PLANNING COMMISSION AGENDA
June 12, 2014 7:00 PM
NEWBERG PUBLIC SAFETY BUILDING
401 EAST THIRD STREET

I. CALL MEETING TO ORDER

II. ROLL CALL

III. PUBLIC COMMENTS (5-minute maximum per person – for items not on the agenda)

IV. QUASI-JUDICIAL PUBLIC HEARING: Continued from May 8, 2014 (oral public testimony was left open - complete registration form to give testimony - 5 minute maximum per person except for principals, unless otherwise set by majority motion of the Planning Commission).

1. **APPLICANT:** Brown/Nielsen
   REQUEST: Subdivision/variance for Shellie Park (21 lots)
   LOCATION: 735 N. College Street
   TAX LOT: 3218DB-2300, -2600, -700
   FILE NO.: SUB3-14-005/VAR-14-002 **ORDER NO.:** 2014-16
   CRITERIA: 15.235.060 and 15.215.040

V. ITEMS FROM STAFF

1. Update on Council items
2. Other reports, letters or correspondence
3. Next Planning Commission meeting: July 10, 2014

VI. ITEMS FROM COMMISSIONERS

VII. ADJOURNMENT

FOR QUESTIONS PLEASE STOP BY, OR CALL 503-537-1240, PLANNING & BUILDING DEPT. – P.O. BOX 970 – 414 E. FIRST STREET

ACCOMMODATION OF PHYSICAL IMPAIRMENTS*: In order to accommodate persons with physical impairments, please notify the City Recorder's Office of any special physical or language accommodations you may need as far in advance of the meeting as possible as and no later than 48 business hours prior to the meeting. To request these arrangements, please contact the City Recorder at (503) 537-1283. For TTY services please dial 711.*

Exhibit "2"
To Planning Commission Rules

OUTLINE FOR QUASI-JUDICIAL PUBLIC HEARING

Newberg Planning Commission

1. CALL TO ORDER
OPEN THE PUBLIC HEARING, ANNOUNCE THE PURPOSE, DISCUSS TESTIMONY PROCEDURE, AND TIME ALLOTMENTS

2. CALL FOR ABSTENTIONS, BIAS, EX PARTE CONTACT, AND OBJECTIONS TO JURISDICTION

3. LEGAL ANNOUNCEMENT
READ "**QUASI-JUDICIAL ANNOUNCEMENTS**" SHEET

4. STAFF REPORT
COMMISSION MAY ASK BRIEF QUESTIONS FOR CLARIFICATION

5. PUBLIC TESTIMONY
5 MINUTE TIME LIMIT PER SPEAKER (15 MINUTE LIMIT FOR APPLICANT AND PRINCIPAL OPPONENT). SPEAKER GOES TO WITNESS TABLE, STATES NAME & PRESENTS TESTIMONY. COMMISSION MAY ASK QUESTIONS OF SPEAKERS.

A. APPLICANT(S)
B. OTHER PROPONENTS
C. OPPONENTS AND UNDECIDED
D. STAFF READS WRITTEN CORRESPONDENCE (TIME LIMIT APPLIES)
E. APPLICANT REBUTTAL

6 CLOSE OF PUBLIC TESTIMONY PORTION OF HEARING

7. FINAL COMMENTS FROM STAFF AND RECOMMENDATION

8. PLANNING COMMISSION DELIBERATION INCLUDING DISCUSSION OF CRITERIA WITH FINDINGS OF FACT

9. ACTION BY THE PLANNING COMMMISSION

A. ORDER OR RESOLUTION – Usually requires passage of order if the commission is the final decision maker, or a resolution if the commission is only advisory to the council.
B. VOTE – Vote is done by roll call.
C. COMBINATION – Can be combined with other commission action; separate vote on each action is required.

QUASI-JUDICIAL
PUBLIC HEARING PROCESS
TESTIMONY AND EVIDENCE REQUIREMENTS

ORS 197.763 requires certain statements to be made at the commencement of a public hearing.

- The applicable City and State zoning criteria must be listed. This means that we must advise you of the standards that must be satisfied by the applicant prior to our approval of an application. The Planning Staff will list the applicable criteria during his or her presentation of the staff report.

- Persons wishing to participate in this hearing must direct their testimony or the evidence toward the criteria stated by the Planner or other specific City or State criteria which you believe apply. You must tell us why the testimony or evidence relates to the criteria.

- Any issue which might be raised in an appeal of this case to the Land Use Board of Appeals (LUBA) must be raised in person or by letter at the local level prior to the City approving or denying the application. The law states that the issue must be raised in enough detail to afford the decision-maker and the parties an opportunity to respond. This part of the law is also known as the "raise it or waive it" requirement. If you do not bring it up now, you can't bring it up at LUBA.

- Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval in enough detail to allow the local government or its designee to respond to the issue precludes an action for damages in Circuit Court.

- Prior to the conclusion of the initial evidentiary hearing on an application, any participant may request an opportunity to present additional evidence or testimony regarding the application. The Planning Commission will grant such a request through a continuance or extension of the record.

City of Newberg
Planning and Building Department
P.O. Box 970 ▪ 414 E First Street ▪ Newberg, Oregon 97132
503-537-1240 ▪ Fax 503-537-1272 ▪ www.newbergoregon.gov

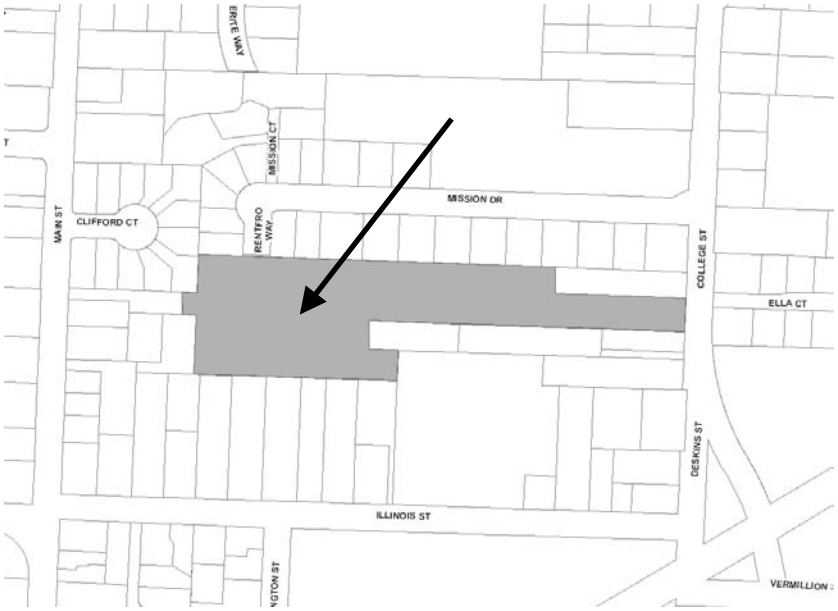
PLANNING COMMISSION STAFF REPORT
SHELLIE PARK SUBDIVISION & VARIANCE APPLICATION

HEARING DATE:	June 12, 2014 (continued from May 8, 2014)
FILE NO:	SUB3-14-005/VAR-14-002
REQUEST:	Approval of a 21 lot subdivision preliminary plan and variance request to exceed the standards for length of cul-de-sac and number of lots on a cul-de-sac.
LOCATION:	735 N. College Street
TAX LOT:	3218DB-2300, -2600, -700
APPLICANT:	Brown/Nielsen
OWNER:	Grahn/Nielsen
ZONE:	R-1
PLAN DISTRICT:	LDR (low density residential)
OVERLAYS:	none

ATTACHMENTS:

Order 2014-16 with
- Exhibit "A": Findings
- Exhibit "B": Conditions

1. Aerial Photo
2. Tentative Plan
3. Zoning map
4. Public Comments/Correspondence Received (all comments through 6/4/14)
5. Application (by reference – see 5/8/14 packet)
6. Supplement to application (by reference – see 5/8/14 packet)



A. DESCRIPTION OF APPLICATION: The applicant has requested a tentative subdivision plan approval for Shellie Park, a 21 lot residential subdivision for single family homes. The lots will range in size primarily from 5,012 sq. ft to 7,689 sq. ft. Lots 20 and 21 will be larger due to access constraints and have areas of 11,371 and 11, 533 sq. ft. The minimum lot size in the R-1 zone is 5,000 square feet. Primary access will be from Rentfro Way and Mission Drive to College Street. Additional pedestrian access will be provided to College Street, and there will be a new emergency vehicle access on College Street. An existing abandoned house on College Street will be removed. Utility and street improvements will be constructed to city standards for all the lots. The applicant has requested a variance to exceed the standards for length of cul-de-sac and number of lots on a cul-de-sac, due to the lack of connecting streets surrounding the site. The subdivision requires a Type III process (Planning Commission review) because it does not meet the street connectivity standards in the code.

The applicant held a neighborhood meeting before submitting this application, and included notes from the meeting in the application.

B. SITE INFORMATION:

1. Location: 735 N. College Street

2. Size: Approximately 4.3 acres

3. Topography: Slight slope from east to west

4. Current Land Uses: Old house (to be removed), grassy field.

5. Natural Features: No significant natural features.

6. Adjacent Land Uses:

    a. North: Residential, single family

    b. East: Across College Street – residential, single family

    c. South: Mix of single family residential, vacant residential land, and a manufactured home park

    d. West: Residential, single family

7. Access and Transportation: The site is adjacent to Rentfro Way and College Street. Rentfro Way is a short street that connects to Mission Drive; both streets are local residential streets, and will provide the main point of access for the proposed subdivision. College Street is a minor arterial street. The proposed subdivision will have an emergency access to College Street, as well as a public walkway.

8. Utilities:

    a. Sanitary Sewer: Existing public line in Rentfro, which will be extended in the

new subdivision street.

b. Water: Existing public line in Rentfro, which will be extended to College Street to create a looped system.

c. Storm: Existing stormwater line stubbed to western edge of site.

C. PROCESS: The subdivision request is a Type III application and follows the procedures in Newberg Development Code 15.100.050. The Planning Commission will hold a quasi-judicial hearing on the application. The Commission is to make a decision on the application based on the criteria listed in the attached findings. The Planning Commission's decision is final unless appealed. Important dates related to this application are as follows:

1. April 23, 2014: The planning director deemed the application complete.

2. April 16, 2014: The applicant mailed notice to the property owners within 500 feet of the site.

3. April 22, 2014: The applicant posted notice on the site.

4. April 23, 2014: The *Newberg Graphic* published notice of the Planning Commission hearing.

5. May 8, 2014: The Planning Commission held a quasi-judicial hearing to consider the application. They heard public testimony, and continued the hearing to June 12, 2014. They left public testimony open, with the requirement that any additional written testimony be due by one week before the hearing (June 5, 2014).

6. June 12, 2014: The Planning Commission will continue the public hearing.

D. AGENCY COMMENTS: The application was routed to several public agencies for review and comment. As of the writing of this report, the city received the following agency comments:

1. Waste Management (Jack Miller): *Reviewed; no conflict*

2. Frontier Communications: *Reviewed; no conflict. Have developer contact Frontier Engineering for conduit plans.*

3. PGE: *Reviewed; no conflict. Call PGE to have the overhead service to the existing house removed prior to it being demolished.*

4. Newberg Police Dept.: *Reviewed; no conflict.*

5. Newberg Fire Dept.: *1) Fire lanes must be marked; 2) Place hydrants as required.*

6. Newberg Engineering Services Dept.*:*

1. Continuous sidewalk connection shall be installed around the cul-de-sac when houses are

built to connect to the public access easement at East end of project

2. Storm water design shall comply with City Code and City Design Standards Manual. LIDA shall be used to the maximum extent reasonable. City standard details shall be used for all public stormwater facilities. For quantity control, site must detain half of the 2 year storm, 2 yr, 10 yr, and 25 year storms.

3. Sidewalk shall be setback sidewalk throughout project except for at cul-de-sac. The sidewalk could be located in an access easement to reduce the need for additional right of way dedication.

4. The public access sidewalk to Clifford Court could be reduced to 4 feet in width to provide room for construction within the 5 foot access easement. Alternatives to standards poured concrete walkways can be considered. No construction impacts outside of the access easement are allowed.

5. Coordinate with Engineering Department and Fire Chief and ODOT for the emergency access to College Street. Bollards will not be allowed. Access road shall be designed for fire equipment loading. Pedestrian access shall be concrete.

6. Fire hydrants will be required to be installed at intervals per the fire chief

7. No construction impacts are allowed on tax lots 2700 and 2800.

8. Frontage improvements along College Street are required. These improvements are being constructed by the City and ODOT through a Local Improvement District. Developer shall participate in the Local Improvement District, paying their identified fee as adopted by the City Council. Developer shall also pay a payment in Lieu of construction for the difference between the LID Assessment and the local street standard improvements. Engineer to submit cost estimate for frontage improvements to be approved by the City for use in determining the payment in lieu fee.

7. Oregon Department of Transportation:

ODOT completed a review of the traffic analysis provided by Mr. Michael Ard of Lancaster Engineering and ODOT concurs with the analysis and conclusions. The additional traffic on Mission Drive will be nominal and the intersection of N College Street/Mission Drive should operate at an acceptable level. ODOT also supports the proposal to connect the new development to Mission Drive rather than creating a new public access directly to N College Street. However, page 3 of the report mentions the intersection was observed to operate at LOS C but provides no backup data on how this was calculated. I recommend that the City ask the applicant to provide the backup information so that it can be included in our files.

The application's project description states that an emergency and pedestrian access will be provided to N. College Street. Sheet P301, the Site Plan for the Public Access Easement to N. College Street shows a 20' wide public utilities and access easement (16' wide paved) starting at the southern property line.

The property referred to as Lot 21 abuts N. College Street, Oregon Route (OR) 219 and there is an existing residential approach on the property. The response to NDC 15.505.030 mentions a paved driveway will be construction to serve as an emergency access to the development. The impression given is that the emergency approach location will be somewhere within the paved area shown on Sheet P301. The response to NDC 15.505.040 states that

improvements along N. College Street are being completed by an ODOT project. For clarification; an ODOT designed project shows improvements along the property's frontage of Lot 21. The proposed approach in the ODOT designed project will not met the criteria of this application. The residential approach design will not have the strength to carry the weight of an emergency vehicle and the approach location show in the ODOT design plans appears to be partially located outside the paved footprint shown on Sheet P301. Therefore, the applicant is required to submit a state highway road approach application to ODOT for the new emergency approach location. The applicant should contact Jacob Butler (503.986.2666) for more information regarding approach road permits.

ODOT recommends the following conditions:

> *The applicant shall provide evidence of an ODOT Approach 'Use' Permit for the proposed emergency approach.*

Sheet P301 shows 5 'of the 16 'of pavement as a marked 4" diagonal striped PED Path (first southern five feet), leaving 11' of pavement unmarked. The plan shows three removable bollards placed, at N. Collage Street (OR 219), within the 16' paved strip in an area labeled as 5' R/W dedication.

Bollards or any restrictive object will need to be placed outside of right-of-way controlled by ODOT. [It is not clear whether the 5' R/W dedication shown on Sheet P301 is a new right-of-way dedication specific to this application or the right-of-way easement to ODOT mentioned in the response to NDC15.505.040]. When bollards are overused they can cause injury particularly to bicycles. Attached are a couple of pages from the Oregon Highway Design Manual Appendix L (Oregon Bicycle and Pedestrian Design Guide). If allowed by the City, the Applicant is welcome to contact Rodger Gutierrez (Rodger.C.GUTIERREZ@odot.state.or.us) Bike/Ped Facility Specialist or Gary Obery (Gary.R.OBERY@odot.state.or.us), Active Modes Engineer to discuss placement and number of the bollards or alterative designs for the emergency access.

If there is a need to perform miscellaneous or utility work within ODOT right-of-way additional permits may be required before work can be done. The applicant should contact David Chuculate (503.986.2876) for information regarding utility and miscellaneous permits

Please provide ODOT with a copy of the City's decision, including findings and conditions of approval.

E. PUBLIC COMMENTS: This staff report addresses all comments received through June 4, 2014. If additional written comments are received June 5th they will be attached as a supplement. The city received several written comments before the May 8th meeting, and several more at the meeting. The Planning Commissioners already received copies of these comments, and they are also included in Attachment 4 of this staff report. Many people testified orally at the meeting. The issues raised in the comments have been summarized below.

Variance: Comments stated that the variance application did not include sufficient evidence or analysis of other R-1 properties to justify concluding that the variance criteria were met. They also noted that a variance is a discretionary decision, and is the key part of the application. If the Planning Commission does not think that the variance is justified based on meeting the

criteria then the application is denied and the other issues are moot.

Completeness: Some comments stated that the application should not be considered as it does not include a conceptual future street plan, and the variance application does not include an adequate scale drawing of affected adjacent properties.

Traffic: There were many comments about traffic congestion and safety on Mission Drive, especially near the Veritas School driveway and the intersection at College Street. One comment stated that on-street parking near the Veritas driveways created a visibility problem and should be removed, and that speed bumps should be added on Mission to slow speeds.

