

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 or 503-537-1212.
Sincerely,

A handwritten signature in blue ink, appearing to read "Doug Rux", enclosed in a thin black rectangular border.

Doug Rux, AICP
Community Development Director

Attachment

<p style="text-align: center;">STAFF REPORT Determination – N Elliott Road – MISC221-0002</p>

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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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: _____

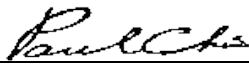
SPECIFIC PROJECT CRITERIA AND REQUIREMENTS ARE ATTACHED

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 Reviewp. 12
Partition Tentative Platp. 14
Subdivision Tentative Platp. 17
Variance Checklistp. 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

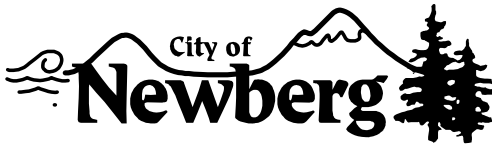
 Owner Signature Date

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

**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

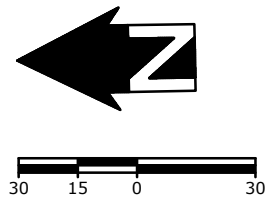
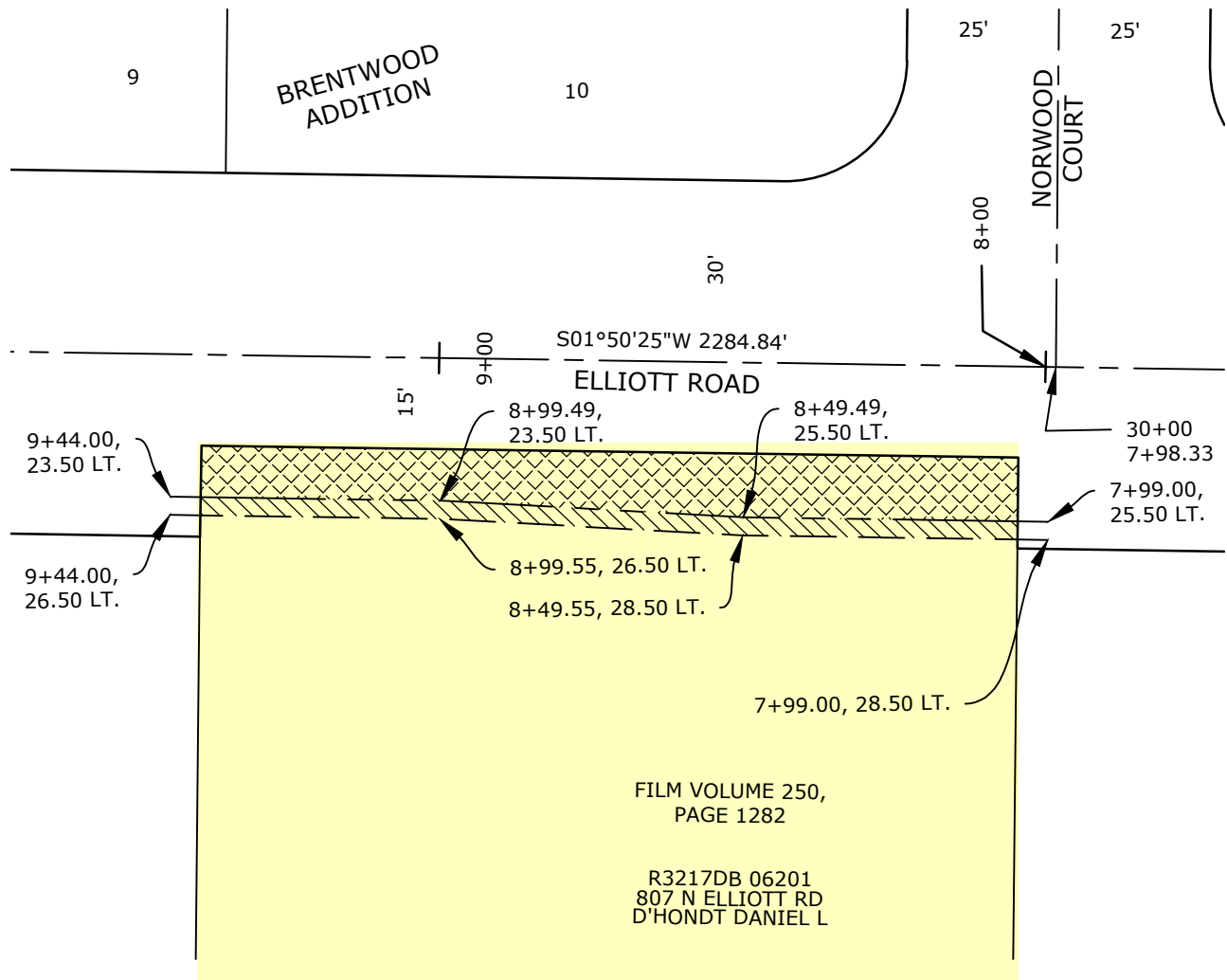
Given the following:



