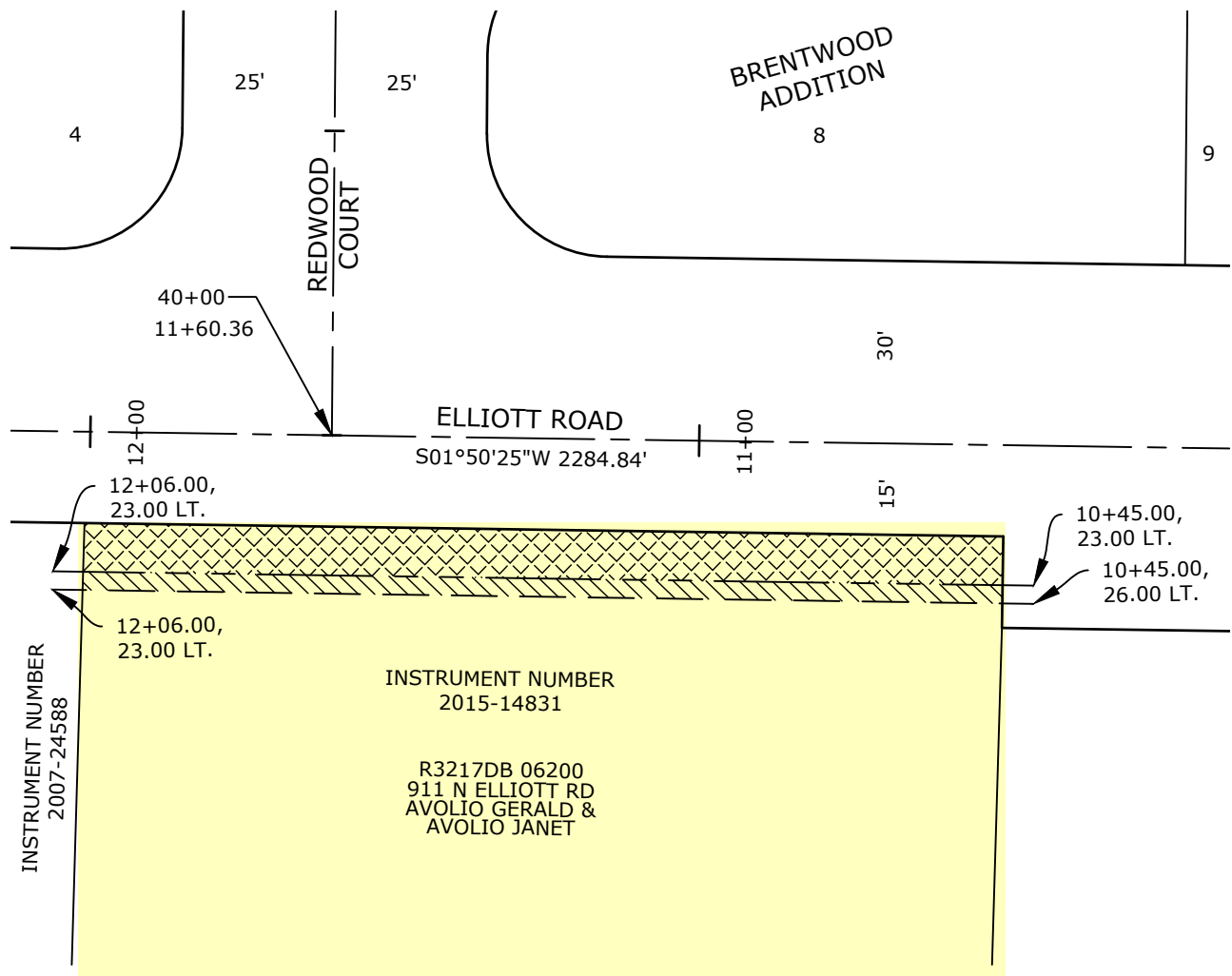
FILE NUMBER: 07	SUBMITTAL DATE: 9/03/2020
TAX LOT: 06201	REVISED DATE: 9/10/2020
TAX MAP: 3 2 17DB	REVISED DATE:
ADDRESS: 807 ELLIOTT ROAD	

EXHIBIT A-2

File 7\_807 Elliott Road  
Proposed grading



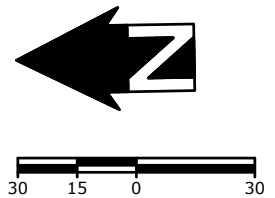
**EXHIBIT B-1**





INSTRUMENT NUMBER  
2007-24588

INSTRUMENT NUMBER  
2015-14831

R3217DB 06200  
911 N ELLIOTT RD  
AVOLIO GERALD &  
AVOLIO JANET



-  1. RIGHT-OF-WAY DEDICATION  
1,027 SQ. FT. MORE OR LESS
-  2. PERMANENT UTILITY EASEMENT  
453 SQ. FT. MORE OR LESS

ELLIOTT ROAD  
N. HWY.99 W. TO NEWBERG HIGH SCHOOL

**CES | NW**

13190 SW 68th Parkway, Suite 150  
Tigard, Oregon 97223  
503.968.6655 www.cesnw.com

FILE NUMBER: 09	SUBMITTAL DATE: 09/10/2020
TAX LOT: 06200	REVISED DATE:
TAX MAP: 3 2 17DB	REVISED DATE:
ADDRESS: 911 N ELLIOTT ROAD	

**EXHIBIT B-2**  
**File 9\_911 Elliott Road**  
**Proposed grading**

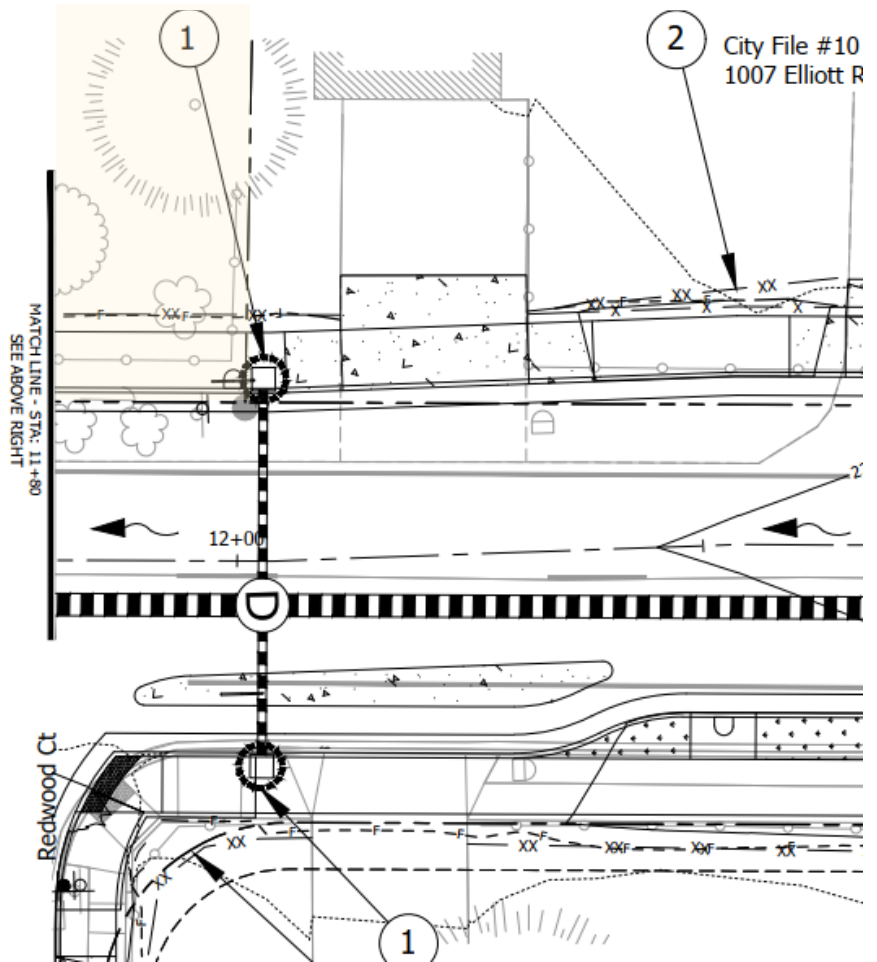
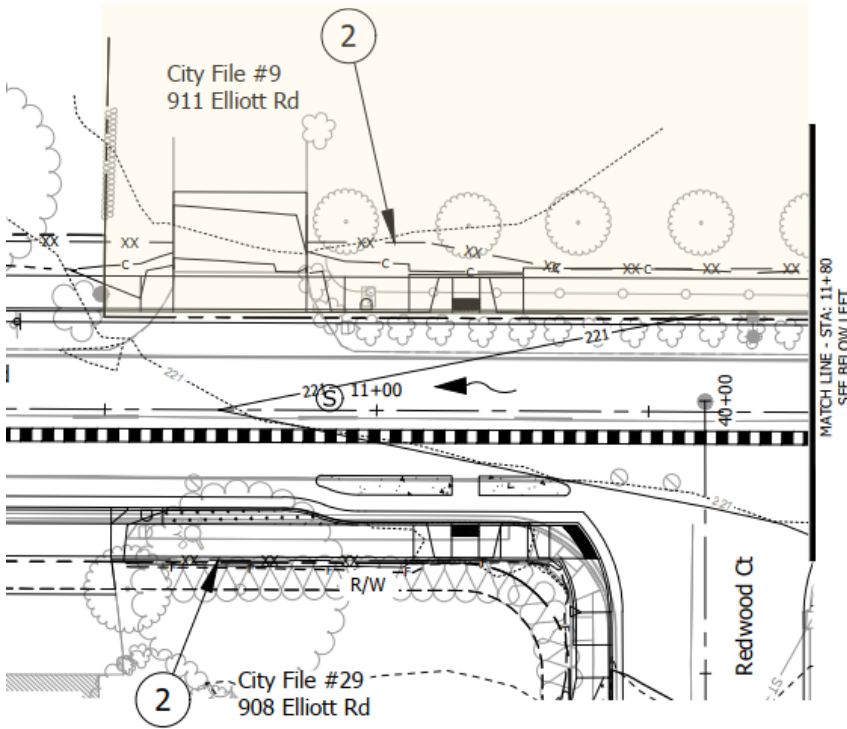
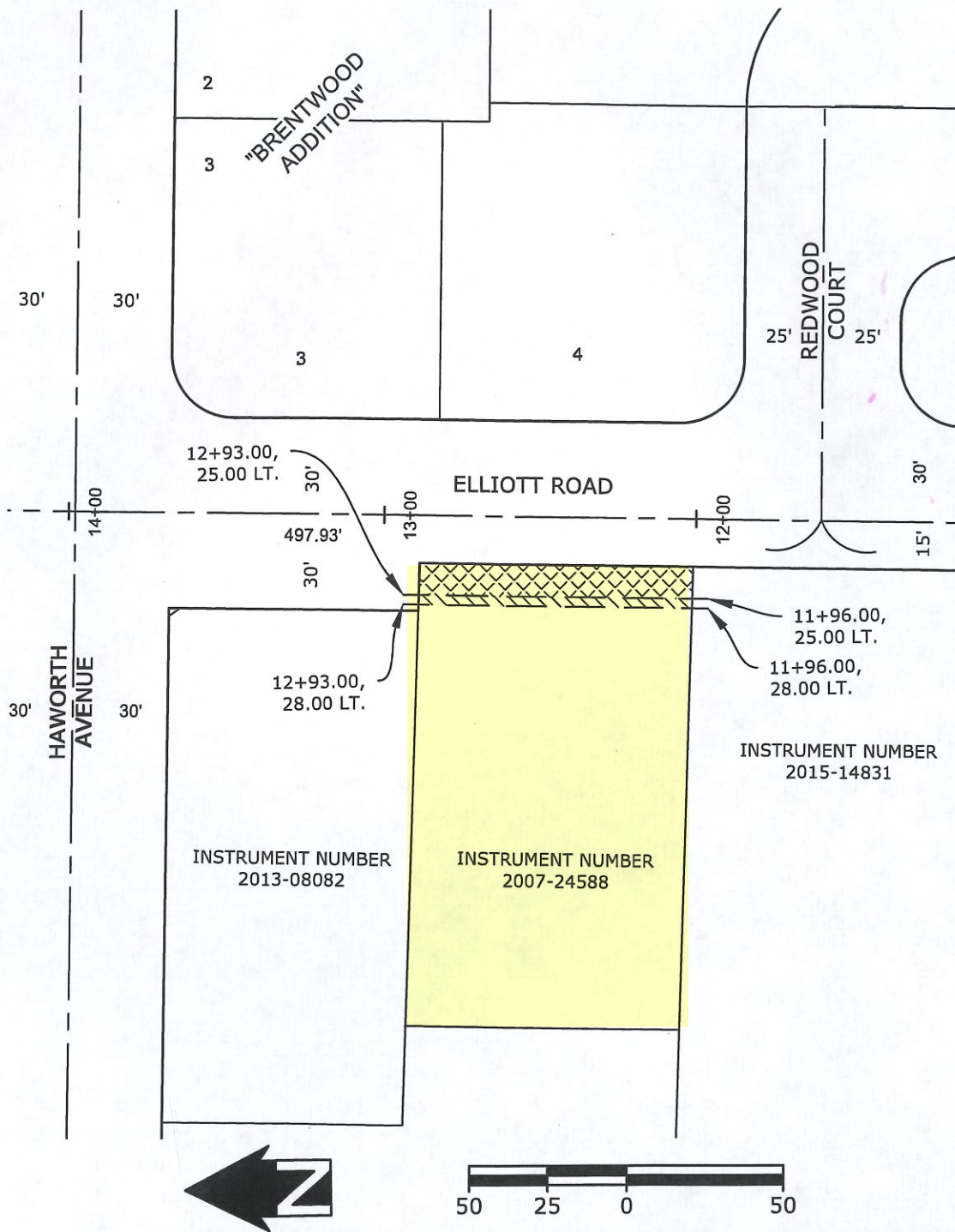