Public walkway to Clifford Court: Many comments were opposed to the walkway and stated that it was not needed, since east-west connections exist on streets to the north and south, and that the walkway would be unsafe for users and create traffic conflicts in Clifford Court.

Street access to adjacent properties: Some comments stated that the street design does not provide access to adjacent underdeveloped properties south of the site. The applicant provided an alternative tentative plat that showed a street stub extending towards Illinois Street, and commented that it was not feasible to buy a single property to the south in order to extend a street to Illinois; they felt they would have to buy 3 properties in order to have development on either side of the street.

Two additional written items have been submitted since the May 8th meeting, which are summarized below and also included in Attachment 4.

Sonda Martin submitted a petition signed by 17 neighbors that were opposed to extending a public walkway on 126 Clifford Court. They felt the city had not demonstrated a need for the pedestrian access, since the residents could travel east-west on Illinois Street, Pinehurst Drive, or through Jaquith Park. They also felt the path would create safety issues due to little visibility from the street, no lighting, and a steep hill that will lead to fast skateboard/bike traffic shooting into Clifford Court. The petition included a letter from Sonda Martin that referenced the development code sections related to public walkways. While the code requires public walkways to connect cul-de-sacs to improve connectivity, it also allows the review body to delete the walkway requirement if physical conditions make a walkway impracticable. The letter states that the steep topography, narrow easement, lack of visibility, lack of lighting, non-compliance with ADA standards, and crooked shape make the walkway impracticable. It also points out that the code requires the developer to create a homeowners association or similar entity to maintain the walkway.

Roger Grahn signed the subdivision/variance application on May 20, 2014, as one of the co-owners. He did this so the Planning Commissioners would proceed with the hearing of the subdivision/variance application. He remained opposed to the project design and wanted the application denied on its merits, per his previous comments.

F. ANALYSIS: Issues to consider

1. **Variance**: The application includes a variance to the cul-de-sac limits for length and number of dwellings, because access spacing standards prevent the extension of Rentfro Way to College Street and there are no other viable access points due to surrounding development. The existing Mission Drive/Rentfro Way street is not considered a cul-de-sac because it is built to be extended; if it had a cul-de-sac bulb on its end it would already exceed the cul-de-sac standards for length and number of single family residences. It would be very difficult to subdivide the existing R-1 zoned site without a variance to cul-de-sac standards unless Rentfro Way extended a stub towards Illinois Street, so the resulting cul-de-sac could meet the length and number standards. The street stub to the south would take up nearly the entire width of one of the skinny properties to the south, however, which would make it infeasible to ever extend the street to Illinois without buying and redeveloping the two adjacent skinny properties to the south, as well.

2. **Traffic concerns**: The standard way to estimate the traffic impact of a development is to refer to the Trip Generation Manuals published by the Institute of Transportation Engineers. The manuals include statistical studies of different types of development, and estimates of how many trips would be generated by the development during the evening rush hour and at other times. The trip generation estimate for a single family home is about 1 trip in the PM peak hour (or evening rush hour). That does not mean that each home will only have 1 car. It is the best impartial analysis we have of what trip generation is likely to be, so it is a good starting point for the analysis. Every development is unique, but the traffic impact for a single family house should be pretty similar across neighborhoods.

   This development is estimated to generate fewer than 40 trips in the PM peak hour, so it is not large enough to require a full traffic study. Staff did have the applicant hire a traffic engineer to examine the existing situation and the impact of the proposed development. The applicant's traffic engineer submitted a letter indicating that the effect of increased traffic on Mission Drive from this development was expected to be minimal, and that the Mission Drive/College Street intersection had adequate capacity. Queues were short at the intersection, based on observation. The traffic engineer did not recommend any mitigation.

   The Planning Commission could add conditions of approval to remove on-street parking near the Veritas School driveways to improve visibility, and add speed bumps on Mission Drive to slow traffic.

3. **Completeness - variance**: The applicant has provided a scale drawing of affected adjacent properties based on an aerial photo. The photo shows the locations of buildings, driveways, and other improvements. The locations of the improvements are not survey-accurate, but the applicant does not have the ability to go on to adjacent properties to precisely locate improvements. The scale drawing the applicant has provided provides an adequate level of detail for the application.

4. **Completeness – subdivision**: A future street plan is not required for this proposal. The

subdivision is an infill project and is mostly surrounded by developed property. Illinois Street, College Street and Mission Drive/Rentfro Way are shown on the Comprehensive Plan map, and the Development Code prohibits access to College Street; together, the Comprehensive Plan and Development Code establish the conceptual street layout on this site unless the applicant purchases other nearby property for access to other streets. The applicant's proposed street plan provides access to the vacant adjacent parcels, and the surrounding street network provides access to the surrounding developed properties. There are no other vacant adjacent properties that require a conceptual future street plan.

5. **Grahn tax lots 3218DB-2700, -2800**: These lots are south of the end of the cul-de-sac, and could potentially be developed once the street and utilities are built by this subdivision. There would be a requirement to dedicate some additional right-of-way and build curb/planter strip/sidewalks when houses are built on these lots in the future. Roger Grahn has commented that these requirements will make the lots almost undevelopable, and that the house at 725 N. College Street is on or over the property line. The applicant has submitted some supplemental information (Attachment 6) to address these concerns: a survey that shows that 725 N. College is apparently 1 foot from the property line and does not encroach, and a plan that shows a potential development option for tax lots 2700 and 2800.

6. **Street access to adjacent properties**: Some comments stated that the street design does not provide access to adjacent underdeveloped properties south of the site. The parcels south of the site are either already fully developed or are single family homes with deep back yards (lots are up to half an acre). These single family lots are developed with homes, have access on Illinois Street, and are connected to city utilities. While they could be considered underdeveloped, they are not vacant properties and there is nothing that would require them to develop. If their owners chose to develop these properties they would probably be able to do so as flag lots that take access from Illinois. Two of these Illinois properties have already been developed this way, so there is already an example of a future development pattern for the area. It would be better for future development on these lots to take access from Illinois Street than from Rentfro Way, so that the number of lots using Rentfro Way for their primary access does not increase in the future.

7. **Public walkways east and west:** The proposal adds public walkways extending east to College Street and west to Clifford Court. When the Clifford Court subdivision was developed there was supposed to be a public walkway extending east to the property line. The public access easement was recorded on the plat, but the walkway was never built by the developer and not noticed by inspectors. The development code clearly states that public walkways shall be provided to connect cul-de-sacs and improve street connectivity, but also allows exceptions where the walkway can be deleted if physical conditions make a walkway impracticable. The code also limits block lengths; if the application requests an exception to the block length standard then the code requires public walkways to break up block length, unless the walkway is not feasible due to preexisting development and other issues. The code requires public walkways to be as short and straight as possible, and within a 15 foot wide public access easement. When the Clifford Court subdivision was approved the walkway easement width was allowed

to be reduced to 5 feet, and the walkway was allowed to have a sharp angle. It is reasonable to assume that the adjacent property owners will install fences along the walkway, which will create a long narrow corridor where a pedestrian entering the path from either end will not be able to see through to the end of the path. Visibility is an important element of safety for the walkway. If the walkway from Clifford Court was in a wider public access easement and was straight then the path would have good visibility and the Planning staff believes the path would be required in order to meet the connectivity and block length standards. The Planning staff has changed its recommendation about the public walkway extending west to Clifford Court, however, and now believes it should not be required; the narrow width of the access easement and the sharp bend in the walkway path that were approved as part of the Clifford Court subdivision created a situation where the walkway would have poor visibility from either end and potentially be unsafe. This is a physical condition due to preexisting development that makes the walkway to Clifford Court impracticable and infeasible. The block length exception for the subdivision application can still be approved, as there is a public walkway extending east to College Street that is feasible. The code does require the applicant to create a HOA or similar entity to maintain the eastern public walkway.

G. PRELIMINARY STAFF RECOMMENDATION: The preliminary staff recommendation is made before the close of public hearing testimony, and may be modified subsequent to the close of the public hearing. At this writing, staff recommends the following motion:

Move to adopt Planning Commission Order 2014-16, which approves the requested subdivision tentative plan/variance with the attached conditions.

PLANNING COMMISSION ORDER 2014-16

AN ORDER APPROVING SUB3-14-005/VAR-14-002 FOR A TENTATIVE SUBDIVISION PLAN FOR SHELLIE PARK, AND A VARIANCE TO CUL-DE-SAC STANDARDS, AT 735 N. COLLEGE STREET, YAMHILL COUNTY TAX LOTS 3218DB-2300, -2600, -700

RECITALS

1. Brown & Nielsen submitted an application for tentative subdivision plan approval for 21 lots and a variance request to the cul-de-sac limits for a residential subdivision called Shellie Park at 735 N. College Street, Yamhill County tax lots 3218DB-2300, -2600, -700.

2. After proper notice, the Newberg Planning Commission held a hearing on May 8, 2014 to consider the application. The Commission took public testimony, and continued the hearing to June 12, 2014.

3. On June 12, 2014, the Newberg Planning Commission reopened the hearing, took additional testimony and deliberated.

4. The Newberg Planning Commission finds that the application meets the applicable criteria as shown in the findings in Exhibit "A" and the conditions in Exhibit "B".

The Newberg Planning Commission orders as follows:

1. The tentative subdivision plan/variance application SUB3-14-005/VAR-14-002 is hereby approved, subject to the conditions contained in Exhibit "B". Exhibit "B" is hereby adopted and by this reference incorporated.

2. The findings shown in Exhibit "A" are hereby adopted. Exhibit "A" is hereby adopted and by this reference incorporated.

3. This order shall be effective June 27, 2014 unless appealed prior to that date.

4. This order shall expire two years after the effective date above if the applicant does record the final plat by that time, unless an extension is granted per Newberg Development Code 15.235.130(B).

Adopted by the Newberg Planning Commission this 12th day of June, 2014.

ATTEST:

Planning Commission Chair

Planning Commission Secretary

List of Exhibits:

Exhibit "A": Findings

Exhibit "B": Conditions

Exhibit "A" to Planning Commission Order 2014-16
Findings –File SUB3-14-005/VAR-14-002
Shellie Park subdivision

I. SUBDIVISION CRITERIA THAT APPLY**: Newberg Development Code 15.235.060(A).**

The Director (Type II) or Planning Commission (Type III) shall approve a subdivision of four parcels or more under a Type II or Type III procedure if the resulting parcels comply with the following approval criteria:

1. Approval does not impede the future best use of the remainder of the property under the same ownership or adversely affect the safe and healthful development of such remainder or adjoining land or access thereto.

Finding: The application subdivides the entire property, so there is no remainder of the property to further develop. A public street and utility lines will be constructed to serve all 21 lots in the subdivision.

In addition, the new street and utility lines will enable the future development of the lots south of the end of the cul-de-sac (tax lots 3218DB-2700 and -2800). These lots would have to dedicate additional right of way and construct curb/planter strip/sidewalk when developed, but would not have to bear the expense of paving half a street or extending public water/sewer lines, which are typically large expenses of development. The requirements for dedicating right of way and improving the street frontage when developing are directly related to the impact of development on the street system, and are proportional to the development because they are based on the length of the frontage being developed. These lots would become fairly shallow if a 10 foot future right of way dedication was required. They are currently 67 feet deep; if the right of way dedication was 10 feet and a house on the lot met the 15 foot front setback and the 5 foot rear setback that would leave 37 feet for the depth of the house. A garage setback is 20 feet deep if it faces the street, but only 15 feet if the opening is perpendicular to the street. A house on this shape lot would have to be shallow and wide, and may need to have a side access garage. The applicant has submitted a site plan (attachment 6) that shows a potential partition and development on tax lots 2700 and 2800, with house footprints that meet the setbacks and lot coverage standards for the R-1 zone. The conclusion is that tax lots 2700 and 2800 would still be developable if Shellie Park was approved, and would have lower development costs than most subdivision lots. If the Planning Commission chooses they can allow a curbside sidewalk on future development on taxlots 2700 and 2800, which would make the lots more flexible to develop in the future.

A future street plan is not required for this proposal. The subdivision is an infill project and is mostly surrounded by developed property. Illinois Street, College Street and Mission Drive/Rentfro Way are shown on the Comprehensive Plan map, and the Development Code prohibits access to College Street; together, the Comprehensive Plan and Development Code establish the conceptual street layout on this site unless the applicant purchases other nearby property for access to other streets. The applicant's proposed street plan provides access to the vacant adjacent parcels, and the surrounding street network provides access to the surrounding developed properties. There are no other vacant adjacent properties that require a conceptual future street plan.

Some public comments stated that the street design does not provide access to adjacent underdeveloped properties south of the site. The parcels south of the site are either already fully developed or are single family homes with deep back yards (lots are up to half an acre). These single family lots are developed with homes, have access on Illinois Street, and are connected to city utilities. While they could be considered underdeveloped, they are not vacant properties and there is nothing that would require them to develop. If their owners chose to develop these properties they would probably be able to do so as flag lots that take access from Illinois. Two of these Illinois properties have already been developed this way, so there is already an example of a future development pattern for the area. It would be better for future development on these lots to take access from Illinois Street than from Rentfro Way, so that the number of lots using Rentfro Way for their primary access does not increase in the future.

For the reasons listed above, approval of the subdivision would not impede the future best use of the remainder of the property or adversely affect the safe and healthful development of adjoining land or access thereto.

2. The subdivision complies with this code including but not limited to 15.340.010 through 15.440.080 and 15.235.030 et seq.

Finding: The lot standards and development standards are addressed in detail below in section II.

3. Either:

a. Improvements required to be completed prior to final plat approval; or

b. The sub divider will substantially complete, as defined by city policies, required improvements prior to final plat approval, and enter into a performance agreement to complete the remaining improvements. The performance agreement shall include security in a form acceptable to the city in sufficient amount to insure completion of all required improvements; or

c. A local improvement district shall have been formed to complete the required improvements; or

d. The required improvements are contained in a city or other government agency capital improvement project that is budgeted and scheduled for construction.

Finding: The required public improvements will either be completed prior to final plat approval or, at the city's discretion, they will be substantially completed, with the remainder bonded and covered by a performance agreement.

II. Applicable Lot Requirement: Newberg Development Code 15.405.010, Lot Area; Lot Areas per Dwelling Unit

A. In the following districts, each lot or development site shall have an area as shown below except as otherwise permitted by this code:

1. In the R-1 district, each lot or development site shall have a minimum area of 5,000 square feet or as may be established by a subdistrict. The average size of lots in a subdivision intended for single-family development shall not exceed 10,000 square feet.

Finding: All of the lots are at least 5,000 square feet, and exceed the minimum standard. The average lot size is 6,352 square feet, so the average lot size does not exceed 10,000 square feet. This criterion is met.

III. Applicable Lot Requirements – Newberg Development Code 15.405.030 Lot Dimensions and Frontage

A. Width. Widths of lots shall conform to the standards of this code.

B. Depth to Width Ratio. Each lot and parcel shall have an average depth between the front and rear lines of not more than two and one-half times the average width between the side lines. Depths of lots shall conform to the standards of this code. Development of lots under 15,000 square feet are exempt from the lot depth to width ratio requirement.

C. Area. Lot sizes shall conform to standards set forth in this code. Lot area calculations shall not include area contained in public or private streets as defined by this code.

D. Frontage.

1. No lot or development site shall have less than the following lot frontage standards:

a. Each lot or development site shall have either frontage on a public street for a distance of at least 25 feet or have access to a public street through an easement that is at least 25 feet wide. No new private streets, as defined in NMC 15.05.030, shall be created to provide frontage or access.

b. Each lot in an R-2 and R-3 zone shall have a minimum width of 30 feet at the front building line.

c. Each lot in an R-1, AI, or RP zone shall have a minimum width of 50 feet at the front building line.

d. Each lot in an AR zone shall have a minimum width of 45 feet at the front building line.

2. The above standards apply with the following exceptions:

a. Legally created lots of record in existence prior to the effective date of the ordinance codified in this code.

b. Lots or development sites which, as a process of their creation, were approved with sub-standard widths in accordance with provisions of this code.

c. Existing private streets may not be used for new dwelling units, except private streets that were created prior to March 1, 1999, including paving to fire access roads standards and installation of necessary utilities, and private streets allowed in the airport residential and airport industrial districts.

Finding: No lots exceed 15,000 square feet, so the lot width/depth ratio does not apply. All lots exceed the minimum lot size of 5,000 square feet. All lots have at least 25 feet of frontage on a street, and all lots are at least 50 feet wide at the front building line. This criterion is met.

IV. Applicable Development Standards

NDC 15.510.040: Water Supply. All lots and parcels within subdivisions and partitions shall be served by the water system of the City of Newberg.

NDC 15.510.050: Sewage. All lots and parcels within subdivisions and partitions shall, where practicable, as determined by the Director, in accordance with the provisions of this Code, be served by the sewage system of the City.

NDC 15.510.060: Land Surface Drainage. Such grading shall be done and such drainage facilities shall be constructed by the land divider as are adequate for the purpose of proper drainage of the partition or subdivision, of areas affected thereby, and for the preservation of healthful and convenient surroundings and conditions for residents of the subdivision or partition, and for the general public, in accordance with specifications adopted by the City Council under 15.510.030.