- 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

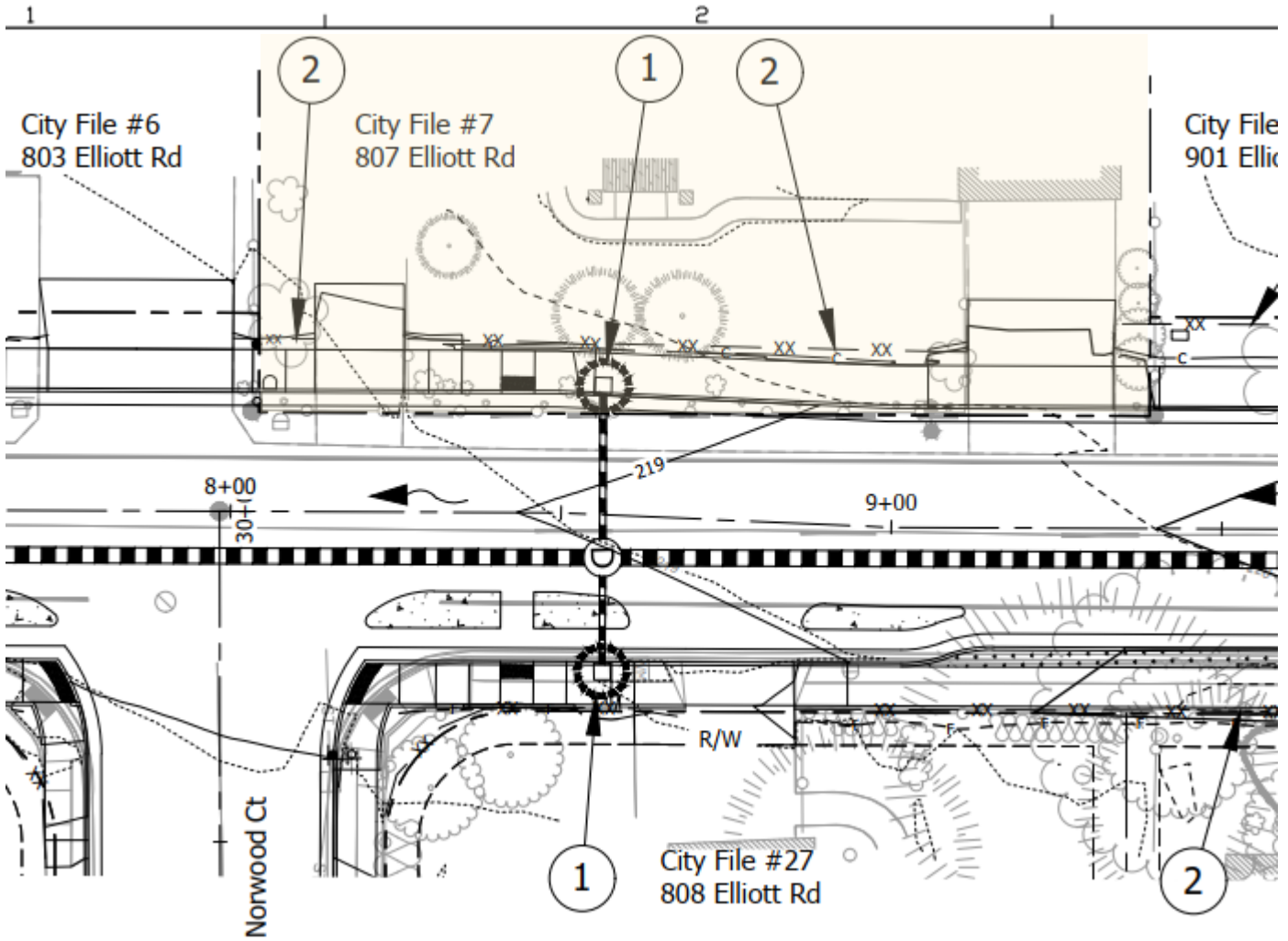