EXHIBIT C-1



-  1. RIGHT-OF-WAY DEDICATION  
876 SQ. FT. MORE OR LESS
-  2. PERMANENT UTILITY EASEMENT  
262 SQ. FT. MORE OR LESS

ELLIOTT ROAD  
N. HWY.99 W. TO NEWBERG HIGH SCHOOL

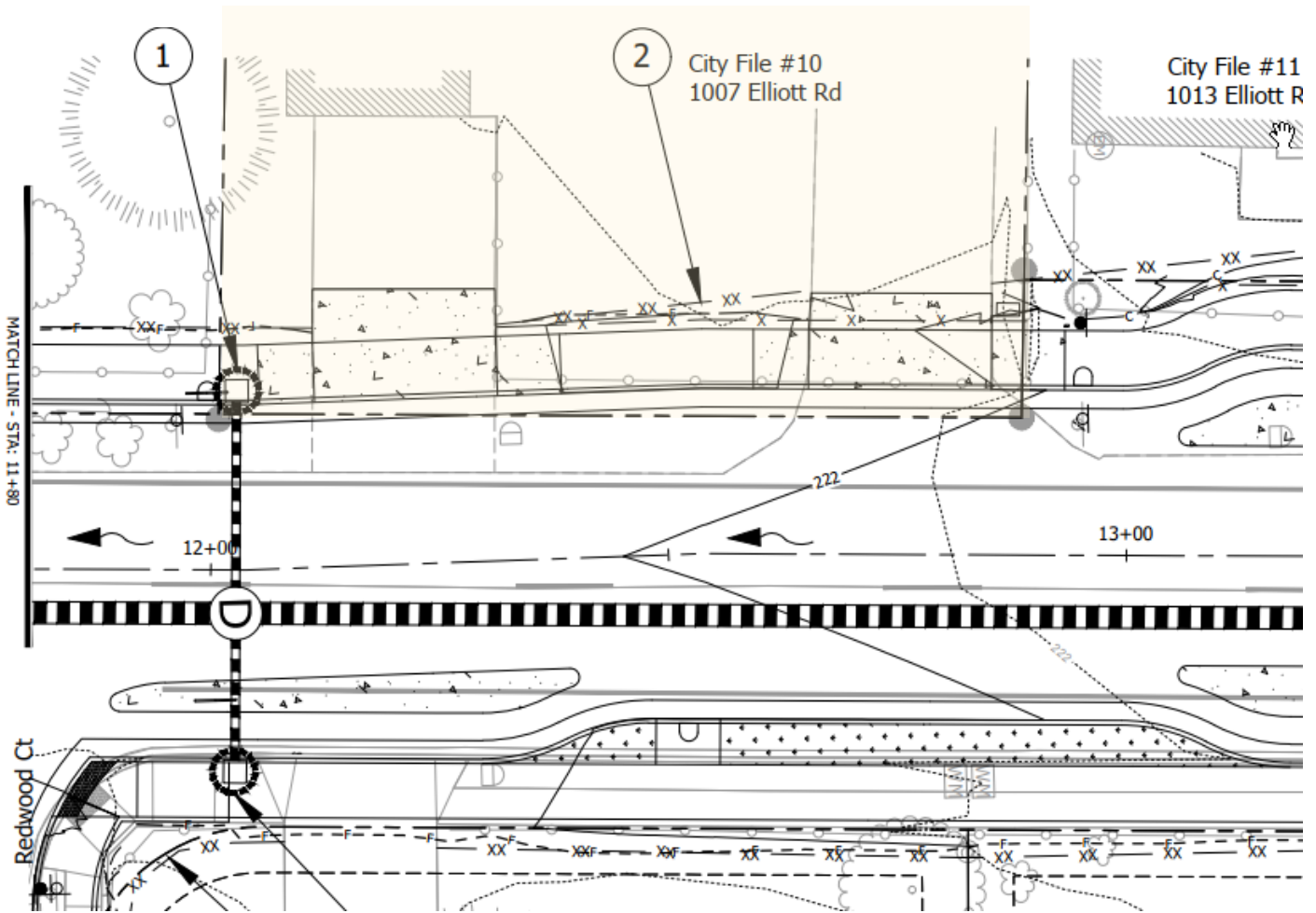
**CES | NW**

13190 SW 68th Parkway, Suite 150  
Tigard, Oregon 97223  
503.968.6655 www.cesnw.com

FILE NUMBER: 10	SUBMITTAL DATE: 7/14/2021
TAX LOT: 06100	REVISED DATE:
TAX MAP: 3 2 17DB	REVISED DATE:
ADDRESS: 1007 N ELLIOTT ROAD	

**EXHIBIT C-2**

**File 10\_1007 Elliott Road  
Proposed grading**



**EXHIBIT D-1**

R3217DD 02501  
704 N ELLIOTT RD 9-12  
CEDAR TERRACE LLC

P06-20

2

5+28.00,  
29.50 RT.

4+20.42,  
29.50 RT.

3+30.91,  
31.71 RT.

3+08.00,  
33.87 RT.

5+28.00,  
25.00 RT.

4+20.36,  
25.00 RT.

3+30.64,  
27.21 RT.

3+08.00,  
29.35 RT.

5+00

ELLIOTT ROAD

S01°50'25"W 2284.84'

4+00

30'



1. RIGHT-OF-WAY DEDICATION  
2,258 SQ. FT. MORE OR LESS



2. PERMANENT UTILITY EASEMENT  
947 SQ. FT. MORE OR LESS

ELLIOTT ROAD  
N. HWY.99 W. TO NEWBERG HIGH SCHOOL

**CES | NW**

13190 SW 68th Parkway, Suite 150  
Tigard, Oregon 97223  
503.968.6655 www.cesnw.com

FILE NUMBER: 22

SUBMITTAL DATE: 09/10/2020

TAX LOT: 02501

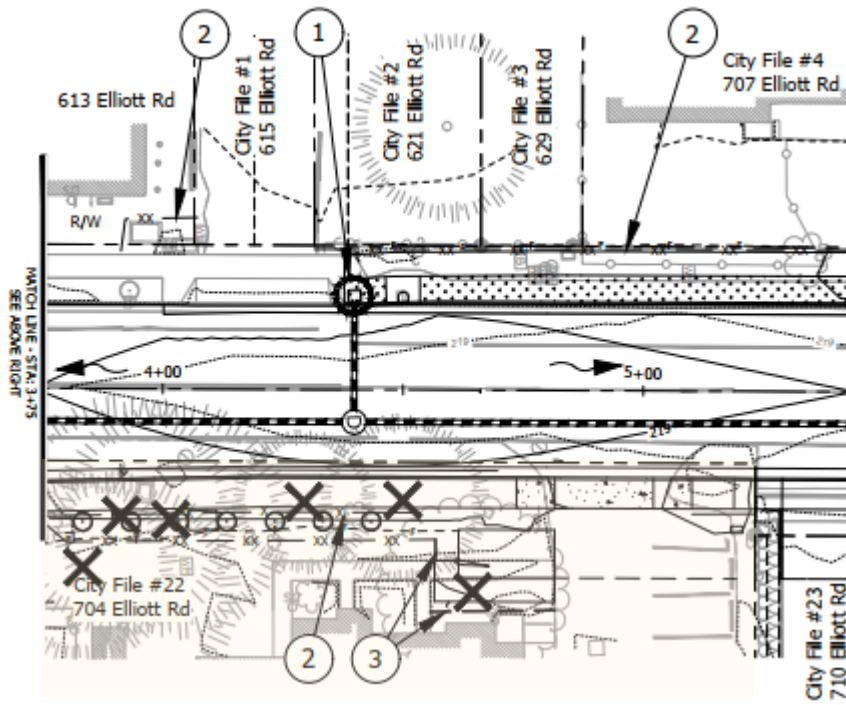
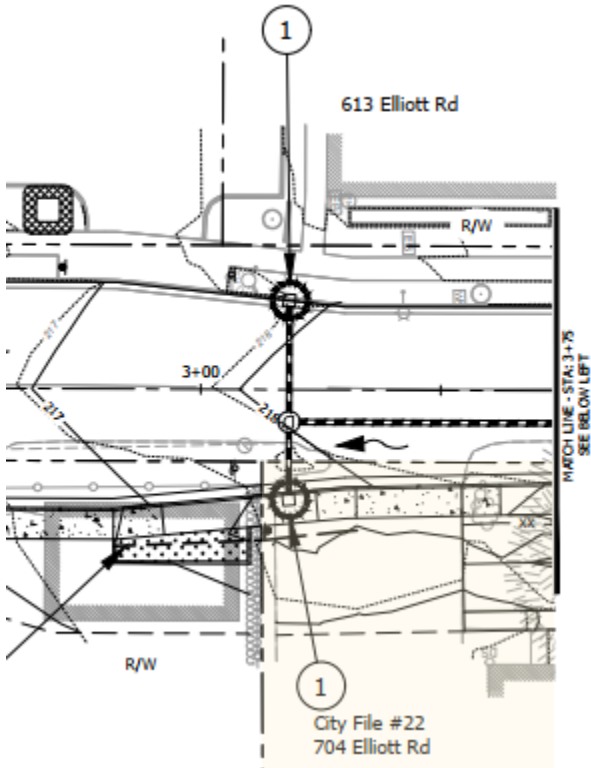
REVISED DATE:

TAX MAP: 3 2 17DD

REVISED DATE:

ADDRESS: 704 N ELLIOTT ROAD

**EXHIBIT D-2**  
**File 22\_704 Elliott Road**  
**Proposed grading**







### ELLIOTT ROAD - TYPE II NOTIFICATION LIST

MapTaxlot	SITUS1	SITUSCITY	SITUSZIP	OWNER1	OWNER2	MAILADD1	MAILCITY	MAILSTATE	MAILZIP
R3217DA 00802	1204 N ELLIOTT RD	NEWBERG	97132	SIMPSON ROBERT J	SIMPSON SHARON L	1204 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 03600	808 N ELLIOTT RD	NEWBERG	97132	REAB AMANDA	REAB BENJAMIN	808 N ELLIOTT RD	NEWBERG	OR	97132
R3217DC 00300	707 N ELLIOTT RD	NEWBERG	97132	BLACK GARRY L		707 N ELLIOTT RD	NEWBERG	OR	97132
R3217DB 06114	901 N ELLIOTT RD	NEWBERG	97132	HARRIMAN WILLIAM E		901 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 03400	908 N ELLIOTT RD	NEWBERG	97132	MITCHELL BRIAN A		1203 SITKA AVE	NEWBERG	OR	97132
R3217DA 00400	2500 HAWTHORNE DR	NEWBERG	97132	J & R EQUITIES		478 17TH ST	SANTA MONICA	CA	90402
R3217DA 00700	1210 N ELLIOTT RD	NEWBERG	97132	SOLORZANO ANTONIO S		1210 N ELLIOTT RD	NEWBERG	OR	97132
R3217DB 01600	1205 N ELLIOTT RD	NEWBERG	97132	VAN BERGEN JEFFREY	VAN BERGEN CONTONA S	1205 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 02501	704 N ELLIOTT RD 9-12	NEWBERG	97132	CEDAR TERRACE LLC		13489 NW TREVINO ST	PORTLAND	OR	97229
R3217DA 00803	1202 N ELLIOTT RD	NEWBERG	97132	BYNON DEVIN R &	BYNON REGINA M	1202 ELLIOTT RD	NEWBERG	OR	97132
R3217DC 00200	713 N ELLIOTT RD	NEWBERG	97132	GONZALEZ ANITA		713 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 02602	710 N ELLIOTT RD	NEWBERG	97132	LUCKY DOG PROPERTIES LLC		5250 ROGUE RIVER HWY	GRANTS PASS	OR	97527
R3217DB 06002	1013 N ELLIOTT RD	NEWBERG	97132	KOCH MICHAEL		19490 S FERGUSON TERRACE	OREGON CITY	OR	97045
R3217DA 00900	2505 HAWORTH AVE	NEWBERG	97132	CHURCH OF CHRIST		2503 HAWORTH AVE	NEWBERG	OR	97132
R3217DA 00300	1300 N ELLIOTT RD	NEWBERG	97132	J & R EQUITIES		478 17TH ST	SANTA MONICA	CA	90402
R3217DB 01500	1207 N ELLIOTT RD	NEWBERG	97132	SPENCER THOMAS K	SPENCER WANDA C	1207 ELLIOTT RD	NEWBERG	OR	97132
R3217DA 00801	1206 N ELLIOTT RD	NEWBERG	97132	WOOLEN NORMAN A	WOOLEN STEFFANIE	1705 GEMINI LN	NEWBERG	OR	97132
R3217DB 06201	807 N ELLIOTT RD	NEWBERG	97132	D'HONDT DANIEL L		807 N ELLIOTT RD	NEWBERG	OR	97132
R3217DC 00500	609 N ELLIOTT RD	NEWBERG	97132	CFT NV DEVELOPMENTS LLC		1683 WALNUT GROVE AVE	ROSEMEAD	CA	91770
R3217DD 02900	2500 HAWORTH AVE	NEWBERG	97132	BROWN TYLER	PAUL KASIE	2500 HAWORTH AVE	NEWBERG	OR	97132
R3217DB 06001	1007 N ELLIOTT RD	NEWBERG	97132	PARKS JON H	PARKS GRACE L	20032 SORRENTO PL	BEND	OR	97702
R3217DC 00402	613 N ELLIOTT RD UNIT 101	NEWBERG	97132	KCK PARTNERS LLC		11483 SE AMITY-DAYTON HWY	DAYTON	OR	97114
R3217DB 05908	2409 HAWORTH AVE	NEWBERG	97132	BROWN MARCIA S TRUSTEE	BROWN MARCIA TRUST	2409 HAWORTH AVE	NEWBERG	OR	97132
R3217DD 04000	2500 NORWOOD CT	NEWBERG	97132	RINGSETH JAMES A	RINGSETH KATIE L	2500 NORWOOD CT	NEWBERG	OR	97132
R3217DB 01700	1203 N ELLIOTT RD	NEWBERG	97132	MULCAHY SHAUN P	MULCAHY KARRIE M	1203 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 03000	1004 N ELLIOTT RD	NEWBERG	97132	ANDERSON NICHOLAS	ANDERSON STACY	1004 N ELLIOTT RD	NEWBERG	OR	97132
R3217DB 03900	2408 WILLOW DR	NEWBERG	97132	WOOLDRIDGE ELMER & BRENDA L		2408 WILLOW DR	NEWBERG	OR	97132
R3217DD 02502	2501 NE PORTLAND RD B	NEWBERG	97132	VEATCH ROGER A & CAROL E TRUSTEES FOR	VEATCH FAMILY TRUST	18450 NE HILLSIDE DR	NEWBERG	OR	97132
R3217DC 00303	621 N ELLIOTT RD E	NEWBERG	97132	ELLIOTT ESTATES LLC		17370 SW 108TH PL	TUALATIN	OR	97062
R3217DC 00400	615 N ELLIOTT RD	NEWBERG	97132	ELLIOTT ESTATES LLC		17370 SW 108TH PL	TUALATIN	OR	97062
R3217DB 06200	911 N ELLIOTT RD	NEWBERG	97132	AVOLIO GERALD &	AVOLIO JANET	911 N ELLIOTT RD	NEWBERG	OR	97132
R3217DD 03500	900 N ELLIOTT RD	NEWBERG	97132	CHILD KATHLEEN		PO BOX 396	NEWBERG	OR	97132
R3217DD 02600	720 N ELLIOTT RD	NEWBERG	97132	SHUCKEROW PATRICK C	SHUCKEROW KATHERINE M	PO BOX 253	NEWBERG	OR	97132
R3217DD 02601	714 N ELLIOTT RD	NEWBERG	97132	THOMPSON EMILY		710 N ELLIOTT RD	NEWBERG	OR	97132
R3217DC 00301	629 N ELLIOTT RD	NEWBERG	97132	ELLIOTT ESTATES LLC		17370 SW 108TH PL	TUALATIN	OR	97062
R3217DB 01800	2409 WILLOW DR	NEWBERG	97132	REDWINE GARY D &	REDWINE CHERI	2409 WILLOW DR	NEWBERG	OR	97132
R3217DB 01400	1209 N ELLIOTT RD	NEWBERG	97132	KWIESELEWICZ NATHALIE		1209 N ELLIOTT RD	NEWBERG	OR	97132
R3217DC 00100	803 N ELLIOTT RD	NEWBERG	97132	CROCKETT WESLEY	CROCKETT BRANDY	803 N ELLIOTT RD	NEWBERG	OR	97132
R3217DB 00100	2409 HAWTHORNE DR	NEWBERG	97132	MARSHALL THOMAS L & TERESA		2409 HAWTHORNE DR	NEWBERG	OR	97132

R3217DA 00802  
SIMPSON ROBERT J  
1204 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DB 06114  
HARRIMAN WILLIAM E  
901 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DA 00700  
SOLORZANO ANTONIO S  
1210 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DA 00803  
BYNON DEVIN R &  
1202 ELLIOTT RD  
NEWBERG, OR 97132

R3217DB 06002  
KOCH MICHAEL  
19490 S FERGUSON TERRACE  
OREGON CITY, OR 97045

R3217DB 01500  
SPENCER THOMAS K  
1207 ELLIOTT RD  
NEWBERG, OR 97132

R3217DC 00500  
CFT NV DEVELOPMENTS LLC  
1683 WALNUT GROVE AVE  
ROSEMEAD, CA 91770

R3217DC 00402  
KCK PARTNERS LLC  
11483 SE AMITY-DAYTON HWY  
DAYTON, OR 97114

R3217DB 01700  
MULCAHY SHAUN P  
1203 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DD 02502  
VEATCH ROGER A & CAROL E  
18450 NE HILLSIDE DR  
NEWBERG, OR 97132

R3217DD 03600  
REAB AMANDA  
808 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DD 03400  
MITCHELL BRIAN A  
1203 SITKA AVE  
NEWBERG, OR 97132

R3217DB 01600  
VAN BERGEN JEFFREY  
1205 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DC 00200  
GONZALEZ ANITA  
713 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DA 00900  
CHURCH OF CHRIST  
2503 HAWORTH AVE  
NEWBERG, OR 97132

R3217DA 00801  
WOOLEN NORMAN A  
1705 GEMINI LN  
NEWBERG, OR 97132

R3217DD 02900  
BROWN TYLER  
2500 HAWORTH AVE  
NEWBERG, OR 97132

R3217DB 05908  
BROWN MARCIA S TRUSTEE  
2409 HAWORTH AVE  
NEWBERG, OR 97132

R3217DD 03000  
ANDERSON NICHOLAS  
1004 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DC 00303  
ELLIOTT ESTATES LLC  
17370 SW 108TH PL  
TUALATIN, OR 97062

R3217DC 00300  
BLACK GARRY L  
707 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DA 00400  
J & R EQUITIES  
478 17TH ST  
SANTA MONICA, CA 90402

R3217DD 02501  
CEDAR TERRACE LLC  
13489 NW TREVINO ST  
PORTLAND, OR 97229

R3217DD 02602  
LUCKY DOG PROPERTIES LLC  
5250 ROGUE RIVER HWY  
GRANTS PASS, OR 97527

R3217DA 00300  
J & R EQUITIES  
478 17TH ST  
SANTA MONICA, CA 90402

R3217DB 06201  
D'HONDT DANIEL L  
807 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DB 06001  
PARKS JON H  
20032 SORRENTO PL  
BEND, OR 97702

R3217DD 04000  
RINGSETH JAMES A  
2500 NORWOOD CT  
NEWBERG, OR 97132

R3217DB 03900  
WOOLDRIDGE ELMER & BRENDA L  
2408 WILLOW DR  
NEWBERG, OR 97132

R3217DC 00400  
ELLIOTT ESTATES LLC  
17370 SW 108TH PL  
TUALATIN, OR 97062

R3217DB 06200  
AVOLIO GERALD &  
911 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DD 02601  
THOMPSON EMILY  
710 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DB 01400  
KWIESELEWICZ NATHALIE  
1209 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DD 03500  
CHILD KATHLEEN  
PO BOX 396  
NEWBERG, OR 97132

R3217DC 00301  
ELLIOTT ESTATES LLC  
17370 SW 108TH PL  
TUALATIN, OR 97062

R3217DC 00100  
CROCKETT WESLEY  
803 N ELLIOTT RD  
NEWBERG, OR 97132

R3217DD 02600  
SHUCKEROW PATRICK C  
PO BOX 253  
NEWBERG, OR 97132

R3217DB 01800  
REDWINE GARY D &  
2409 WILLOW DR  
NEWBERG, OR 97132

R3217DB 00100  
MARSHALL THOMAS L & TERESA  
2409 HAWTHORNE DR  
NEWBERG, OR 97132



November 8, 2021

Doug Rux  
Community Development  
City of Newberg  
PO Box 970  
Newberg, OR 97132

Re: MISC221-0002 – Elliott Road

Dear Mr. Rux:

This letter is a response to your notice dated November 2, 2021, in particular the narrative response for Newberg Municipal Code 15.505.030(H):

Properties 807 N Elliott Road and 911 N Elliott Road requires modification of street right-of-way width because of the necessity to preserve existing trees and to minimize impact to the green features of the Elliott Road corridor according to subsection (H)(1)(c).

Property 1007 N Elliott Road requires transition of the narrower street right-of-way to full width to the north as a result of preserving existing trees to the south according to subsection (H)(1)(c).

Please refer to Exhibits E-1, E-2 and E3 for the reasons due to the tree impact.

Property 704 N Elliott Road requires a 6-inch narrower street right-of-way from the 60-foot full width at the north corner of the existing multi-dwelling development to preserve the loss of an existing parking space and to minimize impact to the existing lot configuration according to subsection (H)(1)(b). The south portion of this lot does not have a right-of-way issue.

Please also note that the City Council authorized Resolution No. 2020-3681 on June 15, 2020 that they selected “The Buffered Bike Lane” design as the preferred alternative. This alternative specifically directed project staff to proceed with the narrower right-of-way design in some areas of the Elliott Road corridor.

With this additional information, please review this Type II application. Please also advise me when to mail the Neighborhood Notice. If you have any further questions, please do not hesitate to contact me.