NDC 15.505.030: Streets and Alleys. The land divider or developer shall grade and pave all streets and alleys in the subdivision or partition to the width specified in 15.505.060, and provide for drainage of all such streets and alleys, construct curbs and gutters within the subdivision or partition in accordance with specifications adopted by the City Council under 15.510.030. Such improvements shall be constructed to specifications of the City under the supervision and direction of the Director. It shall be the responsibility of the land divider or developer to provide street signs

NDC 15.505.040: Existing Streets. A subdivision, partition or development requiring a Type II design review abutting or adjacent to an existing road of inadequate width, shall dedicate additional right-of-way to and improve the street to the width specified in 15.505.060.

NDC 15.505.210: Sidewalks. Sidewalks shall be located and constructed in

accordance with the provisions of 15.510.030. Minimum width is five feet.

15.505.120 Cul-de-sacs.
A. Cul-de-sacs shall only be permitted when one or more of the circumstances listed in this section exist. When cul-de-sacs are justified, public walkway connections shall be provided to connect with another street, greenway, school, or similar destination unless one or more of the circumstances listed in this section exist.
1. Physical or topographic conditions make a street or walkway connection impracticable. These conditions include but are not limited to controlled access streets, railroads, steep slopes, wetlands, or water bodies where a connection could not be reasonably made.
2. Buildings or other existing development on adjacent lands physically preclude a connection now or in the future considering the potential for redevelopment.
3. Where streets or accessways would violate provisions of leases, easements, or similar restrictions.
4. Where the streets or accessways abut the urban growth boundary and rural resource land in farm or forest use, except where the adjoining land is designated as an urban reserve area.
B. There shall be no cul-de-sacs more than 400 feet long (measured from the centerline of the intersection to the radius point of the bulb) or serving more than 18 single-family dwellings.
C. Each cul-de-sac shall have a circular end with a minimum diameter of 90 feet, curb-to-curb, within a 103-foot minimum diameter right-of-way. For residential uses, a 35-foot radius may be allowed if the street has no parking, a mountable curb, attached sidewalks, and sprinkler systems in every building along the street.

15.505.160 Platting standards for blocks.
A. Purpose. Streets and walkways can provide convenient travel within a neighborhood and can serve to connect people and land uses. Large, uninterrupted blocks can serve as a barrier to travel, especially walking and biking. Large blocks also can divide rather than unite neighborhoods. To promote connected neighborhoods and to shorten travel distances, these following minimum standards for block lengths are established.
B. Maximum Block Length and Perimeter. The maximum length and perimeters of blocks in the zones listed below shall be according to the following table. The review body for a subdivision, partition, conditional use permit, or a Type II design review may require installation of streets or walkways as necessary to meet the standards below.

Zone(s)	***Maximum Block Length***	***Maximum Block Perimeter***
R-1	***800 feet***	***2,000 feet***
R-2, R-3, RP, I	***1,200 feet***	***3,000 feet***

C. Exceptions.
1. If a public walkway is installed mid-block, the maximum block length and perimeter may be increased by 25 percent.

2. Where a proposed street divides a block, one of the resulting blocks may exceed the maximum block length and perimeter standards provided the average block length and perimeter of the two resulting blocks do not exceed these standards.
3. Blocks in excess of the above standards are allowed where access controlled streets, street access spacing standards, railroads, steep slopes, wetlands, water bodies, preexisting development, ownership patterns or similar circumstances restrict street and walkway location and design. In these cases, block length and perimeter shall be as small as practical. Where a street cannot be provided because of these circumstances but a public walkway is still feasible, a public walkway shall be provided.
4. Institutional campuses located in an R-1 zone may apply the standards for the institutional zone.
5. Where a block is in more than one zone, the standards of the majority of land in the proposed block shall apply.
6. Where a local street plan, concept master site development plan, or specific plan has been approved for an area, the block standards shall follow those approved in the plan. In approving such a plan, the review body shall follow the block standards listed above to the extent appropriate for the plan area. [Ord. 2736 § 1 (Exh. A § 4), 3-21-11; Ord. 2619, 5-16-05; Ord. 2494, 4-6-98; Ord. 2451, 12-2-96. Code 2001 § 151.695.]

15.505.220 Public walkways.
A. The review body for a design review or land division may require easements for and construction of public walkways where such walkway is needed for the public safety and convenience or where the walkway is necessary to meet the standards of this code or a walkway plan. Public walkways are to connect to cul-de-sacs, to pass through oddly shaped or unusually long blocks, to provide for networks of public paths according to adopted plans, or to provide access to schools, parks or other community destinations or public areas of such design, width, and location as reasonably required to facilitate public use. Where possible, said dedications may also be employed to accommodate public utilities.
B. Public walkways shall be located within a public access easement a minimum of 15 feet in width.
C. A walk strip, not less than five feet in width, shall be paved in the center of all public walkway easements. Such paving shall conform to specifications adopted by the city council under NMC 15.510.030.
D. Public walkways shall be designed, as far as practical, to meet the Americans with Disabilities Act requirements.
E. Public walkways connecting one right-of-way to another shall be designed to provide as short and straight of a route as practical.
F. The developer of the public walkway shall provide a homeowners' association or similar entity to maintain the public walkway and associated improvements.
G. Lighting may be required for public walkways in excess of 250 feet in length.
H. The review body may modify these requirements where it finds that topographic, preexisting development, or similar constraints exist. [Ord. 2619, 5-16-05; Ord. 2451, 12-2-96. Code 2001 § 151.705.]

NDC 15.510.070: Street Trees. Street trees shall be provided adjacent to all public rights-of-way abutting or within a subdivision or partition. Street trees shall be installed in accordance with the provisions of 15.420.010(B) (4).

Finding: All lots will be served by new water and sanitary sewer lines extended within Rentfro Way. All lots will have stormwater drainage facilities; the applicant has proposed a mix of swales in the planter strip, swales/detention areas in yards, and a common stormwater tract near the western end of the subdivision. The city Engineering Services Department has commented:

- *Storm water design shall comply with City Code and City Design Standards Manual. LIDA shall be used to the maximum extent reasonable. City standard details shall be used for all public stormwater facilities. For quantity control, site must detain half of the 2 year storm, 2 yr, 10 yr, and 25 year storms.*

- *Fire hydrants will be required to be installed at intervals per the fire chief*

Part of the subdivision will be served by a standard residential street: 60 foot right-of-way, 32 feet of paving curb to curb, with setback sidewalks and planter strips. The eastern end of the site (lots 1-6) is narrower, so the applicant has proposed a 40 foot wide right-of-way with a ¾ street improvement: 32 feet of paving curb to curb, with a curbside sidewalk on the north. The parcels south of this section of the street would dedicate additional right-of-way and construct curb/planter strip/sidewalk if they develop in the future. The applicant has proposed street trees at regular intervals in the planter strip. At the end of the proposed cul-de-sac a 20 foot wide access and utility easement will extend to College Street. This will provide a pedestrian walkway and emergency vehicle access to College Street, and serve as the driveway for lots 20 and 21. The proposed public walkway to College Street must be constructed of concrete, and not striped on asphalt. The College Street frontage of the property is also required to be improved to city and ODOT standards.

The city Engineering Services Department has commented:

1. Continuous sidewalk connection shall be installed around the cul-de-sac when houses are built to connect to the public access easement at East end of project

2. Sidewalk shall be setback sidewalk throughout project except for at cul-de-sac. The sidewalk could be located in an access easement where the right-of-way is narrow to reduce the need for additional right of way dedication.

3. The public access sidewalk to Clifford Court could be reduced to 4 feet in width to provide room for construction within the 5 foot access easement. Alternatives to standard poured concrete walkways can be considered. No construction impacts outside of the access easement are allowed.

4. Coordinate with Engineering Department and Fire Chief and ODOT for the emergency access to College Street. Bollards will not be allowed. Access road shall be designed for fire equipment loading. Pedestrian access shall be concrete.

5. No construction impacts are allowed on tax lots 2700 and 2800.

6. Frontage improvements along College Street are required. These improvements are being constructed by the City and ODOT through a Local Improvement District. Developer shall participate in the Local Improvement District, paying their identified fee as adopted by the City Council. Developer shall also pay a payment in Lieu of construction for the difference between the LID Assessment and the local street standard improvements. Engineer to submit cost estimate for frontage improvements to be approved by the City for use in determining the payment in lieu fee.

The subdivision design would have better connectivity if Rentfro Way could extend to College Street, and not create a long cul-de-sac. That is not an option, however, for several reasons. College Street is a minor arterial, and the access spacing standards in the development code would require a new street access to be at least 300 feet from Mission Drive. An extension of Rentfro Way would only be 230 feet from Mission Drive. A Rentfro extension would also be only slightly offset from Ella Court on the east side of College. The spacing standards in the development code require street to either align with each other or be offset by at least 100 feet. These spacing standards for streets are based on making safe turning motions and having adequate vision of oncoming cars, and are not standards we would consider approving a variance to. This has the effect of requiring Rentfro Way to be a long cul-de-sac, as there are no street connections on surrounding properties.

The development code limits the maximum length of cul-de-sacs to 400 feet, and limits the maximum number of single family dwellings it can serve to 18. The proposed cul-de-sac is 1,830 feet long and serves 43 single family dwellings, as it includes all of the existing development on Mission Drive. The applicant would prefer to extend Rentfro Way to College Street but access spacing standards prevent that. The long cul-de-sac street is the best design option the developer has under the R-1 zoning, so they have applied for a variance to the cul-de-sac standards for length and number of dwellings.

Block length: In the R-1 zone the maximum block length is 800 feet and the maximum block perimeter is 2000 feet. The city can require the installation of streets or walkways as necessary to meet these standards. Blocks in excess of these standards are allowed where access spacing standards and preexisting development restrict street location and design. The applicant has requested an exception to these standards as the access spacing standards prevent the extension of Rentfro Way to College Street, and the surrounding preexisting development prevents access to surrounding streets. The block length and perimeter greatly exceed the code standards. The applicant has proposed public walkways to bring the subdivision as close to the standards as possible. The walkway to the west is not practicable or feasible, per the finding below, but the walkway to the east is so the exception to the block length and block perimeter standards is allowed.

Public walkways east and west: The proposal adds public walkways extending east to College Street and west to Clifford Court. When the Clifford Court subdivision was developed there was supposed to be a public walkway extending east to the property line. The public access easement was recorded on the plat, but the walkway was never built. The development code clearly states that public walkways shall be

provided to connect cul-de-sacs and improve street connectivity, but also allows exceptions where the walkway can be deleted if physical conditions make a walkway impracticable. The code also limits block lengths; if the application requests an exception to the block length standard then the code requires public walkways to break up block length, unless the walkway is not feasible due to preexisting development and other issues. The code requires public walkways to be as short and straight as possible, and within a 15 foot wide public access easement. When the Clifford Court subdivision was approved the walkway easement width was allowed to be reduced to 5 feet, and the walkway was allowed to have a sharp angle. It is reasonable to assume that the adjacent property owners will install fences along the walkway, which will create a long narrow corridor where a pedestrian entering the path from either end will not be able to see through to the end of the path. Visibility is an important element of safety for the walkway. If the walkway from Clifford Court was in a wider public access easement and was straight then the path would have good visibility and the path would be required in order to meet the connectivity and block length standards. The walkway from Clifford Court should not be required because the narrow width of the access easement and the sharp bend in the walkway path that were approved as part of the Clifford Court subdivision created a situation where the walkway would have poor visibility and potentially be unsafe. This is a physical condition due to preexisting development that makes the walkway to Clifford Court impracticable and infeasible. The block length exception for the subdivision application can still be approved, as there is a public walkway extending east to College Street that is feasible. The code does require the applicant to create a HOA or similar entity to maintain the eastern public walkway.

Traffic: One of the concerns of the neighbors was the existing traffic near Veritas School at the intersection of Mission Drive and College Street, and the future potential increase in traffic. This development is estimated to generate fewer than 40 trips in the PM peak hour, so it is not large enough to require a full traffic study. A 21 lot subdivision will generate approximately 21 trips in the evening peak hour, and traffic studies are typically only required for projects that will generate more than 40 trips in the evening peak hour. Staff did have the applicant hire a traffic engineer to examine the existing situation and the impact of the proposed development. They found that much of the traffic at the intersection was from Veritas School, and Veritas recognized that by working to control the impact. They require parents dropping off children to approach from the north on College and make a right turn into the driveway, and then exit on Mission and again make a right turn on College Street. This does reduce traffic and queuing at the Mission/College intersection. This intersection currently operates well, with minimal queuing and no crash history in the last five years. Overall, the traffic engineer found that the intersection of Mission and College would operate acceptably with a level of service of C if the proposed subdivision was built. The proposed subdivision would be expected to add 7 trips at the Mission/College intersection during the 20-25 minute morning peak traffic period. No mitigation was proposed, as the intersection was found to have ample existing capacity.

ODOT has commented:

> *ODOT completed a review of the traffic analysis provided by Mr. Michael Ard of Lancaster Engineering and ODOT concurs with the analysis and conclusions. The additional traffic on Mission Drive will be nominal and the intersection of N College Street/Mission Drive should operate at an acceptable level. ODOT also supports the proposal to connect the new development to Mission Drive rather than creating a new public access directly to N College Street. However, page 3 of the report*

mentions the intersection was observed to operate at LOS C but provides no backup data on how this was calculated. I recommend that the City ask the applicant to provide the backup information so that it can be included in our files.

The application's project description states that an emergency and pedestrian access will be provided to N. College Street. Sheet P301, the Site Plan for the Public Access Easement to N. College Street shows a 20' wide public utilities and access easement (16' wide paved) starting at the southern property line.

The property referred to as Lot 21 abuts N. College Street, Oregon Route (OR) 219 and there is an existing residential approach on the property. The response to NDC 15.505.030 mentions a paved driveway will be construction to serve as an emergency access to the development. The impression given is that the emergency approach location will be somewhere within the paved area shown on Sheet P301. The response to NDC 15.505.040 states that improvements along N. College Street are being completed by an ODOT project. For clarification; an ODOT designed project shows improvements along the property's frontage of Lot 21. The proposed approach in the ODOT designed project will not met the criteria of this application. The residential approach design will not have the strength to carry the weight of an emergency vehicle and the approach location show in the ODOT design plans appears to be partially located outside the paved footprint shown on Sheet P301. Therefore, the applicant is required to submit a state highway road approach application to ODOT for the new emergency approach location. The applicant should contact Jacob Butler (503.986.2666) for more information regarding approach road permits.

ODOT recommends the following conditions:

> *The applicant shall provide evidence of an ODOT Approach 'Use' Permit for the proposed emergency approach.*

Sheet P301 shows 5 'of the 16 'of pavement as a marked 4" diagonal striped PED Path (first southern five feet), leaving 11' of pavement unmarked. The plan shows three removable bollards placed, at N. Collage Street (OR 219), within the 16' paved strip in an area labeled as 5' R/W dedication.

Bollards or any restrictive object will need to be placed outside of right-of-way controlled by ODOT. [It is not clear whether the 5' R/W dedication shown on Sheet P301 is a new right-of-way dedication specific to this application or the right-of-way easement to ODOT mentioned in the response to NDC15.505.040]. When bollards are overused they can cause injury particularly to bicycles. Attached are a couple of pages from the Oregon Highway Design Manual Appendix L (Oregon Bicycle and Pedestrian Design Guide). If allowed by the City, the Applicant is welcome to contact Rodger Gutierrez (Rodger.C.GUTIERREZ@odot.state.or.us) Bike/Ped Facility Specialist or Gary Obery (Gary.R.OBERY@odot.state.or.us), Active Modes Engineer to discuss placement and number of the bollards or alterative designs for the emergency access.

If there is a need to perform miscellaneous or utility work within ODOT right-of-way additional permits may be required before work can be done. The applicant should contact David Chuculate (503.986.2876) for information regarding utility and miscellaneous permits

Please provide ODOT with a copy of the City's decision, including findings and conditions of approval.

II. VARIANCE CRITERIA THAT APPLY: Newberg Development Code 15.215.040

A. That strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of the zoning ordinance.

Finding: The development code limits the maximum length of a cul-de-sac to 400 feet, and limits the maximum number of single family dwellings it can serve to 18. The existing Mission Drive and Rentfro Way are not currently considered a cul-de-sac, but will become part of one if this subdivision is built. The proposed cul-de-sac is 1,830 feet long and serves 43 single family dwellings, as it includes all of the existing development on Mission Drive as well as the new development. It could potentially serve 2 or 3 more dwellings if other adjacent properties develop. The applicant would prefer to extend Rentfro Way to College Street but access spacing standards prevent that as the intersection would be too close to Ella Court and Mission Drive. The long cul-de-sac street is the best design option the developer has under the R-1 zoning, so they have applied for a variance to the cul-de-sac standards for length and number of dwellings.

The purpose of the zoning ordinance is:

15.05.020 Purpose.
A. The purpose of this code is to coordinate city regulations governing the development and use of land and to implement the Newberg comprehensive plan.