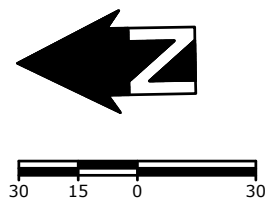
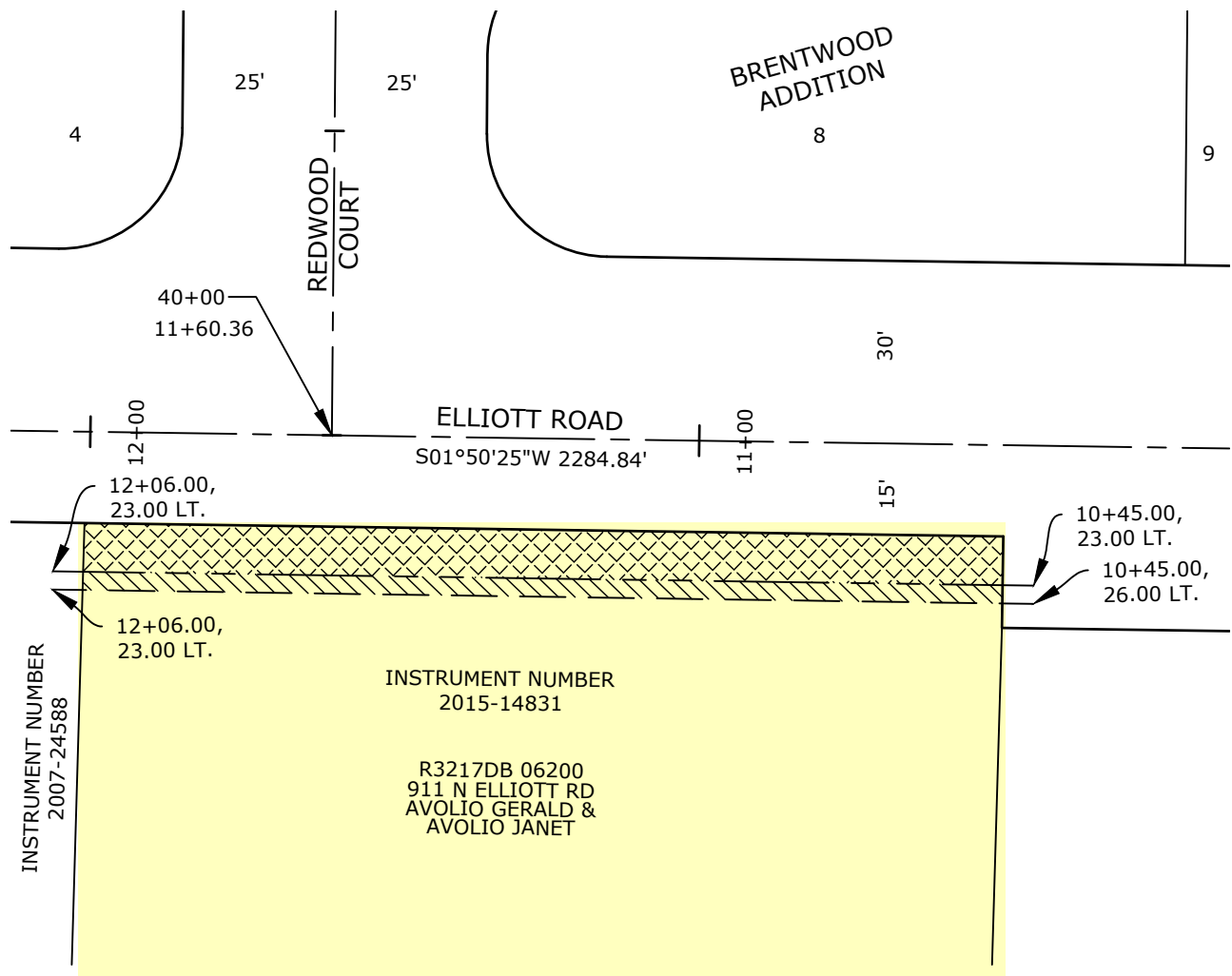