Sincerely,

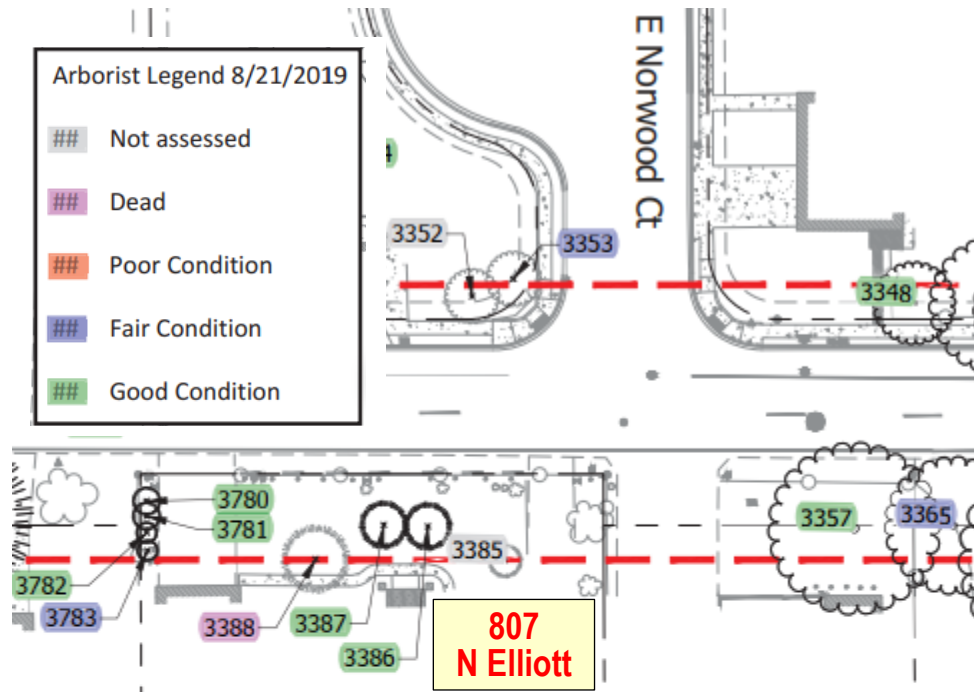
Paul Chiu, PE  
Project Manager

Attachments as noted above

## EXHIBIT E-1

Date of Response to CDD Notice (via email): 11/8/2021

RE: 807 N Elliott  
Tree Survey (8-21-19)



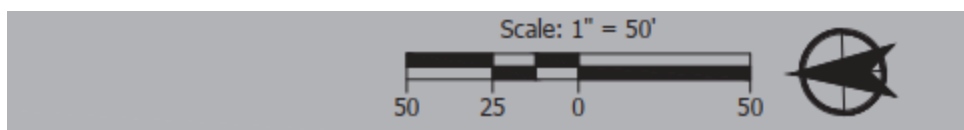
No.	Location	Type	Common Name	Species Name	DBH <sup>1</sup>	C-Rad <sup>2</sup>	Cond <sup>3</sup>	Comments	Treatment
3385	Priv Prop	Con						Not assessed - below 6" diameter	
3386	Priv Prop	Con	palm	<i>Arecaceae</i> spp.	*9	8	G		
3387	Priv Prop	Con	palm	<i>Arecaceae</i> spp.	*9	8	G		
3388	Priv Prop	Con	spruce	<i>Picea</i> spp.	*23	0	D	Completely dead	
3780	Priv Prop	Dec	apple	<i>Malus</i> spp.	6	5	G	Diameter measured at lower trunk below codominant stem juncture	
3781	Priv Prop	Dec	apple	<i>Malus</i> spp.	7	6	G	Diameter measured at lower trunk below codominant stem juncture	
3782	Priv Prop	Dec	apple	<i>Malus</i> spp.	8	6	G	Diameter measured at lower trunk below codominant stem juncture	
3783	Priv Prop	Dec	apple	<i>Malus</i> spp.	6	4	F	Diameter measured at lower trunk below codominant stem juncture	

<sup>1</sup>DBH is tree diameter at breast height measured 4.5-feet above ground level in inches; codominant stems originating below 4.5-feet are separated by a common or indicated as quantity x size. Where noted, diameter was measured below 4.5-feet. \*Asterisk indicates limited visual tree assessment due to access limitations on private properties; size was visually estimated and observations were limited to public rights of way only.

<sup>2</sup>C-Rad is the average crown radius measured in feet.

<sup>3</sup>Cond is an arborist assigned rating to generally describe the condition of individual trees as follows-

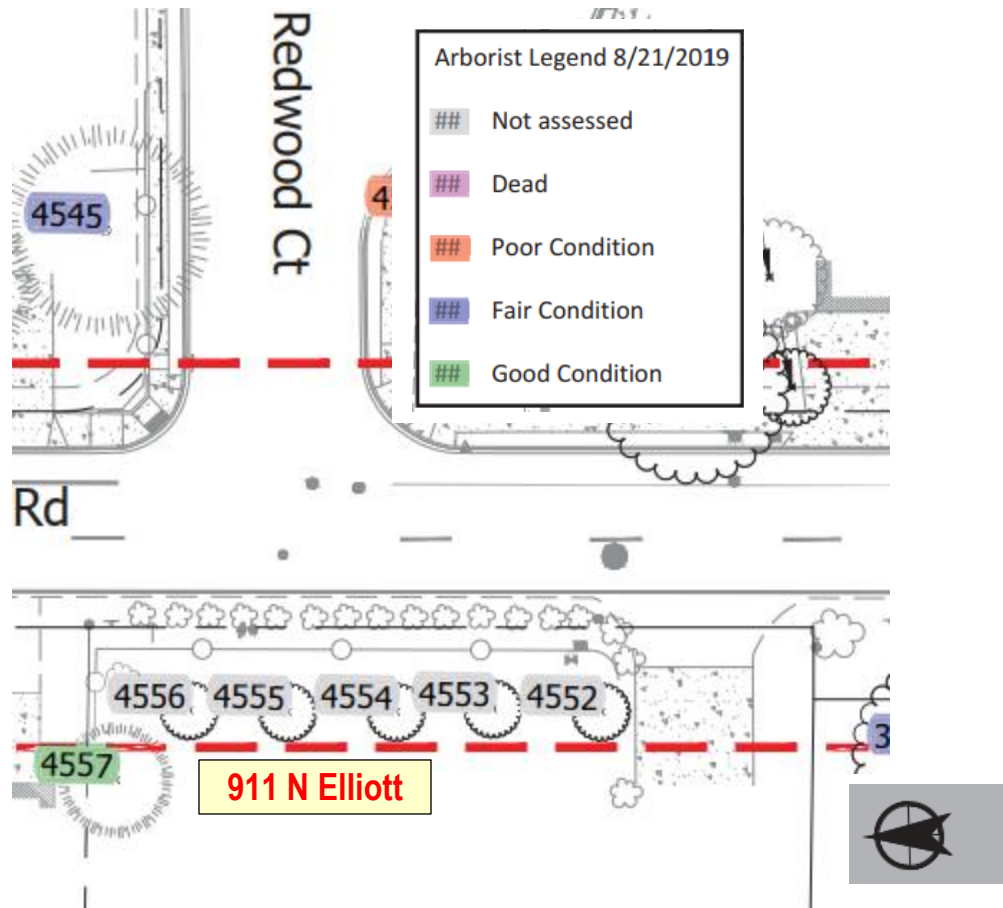
- D: Dead
- P: Poor Condition
- F: Fair Condition



## EXHIBIT E-2

Date of Response to CDD Notice (via email): 11/8/2021

RE: 911 N Elliott  
Tree Survey (8-21-19)



No.	Location	Type	Common Name	Species Name	DBH <sup>1</sup>	C-Rad <sup>2</sup>	Cond <sup>3</sup>	Comments	Treatment
4552	Priv Prop	Dec						Not assessed - below 6" diameter	
4553	Priv Prop	Dec						Not assessed - below 6" diameter	
4554	Priv Prop	Dec						Not assessed - below 6" diameter	
4555	Priv Prop	Dec						Not assessed - below 6" diameter	
4556	Priv Prop	Dec						Not assessed - below 6" diameter	
4557	Priv Prop	Con	blue spruce	<i>Picea pungens</i>	*11	14	G	Long live crown	

<sup>1</sup>DBH is tree diameter at breast height measured 4.5-feet above ground level in inches; codominant stems originating below 4.5-feet are separated by a common or indicated as quantity x size. Where noted, diameter was measured below 4.5-feet. \*Asterisk indicates limited visual tree assessment due to access limitations on private properties; size was visually estimated and observations were limited to public rights of way only.

<sup>2</sup>C-Rad is the average crown radius measured in feet.

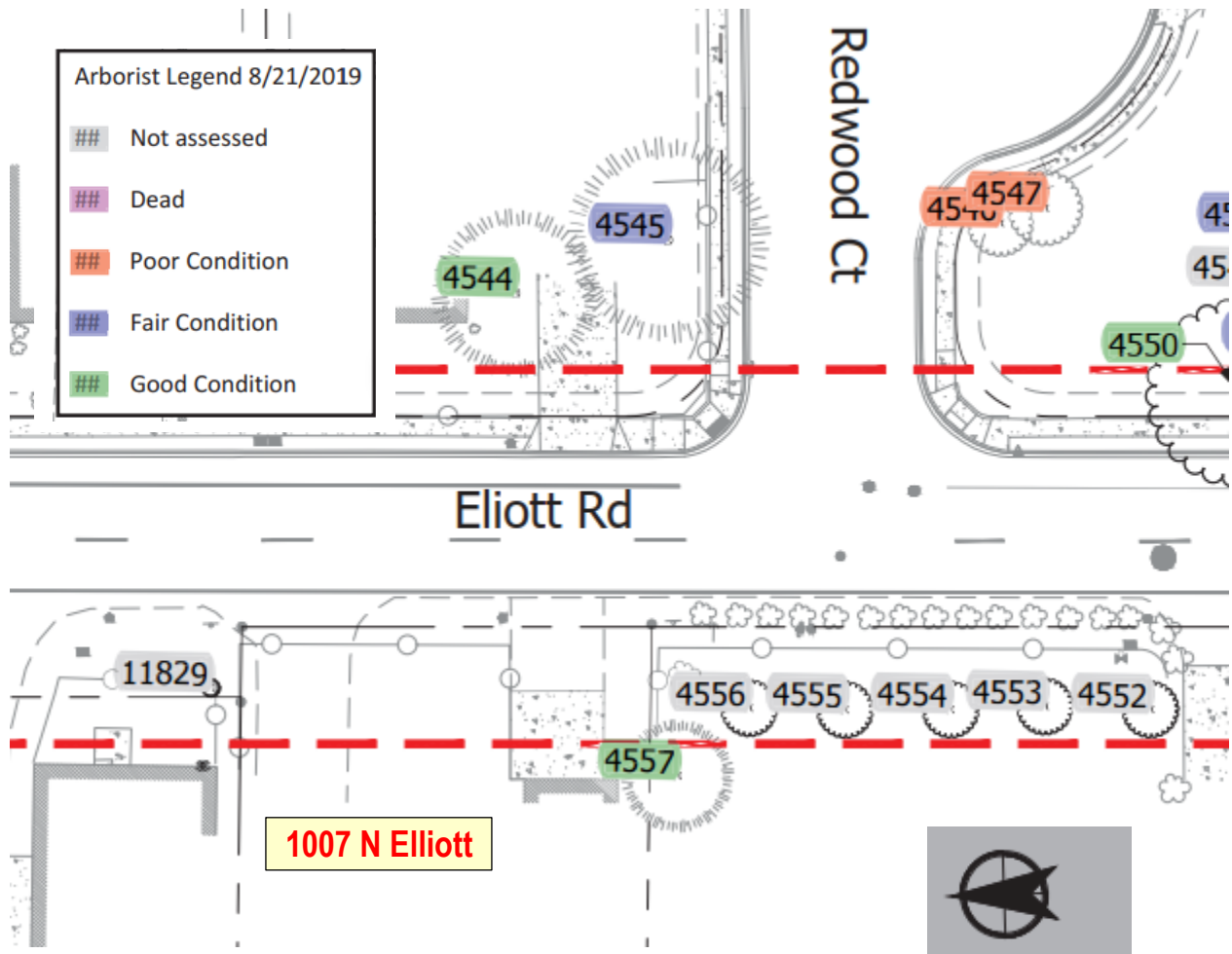
<sup>3</sup>Cond is an arborist assigned rating to generally describe the condition of individual trees as follows-

- D: Dead
- P: Poor Condition
- F: Fair Condition
- G: Good Condition

### EXHIBIT E-3

Date of Response to CDD Notice (via email): 11/8/2021

RE: 1007 N Elliott  
Neighboring Tree Survey (8-21-19)



No.	Location	Type	Common Name	Species Name	DBH <sup>1</sup>	C-Rad <sup>2</sup>	Cond <sup>3</sup>	Comments	Treatment
4557	Priv Prop	Con	blue spruce	<i>Picea pungens</i>	*11	14	G	Long live crown	
11829	ROW	Con						Not assessed - below 6" diameter	

<sup>1</sup>DBH is tree diameter at breast height measured 4.5-feet above ground level in inches; codominant stems originating below 4.5-feet are separated by a common or indicated as quantity. Where noted, diameter was measured below 4.5-feet. \*Asterisk indicates limited visual tree assessment due to access limitations on private properties; size was visually estimated and observations were limited to public rights of way only.

<sup>2</sup>C-Rad is the average crown radius measured in feet.