B. The Newberg development code constitutes the development and land use regulations for the incorporated area of the city. These regulations are adopted to protect and promote the public health, safety, and general welfare, and to provide the economic and social advantages which result from an orderly, planned use of land resources. Such regulations are designed to achieve the following objectives:

1. To implement the comprehensive plan for the city.
2. To advance the position of the city as a regional center of commerce, industry, recreation and culture.
3. To provide for desirable, appropriately located living areas in a variety of dwelling types and at a suitable range of population densities, with adequate provision for sunlight, fresh air and usable open spaces.
4. To protect residential, commercial, industrial and civic areas from the intrusions of incompatible uses, and to provide opportunities for compatible uses to concentrate for efficient operation in mutually beneficial relationship to each other and to shared services.
5. To ensure preservation of adequate space for commercial, industrial, agricultural, and other activities necessary for a healthy economy.

6. To promote safe, fast and efficient movement of people and goods without sacrificing the quality of the city's environment, minimize street congestion, and to provide for adequate off-street parking.
7. To achieve excellence and originality of design in all future developments and preserve the natural beauty of the city's setting.
8. To stabilize expectations regarding future development, thereby providing a basis for wise decisions with respect to such development.
9. To preserve and enhance the quality of the city's environment.
10. To secure safety from fire, flood, geological hazards, pollution and other dangers.
11. To provide adequate light and air, and to facilitate adequate provisions for transportation, water supply, wastewater disposal, drainage, education, recreation and other services and facilities. [Ord. 2451, 12-2-96. Code 2001 § 151.002.]

CITY OF NEWBERG COMPREHENSIVE PLAN
J. URBAN DESIGN
GOAL 1: To maintain and improve the natural beauty and visual character of the City.
1. General Policies
o. The City shall encourage flexibility in design review and interpretation of policies and regulations by ensuring that functional design and community benefit remain as the principal review criteria. Consider variance procedures where interpretation of regulations impede fulfillment of these criteria.

K. TRANSPORTATION
GOAL 9: Create effective circulation and access for the local transportation system.
POLICIES:
b. Enhance existing and add alternative routes for local travel.
1) The City development code shall encourage the development of a continuous interconnected street pattern that connects adjacent developments and minimizes the use of cul-de-sacs.
2) The City shall implement standards for cul-de-sac design.

The objectives of the zoning ordinance include implementing the Comprehensive Plan and regulating development to protect the health, safety and general welfare of the public. The Comprehensive Plan states that the use of cul-de-sacs should be minimized to improve access and circulation, but also allows variances. If the cul-de-sac standards were strictly applied they would make it infeasible to subdivide the property without buying other property to provide access to Illinois Street.

The existing Mission Drive/Rentfro Way street is not considered a cul-de-sac because it is built to be extended; if it had a cul-de-sac bulb on its end it would already exceed the cul-de-sac standards for length and number of single family residences.

It would be very difficult to subdivide the existing R-1 zoned site without a variance to cul-de-sac standards unless Rentfro Way extended a stub towards Illinois Street, so the resulting cul-de-sac could meet the length and number standards. The street stub to the south would take up nearly the entire width of one of the skinny properties to the south, however, which would make it infeasible to ever extend the street to Illinois without buying and redeveloping the two adjacent skinny properties to the south, as well.

The development code discourages the creation of cul-de-sacs in order to improve the connectivity of streets for drivers, pedestrians and cyclists. Where cul-de-sacs are allowed, they are limited in length and number of dwellings to further discourage their use in subdivision design. In this case, however, the applicant has no other reasonable alternative to a long cul-de-sac because the access spacing standards and existing surrounding development do not allow another street connection. The public walkway on the east end improves connectivity for pedestrians and cyclists, and the emergency access onto College Street improves public safety access. Strict enforcement of the cul-de-sac length and dwelling standards would prevent the subdivision development of the site and create a practical difficulty inconsistent with the objectives of the zoning ordinance.

B. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties classified in the same zoning district.

Finding: The property can only be accessed from Rentfro Way, which makes it an infill project with extraordinary circumstances. Prior development did not provide other access points, and access to College Street would not meet city access spacing standards. This is an unusual situation that does not generally apply to other R-1 properties.

C. That strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zoning district.

Finding: Strict interpretation of the cul-de-sac length and dwelling standards would prohibit subdivision of the property to R-1 standards. This would deprive the owners of the ability to develop their property, which is a privilege that other R-1 property owners enjoy.

D. That the granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zoning district.

Finding: Granting the variance will allow the property to be developed in similar fashion to other subdivisions throughout the city. This variance will not increase the density of the project or constitute a grant of special privilege.

E. That the granting of the variance will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity.

Finding: Granting a variance will not be detrimental to public health and safety because at the end of the cul-de-sac there will be an emergency access to College Street. For public safety vehicles, this will be similar to having a street extend all the way to College. The traffic impact from the additional development has been determined to be minor, and the subdivision utilities will meet all current standards for health and safety.

Conclusion: Based on the above-mentioned findings, the application meets the required criteria within the Newberg Development Code, subject to completion of the attached conditions.

Exhibit B to Planning Commission Order 2014-16
Conditions –File SUB3-14-005/VAR-14-002
Shellie Park

A. The applicant must provide the following information for review and approval <u>prior</u> to construction of any improvements:

1. **Construction Plans:** Submit engineered construction plans for review and approval of all utilities, public street improvements, and any new public streets being constructed. Plans should be drawn to show storm and street information on one sheet; water and sanitary on another sheet. Please note that additional Engineering Division plan review application and fees apply for review of plans. The plans must note the following:

   a. Utilities:

      i. Each lot needs separate utility lines.

      ii. Catch basins are required on the uphill side of intersections.

      iii. Utilities must be constructed to be "to and through" (i.e. to the proposed development and through to provide for adjacent properties to develop).

      iv. All utilities crossing the site must be undergrounded, including power, cable and telephone lines.

      v. Fire hydrants will be required to be installed at intervals per the fire chief

      vi. Storm water design shall comply with City Code and City Design Standards Manual. LIDA shall be used to the maximum extent reasonable. City standard details shall be used for all public stormwater facilities. For quantity control, site must detain half of the 2 year storm, 2 yr, 10 yr, and 25 year storms.

   b. Streets:

      i. New internal streets must be constructed in accordance with approved city standards.

      ii. Fire lanes must be marked.

iii. Continuous sidewalk connection shall be installed around the cul-de-sac when houses are built to connect to the public access easement at East end of project.

iv. Sidewalk shall be setback sidewalk throughout project except for at cul-de-sac. The sidewalk could be located in an access easement to reduce the need for additional right of way dedication.

v. Coordinate with Engineering Department and Fire Chief and ODOT for the emergency access to College Street. Bollards will not be allowed. Access road shall be designed for fire equipment loading. Pedestrian access shall be concrete.

vi. No construction impacts are allowed on tax lots 2700 and 2800.

vii. Frontage improvements along College Street are required. These improvements are being constructed by the City and ODOT through a Local Improvement District. Developer shall participate in the Local Improvement District, paying their identified fee as adopted by the City Council. Developer shall also pay a payment in Lieu of construction for the difference between the LID Assessment and the local street standard improvements. Engineer to submit cost estimate for frontage improvements to be approved by the City for use in determining the payment in lieu fee.

2. **Grading:** Obtain a DEQ 1200-C permit and a city grading permit prior to grading.

3. **ODOT:**

a. Provide the backup information for the level of service calculation for ODOT's file.

b. Applicant shall provide evidence of an ODOT Approach "Use" permit for the proposed emergency access. Bollards or any restrictive object will need to be placed outside of right-of-way controlled by ODOT.

B. The applicant must complete the following <u>prior</u> to final plat approval.

1. **Substantially Complete the Construction Improvements:** Prior to final plat approval, the applicant must substantially complete the construction improvements and secure for them in accordance with city policy. Complete construction and call for a walk-through inspection with the Engineering Division (503-537-1273).

2. Create a HOA or similar entity to maintain the eastern public walkway.

C. Final Plat Application: In accordance with NDC 15.235.150, submit the following for City review of the final plat application. Construction improvements should be substantially complete at this point.

1. **Application Materials:**

   a. Type I application form (found either at City Hall or on the website – www.newbergoregon.gov in the Planning Forms section) with the appropriate fees.

   b. A current title report (within 6 months old) for the property. Include copies of all existing easements and CC&Rs that pertain to the property.

   c. A written response to these Conditions of Approval that specifies how each condition has been met.

   d. Two blue-line copies of the final subdivision plat for preliminary review by the City Engineering Division. The City Surveyor will make red-line comments on these sheets for your surveyor/engineer to correct prior to printing final Mylar copies.

   e. Any other documents required for review.

2. **Dedications/Easements Required:** The plat must show the following:

   a. Easements:

      i. All utility, sanitary sewer, water and storm drainage easements to the City.

      ii. 10 ft utility easements along all frontages.

      iii. All access easements shown on the preliminary plan.

   b. Dedications of Right-Of-Way:

      i. For the extension of Rentfro Way as shown on the approved preliminary plan.

3. **Documents Required:** Provide the following documents for review and approval:

   a. A signed and notarized performance agreement that assures construction and performance in accordance with the approved final plans.

   b. A bond for street tree planting in an amount to be approved by the Planning Division.

   c. Complete a subdivision agreement with the City of Newberg. The completed subdivision agreement shall be recorded by the applicant at the time of the final plat recordation.

   d. A final draft copy of any Codes, Covenants and Restrictions (CC&Rs) for the subdivision. Planning staff will review the proposed CC&Rs for compliance with City Code prior to recordation.

4. **Final Mylar Copies of the Subdivision Plat:** Submit final mylar copies of the corrected final subdivision plat (after red-line corrections have been made).

   a. Three sets (one original and two copies), 18 inches by 24 inches in size, of the final subdivision plan drawn in black India ink in clear and legible form. Original plats shall be in substantial conformity to the approved tentative plan and shall conform to the Yamhill County Surveyor's specifications and requirements pertaining to material that has the characteristics of adequate strength, permanency, as well as suitability for binding

   b. and copying. Plats shall be in clear and legible form and may be placed on as many sheets as necessary, but a face sheet and an index page shall be included for all plats placed upon three or more sheets. Scale requirements shall be the same as specified for the tentative plans.

D. The final plat process must be completed <u>prior</u> to issuance of any building permits. The City will review the final plat application after the applicant has completed all of the conditions of approval listed above.

1. **City Review:** In accordance with NDC 15.235.160 and 15.235.180, Planning staff shall determine that:

   a. Streets, roads, and alleys for public use are dedicated without any reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public utilities.

   b. The proposal complies with this code.

   c. The plat is in substantial conformity with the provisions of the tentative plan for the subdivision, as approved.

   d. The plat contains a donation to the public of all common improvements, including but not limited to streets, roads, parks, sewage disposal and water supply systems.

   e. Explanations of all common improvements required as conditions of approval of the tentative plan of the subdivision have been accounted for and referenced on the plat.

   f. There will exist an adequate quantity and quality of water and an adequate sewage disposal system to support the proposed use of the land described in the plat.

   g. Either:

i. Improvements as required by this code or as a condition of tentative plan approval have been filed with the Director; or

ii. A performance agreement (bond) or suitable substitute as agreed upon by the city and applicant has been filed with the Director in sufficient amount to insure the completion of all required improvements; or

iii. A petition for improvements has been properly executed by the applicant who is effecting the subdivision and will be assessed for said improvements.

h. Taxes, as well as public liens, assessments and fees, with respect to the subdivision area have been paid, or adequate guarantee has been provided assuring said taxes, liens, assessments and fees will be paid prior to recordation.

i. The sub divider has entered into agreement with the city relating to completion of improvements, payment of sewer and water hookup fees, inspection fees, public lands payments, monumentation or any other elements deemed relevant to the purpose of this or any other city ordinance, state statute or federal law.

j. If the conditions set at the time of tentative land division approval are not fulfilled and the final plat or final map is not recorded by the tentative plan expiration date, the tentative land division approval is null and void.

2. **Required Signatures:** According to NDC 15.235.180, approval of a final subdivision plat must be acknowledged and signed by the following:

a. Planning and Building Director

b. The County Assessor

c. The County Surveyor

d. The City Recorder

3. **Recording:** Deliver the approved subdivision plat to the office of the County Clerk for recording. The County Clerk's office is located at 414 NE Evans St, McMinnville, OR 97128.

4. **Completion:** Return an exact mylar copy of the recorded plat to the Director to complete the subdivision process.

E. Development Notes:

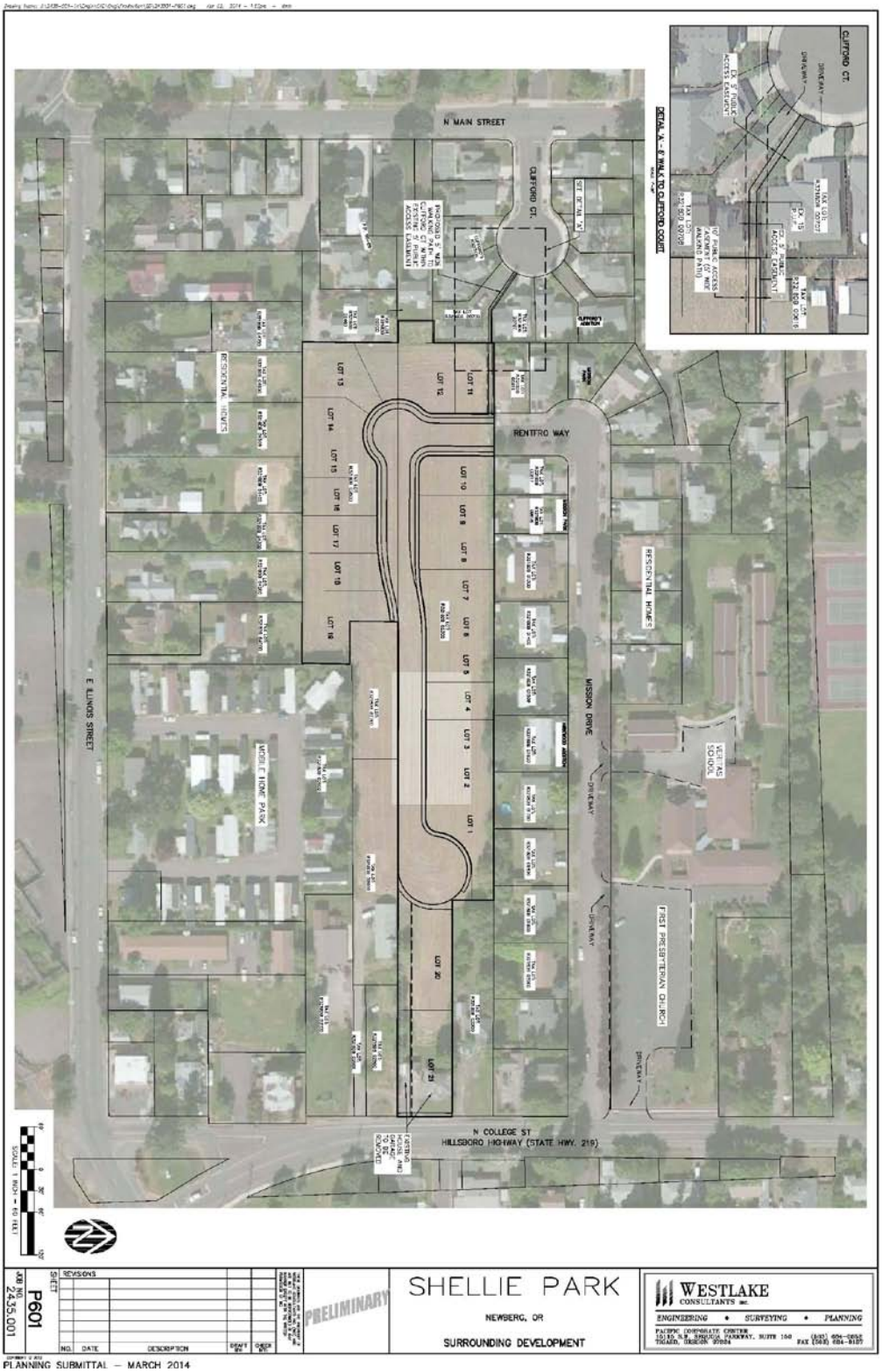
1. **Postal Service:** The applicant shall submit plans to the Newberg Postmaster for approval of proposed mailbox delivery locations. Contact the Newberg Post Office for assistance at 503-554-8014.

2. **PGE:** PGE can provide electrical service to this project under terms of the current tariff which will involve developer expense and easements. Contact the Service & Design Supervisor, PGE, at 503-463-4348. Call PGE to have the overhead service line to the existing house removed before demolition.