EXHIBIT B-1



-  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

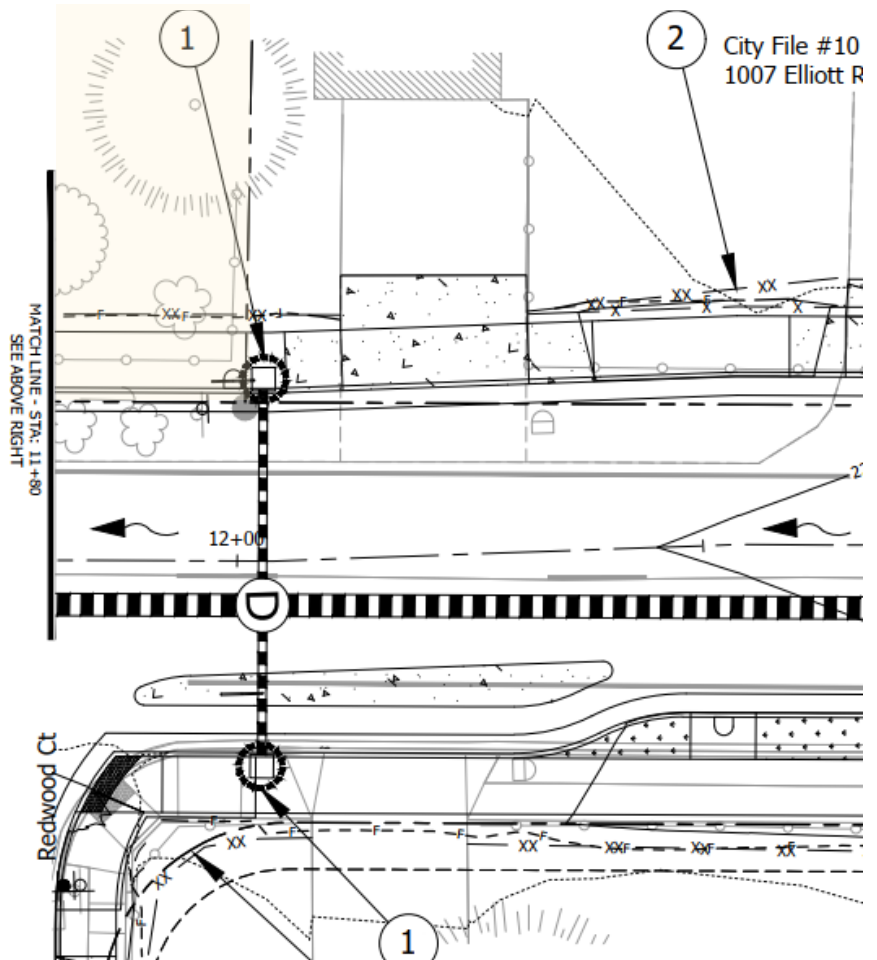