<sup>3</sup>Cond is an arborist assigned rating to generally describe the condition of individual trees as follows-

- D: Dead
- P: Poor Condition
- F: Fair Condition
- G: Good Condition

## **Attachment 2: Public Comments**



Find messages, documents, photos or people



Home

Compose

To Mr. Paul CHIU

CC / BCC

19

Inbox

999

Unread

Starred

Drafts

240

Sent

Archive

Spam

Trash

Less

Views

Hide

Photos

Documents

Subscriptions

Deals

Groceries

Receipts

Travel

Folders

Show

Elliott Rd. Project Comments

Good morning Mr. Chiu:

Thank you for the opportunity to submit comments on the proposed Elliott Road Project. My comments follow:

- 1) I am surprised at the extensive work planned , which I understand will cost in excess of \$3,000,000 to dress a road to a high school parking lot.
- 2) I very much do understand and support the need for sidewalks on both sides of Elliott Road for the safety and convenience of pedestrians As you know this would require the City acquiring part of my front yard.
- 3) Every week I walk many miles of Newberg City streets. Many streets here have sidewalks on only one side of the street. Many streets do not have sidewalks on either side. I also have noticed many, many sidewalks in the city are in bad need of extensive repair work. May I suggest , if only sidewalks were installed on Elliott Rd. any excess funds could/should be used installing new and repairing old sidewalks in the City.
- 4) I was told by one of your staff that the Elliott Rd. Project requires widening the road because widening the road will help reduce the speed of traffic.. I believe permanent speed cameras would immediatly solve the speed problem at a much reduced cost.

Bst Rgds

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NOV 22 2021

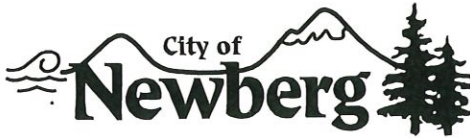
Initial: \_\_\_\_\_

Send



Good morning Mr Chiu:  
 I sent comments per your  
 Request by e mail as  
 detailed in this cc.  
 Thank you for the opportunity  
 to submit comments on the  
 Elliott Rd. Project  
 Best Rgds  
 Gerry Avolio  
 [Signature]

CITY OF NEWBERG TYPE II  
MAILED NOTICE



Community Development Department

P.O. Box 970 • 414 E First Street • Newberg, Oregon 97132  
503-537-1240. Fax 503-537-1272 [www.newbergoregon.gov](http://www.newbergoregon.gov)

**WE WANT YOUR COMMENTS ON A PROPOSED NEW  
DEVELOPMENT IN YOUR NEIGHBORHOOD**

The Elliott Road project manager submitted an application to the City of Newberg for Type II Determination. See below for details. You are invited to take part in the City's review of this project by sending in your written comments. The applicable criteria used to make a decision on this application are found in Newberg Development Code 15.505.030(H). For more details about giving comments, please see the back of this sheet.

The development would include right of way improvements for the N Elliott Road corridor from Highway 99W north to Newberg High School. Proposed improvements include pavement, curb and gutter, sidewalk, ADA ramps, bicycle lanes, storm drainage, wastewater pipeline, water main, street lighting, conversion from aerial to underground power line, traffic calming and roadway safety features, and landscape enhancement.

APPLICANT: *Paul Chiu (Elliott Road Project Manager)*  
TELEPHONE: *(503) 554-1751*

PROPERTY OWNER: *City of Newberg (Elliott Road right-of-way)*

LOCATION: *Elliott Road from Hwy 99W to Newberg High School*

TAX LOT NUMBER: *Yamhill County TL 3217DB-06201, TL 3217DB-06200, TL 3217DB-06100, and TL 3217DD-02501 (Elliott Road residential)*



Site map with project location (N Elliott Road) highlighted as shown above (arrows pointing to properties for Type II determination)

**From:**  
Miguel Gonzales  
713 N Elliott Road  
Newberg, OR 97132

November 30, 2021

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DEC - 1 2021

**To:**  
City of Newberg  
Community Development Department  
PO Box 970  
Newberg, OR 97132

Initial: \_\_\_\_\_

**Subject:** City Of Newberg File No. MISC221-0002 Type II Application -Land Use

I, Miguel Gonzales, do NOT approve of the subject Type II application.

It is fundamental, and a part of land use law and the city's own code that the Owner must approve of the application, even approve of and sign the land use application.

The City does NOT meet the provisions of NMC 15.505.030(h) because you have failed to have the owners sign the land use application.

Below is the relevant code and key case examples below in **Yellow**

Additionally, and

of equal or GREATER IMPORTANCE the city has made no serious effort to address the many concerns and suggestions of Elliott Road residents including those presented at the Newberg City Council Meeting on 3/15/2016.



Miguel Gonzales

CC: Attorney - Tyler Smith

Via US Mail (1st class) and hand delivered

Via email (courtesy of Daniel DHondt) to all City Council members

### **15.100.030 Type II procedure.**

A. Type II development actions shall be decided by the [director](#).

B. Type II actions include, but are not limited to:

1. Site design review.
2. [Variances](#).
3. [Manufactured dwelling parks](#) and [mobile home parks](#).
4. [Partitions](#).
5. Subdivisions, except for subdivisions with certain conditions requiring them to be processed using the Type III process, pursuant to NMC [15.235.030\(A\)](#).

C. The [applicant](#) shall provide notice pursuant to the requirements of NMC [15.100.200](#) et seq.

D. The [director](#) shall make a decision based on the information presented and shall issue a [development permit](#) if the [applicant](#) has complied with all of the relevant requirements of this [code](#). The [director](#) may add conditions to the permit to ensure compliance with all requirements of this [code](#).

E. Appeals may be made by an affected party, Type II, in accordance with NMC [15.100.160](#) et seq. All Type II development action appeals shall be heard and decided by the [planning commission](#).

F. If the [director](#)'s decision is appealed as provided in subsection (E) of this section, the [hearing](#) shall be conducted pursuant to the Type III [quasi-judicial hearing](#) procedures as identified in NMC [15.100.050](#).

G. The decision of the [planning commission](#) on any appeal may be further appealed to the [city council](#) by an affected party, Type III, in accordance with NMC [15.100.160](#) et seq. and shall be a review of the record supplemented by written or oral arguments relevant to the record presented by the parties.

H. An [applicant](#) shall have the option to request at the time the [development permit](#) application is submitted that the proposal be reviewed under the Type III procedure. [Ord. [2813](#) § 1 (Exh. A § 3), 9-5-17; Ord. [2747](#) § 1 (Exh. A § 4), 9-6-11; Ord. [2451](#), 12-2-96. Code 2001 § 151.022.]

## 15.100.090 Development permit application.

Applications for [development permits](#) shall be submitted upon forms established by the [director](#). An application shall consist of all materials required by this [code](#), including the following information:

A. A completed [development permit](#) application form.

B. Proof that the property affected by the application is in the exclusive ownership of the [applicant](#), or that the [applicant](#) has the consent of all [owners](#) of the affected property.

C. Other information required by this [code](#).

D. The applicable fees. [Ord. [2451](#), 12-2-96. Code 2001 § 151.040.]

---

### Relevant Cases:

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. A local government does not err in failing to require an easement holder to sign or authorize the landowner's permit application, where the code requires only the "owner" to sign and the code defines "owner" to refer only to the owner of record, not easement holders. *Kane v. City of Beaverton*, 56 Or LUBA 240 (2008).

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. Any error in a hearings officer's conclusion that the terms of an easement allow a public utility to file a land use application without the property owner's signature is harmless, where the code allows a public utility with condemnation authority to sign land use applications, and there is no dispute that the applicant is a public utility with condemnation powers under applicable statutes. *Cyrus v. Deschutes County*, 46 Or LUBA 703 (2004)

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. Where the applicant is a general partnership, a code requirement that the application bear the signature of the applicant is satisfied if the record indicates the person who signed the application is a general partner. *BCT Partnership v. City of Portland*, 27 Or LUBA 278 (1994)

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. Where a local code provision requires the consent of all property owners affected by a land use application, a present owner must sign the application, notwithstanding an agreement obligating the present owner to convey the property in the future to a party who signed the application. *Johnston v. City of Albany*, 34 Or LUBA 32 (1998)

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. A county errs in deferring the requirement to obtain the signatures of all property owners to a subsequent administrative proceeding, in which staff are granted the discretion to determine whether the county signature

requirement is preempted or rendered invalid under federal law. Citizens Against LNG v. Coos County, 63 Or LUBA 162 (2011).

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. A county errs in deferring a county code requirement to obtain the signatures of all property owners to a subsequent administrative proceeding that does not provide notice or opportunity for public input, in which staff is granted the discretion to determine whether a circuit court order condemning an easement or less-than-fee interest in property “obviates” the need to obtain the signature of the fee owner. Citizens Against LNG v. Coos County, 63 Or LUBA 162 (2011).

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. Where the purpose of a zoning code requirement that a permit application be initiated in one of six specified ways is to ensure that the current property owner or purchaser of the affected property knows about and agrees with the application, and the record establishes that the current property owner agrees with the application, the county’s procedural error in allowing the permit application to be initiated in other than one of the six ways specified in the zoning code could not prejudice a permit opponent’s rights and provides no basis for reversal or remand. Womble v. Wasco County, 54 Or LUBA 68 (2007).

25.4.2 Local Government Procedures – Compliance with Local Ordinances/Regs – Application Requirements. Where the county code requires the signature of all owners of the property, and to ensure compliance with respect to a proposed pipeline crossing multiple properties the county imposes a condition requiring that the approval becomes effective only when the utility provider supplies all required signatures, an ambiguity in the condition regarding whether all signatures of all property owners are required for the approval to become effective is not a basis to remand the decision, where it is reasonably clear from the condition and findings that the county intended that all signatures of all owners be obtained before the approval becomes effective and Page 2 of 11 building permits for any part of the pipeline can be obtained. Citizens Against LNG v. Coos County, 63 Or LUBA 162 (2011).

25.2 Local Government Procedures – Authority to Act. A county has authority or jurisdiction to deny a permit application on its merits, where the permit applicant fails to demonstrate he was authorized to submit the permit application but the code limitations on who can submit permit applications do not impose a “jurisdictional” requirement. Base Enterprises, Inc. v. Clackamas County, 38 Or LUBA 614 (2000).

25.2 Local Government Procedures – Authority to Act. The absence of relevant or even essential information in an application does not preclude consideration by the city, although it may result in a denial of the application. Sullivan v. City of Woodburn, 31 Or LUBA 192 (1996).

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. A provision in a local subarea plan allowing submittal of master plan application without the consent of all owners of property subject to the application does not violate ORS 227.175(1). Lowery v. City of Keizer, 48 Or LUBA 568 (2005)

25.3.1 Local Government Procedures – Compliance with Statutes – Generally. Where intervenors filed a conditional use permit application as an agent of the property owner, there is no violation of the provision in ORS 215.416(1) stating that an owner of property may apply for a permit. Silani v. Klamath County, 22 Or LUBA 735 (1992)

12/01/2021

## Elliott Road Development Resident Comment

File No MISC221-0002

Dear City Council & Paul Chiu,

As a landowner along Elliott Rd, I am writing to state that I am in opposition to the bike lanes included in the Elliott Road Improvement Project.

I continue to be opposed to adding bike lanes on Elliott Road by way of taking homeowners property. Here are my reasons why:

1. The number of people that will actually use bike lanes on this road is low. We have low bike traffic in all of Newberg and extremely low bike traffic on this road.
2. A big reason City Council wants bike lanes is for the students locally commuting to school, particularly for Newberg High School Students. However, the number of bikes on the bike racks at this school are low.
3. Most bikers don't use bike lanes anyways and will either ride with traffic on the street if they are a regular/confident biker or the less confident bikers (children) will use sidewalks. As a mother, I know, even with bike lanes I would still ask my kids to ride on the sidewalk which is safer for children.
4. The 10 year plan of taking street parking from Haworth and Deborah to make connecting bike lanes from Elliott Rd. is incredibly faulty. Both Haworth and Deborah have a significant number of cars parked on the street every single day, especially in front of Multi-Family Housing Complexes. The reality is, these complexes need that overflow parking and to take it away for rarely used bike lanes is going to negatively impact these families.

Simply stated, I do not agree that the number of possible bikers that might use the bike lanes on Elliott Rd. will outweigh the impact this proposed road expansion will have on the property owners of Elliott Rd. or the impact bike lanes will have on the residents of Haworth and Deborah in the coming years.