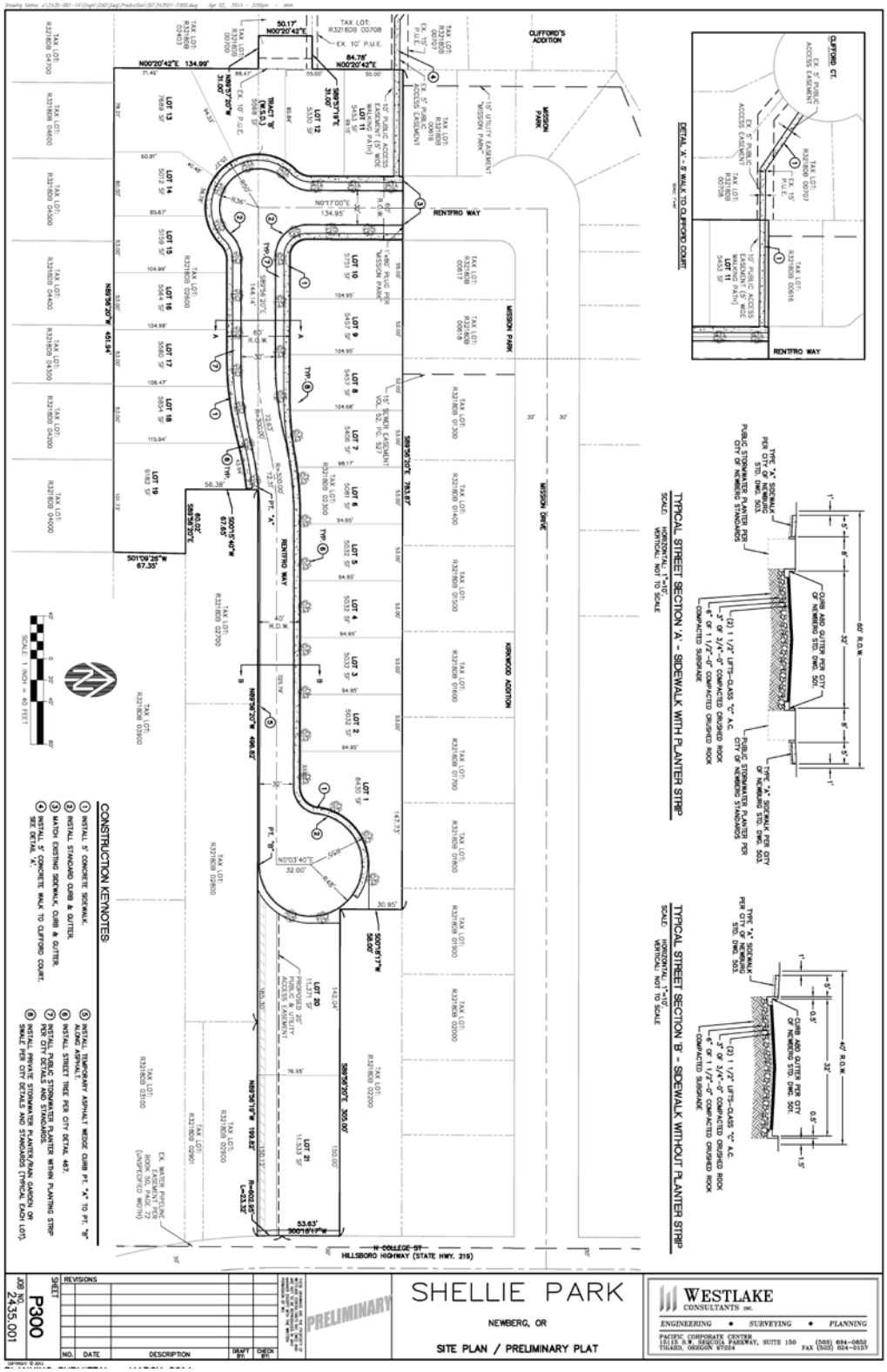
3. **Frontier:** The developer must coordinate trench/conduit requirements with Frontier. Contact the Engineering Division, Frontier, at 541-269-3375.

4. **Addresses:** The Planning Division will assign addresses for the new subdivision. Planning Division staff will send out notice of the new addresses after they receive a recorded mylar copy of the final subdivision plat.

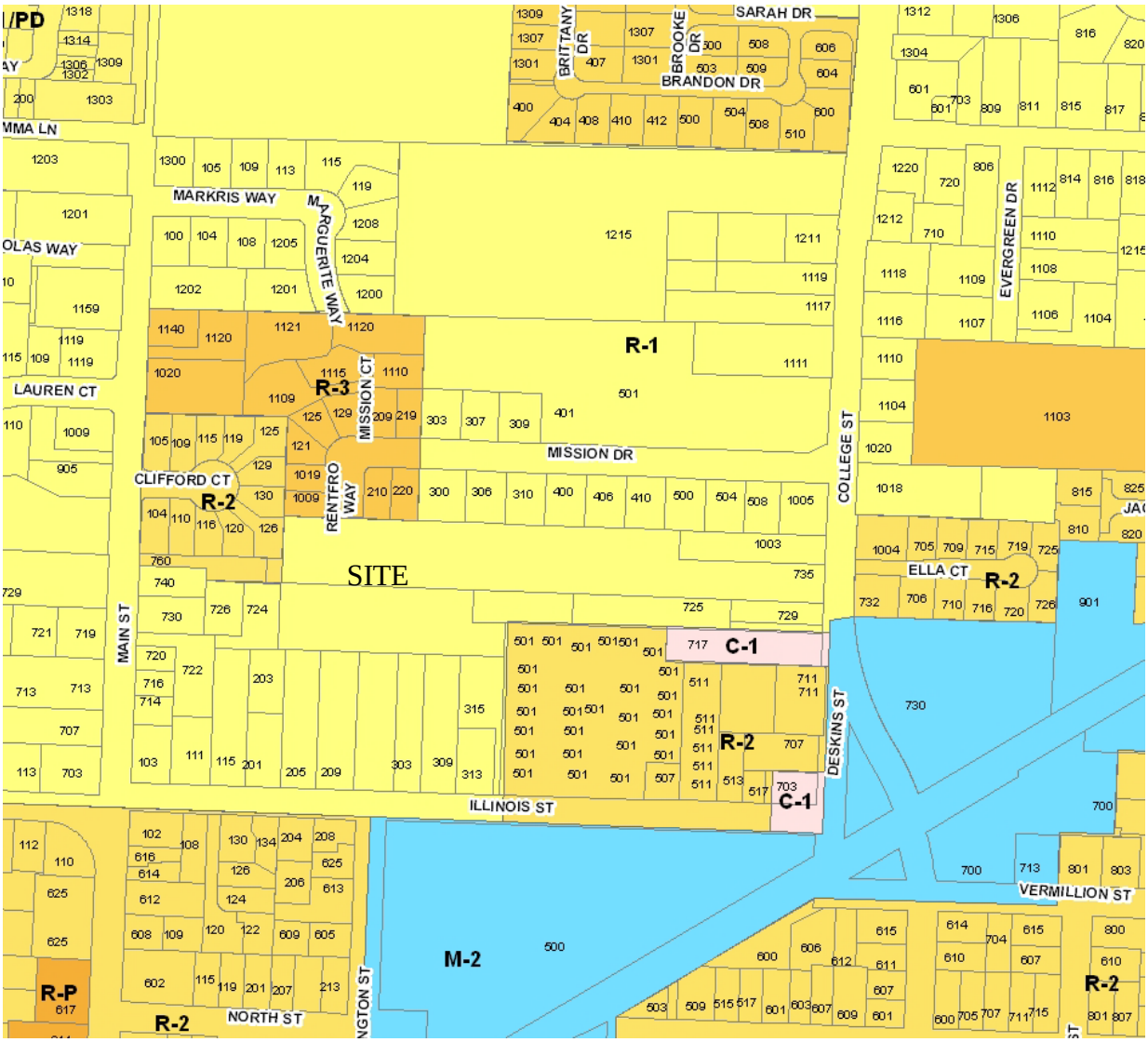
Attachment 1: Aerial Photo



Attachment 2: Tentative Plan



Attachment 3: Zoning map



R.P. GRAHN, Inc.
7131 Hwy 240
Yamhill, OR 97148
503-314-7682

April 28, 2014

Re: File #SUB 3-14-005/VAR14-002

City of Newberg
Planning and Building Dept.
P. O. Box 970
Newberg, OR 97132

Dear Sirs;

We do not oppose a development of this site.
We do oppose the design of this proposal. It effectively eliminates any development - and even most of the value - of the adjoining Tax Lots 2700 and 2800 on the South. By fronting the roadway along the long side, the ensuing and future requirements of setbacks both for and from the proposed street will render this property useless.

Further, there is an existing house (725 N.College) that was long ago sited approximately ON the North Property line. How is this to be dealt with?

The proposal as submitted ignores all the problems it creates.

We urge the City to REJECT this proposal.

Sincerely,

R. P. GRAHN, Inc.

RECEIVED
APR 30 2014
Initial: _____

James & Barbara Westervelt
116 Clifford Court
Newberg, OR 97132
971.832.8412

April 26, 2014

Written Comments: File No. SUB3-14-005/VAR-14-002
City of Newberg
Planning & Building Department
P.O. Box 970
Newberg, OR 97132

Dear Planning Commission:

We are deeply sadden and concerned about your efforts to open our lovely cul-de-sac to the new Shellie Park development.

We don't understand the importance of "connecting neighborhoods." (We're not "connected" to any of our neighborhoods.) It would not even be a safe walking route to other neighborhoods and Jaquith Park, because there are no sidewalks on the north/east side of Main Street like there are on Illinois.

We brought our home on Clifford Court approx. 3 1/2 years ago and feel blessed everyday for our private, quite, safe and well kept lovely cul-de-sac. A major factor for buying was because it is a closed cul-de-sac. No one disclosed the fact that it could one day be opened to everyone. The neighbors I have spoken to told me that they too were not advised at the time they purchased their home. We are like a little community within our wonderful City of Newberg. We look after one another and keep a watchful eye out for stranger's comings and goings. We are blessed to have our very young grandchildren living close by, who loves to visit us because because they are able to play outside in our safe and clean cul-de-sac with our neighbor's small children. Please don't ruin our wonderful neighborhood by opening our little cul-de-sac to anyone who wants to cut through! The benefits do not outweigh the cost of our privacy and safety.

We are not wanting to try and stop development, we are trying to keep our lovely little neighborhood as it is today. We ask that each one of you take a minute and come visit our cul-de-sac, imagine you and your family lives here and reconsider. Thank you.

Sincerely,

James M. Westervelt

Barbara A. Westervelt

ATTACHMENT 4

LAW OFFICE OF BRYAN CAVANESS
ATTORNEY AT LAW

BRYAN W. CAVANESS
Licensed in Oregon
E-mail: bryancavaness@comcast.net

6344 SW Alfred Street
Portland, Oregon 97219
(503) 332-6699

RECEIVED
MAY 05 2014
Initial: _____

May 5, 2014

Hand Delivered

Newberg Planning Commission
C/O Newberg Planning and Building Department
414 East First Street
Newberg, Oregon 97132

Re: ***Shellie Park Subdivision & Variance Application***
Planning File No. SUB3-14-005/VAR-14-002

Good Day:

I represent R. P. Grahn, Inc., mailing address 7131 NE Highway 240, Yamhill, Oregon 97148. R. P. Grahn, Inc. owns three tax lots that are impacted by the proposed Shellie Park Subdivision: T3S R2W 18DB 02700 and 02800, which abut the south side of the proposed extension of Rentfro Way; and T3S R2W 18DB 04200, which abuts the southern border of the proposed subdivision. The applicant, Brown/Nielson, proposes to construct a 1,830-foot long cul-de-sac that would serve 48 single-family dwellings plus additional institutional and educational uses associated with the First Presbyterian Church property.[1] Section 15.505.120B of the Newberg Development Code prohibits cul-de-sacs more than 400 feet long or that serve more than 18 single-family dwellings. The variance request seeks to exceed the maximum allowed length of a cul-de-sac by a factor of approximately 460 percent and the maximum number of lots a cul-de-sac is permitted to serve by a factor of approximately 266 percent. The requested variance would prohibit all future access to large parcels of underdeveloped property to the south of the proposed Shellie Park subdivision and would create potential threats to the life and safety of structures that will access the cul-de-sac and other properties in the vicinity of the proposed development.

Preliminarily, the planning commission should decline to consider the Shellie Park Subdivision application and the associated variance request because the applicant has not submitted the conceptual future street plan required by Section 15.235.070 or a scale drawing of affected adjacent properties required by Section 15.215.030 C, both of which the planning commission must review and consider before it can issue findings concerning impacts on adjoining properties that will result if the subdivision and/or variance applications are approved.

If the planning commission elects to proceed with the hearing it should deny the subdivision application and the variance request to exceed the cul-de-sac design standards because:

[1] The tally does not include the four homes the subdivision application suggests R. P. Grahn, Inc. could construct on

1) The proposed development does not comply with Goal 2, Policy a. and Goal 9, Policy b. of the Transportation Element of the Newberg Comprehensive Plan because the proposed variance will permanently preclude any development of a continuous interconnected street pattern that would allow for future development of adjoining land resources to the south in a rational, pedestrian friendly and economically efficient manner;

2) The applicant has failed to offer any evidence sufficient to demonstrate compliance with Section 15.235.060A(1) of the Newberg Development Code, which requires the Planning Commission to find that the proposed subdivision will not impede or adversely affect the safe and healthful development of adjoining land or access thereto;

3) The subdivision application does not include a conceptual future street plan required by Section 15.235.070B of the Newberg Development Code that demonstrates how access can be provided to 8.6 acres of underdeveloped land to the south of the proposed development;

4) The variance request does not include a scale drawing of affected adjacent properties required by Section 15.215.030 C, which the planning commission is required to review and consider before it can issue findings concerning impacts on adjoining properties that would result if the variance application was approved; and

5) The applicant has failed to offer substantial evidence sufficient to demonstrate that the requested variance complies with all five of the variance criteria set forth at Section 15.215.040 of the Newberg Development Code.

The following discussion identifies and summarizes specific goals and polices set forth in the Newberg Comprehensive Plan, and regulations set forth in the Newberg Development Code, which implements the Plan's goals and policies, the applicant has failed to demonstrate compliance with and which require the planning commission to deny the proposed subdivision and requested variance.

City of Newberg Comprehensive Plan

The purpose and intent of the City of Newberg's Comprehensive Plan is to "establish directions for future planning decisions and activities."[2] Goal 2 of the Plan's Transportation Element states that the city shall:

> "Establish consistent policies which require concurrent consideration of transportation/land use system impacts."

Policy a. of Goal 2 states:

[2] City of Newberg Comprehensive Plan, Section II, Goals and Policies.

> "Transportation improvements shall be used to guide urban development and shall be designed to serve anticipated future needs."

Goal 9 of the Plan's Transportation Element states the city shall:

> "Create effective circulation and access for the local transportation system."

Goal 9 contains several policy objectives that are intended to guide the City in achieving the stated goal, including Policy b., which states the City will "enhance existing and add alternative routes for local travel." Policy b. adopts two sub-policies that are specifically directed to the creation and construction of cul-de-sacs within residential developments:

1) The City development code shall encourage the development of a continuous interconnected street pattern that connects adjacent developments and minimizes the use of cul-de-sacs.

2) The City shall implement standards for cul-de-sac design.

City of Newberg Development Code

The purpose of Newberg Development Code is to "coordinate city regulations governing the development and use of land and to implement the Newberg Comprehensive Plan."[3] The City adopted the regulations in the Development Code "to protect and promote the public health, safety, and general welfare, and to provide the economic and social advantages which result from an orderly, planned use of land resources."[4] The development regulations are intended to achieve the following objectives:

1. To implement the comprehensive plan for the city.

* * *

8. To stabilize expectations regarding future development, thereby providing a basis for wise decisions with respect to such development.[5]

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[3] Newberg Development Code, Section 15.05.010A
[4] *Id.* at Section 15.05.101B.
[5] *Id.*

Applicable Development Standards

The subdivision application and variance request do not demonstrate compliance with the following standards and regulations set forth in the Newberg Development Code:

15.235.060 Subdivision requirements – Type II and Type III.

A. The director (Type II) or planning commission (Type III) shall approve a subdivision of four parcels or more under a Type II or Type III procedure if the resulting parcels comply with the following approval criteria:

1. Approval does not impede the future best use of the remainder of the property under the same ownership or adversely affect the safe and healthful development of such remainder or adjoining land or access thereto.

The applicant's statement, and staff's proposed findings, regarding the absence of adverse impacts to adjoining land or access there to is limited to parcels T3S R2W 18DB 02700 and 02800, which abut the south side of the proposed extension of Rentfro Way. The adjoining land to the south of the proposed development includes ten large, underdeveloped parcels with direct access to Illinois Street contain a combined area of approximately 3.7 acres (T3S R2W 18DB Tax Lots 04000, 04100, 04200, 04300, 04400, 04500, 04600, 04700, 04701 and 04800) which is equates to 86 percent of the proposed development. The proposed development also has the potential to adversely affect future development of ten additional parcels that are either underdeveloped or that could be subject to redevelopment in the future that contain a combined area of approximately 4.9 acres (T3S R2W 18DB Tax Lots 03100, 03200, 03201, 03300, 03400, 03500, 03600, 03700, 03800 and 03900). The proposed development will certainly prohibit all future access to the adjoining properties, which will impede and adversely affect their best uses and future development. In total, the proposed development will restrict access to and impede the best use and future development of an area equal to approximately 8.6 acres, which is twice the size of the proposed development. The planning commission should deny the subdivision application because the applicant's statement, and staff's proposed findings, are entirely devoid of any facts or discussion that would allow the planning commission to make required findings that the proposed development will not impede or adversely affect the safe and healthful development of, or access to, the 8.6 acres of land that lie south of the proposed development.