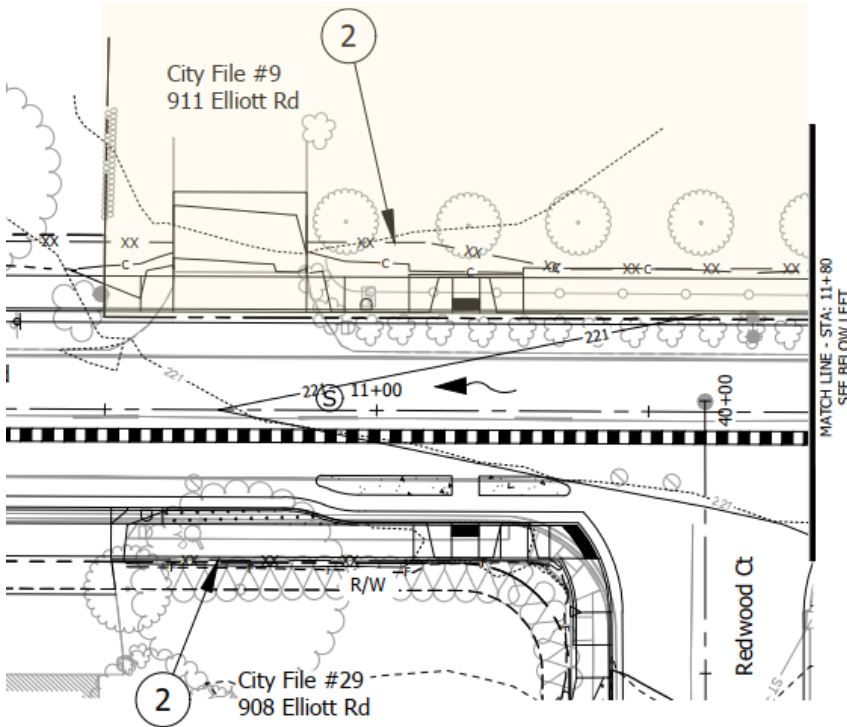
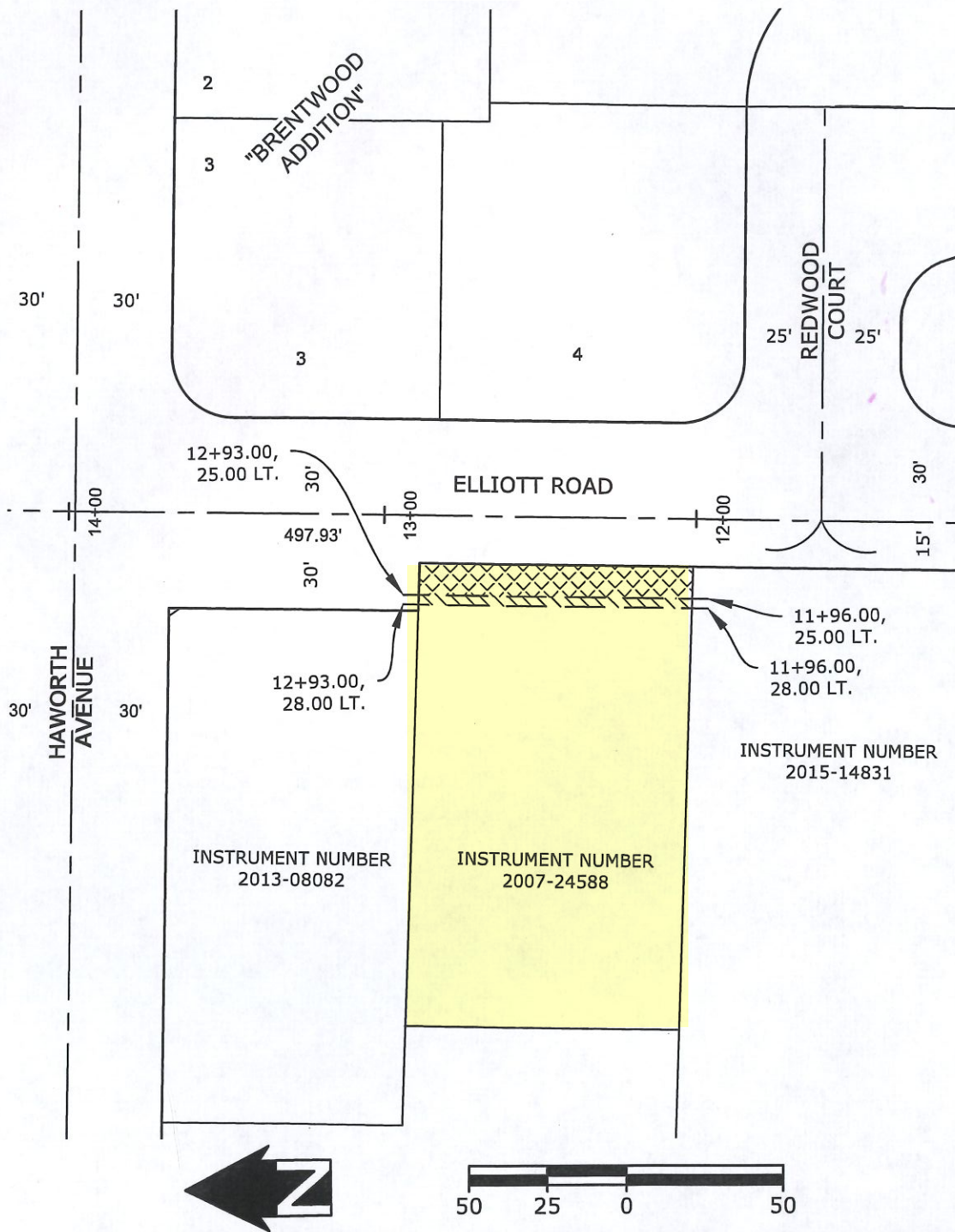