Sincerely,  
Brandy Crockett  
803 N Elliott Rd  
Newberg OR 97132

RECEIVED

DEC - 1 2021

Initial: \_\_\_\_\_

James A Talt  
201 Crestview Dr  
Newberg, OR 97132  
(503) 554 5461

November 29, 2021 Page 1/3

City of Newberg  
Community Development Department  
PO Box 970  
Newberg, OR 97132

RECEIVED

DEC - 1 2021

Initial: \_\_\_\_\_

**Subject:** Elliott Road Improvement

**Reference:** City Of Newberg File No. MISC221-0002 Type II Application -Land Use

Attention Newberg City and City Council Members,

This letter documents requested modifications to the Type II Land Use Application described in the referenced file. The proposed modifications herein will achieve the cities goals of sidewalks, curbs, gutters, ADA compliance, improved lighting and safety on Elliott Road while also preserving the home environments of the Elliott Rd citizenry and their needed on-street parking. The proposals save annex compensation money and also provide immediate inexpensive improvements to current bike routes to the Newberg school and sport complexes located on Deborah Road.

**Proposed Modifications**

- A) **'Fast track' the completion of bike lanes on Deborah Rd from 99W to Haworth and designate both sides as No Parking. (See photo 1)** This will immediately improve bike access and safety to the Newberg schools and sport complexes and reduces a need for bike lanes on Elliott Rd. There are no residences on that portion of Deborah Rd and the business have ample *on-site* parking so there is no demand for *on-street* parking. Newberg's Transportation Safety Plan (TSP) currently lists Deborah Rd as both a Critical Bicycle Route and a Minor Collector (ref TSP pages 26 & 37) and it does not yet have its bike lanes! The TSP refers to this as a **Bike Lane Gap** (ref TSP page 29)
  
- B) **Reclassify Elliott Rd from a Major Collector to a Local Residential street. Add needed road improvements for Safety, Accessibility, ADA, Drainage, etc. and with on-street parking and Shared Lane Markings for bikes from Haworth south to 99W.** This will preserve the approx. 25 on-street parking spots in daily use by residents that will otherwise be lost in the current plan (Where are



they to park?). The TSP repeatedly states that high priority be given to providing on-street residential parking availability (ref TSP page 47).

**C) Omit Planter Strips.** The city plan removes Green Space from the yards of residents to create Green Spaces in planter strips. Leave the Green Space with the residents where, daresay, it will be better maintained. Also, Elliott Rd south of 99W does not have planter strips so this proposal results in a street design consistent with existing Elliott Rd segments (see photo 2).

**D) Add road improvements per (B) above and create bike lanes from Haworth north to the High School. Designate no street parking on this one block stretch.** The proposed changes will provide safe access for bikes traveling south to Haworth from the Hawthorne and Willow neighborhoods and from there East to the schools, or the Aquatic Center to the West. There is currently no parking on either side of that portion of Elliott because of drainage ditches and no residences front onto Elliott.

Though the TSP designates N. Elliot Rd a Major Collector (TSP page 37), it is a **Major Collector in name only**. It is only two blocks long and has only 3 intersecting streets. The adjacent neighborhoods south of Haworth have their own residential street access to 99W and do not use Elliott Rd. 90% of Haworth traffic continues East-West on Haworth to Villa or Springbrook. This is also true of the high school drivers who are only in attendance 180 days per year. Traffic on Elliott is low and so is the speed limit. Additionally, the portion of Elliott Rd from Haworth to 99W fails the various setback requirements for a Major Collector (TSP page 40). Overall, it is much easier to envision Elliott Rd as a Residential Street than a Major Collector.



**Photo 1:** Deborah Road leading from 99W towards Newberg Schools and sports complexes. Classified as a Minor Collector. Needs dedicated bike lanes. Has no need of on-street parking. Note that it does not have planter strips.



**Photo 2: Elliott Road south of 99W.  
No planter strips.**

## **Conclusion**

The reference city plan will totally change the yard and home environments of the N. Elliott Road residents and does NOT address their repeatedly expressed concerns for on-street parking (ref Council Mtg 3/15/21).

City Planning has made no serious effort to address these issues directly face-to-face with Elliott residents.

Proposed herein are workable alternatives to Newberg's Type II Land Use request. They represent one of several different solutions that could be explored if only the City Council will vote to reopen the Elliott Road project and not allow Newberg City to **steamroll Elliott residents** using outside consultants that produce fancy videos and claim that they have produced a net gain in parking (ref Council Mtg 3/15/21).

Please vote NO on the cities Type II application and then vote to revisit the whole plan and make this a model for how the many future city projects should be developed thereby proving that we are truly Better Together.

Regards,

Jim Talt

## Tyler Smith

---

**From:** Tyler Smith  
**Sent:** Wednesday, December 1, 2021 9:55 AM  
**To:** Paul Chiu; Doug Rux  
**Cc:** Tyler Smith; Dan Dhondt  
**Subject:** Comments, objections and legal arguments about File No. MISC221-0002

(Via US Mail and e-mail)  
City of Newberg  
Community Development  
PO Box 970  
Newberg Oregon 97132

RECEIVED

DEC - 6 2021

Initial: \_\_\_\_\_

File No. MISC221-0002 (Elliot Road Variance Request)

Dear Community Development Director, Newberg City Council and Staff:

I write to you today to note a few legal reasons why your proposed Application must be denied. As you are aware our law firm represents Mr. Daniel Dhondt and Cedar Terrace, LLC in relation to their property rights.

- 1) Newberg Municipal Code requires the Owner of the real property in question to approve of the application or be the applicant. Rajiv Jain and Cedar Terrace, LLC as well as Dan Dhondt, own 704 N Elliot Rd, and 807 N Elliot Rd respectively. They are not the applicant, nor do they approve of land use actions covering their property.
- 2) Your application does not meet any of the criteria of NMC 15.505.030(h)

There are other options, such as downgrading the street category of Elliot Rd., delaying this action, and reducing the impacts and condemnations of the owners' property that are preferred. While we appreciate this attempt to minimize the taking of private property for public use, nonetheless we oppose your attempts to condemn and take my client's private property for your preferred use and plan. My clients and other interested community members have suggested alternatives, and alternate plans.

This application was just discovered by my clients so this is a rushed response. However points 1 and 2 above are elaborated as follows:

**1) Newberg Municipal Code 15.100.090 (b) bars this application from being approved.**

NMC 15.100.090 requires that land use application provide PROOF that the property affected by the application is in the exclusive ownership of the applicant, or otherwise have the consent of all owners of the property.

- a. Newberg does not have the consent of my clients Daniel Dhondt, nor Rajiv Jain who is the managing member of Cedar Terrace LLC. The property that they own as fee simple title owners is included as a part of your application. See Exhibit A-1 of your application packet shows the portion owned by Mr. Dhondt, and See Exhibit D-1 of your application, which shows the portion owned by Cedar Terrace LLC. Thus Mr. Chiu (the Applicant) nor the City of Newberg is the

“exclusive owner” of the property, nor does the Applicant have the consent of these two owners. The application must therefore be denied under the NMC. Oregon law is clear on this point. Where a local code provision requires the consent of all property owners affected by a land use application, a present owner must sign the application. *Johnston v. City of Albany*, 34 Or LUBA 32 (1998).

- b. Furthermore, the application page itself, shows that no-owner has signed the application. Mr. Chiu apparently signed for the applicant on October 20, 2021 but he is neither the owner nor the owner’s agent.

**2) Newberg Municipal Code 15.505.030(h) is not met here.**

NMC 15.505.030 is cited as the basis for this variance. Modification of Street Right-of-Way and Improvement Width. The director, pursuant to the Type II review procedures of Chapter 15.220 NMC, may allow modification to the public street standards of subsection (G) of this section, when the criteria in both subsections (H)(1) and (2) of this section are satisfied:

“ The modification is necessary to provide design flexibility in instances where:

- a. Unusual topographic conditions require a reduced width or grade separation of improved surfaces; or
- b. Lot shape or configuration precludes accessing a proposed development with a street which meets the full standards of this section; or
- c. A modification is necessary to preserve trees or other natural features determined by the city to be significant to the aesthetic character of the area; or
- d. A planned unit development is proposed and the modification of street standards is necessary to provide greater privacy or aesthetic quality to the development.”

Each of those four possible alternatives is not met

(a) Here, there is no unusual topographic condition, the City is simply proposing to widening the street against the wishes of these owners. Proposing to enter onto these owners lots, take their property for public use and establish wider easements and rights of way over Cedar Terrace.

(b) The lot shape and configuration is not affective access at all since the access will exist either way and these properties are already street frontage properties.

(c) There have not yet been any findings nor assertions about which trees are being determined to be significant, but the opponents agree there are some important and significant trees that should not be disturbed by the proposed plan.

(d) No planned unit development is proposed.

**CONCLUSION**

**This application cannot be approved because the owners of at least some of the the property in question are not the applicant, and have not consented to this application. This violates the NMC and Oregon law.**

-----  
Tyler Smith | Owner and Founding Attorney  
Tyler Smith & Associates P.C.  
503-266-5590 (work) | 503-266-5594 (work)  
503-212-6392 (fax)

tyler@ruralbusinessattorneys.com

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Our Law Firm: <http://www.RuralBusinessAttorneys.com>

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**Attachment 3: Memorandum From Paul Chiu to Doug Rux, March 1, 2022**



3/1/22

To: Doug Rux  
 From: Paul Chiu  
 RE: File 7 – D'Hondt at 807 N Elliott Road

Couple of questions from Doug with answers from Paul:

1. What documentation do you have in your project case file on negotiations with Mr. Dhondt on ROW acquisition?

I have a paper file folder. In summary:

- 11/6/20 UF sent certified General Info Notice to D'Hondt (emailed Tyler Smith his attorney) intent for property acquisition.
- 11/10/20 OVG mailed a 15-day notice to D'Hondt prior to conducting a site visit for real estate valuation.
- 5/5/21 UF emailed Smith that UF will send offer packets.
- 5/10/21 UF sent certified Offer Letter to D'Hondt and Smith, starting the clock for 40 day consideration.
- 6/3/21 Smith emailed City Attorney James Walker his clients need more time to see if the offer is close.
- 6/15/21 D'Hondt sent a certified mail to UF declining the offer and noted the process of getting an appraisal and should have relocation benefits.
- 6/18/21 Smith emailed UF cc D'Hondt and Walker that offer was too low and thus declined it.
- 6/21/21 UF emailed Smith cc D'Hondt and Walker that UF will wait for D'Hondt's counteroffer, and also wanted to explain relocation benefit and how eligibility is determined.
- 7/30/21 UF sent a certified letter to D'Hondt and Smith explaining why relocation benefit does not apply and that D'Hondt is not eligible to receive it.
- 8/18/21 UF emailed D'Hondt (webmandan@gmail.com) if he is still planning to submit a counteroffer.
- 8/20/21 D'Hondt replied UF's email that they absolutely intend to formulate a reply and submit a counteroffer. D'Hondt noted that his pest control business has been owned and operated from this location for over 30 years.
- 9/10/21 UF emailed D'Hondt asking for a timeline of when they will be sending the counteroffer.
- 9/13/21 Smith emailed UF that the City's offer failed to consider major things, alleging that City did not comply with ORS 35.510 and 35.520.
- 10/8/21 UF turned over File 7 folder to City of Newberg.

2. How long has outreach and negotiations with property owners along the corridor been occurring?

- 5/6/19 Council meeting (Resolution 2019-3547) hiring KAI as project consultant.
- 5/8/19 Newberg Graphic published news on Elliott Road reconstruction.
- 6/4/19 Staff drafted a response to keep Council informed.
- 7/23/19 (Also 7/24/19) Walking Tours with neighbors.
- 9/18/19 Open House at Mabel Rush School Library, sharing concepts and soliciting public feedback.
- 11/18/19 Presented project info to Council.
- 5/18/20 Presented preferred alternative to City Council.
- 5/28/20 Online Neighborhood Meeting via zoom.
- 6/10/20 Presented project to Traffic Safety Commission via zoom.
- 6/15/20 Council meeting (Resolution 2020-3681) directing staff to negotiate with property owners.
- 8/2020 More meetings with neighbors.
- 3/15/21 Presented Information to Council.
- 10/7/21 Memo to City Manager for Council update.

Outreach started in July 2019 – see timeline above.

Negotiation began after Council's direction in June 2020.

3. How many times and on what dates has this project been before City Council for briefings, feedback and direction?

See timeline in #2.

4. What do you have in your case file that shows Mr. Dhondt is the owner of the parcel at 807 N Elliott Road based on your ROW negotiations?