15.235.070 Future street plan required

A. A future street plan shall not be required for any portion of an area for which a proposed street layout has been established by either the Newberg comprehensive plan, its implementing ordinances, or a future street plan previously approved by a hearing body.

B. A future street plan is a conceptual plan in that its adoption does not establish a precise alignment. The plan shall demonstrate how access can be provided to

adjoining parcels. The director may require that a traffic study be submitted where access to the land division includes streets that are classified as a collector or greater functional classification status.

C. Except as provided in subsection (A) of this section, a future street plan **shall** be filed **and reviewed** as part of an application for a partition or subdivision. (Emphasis added.)

Section 15.235.070 states that an application for subdivision **shall** include, and that the planning commission **shall** review, a conceptual street plan that demonstrates how access can be provided to adjoining parcels. The development code exempts areas where the comprehensive plan, an implementing ordinance or a prior action by a hearing body has previously established or identified a proposed street layout.

The Shellie Park subdivision application does not include a conceptual street plan that demonstrates how access can be provided to the 8.6 acres of developable and/or re-developable lands adjacent to and/or impacted by the proposed development nor does the application state a basis for exemption from this requirement. The planning commission should decline to consider the subdivision application because the application is functionally incomplete. If the planning commission elects to proceed with the hearing, then, based on the absence of the required conceptual street plan, the planning commission must deny the subdivision application because it cannot issue required findings concerning impacts on adjoining properties that would result if the subdivision and/or variance applications were approved.

15.505.120 Cul-de-sacs

B. There shall be no cul-de-sacs more than 400 feet long (measured from the centerline of the intersection to the radius of the bulb) or serving more than 18 single-family dwellings.

Section 15.505.120B of the Newberg Development Code serves several important policy functions. First, the cul-de-sac design standards implement the policies stated in Goal 2 and Goal 9 of the Comprehensive Plan's Transportation Element by promoting safe access to, and efficient development of, lands adjacent to proposed developments. The cul-de-sac design limitations encourage the development of a continuous, interconnected street pattern that connects adjacent developments and allows adjoining land resources to be developed in a rational and economically efficient manner that conserves and best utilizes land and infrastructure resources within the Urban Growth Boundary.

Secondly, the design standards protect residents' health, safety and general welfare by restricting the maximum length of cul-de-sacs to no more than 400 feet and limiting the maximum number of single-family residential homes a cul-de-sac may serve to 18 dwellings. As the overall length of a single roadway and the number of units it exclusively serves increases, the potential for adverse impacts to life and safety resulting from temporary blockage also increases. The cul-de-sac design limitations promote public health, safety and general welfare by limiting

potential blockage of emergency access that pose critical threats to the life, safety and welfare of occupants of residential dwellings that access onto overly long cul-de-sacs as well as to adjoining properties that may require emergency services.

15.215 Variance Procedures

The planning commission may grant variances "in order to prevent or to lessen practical difficulties and unnecessary physical hardships inconsistent with the of objectives of [the] code as would result from a strict or literal interpretation of [the] code."[6] A decision to grant a variance is a discretionary decision. The planning commission may only allow specific standards contained in the code to be modified if the applicant satisfactorily documents compliance with the approval criteria.[7] A variance application must state the precise nature of the variance being requested and identify the practical difficulty or unnecessary hardship that is inconsistent with all of the objectives of the city's comprehensive plan and development code that would result from a strict or literal interpretation and enforcement of an applicable code standard.[8] The variance request must include an "accurate scale drawing of the site and any adjacent property affected that shows all existing and proposed locations of streets, property lines, uses, structures, driveways, pedestrian walks, off-street parking and off-street loading facilities and landscaped area."[9]

The Newberg Development Code does provide a definition for the term "adjacent." The commonly understood meaning of "adjacent" is "not distant : nearby."[10] This definition is consistent with language contained in Section 15.215.040 E, which requires applicants seeking a variance to demonstrate that if the variance is granted it will not be "detrimental * * * or materially injurious to properties or improvements in the **vicinity**." (Emphasis added.) A reasonable application of the term "adjacent property" in this instance would necessarily include an analysis of impacts that would result on the approximately 8.6 acres of land that lies between Illinois Street and the proposed development's southern boundary.

Variance Request

The development application requests a variance to construct a 1,830-foot long cul-de-sac that would serve 48 single-family dwellings plus additional institutional and educational uses associated with the First Presbyterian Church property. If approved, the resulting cul-de-sac would exceed the maximum allowable length by a factor of approximately 460 percent and exceed the maximum number of lots a cul-de-sac is permitted to serve by a factor of approximately 266 percent.

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[6] Newberg City Code Section 15.215.010.
[7] *Id.* at 15.215.020.
[8] *Id.* at 15.215.030 A.
[9] *Id.* at 15.215.030 C.
[10] "adjacent." *Merriam-Webster.com*. 2014. http://www.merriam-webster.com (5 May 2014).

The variance request does not include a scale drawing of affected adjacent properties that shows all existing and proposed locations of streets, property lines, uses, structures, driveways, pedestrian walks, off-street parking and off-street loading facilities and landscaped area. The applicant's failure to provide the required scale drawing of affected adjacent properties renders the variance request functionally incomplete. The planning commission must deny the variance request, and the subdivision application generally, because the planning commission cannot issue required findings concerning impacts on adjoining properties that would result if the variance request, and the underlying subdivision application, were approved.

15.215.040 Variance Criteria

A property owner that seeks a variance to a specific development code standard must demonstrate compliance with **all** of the following criteria:[11]

A. That strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of this code.

Applicant's response, which staff has adopted and incorporated into its proposed findings in support of the variance, posits that the property cannot be developed without constructing a 1,830 foot long cul-de-sac because prior development on adjoining parcels did not extend streets to the parcel and that ODOT access spacing requirements prohibit any connection to North College Street. The planning commission should deny the variance request because applicant's response does not address the "practical difficulty" standard or any "code objectives" that may be applicable to the variance request.

1. Practical Difficulty

The "practical difficulty" standard the development code relies upon has been traditionally interpreted to require proof that a strict application would deny the property owner of the benefits of ownership. *See Wentland v. City of Portland*, 22 Or LUBA 15, 25 (1991). It is entirely appropriate for local governments to follow LUBA precedent in interpreting variance code language. *Reagan v. City of Oregon City*, 39 Or LUBA 672, 681 (2001). The planning commission should not construe, and it is not obligated to construe, the "practical difficulty" standard to allow approval of variances so that applicants for land use approval can "maximize" all allowable uses in a zone or, simply, to accommodate a landowner's particular development desires at the expense of life and safety or the orderly development of adjoining properties in a manner that is consistent with policies set for in the comprehensive plan.

2. Code Objectives

The "code objective" element of this criterion requires the planning commission to evaluate whether the practical difficulty an applicant identifies arising from strict interpretation

[11] Newberg Development Code, Section 15.215.040.

or enforcement of the cul-de-sac design standards would be inconsistent with one or more applicable code objectives. The variance application does not discuss any code objectives that are relevant to the variance application or offer any evidence that would allow the planning commission to conclude that failure to grant the requested variance would result in "practical difficulty or unnecessary hardship inconsistent with the objectives of [the] code." The planning commission should deny the variance request because the record does not contain substantial evidence sufficient to support findings required to conclude the applicant has demonstrated compliance with this approval criterion.

B. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties classified in the same zoning district.

Once again, applicant's response, which staff has adopted and incorporated into its proposed findings in support of the variance, posits that the property cannot be developed without constructing a 1,830 foot long cul-de-sac because prior development on adjoining parcels did not extend streets to the parcel and that ODOT access spacing requirements prohibit any connection to North College Street. The applicant's response to this criteria ends with an irrelevant statement that "[s]ubdivisions reviewed using current development standards require street and pedestrian connections to adjoining parcels so as not to create situations similar to this property.

Applicant's response to this criterion is inadequate because it entirely fails to conduct any fact-finding regarding other tax lots in the R-1 zoning district. This criterion requires the applicant to identify one or more exceptional or extraordinary circumstances applicable to the subject property ***which do not apply generally to other property*** in the R-1 zone. The analysis necessarily requires some comparison between the subject property and other property in the R-1 zone. *See generally JCK Enterprises, LLC v. City of Cottage Grove*, 63 Or LUBA 582 (2011). The planning commission should deny the variance request because the record does not contain substantial evidence sufficient to support findings required to conclude the applicant has demonstrated compliance with this approval criterion.

C. That strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zoning district.

The applicant's response to this criterion is based on a simple statement that the variance will allow the owners to develop the property as allowed by the comprehensive plan and development code and that denial of the requested variance would deprive the owners of the right to develop and use the property in the same manner enjoyed by owners of other similarly zoned property.

The question that the planning commission must resolve under this criterion is what the zoning code presently allows other owners in the R-1 zone to construct on their property, not

what has actually been constructed. The fact that other properties in the city, such as the properties along Mission Drive, have been with cul-de-sacs over 1000 feet long and which deny access to adjacent properties is irrelevant. Other properties may have been developed in compliance with older versions of the code, through the use of a variance, or, possibly, in violation of applicable code standards. Again, the analysis necessarily requires some comparison between the subject property and other property in the R-1 zone. The applicant's response is fatally flawed because it does not identify any "privilege" that other owners in the R-1 zone enjoy that the applicant does not. The planning commission should deny the variance request because the record does not contain substantial evidence sufficient to support findings required to conclude the applicant has demonstrated compliance with this criterion.

D. That the granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zoning district.

The applicant's response to this criterion merely states that the variance will "allow the property to developed in a similar fashion to other subdivisions throughout the city." The record is devoid of any facts that establish the conditions and circumstances applicant complains of are not generally present or similarly affect other properties in the R-1 zone. The planning commission should deny the variance request because the record does not contain substantial evidence sufficient to support findings required to conclude the applicant has demonstrated the circumstance(s) that exist on the subject property is (are) not generally present on other properties in the R-1 zone.

E. That granting the variance will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity.

The applicant's response to this criterion states that the variance will result in several "benefits," including the improvement of vacant land, providing additional pedestrian access, and construction of a looped water system and storm water pipes. The potential "benefits" the applicant cites are irrelevant to this criterion and fail to meet the requirement that the applicant must produce facts that evidence the proposed variance ***will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity.***

The applicant has submitted a traffic report that concludes the proposed development will not adversely impact the existing Level of Service at the intersection of Mission Drive and North College. However, as discussed above, as the overall length of a single roadway and the number of units it exclusively serves increases, the potential for adverse impacts to life and safety resulting from temporary blockage also increases. Neither the traffic report nor the applicant's statement offer any evidence that addresses the potential threats to the life, safety and welfare of occupants of residential dwellings, or to adjoining properties, that could result from blockages of the proposed 1,830 foot long cul-de-sac.

Finally, the applicant's response fails to offer any discussion or facts that would enable the planning commission to find that the proposed variance will not be detrimental or materially injurious to properties or improvements in the vicinity. To the contrary, the proposed variance will permanently preclude any development of a continuous interconnected street pattern that would allow for future development of substantial and significant adjoining land resources to the south in a rational, pedestrian friendly and economically efficient manner. *See Williams v. City of Philomath,* LUBA No. 95-039, 30 Or LUBA 5, 11–12 (1995).

Conclusion

The planning commission should decline to consider the Shellie Park Subdivision application and the associated variance request because the applicant has not submitted the conceptual future street plan required by Section 15.235.070 or a scale drawing of affected adjacent properties required by Section 15.215.030 C, both of which the planning commission is required to review and consider before it can issue findings concerning impacts on adjoining properties that would result if the subdivision and/or variance applications were approved.

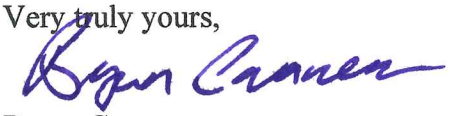
If the planning commission elects to proceed with the hearing it must deny the subdivision application because the applicant's statement, and staff's proposed findings which are based on the applicant's statement, are devoid of any facts or discussion that would allow the planning commission to make findings that the proposed development would not impede or adversely affect the safe and healthful development of the 8.6 acres of land the proposed development would impact or access thereto.

The planning commission must also deny the applicant's variance request because the record does not contain substantial evidence sufficient to support findings required to conclude the applicant has demonstrated compliance with any of the variance approval criteria set forth in Section 15.215.040.

* * *

On behalf of R. P. Grahn, Inc., I would like to thank the members of the planning commission for their time and consideration of the objections set forth above. We look forward to participating during the hearing that is scheduled for this matter on Thursday, May 8, 2014 and responding to any questions members of the planning commission may have.

Very truly yours,



Bryan Cavaness
Of Attorneys for R. P. Grahn, Inc.

ATTACHMENT 4

Veritas School
SOLI DEO GLORIA

RECEIVED
MAY 07 2014
Initial: _____

May 6, 2014

City of Newberg
Planning and Building Department
P.O. Box 970
414 E. First Street
Newberg, OR 97132

Dear Planning Commission,

RE: Proposed SHELLIE PARK development

As you consider the application for a development named Shellie Part, please bear in mind that Veritas School is located at 401 Mission Drive and that about 230 students are being delivered in the morning and picked up in the afternoon by individual vehicle each day of the school year. These vehicles, according to the plan directed by the city, exit the First Presbyterian Church parking lot onto Mission Drive and make their way to College Street. Although this plan is working well presently, more traffic may prove to be a strain.

Sincerely,

Marsha Ackerlund

Marsha Ackerlund
Business Manager

401 Mission Drive • Newberg, Oregon 97132
Phone: (503) 538-1962 • Fax: (503) 538-9229 • Email: info@veritasschool.net • Website: veritasschool.net

LAW OFFICE OF BRYAN CAVANESS
ATTORNEY AT LAW

6344 SW Alfred Street
Portland, Oregon 97219
(503) 332-6699

BRYAN W. CAVANESS
Licensed in Oregon
E-mail: bryancavaness@comcast.net

May 8, 2014

Hand Delivered

Newberg Planning Commission
C/O Newberg Planning and Building Department
414 East First Street
Newberg, Oregon 97132

Re: ***Shellie Park Subdivision & Variance Application***
Planning File No. SUB3-14-005/VAR-14-002

Good Day:

I represent R. P. Grahn, Inc., mailing address 7131 NE Highway 240, Yamhill, Oregon 97148. R. P. Grahn, Inc. owns three tax lots that are impacted by the proposed Shellie Park Subdivision: T3S R2W 18DB 02700 and 02800, which abut the south side of the proposed extension of Rentfro Way; and T3S R2W 18DB 04200, which abuts the southern border of the proposed subdivision. The applicant, Brown/Nielson, proposes to construct a 1,830-foot long cul-de-sac that would serve 50 single-family dwellings plus additional institutional and educational uses associated with the First Presbyterian Church property.[1] Section 15.505.120B of the Newberg Development Code prohibits cul-de-sacs more than 400 feet long or that serve more than 18 single-family dwellings. The variance request seeks to exceed the maximum allowed length of a cul-de-sac by a factor of approximately 460 percent and the maximum number of lots a cul-de-sac is permitted to serve by a factor of approximately 277 percent. The requested variance would prohibit all future access to large parcels of underdeveloped property to the south of the proposed Shellie Park subdivision and would create potential threats to the life and safety of structures that will access the cul-de-sac and other properties in the vicinity of the proposed development.

Preliminarily, the planning commission should decline to consider the Shellie Park Subdivision application and the associated variance request because the applicant has not submitted the conceptual future street plan required by Section 15.235.070 or a scale drawing of affected adjacent properties required by Section 15.215.030 C, both of which the planning commission must review and consider before it can issue findings concerning impacts on adjoining properties that will result if the subdivision and/or variance applications are approved.

If the planning commission elects to proceed with the hearing it should deny the subdivision application and the variance request to exceed the cul-de-sac design standards because:

[1] The tally does not include the four homes the subdivision application suggests R. P. Grahn, Inc. could construct on tax lots 02700 and 02800 or the four flag lots that presently access from Mission Drive.

1) The proposed development does not comply with Goal 2, Policy a. and Goal 9, Policy b. of the Transportation Element of the Newberg Comprehensive Plan because the proposed variance will permanently preclude any development of a continuous interconnected street pattern that would allow for future development of adjoining land resources to the south in a rational, pedestrian friendly and economically efficient manner;

2) The applicant has failed to offer any evidence sufficient to demonstrate compliance with Section 15.235.060A(1) of the Newberg Development Code, which requires the Planning Commission to find that the proposed subdivision will not impede or adversely affect the safe and healthful development of adjoining land or access thereto;

3) The subdivision application does not include a conceptual future street plan required by Section 15.235.070B of the Newberg Development Code that demonstrates how access can be provided to 8.6 acres of underdeveloped land to the south of the proposed development;

4) The variance request does not include a scale drawing of affected adjacent properties required by Section 15.215.030 C, which the planning commission is required to review and consider before it can issue findings concerning impacts on adjoining properties that would result if the variance application was approved; and

5) The applicant has failed to offer substantial evidence sufficient to demonstrate that the requested variance complies with all five of the variance criteria set forth at Section 15.215.040 of the Newberg Development Code.