EXHIBIT C-1



-  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**

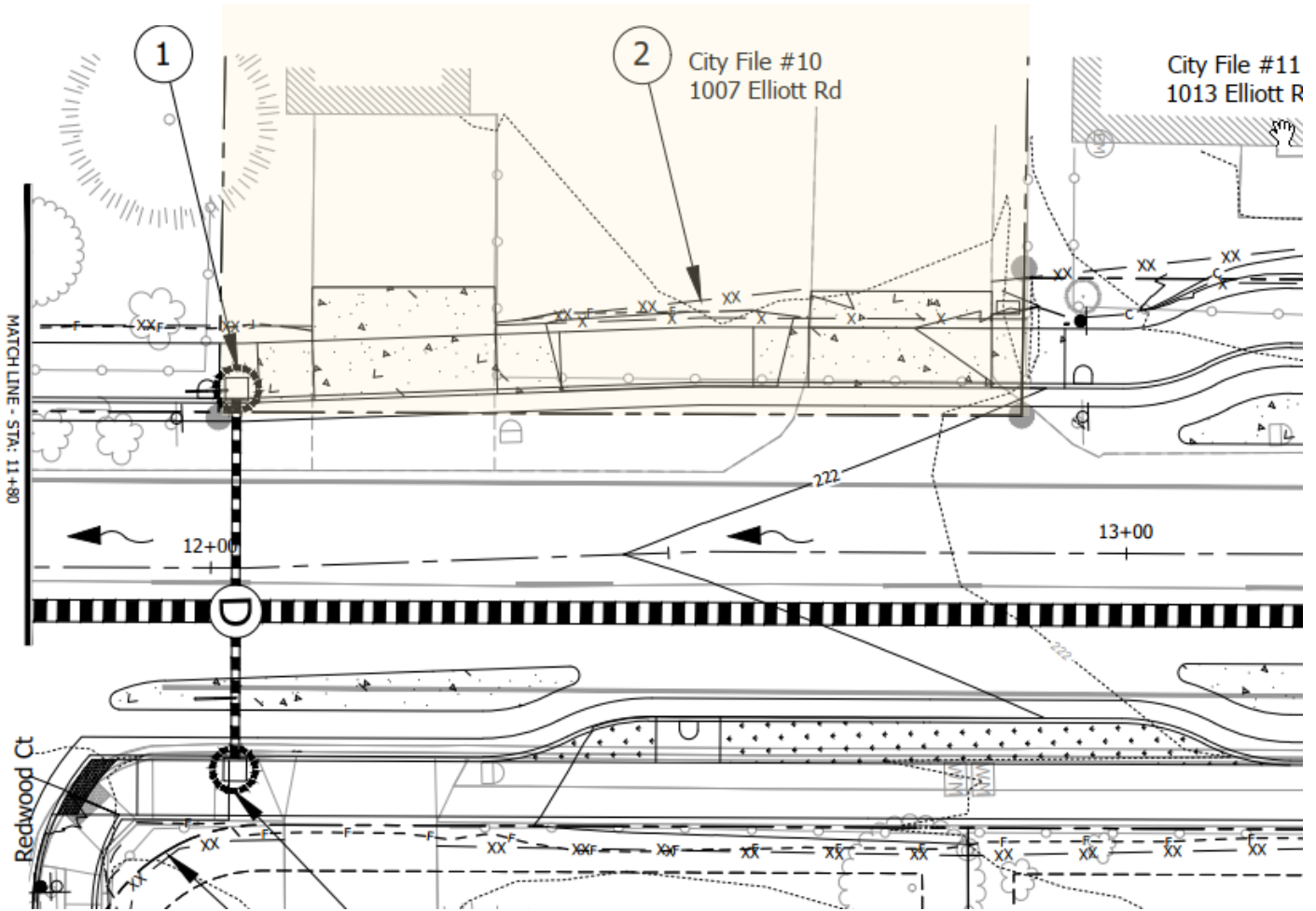


EXHIBIT D-1

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.

15'
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

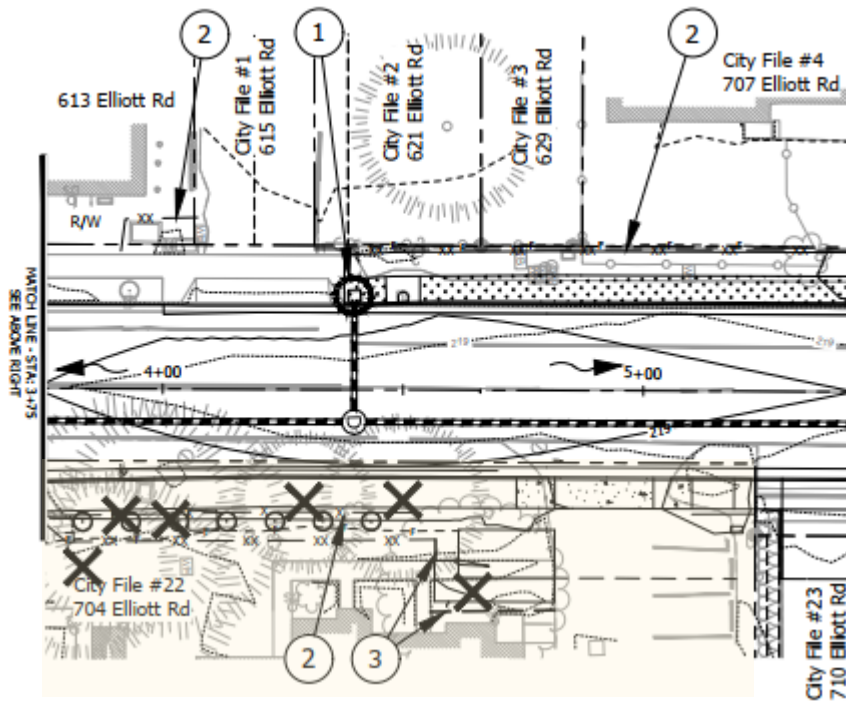
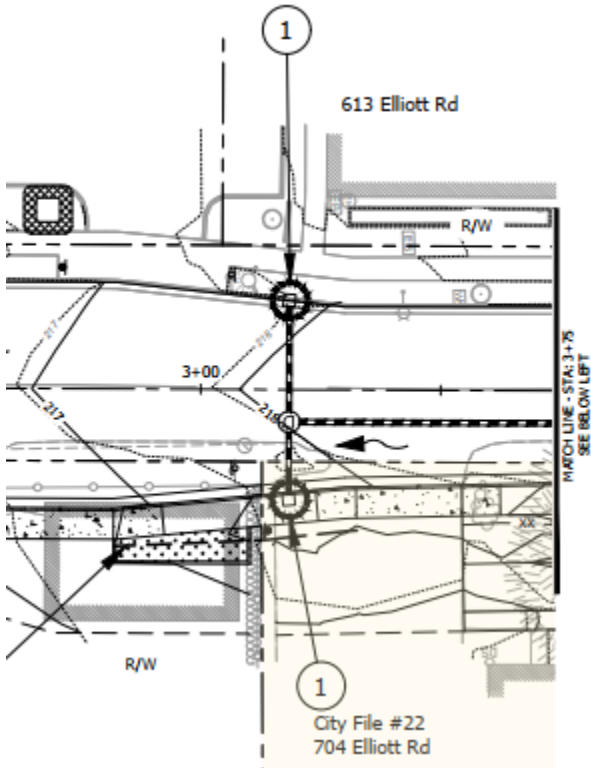
REVISED DATE:

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,

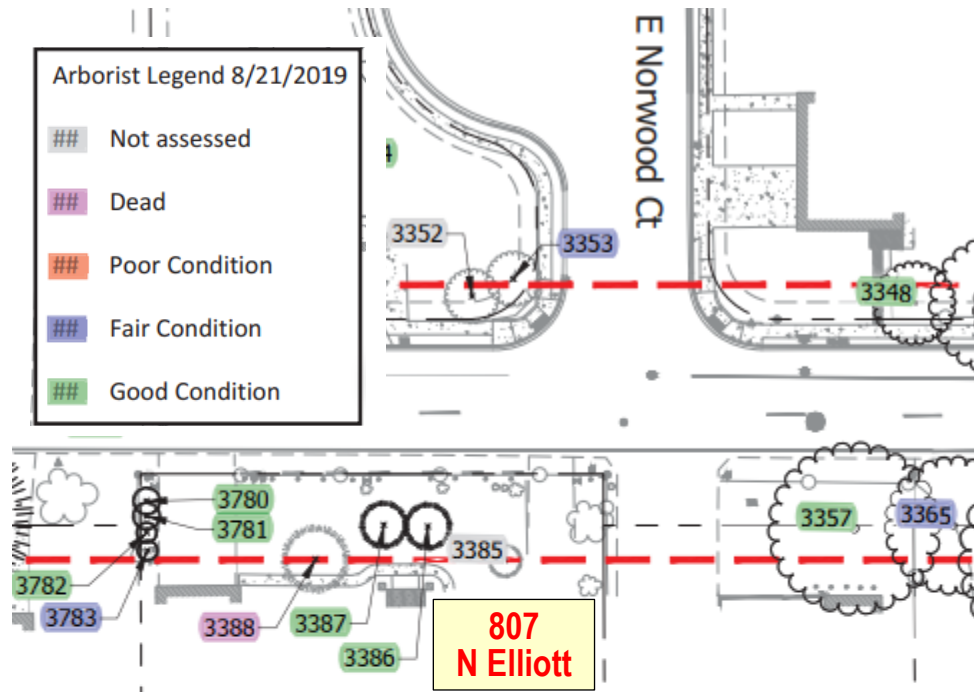
Paul Chiu, PE
Project Manager

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 ¹	C-Rad ²	Cond ³	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	

¹DBH 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.

²C-Rad is the average crown radius measured in feet.

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

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

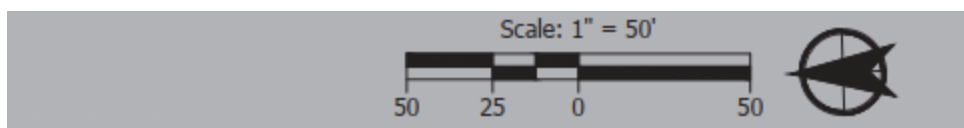
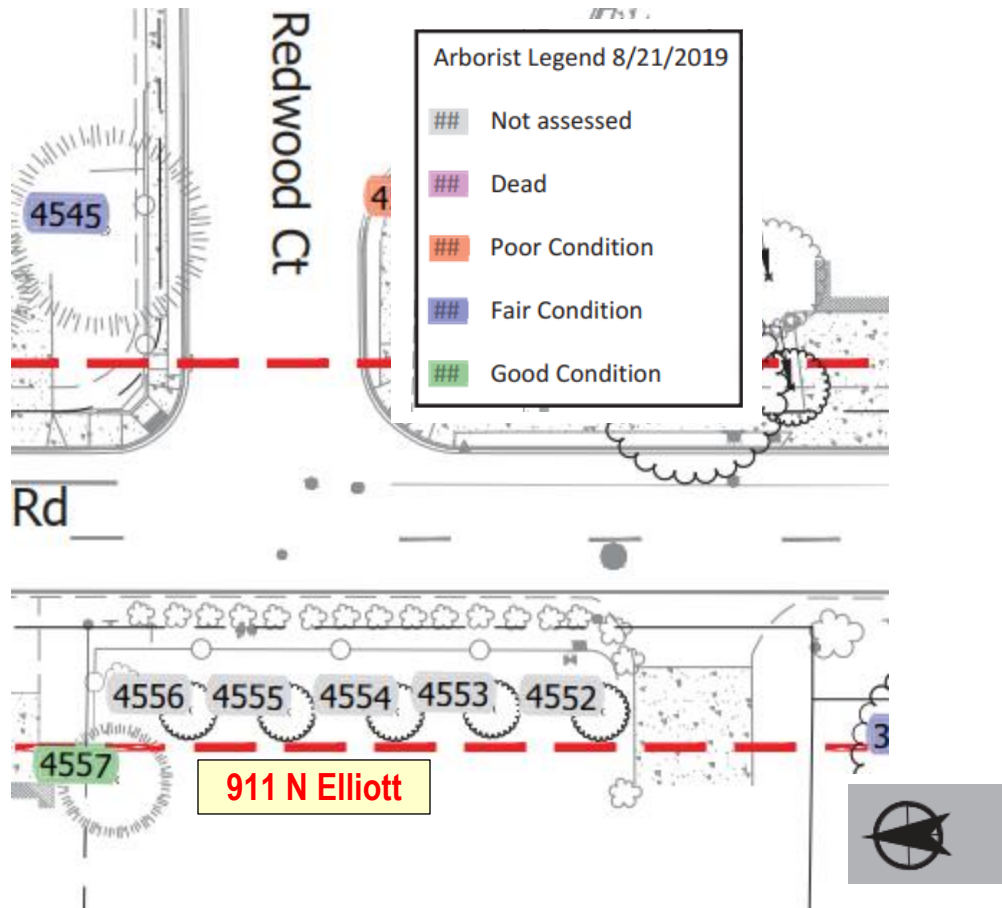


EXHIBIT E-2

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 ¹	C-Rad ²	Cond ³	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	

¹DBH 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.