There is a paper copy in the file showing a Northwest Title Company Statutory Warranty Deed dated 12/6/1990.

Abbreviation:

KAI = Kittelson & Associates, Inc. (consultant)

OVG=Oregon Valuation Group (subconsultant)

UF = Universal Field Services, Inc. (subconsultant)

Engineering Division • P.O. Box 970, Newberg, OR 97132 • engineering@newbergoregon.gov • (503) 537-1273

Newberg City Hall • 414 E First Street, Newberg, OR 97132 • 503-538-9421 • www.newbergoregon.gov

**Attachment 4: Johnston v. City of Albany, 34 OR LUBA 32 (1998)**



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BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

SUE JOHNSTON and ROBLEY W. )  
JOHNSTON, )  
 )  
Petitioners, )  
 )  
vs. )  
 )  
CITY OF ALBANY, )  
 )  
Respondent, )  
 )  
and )  
 )  
RICHARD B. LEFOR, JACQUELINE O. )  
LEFOR, DAVID KRAEMER, and )  
THORNTON COFFEY, dba PERIWINKLE )  
PARK PARTNERSHIP, )  
 )  
Intervenors-Respondent.)

LUBA No. 97-076  
FINAL OPINION  
AND ORDER

Appeal from City of Albany.

Corinne C. Sherton, Salem, filed the petition for review and argued on behalf of petitioners. With her on the brief was Johnson Kloos & Sherton.

No appearance by respondent.

David Hilgemann, Salem, filed the response brief and argued on behalf of intervenors-respondent. With him on the brief was Graves & Hilgemann.

LIVINGSTON, Administrative Law Judge; HANNA, Administrative Law Judge, participated in the decision.

REMANDED 01/13/98

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Livingston.

2 **NATURE OF THE DECISION**

3 Petitioners appeal a decision by the city planning staff  
4 to approve a site plan review application for a 68-unit  
5 manufactured home park.

6 **MOTION TO INTERVENE**

7 Richard B. LeFlor, Jacqueline O. LeFlor, David Kraemer  
8 and Thornton Coffey, dba Periwinkle Park Partnership  
9 (intervenors), move to intervene on the side of respondent.  
10 There is no opposition to the motion, and it is allowed.

11 **FACTS**

12 Intervenors seek to establish a 68-unit manufactured home  
13 park on a site zoned Residential Single Family District (RS-  
14 6.5). The precise size of the site is in dispute; it is  
15 approximately 10 acres. The subject property is bordered to  
16 the north by Grand Prairie Road, and to the south by  
17 Periwinkle Creek. Under Albany Development Code (ADC) 3.050,  
18 manufactured home parks are permitted in an RS-6.5 zone  
19 subject to site plan review.

20 Intervenors submitted their original site plan review  
21 application on July 29, 1996. Record 306. After a comment  
22 period, and in response to issues raised by neighboring  
23 property owners, intervenors submitted a revised site plan on  
24 December 2, 1996, and a second revised site plan on February  
25 18, 1997. Record Exhibits B, D. The city mailed notice to  
26 neighboring property owners on February 21, 1997, providing a

1 14-day comment period that closed on March 7, 1997. Record  
2 120. The city planning division issued its decision approving  
3 intervenors' application, with conditions, on March 31, 1997.  
4 Record 5. On April 4, 1997, the city issued an amended notice  
5 of decision, including an additional finding of fact and  
6 condition of approval regarding storm drainage. Record 1.

7 This appeal followed.

8 **FIRST ASSIGNMENT OF ERROR**

9 Petitioners contend that the city failed to comply with  
10 an applicable provision of the city's land use regulations by  
11 acting on an application that includes property not owned by  
12 the applicants. Petitioners argue that the city's decision  
13 violates ADC 1.203(2), which requires that a land use  
14 application shall include a

15 "[s]igned statement indicating that the property  
16 affected by the application is in the exclusive  
17 ownership or control of the applicant, or that the  
18 applicant has the consent of all partners in  
19 ownership of the affected property."

20 **A. Tax Lot 115**

21 The proposed manufactured home park includes all or  
22 portions of five tax lots, which are numbered 100, 102, 103,  
23 113, and 115. Record 18; Record Exhibit H. Tax lot 115 is  
24 located on the northern edge of the subject property, and is  
25 owned by Larry and Linda Klinefelter. The eastern half of tax  
26 lot 115 contains a house owned and occupied by the  
27 Klinefelters; the western half contains a septic system and  
28 drain field for that house. The western half of tax lot 115

1 is included as part of the proposed manufactured home park in  
2 the application approved by the city.

3 Petitioners contend that intervenors failed to obtain the  
4 necessary consent of the Klinefelters to include the western  
5 half of tax lot 115 in the development application.  
6 Petitioners point to a letter in the record from the  
7 Klinefelters to the city planner in which they raise numerous  
8 objections to the application. Record 82-83.

9 Regarding the ownership of the western portion of tax lot  
10 115, the findings set forth in the staff report state:

11 "Tax Lot 115 is subject to the terms and provisions  
12 of a 1976 agreement \* \* \*. In that agreement, a  
13 former owner had agreed to convey the western  
14 portion of the property in exchange for connection  
15 to city services when available. This agreement has  
16 not been challenged by any party, and accordingly  
17 the portion of TL 115 has been included in the  
18 subject property, the 1976 agreement serving as  
19 consent to the application." Record 19.

20 The 1976 agreement was entered into by the Easdales and  
21 the Wingos, when tax lot 115 was conveyed by the Easdales to  
22 the Wingos. Under the agreement, the Wingos took title to  
23 both the eastern portion of tax lot 115, containing the house,  
24 and to the western portion, containing the drain field.  
25 However, the agreement provides that the Wingos, or their  
26 successors in interest, must reconvey the western portion of  
27 the property back to the Easdales, or to their successors in  
28 interest, within six months after the city provides an  
29 available sewer connection to the property. Record 43-46.  
30 The Klinefelters purchased tax lot 115 subject to the 1976

1 agreement.

2           Petitioners contend that the 1976 agreement, standing  
3 alone, does not provide evidentiary support for the city's  
4 finding that the requisite consent has been obtained under ADC  
5 1.203(2). We agree. The 1976 agreement requires that the  
6 Klinefelters must connect to the city sewer system within six  
7 months after the city makes connection to a sewer line in an  
8 adjoining street or sewer easement available. Record 45.  
9 Only after the connection with the sewer line is made and the  
10 existing septic system is abandoned must the Klinefelters  
11 reconvey the western portion of tax lot 115 back to the  
12 sellers. Record 46. Until that time, under the terms of the  
13 agreement, the Klinefelters retain full control and possession  
14 of tax lot 115 in its entirety. Under ADC 1.203(2), no  
15 portion of that property can be included in a development  
16 application without a signed statement indicating that  
17 intervenor has obtained the consent of the Klinefelters. The  
18 record contains no such signed statement. The city's  
19 determination that the mere existence of the 1976 agreement  
20 establishes the requisite consent to the application was in  
21 error.<sup>1</sup>

---

<sup>1</sup>The copy of the 1976 agreement in the record before this Board contains only the signatures of the Easdales, and not the signatures of the Wingos, who are the Klinefelters' predecessors in interest. Record 46. Petitioners argue that the agreement is therefore unenforceable. If there is no version of the 1976 agreement that contains the signatures of the Wingos, petitioners may be correct. See, e.g., Martin v. Allbritton, 124 Or App 345, 349, 862 P2d 569 (1993). However, since we conclude that even if the agreement were enforceable, it would not constitute consent, we need not reach petitioners' argument that the agreement is not enforceable.

1           Intervenors contend that petitioners do not have standing  
2 to raise an objection based on the lack of consent from the  
3 Klinefelters, because only the Klinefelters can raise this  
4 issue.     Intervenors are incorrect.     Petitioners appeared  
5 below, and are entitled to challenge the city's conclusion  
6 that the consent requirement of ADC 1.203(2) is satisfied by  
7 the terms of the 1976 agreement.   Although petitioners are not  
8 parties to the 1976 agreement, petitioners have standing to  
9 challenge the city's reliance on that agreement to satisfy an  
10 applicable approval criterion.

11           This subassignment of error is sustained.

12           **B. Tax Lots 100 and 113**

13           Petitioners contend that the city's decision violates ADC  
14 1.203(2) because there is no evidence in the record that a  
15 city official with authority to do so consented to the  
16 inclusion of city-owned portions of tax lots 100 and 113 in  
17 the subject application.   Regarding the ownership of tax lots  
18 100 and 113, the staff report states:

19           "The ownership of a portion of TL 100 over  
20 Periwinkle Creek became an issue when it was  
21 discovered in early January 1997 that the City of  
22 Albany had apparently received title in 1975 (Linn  
23 County Vol 113, Page 116) but a closer examination  
24 of the legal description disclosed an incorrect  
25 bearing that the applicant was willing to contest.  
26 The chain of title could not be resolved without  
27 litigation.   In lieu of litigation, the City agreed  
28 to consent to the application due to the clouded  
29 ownership interest of a portion of TL 100 in  
30 exchange for other consideration.

31           "\* \* \* The applicant negotiated with the City for  
32 the acquisition of Tax Lot 113.   The City agreed to  
33 release a portion of TL 113 in exchange for other

1 consideration and consented to the application."  
2 Record 18-19.

3 Petitioners argue that the record contains only  
4 statements by city planning division staff that the city has  
5 agreed to allow certain city-owned portions of tax lots 100  
6 and 113 to be included in the application, and that

7 "[t]here are no actual documents in the record,  
8 signed by a city official with responsibility for  
9 the City's proprietary interests in real property,  
10 allowing the City's portions of Tax Lots 113 and 100  
11 to be included in a private manufactured home park."  
12 Petition for Review 10-11.

13 We agree. ADC 1.203(2) requires a "[s]igned statement  
14 indicating that \* \* \* the applicant has the consent of all  
15 partners in ownership of the affected property." Intervenors  
16 point to the above-quoted findings set forth in the city staff  
17 report as evidence that the city consented to the application.  
18 However, the city's findings, which were issued as part of the  
19 final decision, do not constitute substantial evidence in the  
20 record supporting that decision.

21 Intervenors also argue that there is "ample evidence that  
22 duly authorized representatives of [the city] consented to the  
23 inclusion" of city-owned portions of tax lots 100 and 113.  
24 Response Brief 9. First, we note that even if intervenors are  
25 correct, the applicable criterion is not satisfied. ADC  
26 1.203(2) requires that a land use application must include the  
27 signed statement of the applicant, indicating that the  
28 applicant either owns the property or has obtained the consent  
29 of those who do. Aside from the above-quoted findings,

1 intervenors point only to a letter from an associate city  
2 planner to intervenors stating that "the city has consented"  
3 to including portions of the tax lots at issue as part of the  
4 application. Record 59. However, that letter is dated March  
5 11, 1997, which is one day after the close of the record, and  
6 even if the letter had been included in the record, the  
7 planners' statement would not satisfy ADC 1.203(2).

8 This subassignment of error is sustained.

9 The first assignment of error is sustained.

10 **SECOND ASSIGNMENT OF ERROR**

11 Petitioners contend that the city failed to comply with  
12 provisions of the city's land use regulations applicable to  
13 manufactured home park applications containing land within a  
14 floodplain district. Specifically, petitioners argue that,  
15 under applicable code provisions, the city was required to  
16 process intervenors' application using a "Type III" process,  
17 and that its failure to provide a required public hearing  
18 prejudiced petitioners' substantial rights.

19 ADC 6.080 provides that the city's floodplain district  
20 regulations, which are set forth in ADC 6.070 to 6.170, apply

21 "to all areas within the City of Albany that are  
22 subject to inundation from a 100-year flood. These  
23 areas are depicted on federal Flood Insurance Rate  
24 Maps (FIRMs) and Floodway Maps by the letter A, AE,  
25 or AO."

26 In its decision, the city concludes that, under the applicable  
27 FIRMs, "for the stretch of Periwinkle Creek that flows through  
28 the subject property, Zone A is contained within the channel



1 of the creek on the subject property." Record 30-31.  
2 Specific regulations set forth at ADC 6.131 apply to  
3 manufactured home parks that are planned in a floodplain  
4 district:

5 "Manufactured home parks and manufactured home  
6 subdivisions proposed in the floodplain district  
7 shall be reviewed by the Planning Division.  
8 Notwithstanding other provisions of this code, all  
9 manufactured home park and subdivision applications  
10 which contain land within the floodplain district  
11 shall be processed under a Type III process. In  
12 addition to the general review criteria applicable  
13 to manufactured home parks and subdivisions in  
14 Article 10, application for such within the  
15 floodplain district shall include an evacuation plan  
16 indicating alternate vehicular access and escape  
17 routes." (Emphasis added).