The following discussion identifies and summarizes specific goals and polices set forth in the Newberg Comprehensive Plan, and regulations set forth in the Newberg Development Code, which implements the Plan's goals and policies, the applicant has failed to demonstrate compliance with and which require the planning commission to deny the proposed subdivision and requested variance.

City of Newberg Comprehensive Plan

The purpose and intent of the City of Newberg's Comprehensive Plan is to "establish directions for future planning decisions and activities."[2] Goal 2 of the Plan's Transportation Element states that the city shall:

> "Establish consistent policies which require concurrent consideration of transportation/land use system impacts."

[2] City of Newberg Comprehensive Plan, Section II, Goals and Policies.

Policy a. of Goal 2 states:

> "Transportation improvements shall be used to guide urban development and shall be designed to serve anticipated future needs."

Goal 9 of the Plan's Transportation Element states the city shall:

> "Create effective circulation and access for the local transportation system."

Goal 9 contains several policy objectives that are intended to guide the City in achieving the stated goal, including Policy b., which states the City will "enhance existing and add alternative routes for local travel." Policy b. adopts two sub-policies that are specifically directed to the creation and construction of cul-de-sacs within residential developments:

1) The City development code shall encourage the development of a continuous interconnected street pattern that connects adjacent developments and minimizes the use of cul-de-sacs.

2) The City shall implement standards for cul-de-sac design.

City of Newberg Development Code

The purpose of Newberg Development Code is to "coordinate city regulations governing the development and use of land and to implement the Newberg Comprehensive Plan."[3] The City adopted the regulations in the Development Code "to protect and promote the public health, safety, and general welfare, and to provide the economic and social advantages which result from an orderly, planned use of land resources."[4] The development regulations are intended to achieve the following objectives:

1. To implement the comprehensive plan for the city.

* * *

8. To stabilize expectations regarding future development, thereby providing a basis for wise decisions with respect to such development.[5]

---

[3] Newberg Development Code, Section 15.05.010A
[4] *Id.* at Section 15.05.101B.
[5] *Id.*

Applicable Development Standards

The subdivision application and variance request do not demonstrate compliance with the following standards and regulations set forth in the Newberg Development Code:

15.235.060 Subdivision requirements – Type II and Type III.

A. The director (Type II) or planning commission (Type III) shall approve a subdivision of four parcels or more under a Type II or Type III procedure if the resulting parcels comply with the following approval criteria:

1. Approval does not impede the future best use of the remainder of the property under the same ownership or adversely affect the safe and healthful development of such remainder or adjoining land or access thereto.

The applicant's statement, and staff's proposed findings, regarding the absence of adverse impacts to adjoining land or access there to is limited to parcels T3S R2W 18DB 02700 and 02800, which abut the south side of the proposed extension of Rentfro Way. The adjoining land to the south of the proposed development includes ten large, underdeveloped parcels with direct access to Illinois Street contain a combined area of approximately 3.7 acres (T3S R2W 18DB Tax Lots 04000, 04100, 04200, 04300, 04400, 04500, 04600, 04700, 04701 and 04800) which is equates to 86 percent of the proposed development. The proposed development also has the potential to adversely affect future development of ten additional parcels that are either underdeveloped or that could be subject to redevelopment in the future that contain a combined area of approximately 4.9 acres (T3S R2W 18DB Tax Lots 03100, 03200, 03201, 03300, 03400, 03500, 03600, 03700, 03800 and 03900). The proposed development will certainly prohibit all future access to the adjoining properties, which will impede and adversely affect their best uses and future development. In total, the proposed development will restrict access to and impede the best use and future development of an area equal to approximately 8.6 acres, which is twice the size of the proposed development. The planning commission should deny the subdivision application because the applicant's statement, and staff's proposed findings, are entirely devoid of any facts or discussion that would allow the planning commission to make required findings that the proposed development will not impede or adversely affect the safe and healthful development of, or access to, the 8.6 acres of land that lie south of the proposed development.

15.235.070 Future street plan required

A. A future street plan shall not be required for any portion of an area for which a proposed street layout has been established by either the Newberg comprehensive plan, its implementing ordinances, or a future street plan previously approved by a hearing body.

B. A future street plan is a conceptual plan in that its adoption does not establish a precise alignment. The plan shall demonstrate how access can be provided to adjoining parcels. The director may require that a traffic study be submitted where access to the land division includes streets that are classified as a collector or greater functional classification status.

C. Except as provided in subsection (A) of this section, a future street plan **shall** be filed **and reviewed** as part of an application for a partition or subdivision. (Emphasis added.)

Section 15.235.070 states that an application for subdivision **shall** include, and that the planning commission **shall** review, a conceptual street plan that demonstrates how access can be provided to adjoining parcels. The development code exempts areas where the comprehensive plan, an implementing ordinance or a prior action by a hearing body has previously established or identified a proposed street layout.

The Shellie Park subdivision application does not include a conceptual street plan that demonstrates how access can be provided to the 8.6 acres of developable and/or re-developable lands adjacent to and/or impacted by the proposed development nor does the application state a basis for exemption from this requirement. The planning commission should decline to consider the subdivision application because the application is functionally incomplete. If the planning commission elects to proceed with the hearing, then, based on the absence of the required conceptual street plan, the planning commission must deny the subdivision application because it cannot issue required findings concerning impacts on adjoining properties that would result if the subdivision and/or variance applications were approved.

15.505.120 Cul-de-sacs

B. There shall be no cul-de-sacs more than 400 feet long (measured from the centerline of the intersection to the radius of the bulb) or serving more than 18 single-family dwellings.

Section 15.505.120B of the Newberg Development Code serves several important policy functions. First, the cul-de-sac design standards implement the policies stated in Goal 2 and Goal 9 of the Comprehensive Plan's Transportation Element by promoting safe access to, and efficient development of, lands adjacent to proposed developments. The cul-de-sac design limitations encourage the development of a continuous, interconnected street pattern that connects adjacent developments and allows adjoining land resources to be developed in a rational and economically efficient manner that conserves and best utilizes land and infrastructure resources within the Urban Growth Boundary.

Secondly, the design standards protect residents' health, safety and general welfare by restricting the maximum length of cul-de-sacs to no more than 400 feet and limiting the maximum number of single-family residential homes a cul-de-sac may serve to 18 dwellings. As the overall length of a single roadway and the number of units it exclusively serves increases, the

potential for adverse impacts to life and safety resulting from temporary blockage also increases. The cul-de-sac design limitations promote public health, safety and general welfare by limiting potential blockage of emergency access that pose critical threats to the life, safety and welfare of occupants of residential dwellings that access onto overly long cul-de-sacs as well as to adjoining properties that may require emergency services.

15.215 Variance Procedures

The planning commission may grant variances "in order to prevent or to lessen practical difficulties and unnecessary physical hardships inconsistent with the of objectives of [the] code as would result from a strict or literal interpretation of [the] code."[6] A decision to grant a variance is a discretionary decision. The planning commission may only allow specific standards contained in the code to be modified if the applicant satisfactorily documents compliance with the approval criteria.[7] A variance application must state the precise nature of the variance being requested and identify the practical difficulty or unnecessary hardship that is inconsistent with all of the objectives of the city's comprehensive plan and development code that would result from a strict or literal interpretation and enforcement of an applicable code standard.[8] The variance request must include an "accurate scale drawing of the site and any adjacent property affected that shows all existing and proposed locations of streets, property lines, uses, structures, driveways, pedestrian walks, off-street parking and off-street loading facilities and landscaped area."[9]

The Newberg Development Code does provide a definition for the term "adjacent." The commonly understood meaning of "adjacent" is "not distant : nearby."[10] This definition is consistent with language contained in Section 15.215.040 E, which requires applicants seeking a variance to demonstrate that if the variance is granted it will not be "detrimental * * * or materially injurious to properties or improvements in the **vicinity**." (Emphasis added.) A reasonable application of the term "adjacent property" in this instance would necessarily include an analysis of impacts that would result on the approximately 8.6 acres of land that lies between Illinois Street and the proposed development's southern boundary.

Variance Request

The development application requests a variance to construct a 1,830-foot long cul-de-sac that would serve 50 single-family dwellings plus additional institutional and educational uses associated with the First Presbyterian Church property. If approved, the resulting cul-de-sac would exceed the maximum allowable length by a factor of approximately 460 percent and exceed the maximum number of lots a cul-de-sac is permitted to serve by a factor of approximately 277 percent.

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[6] Newberg City Code Section 15.215.010.
[7] *Id.* at 15.215.020.
[8] *Id.* at 15.215.030 A.
[9] *Id.* at 15.215.030 C.
[10] "adjacent." *Merriam-Webster.com*. 2014. http://www.merriam-webster.com (5 May 2014).

The variance request does not include a scale drawing of affected adjacent properties that shows all existing and proposed locations of streets, property lines, uses, structures, driveways, pedestrian walks, off-street parking and off-street loading facilities and landscaped area. The applicant's failure to provide the required scale drawing of affected adjacent properties renders the variance request functionally incomplete. The planning commission must deny the variance request, and the subdivision application generally, because the planning commission cannot issue required findings concerning impacts on adjoining properties that would result if the variance request, and the underlying subdivision application, were approved.

15.215.040 Variance Criteria

A property owner that seeks a variance to a specific development code standard must demonstrate compliance with **all** of the following criteria:[11]

A. That strict or literal interpretation and enforcement of the specified regulation would result in practical difficulty or unnecessary physical hardship inconsistent with the objectives of this code.

Applicant's response, which staff has adopted and incorporated into its proposed findings in support of the variance, posits that the property cannot be developed without constructing a 1,830 foot long cul-de-sac because prior development on adjoining parcels did not extend streets to the parcel and that ODOT access spacing requirements prohibit any connection to North College Street. The planning commission should deny the variance request because applicant's response does not address the "practical difficulty" standard or any "code objectives" that may be applicable to the variance request.

1. Practical Difficulty

The "practical difficulty" standard the development code relies upon has been traditionally interpreted to require proof that a strict application would deny the property owner of the benefits of ownership. *See Wentland v. City of Portland*, 22 Or LUBA 15, 25 (1991). It is entirely appropriate for local governments to follow LUBA precedent in interpreting variance code language. *Reagan v. City of Oregon City*, 39 Or LUBA 672, 681 (2001). The planning commission should not construe, and it is not obligated to construe, the "practical difficulty" standard to allow approval of variances so that applicants for land use approval can "maximize" all allowable uses in a zone or, simply, to accommodate a landowner's particular development desires at the expense of life and safety or the orderly development of adjoining properties in a manner that is consistent with policies set for in the comprehensive plan.

[11] Newberg Development Code, Section 15.215.040.

2. Code Objectives

The "code objective" element of this criterion requires the planning commission to evaluate whether the practical difficulty an applicant identifies arising from strict interpretation or enforcement of the cul-de-sac design standards would be inconsistent with one or more applicable code objectives. The variance application does not discuss any code objectives that are relevant to the variance application or offer any evidence that would allow the planning commission to conclude that failure to grant the requested variance would result in "practical difficulty or unnecessary hardship inconsistent with the objectives of [the] code." The planning commission should deny the variance request because the record does not contain substantial evidence sufficient to support findings required to conclude the applicant has demonstrated compliance with this approval criterion.

B. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property which do not apply generally to other properties classified in the same zoning district.

Once again, applicant's response, which staff has adopted and incorporated into its proposed findings in support of the variance, posits that the property cannot be developed without constructing a 1,830 foot long cul-de-sac because prior development on adjoining parcels did not extend streets to the parcel and that ODOT access spacing requirements prohibit any connection to North College Street. The applicant's response to this criteria ends with an irrelevant statement that "[s]ubdivisions reviewed using current development standards require street and pedestrian connections to adjoining parcels so as not to create situations similar to this property.

Applicant's response to this criterion is inadequate because it entirely fails to conduct any fact-finding regarding other tax lots in the R-1 zoning district. This criterion requires the applicant to identify one or more exceptional or extraordinary circumstances applicable to the subject property ***which do not apply generally to other property*** in the R-1 zone. The analysis necessarily requires some comparison between the subject property and other property in the R-1 zone. *See generally JCK Enterprises, LLC v. City of Cottage Grove*, 63 Or LUBA 582 (2011). The planning commission should deny the variance request because the record does not contain substantial evidence sufficient to support findings required to conclude the applicant has demonstrated compliance with this approval criterion.

C. That strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges enjoyed by the owners of other properties classified in the same zoning district.

The applicant's response to this criterion is based on a simple statement that the variance will allow the owners to develop the property as allowed by the comprehensive plan and development code and that denial of the requested variance would deprive the owners of the

right to develop and use the property in the same manner enjoyed by owners of other similarly zoned property.

The question that the planning commission must resolve under this criterion is what the zoning code presently allows other owners in the R-1 zone to construct on their property, not what has actually been constructed. The fact that other properties in the city, such as the properties along Mission Drive, have been with cul-de-sacs over 1000 feet long and which deny access to adjacent properties is irrelevant. Other properties may have been developed in compliance with older versions of the code, through the use of a variance, or, possibly, in violation of applicable code standards. Again, the analysis necessarily requires some comparison between the subject property and other property in the R-1 zone. The applicant's response is fatally flawed because it does not identify any "privilege" that other owners in the R-1 zone enjoy that the applicant does not. The planning commission should deny the variance request because the record does not contain substantial evidence sufficient to support findings required to conclude the applicant has demonstrated compliance with this criterion.

D. That the granting of the variance will not constitute a grant of special privilege inconsistent with the limitations on other properties classified in the same zoning district.

The applicant's response to this criterion merely states that the variance will "allow the property to developed in a similar fashion to other subdivisions throughout the city." The record is devoid of any facts that establish the conditions and circumstances applicant complains of are not generally present or similarly affect other properties in the R-1 zone. The planning commission should deny the variance request because the record does not contain substantial evidence sufficient to support findings required to conclude the applicant has demonstrated the circumstance(s) that exist on the subject property is (are) not generally present on other properties in the R-1 zone.

E. That granting the variance will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity.

The applicant's response to this criterion states that the variance will result in several "benefits," including the improvement of vacant land, providing additional pedestrian access, and construction of a looped water system and storm water pipes. The potential "benefits" the applicant cites are irrelevant to this criterion and fail to meet the requirement that the applicant must produce facts that evidence the proposed variance ***will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the vicinity.***

The applicant has submitted a traffic report that concludes the proposed development will not adversely impact the existing Level of Service at the intersection of Mission Drive and North College. However, as discussed above, as the overall length of a single roadway and the number of units it exclusively serves increases, the potential for adverse impacts to life and safety resulting from temporary blockage also increases. Neither the traffic report nor the applicant's

statement offer any evidence that addresses the potential threats to the life, safety and welfare of occupants of residential dwellings, or to adjoining properties, that could result from blockages of the proposed 1,830 foot long cul-de-sac.

Finally, the applicant's response fails to offer any discussion or facts that would enable the planning commission to find that the proposed variance will not be detrimental or materially injurious to properties or improvements in the vicinity. To the contrary, the proposed variance will permanently preclude any development of a continuous interconnected street pattern that would allow for future development of substantial and significant adjoining land resources to the south in a rational, pedestrian friendly and economically efficient manner. *See Williams v. City of Philomath,* LUBA No. 95-039, 30 Or LUBA 5, 11–12 (1995).

Conclusion

The planning commission should decline to consider the Shellie Park Subdivision application and the associated variance request because the applicant has not submitted the conceptual future street plan required by Section 15.235.070 or a scale drawing of affected adjacent properties required by Section 15.215.030 C, both of which the planning commission is required to review and consider before it can issue findings concerning impacts on adjoining properties that would result if the subdivision and/or variance applications were approved.

If the planning commission elects to proceed with the hearing it must deny the subdivision application because the applicant's statement, and staff's proposed findings which are based on the applicant's statement, are devoid of any facts or discussion that would allow the planning commission to make findings that the proposed development would not impede or adversely affect the safe and healthful development of the 8.6 acres of land the proposed development would impact or access thereto.

The planning commission must also deny the applicant's variance request because the record does not contain substantial evidence sufficient to support findings required to conclude the applicant has demonstrated compliance with any of the variance approval criteria set forth in Section 15.215.040.

* * *

On behalf of R. P. Grahn, Inc., I would like to thank the members of the planning commission for their time and consideration of the objections set forth above. We look forward to participating during the hearing that is scheduled for this matter on Thursday, May 8, 2014 and responding to any questions members of the planning commission may have.