²C-Rad is the average crown radius measured in feet.

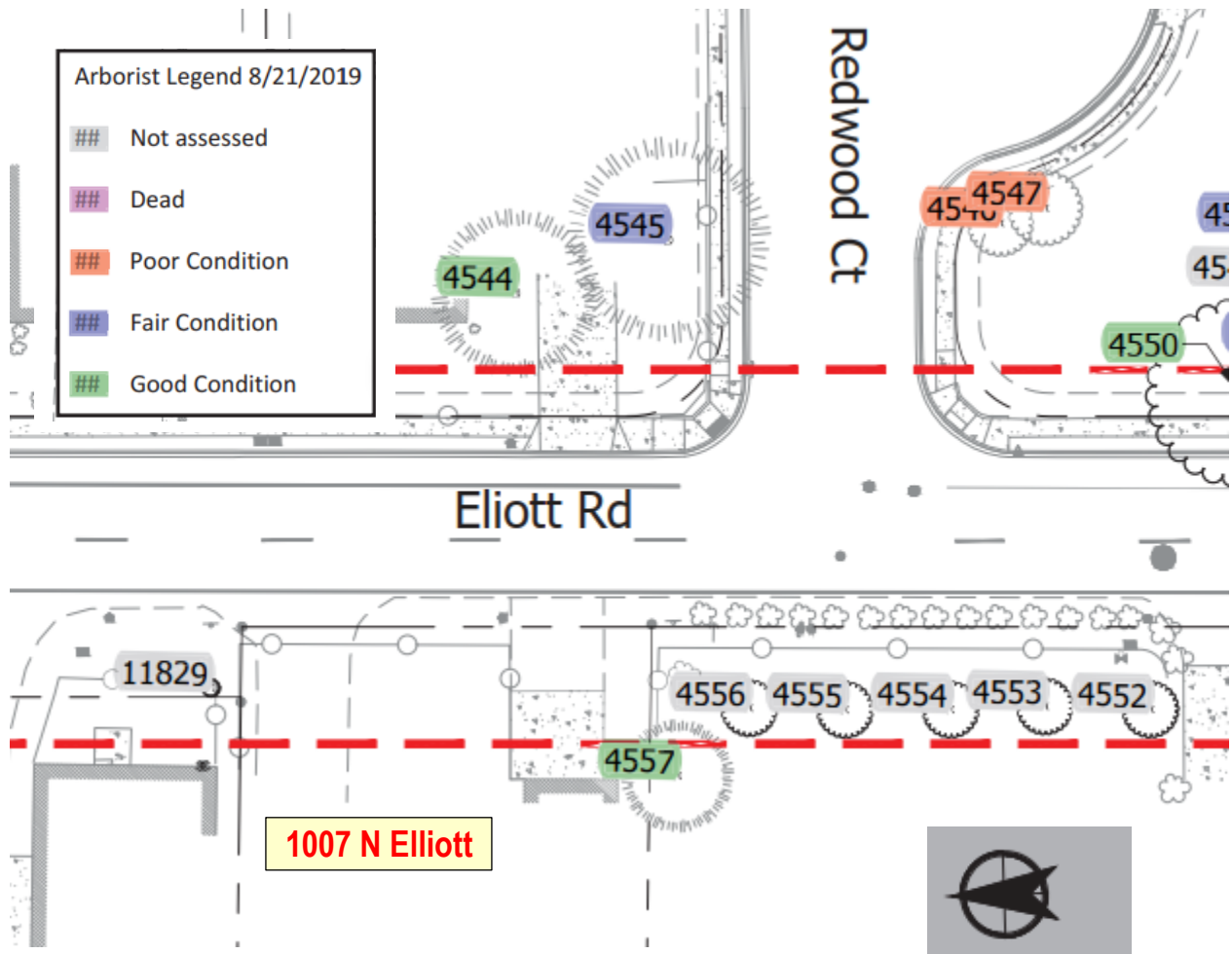
³Cond is an arborist assigned rating to generally describe the condition of individual trees as follows-

- 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 ¹	C-Rad ²	Cond ³	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	

¹DBH 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.

²C-Rad is the average crown radius measured in feet.

³Cond 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

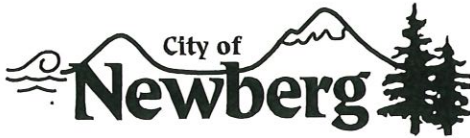
Initial: _____

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

**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

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

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