18 Notwithstanding its determination that the subject  
19 property contains Zone A land that is subject to inundation by  
20 a 100-year flood, the findings adopted by the city conclude  
21 that the provisions of ADC 6.131 relating to manufactured home  
22 parks in floodplain districts do not apply because there will  
23 be no homes placed in the floodplain area:

24 "The proposed development will be reasonably safe  
25 from flooding because that portion of the subject  
26 property within Periwinkle Creek that has been  
27 identified as a flood hazard area, Zone A, has been  
28 excluded from the proposed development and set aside  
29 for open/ recreational space. The flood hazard area  
30 will not be improved for the proposed development.  
31 All manufactured homes will be sited on the portion  
32 of the property outside the flood hazard area and  
33 access to the proposed development will not be  
34 impeded by the flood hazard area. Therefore, the  
35 provisions for flood plain land use [ADC 6.070-  
36 6.160], and particularly a manufactured home  
37 development [ADC 6.131], are not applicable to this  
38 request." Record 31. (Bracketed text in original.)

39 Petitioners argue, and we agree, that the above-quoted

1 findings fail to establish that the subject application does  
2 not "contain land within the floodplain district," which is  
3 the sole criterion for whether the provisions of ADC 6.131  
4 apply. Further, the city's finding that "[t]he flood hazard  
5 area will not be improved for the proposed development" cannot  
6 be reconciled with the conditions of approval imposed by the  
7 city that require intervenors to construct a 10-foot wide  
8 paved bicycle/pedestrian path and an access ramp within the  
9 flood hazard area. Record 7-8.

10 We conclude that the city's decision does not comply with  
11 applicable provisions of the floodplain regulations set forth  
12 in ADC 6.070 to 6.170, and that the decision must be remanded  
13 for application of those provisions, and for any applicable  
14 Type III procedures required by ADC 6.131. See Venable v.  
15 City of Albany, 149 Or App 274, \_\_\_ P2d \_\_\_ (1997).

16 The second assignment of error is sustained.

17 **THIRD ASSIGNMENT OF ERROR**

18 **A. Access to Evidence**

19 Petitioners contend that during the course of the  
20 proceedings below, they were improperly denied access to  
21 certain documents related to the proposed mobile home park  
22 that were submitted to the city planning staff prior to the  
23 date the original application was filed. In response,  
24 intervenors submit two affidavits of city staff who state that  
25 petitioners were informed that any documents submitted to the  
26 city by intervenors prior to the application date should not

1 be considered part of the application file. However,  
2 according to intervenors and the city staff affidavits,  
3 petitioners were never denied access to the entire file,  
4 including the pre-application documents, and in fact had  
5 regular access to the entire file. Based on the affidavits  
6 submitted by both parties, we agree with intervenors.

7 This subassignment of error is denied.

8 **B. Acceptance of Evidence after Close of Comment Period**

9 Petitioners assert that the city improperly accepted  
10 evidence from intervenors after the close of the final comment  
11 period on March 7, 1997. Petitioners point to four documents  
12 in the record that were received by the planning division  
13 after March 7, 1997, and which were specifically relied upon  
14 by the city in making the challenged decision. Among those  
15 documents is the 1976 agreement on which the city based its  
16 determination that the applicant had satisfied the "consent"  
17 requirement of ADC 1.203(2), and which is the subject of  
18 petitioners' first assignment of error. That document, along  
19 with an attached warranty deed, was received by the county on  
20 March 21, 1997. Record 43. According to petitioners, they  
21 had no knowledge that those documents had been placed before  
22 the decision maker until after the challenged decision was  
23 issued on March 31, 1997. Petition for Review 20.

24 Intervenor respond that petitioners were not prejudiced  
25 by this "procedural error" because they were generally aware  
26 of the issues discussed in the disputed documents and were

1 able to raise arguments regarding those issues earlier in the  
2 proceedings before the city. Regarding the 1976 agreement and  
3 warranty deed, intervenors assert that because petitioners  
4 were able to include extensive argument regarding those  
5 documents in their brief before this Board, they were not  
6 prejudiced in the proceedings below. Intervenors' arguments  
7 are without merit. Where the city closes the 14-day comment  
8 period required for a limited land use decision under ORS  
9 197.195(3)(c)(A), but continues to accept additional evidence  
10 from intervenors after the close of the 14-day period, the  
11 city violates ORS 197.195(3)(c)(F) and ADC 1.330(4)(f).  
12 Azevedo v. City of Albany, 29 Or LUBA 516, 520 (1995).

13 This subassignment of error is sustained.

14 The third assignment of error is sustained, in part.

15 **FOURTH ASSIGNMENT OF ERROR**

16 Petitioners contend that the city's findings regarding  
17 the acreage of the proposed manufactured home park and the  
18 related findings regarding the density of the proposed park  
19 are not supported by substantial evidence in the record. The  
20 findings adopted by the city state:

21 "1.2 The proposed development meets the minimum area  
22 requirement for a manufactured home park  
23 because the subject property is approximately  
24 10.5 acres as calculated from Linn County  
25 Assessor's records: Tax Lot 100, 5.7 acres;  
26 Tax Lot 102, 2.28 acres; Tax Lot 103, 1.53  
27 acres; a portion of Tax Lot 113, 0.4 acres; and  
28 a portion of Tax Lot 115, 0.5 acres.

29 \* \* \* \* \*

30 "1.3 The proposed 68-space development complies with

1           the density standard for a manufactured home  
2           park because the 10.5-acre park area divided by  
3           the 6,500 square foot minimum lot area of the  
4           RS-6.5 zone yields a maximum of 70 spaces. The  
5           resulting density is 6.5 spaces per acre."  
6           Record 20.

7           This Board is authorized to reverse or remand a  
8           challenged limited land use decision if it is "not supported  
9           by substantial evidence in the record." ORS 197.828(2)(a).  
10          Where petitioners challenge the evidentiary support for  
11          findings addressing an applicable approval standard, and no  
12          party cites any evidence in the record to support such  
13          findings, the challenged decision must be remanded. Neuman v.  
14          City of Albany, 28 Or LUBA 337, 346 (1994).

15          Petitioners are correct that the above-quoted findings  
16          regarding park size and density are not supported by  
17          substantial evidence in the record. Intervenors do not point  
18          to any evidence in the record supporting the city's conclusion  
19          that the proposed park will be 10.5 acres in size.<sup>2</sup> Rather,  
20          intervenors rely exclusively on findings prepared by the  
21          staff, which were not available until after the expiration of  
22          the period for the submission of comments and evidence. The  
23          staff findings state that the acreage determination is based

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<sup>2</sup>The second notice of filing mailed by city planning staff states the size of the proposed park as 12.11 acres. Record 181, 197. The third notice of filing states the acreage as 10.88 acres. Record 120. The record also contains a February 26, 1997 letter from intervenors' own engineer, stating his conclusion, based on a review of the site plan, that "the total area within the park boundary is 9.68 acres." Record 105. The February 26, 1997 letter responds to a February 24, 1997 memorandum from a city planner that expresses concerns about the south property line of the subject property and the boundaries of tax lots 100 and 115. Record 110. This is the extent of the evidence in the record to which we are directed regarding the acreage of the proposed park.

1 on the county assessor's records. However, the data from the  
2 county assessor is not in the record. Because the city's  
3 findings regarding the acreage of the proposed park are not  
4 supported by substantial evidence in the record, the  
5 corresponding findings regarding the density standards set  
6 forth in ADC 10.220 are also defective.

7 The fourth assignment of error is sustained.

8 **FIFTH ASSIGNMENT OF ERROR**

9 Petitioners contend that the challenged decision does not  
10 comply with applicable standards regarding landscaping and  
11 maintenance of common outdoor space. According to  
12 petitioners, the decision fails to satisfy ADC 10.390, which  
13 provides, in relevant part:

14 "Landscaping. All common areas within a  
15 manufactured home park -- exclusive of required  
16 buffer areas, buildings and roadways -- shall be  
17 landscaped and maintained in accordance with the  
18 following minimum standards per each 1,000 square  
19 feet of open area.

20 "(1) One tree at least six feet in height.

21 "(2) Five shrubs or accent plants.

22 "(3) The remaining area containing walkways and  
23 attractive ground cover at least 50% of which  
24 must be living ground cover within one year of  
25 planting."

26 The city's decision states:

27 "The only common area shown on the site plan is the  
28 open/recreation space over Periwinkle Creek. As  
29 noted under the recreation area standard \* \* \*, the  
30 open/recreation space over Periwinkle Creek will  
31 remain in a natural condition without landscaping,  
32 which would increase the difficulty of creek  
33 maintenance and increase the flood hazard associated  
34 with the creek. This area will be maintained in its

1 natural condition with the exception of the  
2 construction of a pedestrian/bicycle path located on  
3 the north side of the stream, and also with the  
4 exception of periodic maintenance to maintain  
5 adequate stream flow. For this reason, the standard  
6 [of ADC 10.390] does not apply." Record 24.

7 Petitioners argue that the standards set forth in ADC  
8 10.390 do not provide an exception from the landscape  
9 requirements for manufactured home parks where the common  
10 areas are located in a floodplain. Petitioners point out that  
11 the only areas that are excepted from the common space  
12 landscaping requirements of ADC 10.390 are required buffers,  
13 buildings, or roadways, none of which are present in this  
14 instance.

15 Intervenors respond that the pedestrian/bicycle path  
16 located in the identified common area fits within the ADC  
17 10.390 exception for roadways. According to intervenors, the  
18 city's decision

19 "recognizes that the open/recreation space contains  
20 a bicycle path/maintenance roadway which must be  
21 kept clear of landscaping and other development to  
22 facilitate periodic maintenance of the banks of  
23 Periwinkle Creek to maintain adequate stream flows."  
24 Response Brief 20.

25 Intervenors maintain that the city correctly concluded that  
26 the requirements of ADC 10.390 do not apply to intervenors'  
27 application.

28 We disagree. The challenged decision does not include  
29 findings that the "required roadway" exception to the ADC  
30 10.390 landscaping requirements applies to the Periwinkle  
31 Creek common area as a result of the bicycle/pedestrian path.

1 Rather, the findings state that ADC 10.390 does not apply  
2 because landscaping around the creek "would increase the  
3 difficulty of creek maintenance and increase the flood hazard  
4 associated with the creek." Record 24. Although this  
5 conclusion may be correct, the city's decision does not  
6 suggest that this site fits any exception to the requirements  
7 set forth in ADC 10.390 regarding landscaping of common areas  
8 in manufactured home parks.

9 The fifth assignment of error is sustained.

10 **SIXTH ASSIGNMENT OF ERROR**

11 Petitioners contend that the challenged decision does not  
12 comply with applicable site plan review standards regarding  
13 the compatibility of design and operating characteristics of  
14 the proposed manufactured home park with surrounding  
15 development and land uses. Petitioners argue that the city's  
16 decision fails to demonstrate compliance with ADC 8.070(3),  
17 which provides:

18 "Review Criteria. A site plan approval will be  
19 granted if the review body finds that the applicant  
20 has met all of the following criteria which are  
21 applicable to the proposed development.

22 "\* \* \* \* \*

23 "(3) The design and operating characteristics of the  
24 proposed development are reasonably compatible  
25 with surrounding development and land uses, and  
26 any negative impacts have been sufficiently  
27 minimized."

28 Petitioners argue that the findings adopted by the city  
29 fail to adequately identify the physical characteristics of  
30 the surrounding development and the proposed development, and



1 therefore fail to make the required assessment regarding  
2 compatibility. Intervenors respond that, in its final  
3 decision, the city

4 "carefully considered each of the four review  
5 criteria set forth in ADC 8.070, and summarized its  
6 analysis, findings, and conclusions at length in its  
7 Staff Report. In conducting its review, [the city]  
8 incorporated conditions of approval into its  
9 decision in order to minimize any negative impacts  
10 of the proposed development." Response Brief 22.

11 The findings describe past and present development  
12 patterns in the area surrounding the subject property. These  
13 development patterns are considered in the evaluation of the  
14 physical design of the proposed development, including  
15 building placement, setbacks, parking areas, external storage  
16 areas, open areas and landscaping. Record 32-33. The  
17 findings adequately address ADC 8.070(3).

18 The sixth assignment of error is denied.

19 The city's decision is remanded.