Very truly yours,

Bryan Cavaness
Of Attorneys for R. P. Grahn, Inc

May 6, 2014

FROM: Daniel A. Schutter, 115 Clifford Ct., Newberg, Oregon

TO: Newberg City Planning and Building Department

REGARDING: File No. SUB3-14-005 / VAR-14-002

My comments are in opposition to this proposed subdivision, in particular the requirement to add pedestrian access between Clifford Court and Mission Drive. I am opposed to this requirement for the following reasons.

1) The proposed pedestrian access will be a serious safety and security concern. A narrow sidewalk more than 200 feet long with privacy fences on both sides and insufficient pathway lighting is a tragedy waiting to happen. Pedestrians will have nowhere to go except to try and climb a fence when bicycles and skateboards whiz by. And at night nothing good happens in a dark alleyway like this.
2) There is no need for this pedestrian access. Per the attached Exhibit, there is no need for additional access in the East/West direction at Clifford Ct. because there is nowhere to go west of Main Street or east of College at this location that either Illinois Street or Jaquith Park do not provide. The only need may be for the people in the new subdivision to get to Main Street but that need does not exist at this current time. Therefore the City is imposing on existing citizens to provide for the needs of some people that do not as yet exist.
3) I believe the proposed pedestrian access will be detrimental to my neighborhood. I purchased my home on Clifford Court because it was in a small cul-de-sac of only 12 homes and I feel this pedestrian thoroughfare at the head of the cul-de-sac will impact the character, security, and tranquility of my quiet neighborhood while at the same time offering no benefit.

And in conclusion I think the City has failed in keep the trust of its citizens who live on Clifford Court by allowing the developer of the Clifford subdivision to construct and sell houses without providing a decent understanding that this would happen. The City needs to stop allowing developers to hide this kind of condition so the City can spring it on us 5 or 10 years later. It's not too late to make this right. All you need to do is delete the requirement for a pedestrian access from this proposed development.

Sincerely,

Daniel A. Schutter

Exhibit A

Exhibit A D. Schutter May 6, 2014 2/2

Statement to be read into the record at the Shellie Park Public Hearing - May 8, 2014.

City of Newberg
Planning and Building Dept.
P.O. Box 970
Newberg, OR 97132

Subject: File No. SUB3-14-005/VAR-14-002

Dear Mr. Olson:

I am writing to express an opinion regarding the proposed Shellie Park subdivision and the potential impact on traffic near the First Presbyterian Church at 501 Mission Drive. My role with the church is an elder and member of the ruling body as well as liaison to Veritas School which is on the church's property. These remarks are mine personally and may not reflect those of our congregation or of the school but are based on my personal review of the plan.

It did not appear that the traffic plan included in the application took into adequate account traffic associated with church activities nor the fact that the school is dependent on parents' delivery of students in the mornings and pick-up of the same students in the afternoon. The protocol used by the delivery and pick-up vehicles is to enter the church parking lot from the north on College St. and exit by way of Mission Drive placing a number of vehicles on that street twice a day. Vehicles arriving at the church and Mission Drive for other affairs from the south on College St. turn left into the parking lot or the street. The new addition will increase those turning in to Mission Drive from the south where there is currently no left-turn lane.

The report is lacking in substantiating figures for the traffic study. The ODOT comment on the traffic plan notes: *" However, page 3 of the report mentions the intersection was observed to operate at LOS C [Level of Service C] but provides no backup data on how this was calculated.*

A second issue is that of the assumption of only 21 trips or one trip per unit during peak traffic times. The statement below from the study is open to question:

" The development is proposing 21 single family residential lots. Based on the Institute of Transportation Engineers (ITE) Trip Generation Manual, 8th Edition, the project will generate 21 new PM peak hour trips (21 lots that generate 1 trip per unit each during the PM peak hour)."

A valid question is, where is the substantiation in the report that each lot will have only one vehicle making a trip during peak traffic times?

One source in Wisconsin cites the following:

"...Even if the development does not generate the threshold level of trips, a traffic analysis may still be necessary under the following conditions:

- *High traffic volumes on surrounding roads that my affect movement to and from the proposed development.*
- *Lack of existing left turn lanes on the adjacent roadway at the proposed access drive.*
- *Inadequate sight distance at access points.*
- *The proximity of the proposed access points to other existing drives or intersections..."*

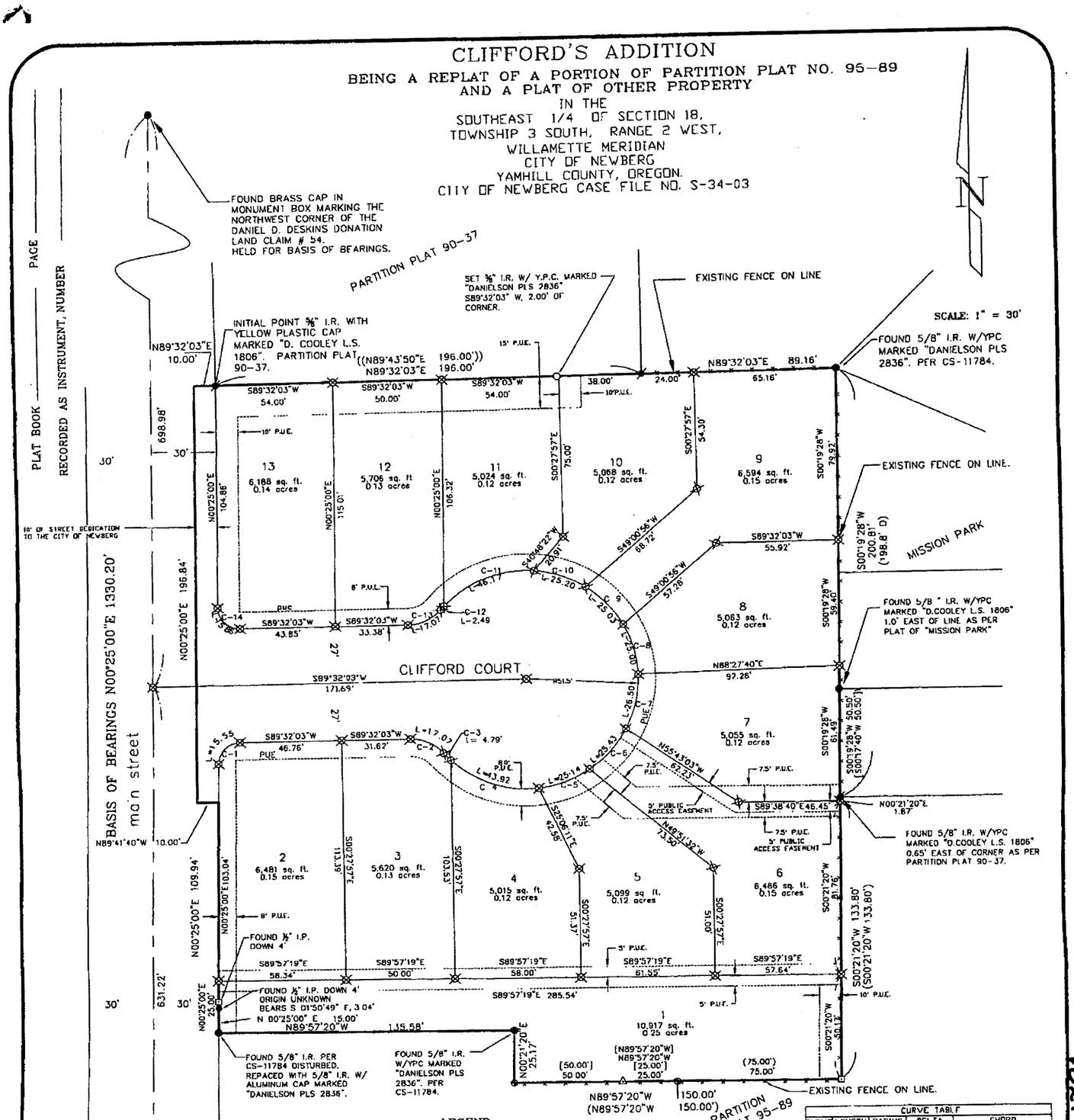
I believe it is incumbent that the planners consider, at a minimum, the above concerns before granting approval.

Very truly yours,

C. S. Zickefoose
1201 Fulton St. #9
Newberg, OR 97132

CLIFFORD'S ADDITION

BEING A REPLAT OF A PORTION OF PARTITION PLAT NO. 95-89
AND A PLAT OF OTHER PROPERTY
IN THE
SOUTHEAST 1/4 OF SECTION 18,
TOWNSHIP 3 SOUTH, RANGE 2 WEST,
WILLAMETTE MERIDIAN
CITY OF NEWBERG
YAMHILL COUNTY, OREGON.
CITY OF NEWBERG CASE FILE NO. S-34-03



LEGEND

- ○ SET 5/8 " X 30" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "DANIELSON PLS 2836"
- ⊗ SET 5/8 " X 30" IRON ROD WITH ALUMINUM CAP STAMPED "DANIELSON PLS 2836"
- FOUND 5/8 " IRON ROD WITH YELLOW PLASTIC CAP STAMPED "D.COOLEY L.S. 1806" AS PER PARTITION PLAT 90-37.
- FOUND 5/8 " IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SUMMERS PLS 1042" AS PER PARTITION PLAT 95-89.
- △ FOUND 5/8 " IRON ROD WITH YELLOW PLASTIC CAP MARKED "DUNCKEL PLS 1942" AS PER R.O.S. CS-11004.
- ⊡ FOUND 1/2 " IRON PIPE AS PER CSP 4022
- ● FOUND MONUMENT AS NOTED.

(XXXXX D)	DENOTES DEED INFORMATION FROM INSTRUMENT NUMBER 199800580 PARCEL IV
(XXXXX)	DENOTES RECORD INFORMATION FROM PARTITION PLAT 1995-89
((XXXXX))	DENOTES RECORD INFORMATION FROM PARTITION PLAT 90-37
[XXXXX]1	DENOTES RECORD INFORMATION FROM PLAT OF "MISSION PARK"
[XXXXX]	DENOTES RECORD INFORMATION FROM CS-11004
[XXXXX]C	DENOTES CALCULATED INFORMATION
I.R.	IRON ROD
I.P.	IRON PIPE
Y.P.C.	YELLOW PLASTIC CAP
X' P.U.E.	PUBLIC UTILITY EASEMENT
R.O.S.	RECORD OF SURVEY
SNF	SEARCHED FOR MONUMENT DID NOT FIND
—x—x—x—	EXISTING FENCE

CURVE TABLE					
CURVE NO.	LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C-1	15.55	10.00	89°07'03"	N44°58'31"E	14.03
C-2	17.07	20.00	48°54'04"	S66°00'55"E	16.55
C-3	4.79	51.50	5°19'29"	S44°13'38"E	4.78
C-4	42.92	51.50	48°52'01"	S71°19'22"E	42.60
C-5	25.14	51.50	27°58'25"	N70°15'25"E	24.90
C-6	25.43	51.50	28°17'29"	N42°07'27"E	25.17
C-7	26.50	51.50	29°28'57"	N13°14'14"E	26.21
C-8	25.00	51.50	27°48'34"	N15°26'37"W	24.75
C-9	25.03	51.50	27°50'29"	S43°16'08"E	24.78
C-10	25.20	51.50	28°01'55"	S71°12'20"E	24.95
C-11	46.17	51.50	51°22'16"	N69°05'34"E	44.64
C-12	2.49	51.50	2°46'27"	N42°01'13"E	2.49
C-13	17.07	20.00	48°55'05"	N65°04'46"E	16.56
C-14	15.86	10.00	90°52'57"	S45°01'29"E	14.25

REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
June 30, 1997
JEFFREY L. DANIELSON
2836

RENEWABLE: 12/31/03

THIS IS AN EXACT COPY OF THE ORIGINAL SUBDIVISION PLAT

Renewal 12-11-03
County Surveyor

DANIELSON LAND SURVEYING, INC.
4050 N. TERRACE DR.
NEWBERG, OR.
97132
(503) 538-5554

SEPTEMBER 20, 2003 | SHEET 1 OF 2

Vol. 12 Pg. 89

CLIFFORD'S ADDITION

BEING A REPLAT OF A PORTION OF PARTITION PLAT NO. 95-89
AND A PLAT OF OTHER PROPERTY
IN THE
SOUTHEAST 1/4 OF SECTION 18,
TOWNSHIP 3 SOUTH, RANGE 2 WEST,
WILLAMETTE MERIDIAN
CITY OF NEWBERG
YAMHILL COUNTY, OREGON.
CITY OF NEWBERG CASE FILE NO. S-34-03

PLAT BOOK _____ PAGE _____

RECORDED AS INSTRUMENT NUMBER _____

APPROVALS

APPROVED THIS 24TH DAY OF NOVEMBER, 2003.
CITY OF NEWBERG COMMUNITY DEVELOPMENT DIRECTOR
BY: M. Ludwig

APPROVED THIS 25th DAY OF November, 2003.
CITY OF NEWBERG RECORDER
BY: J H Bennett

APPROVED THIS 3rd DAY OF DECEMBER, 2003.
YAMHILL COUNTY SURVEYOR
BY: Dan L. [illegible]

APPROVED THIS 10th DAY OF December, 2003.
YAMHILL COUNTY ASSESSOR
BY: David Faust

APPROVED THIS 10th DAY OF December, 2003.
YAMHILL COUNTY COMMISSIONER
BY: Carlie K. Davis

APPROVED THIS 10th DAY OF December, 2003.
YAMHILL COUNTY COMMISSIONER
BY: Kathy George

APPROVED THIS 10th DAY OF December, 2003.
YAMHILL COUNTY COMMISSIONER
BY: Mary P. Stern

DECLARATION

KNOW ALL MEN BY THESE PRESENTS, THAT R.P. GRAHN, INC., AN OREGON CORPORATION, IS THE OWNER OF THE LANDS DESCRIBED IN THE SURVEYOR'S CERTIFICATE WHICH IS REPRESENTED BY THE ACCOMPANYING PLAT AND HAS CAUSED SAID LANDS TO BE SUBDIVIDED INTO THE LOTS AS SHOWN THEREON, AND DOES HEREBY DEDICATE TO THE PUBLIC, THE RIGHT-OF-WAY AS SHOWN, AND HEREBY GRANTS ALL EASEMENTS AS SHOWN OR NOTED HEREON. PRIOR EASEMENTS SHOWN ON PARCEL 1 OF PARTITION PLAT NO. 95-89, AS RECORDED IN THE OFFICIAL YAMHILL COUNTY RECORDS AS INSTRUMENT NUMBER 199517333, INCLUDING THAT PART OF THE 15' STORM SEWER EASEMENT WITHIN YAMHILL COUNTY TAX LOT 3210B-2401, ARE HEREBY EXTINGUISHED.

ROGER P. GRAHN, PRESIDENT
R.P. GRAHN, INC.

ACKNOWLEDGMENT

STATE OF OREGON)
)ss.
COUNTY OF YAMHILL)

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON November 14, 2003, BY ROGER P. GRAHN AS PRESIDENT OF R.P. GRAHN, INC.

SIGNATURE Virginia Willett
title Notary Public
my commission expires: 03-10-06

OFFICIAL SEAL
VIRGINIA WILLETT
NOTARY PUBLIC - OREGON
COMMISSION NO. 354469
MY COMMISSION EXPIRES MARCH 10, 2006

APPROVALS

PURSUANT TO O.R.S. 92-095, TAXES HAVE BEEN PAID OR BOND POSTED TO THE DATE OF 6-30-2004, 2003.
YAMHILL COUNTY TAX COLLECTOR
BY: David Faust

STATE OF OREGON)
)ss.
COUNTY OF YAMHILL)

I DO HEREBY CERTIFY THAT THIS PLAT WAS RECEIVED FOR RECORD ON _____, 2003, AT _____ O'CLOCK _____ M. AND RECORDED IN _____ OF THE RECORDS OF YAMHILL COUNTY.

BY _____ COUNTY CLERK

OFFICIAL YAMHILL COUNTY RECORDS
CHARLES STERN, COUNTY CLERK
200331205
$66.00
00151571200300312050020022
12/11/2003 02:15:40 PM
PR-PPR Cnt=1 Stn=2 ANITA
$45.00 $10.00 $11.00

SURVEYOR'S CERTIFICATE

I, JEFFREY L. DANIELSON, AN OREGON PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT I HAVE CORRECTLY SURVEYED AND MARKED WITH PROPER MONUMENTS THE LANDS REPRESENTED ON THE ACCOMPANYING SUBDIVISION PLAT, A TRACT OF LAND WITHIN THE SE 1/4 OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 2 WEST, OF THE WILLAMETTE MERIDIAN, IN THE CITY OF NEWBERG, YAMHILL COUNTY, OREGON AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INITIAL POINT, A 5/8" IRON ROD MARKING THE SOUTHWEST CORNER OF LOT 2 OF PARTITION PLAT NO. 90-37 AND RECORDED IN FILM VOL. 3, PAGE 40, YAMHILL COUNTY RECORDS; THENCE ALONG THE SOUTH LINE OF SAID LOT 2, N 89°32'03" E, 196.00' TO A 5/8" IRON ROD; THENCE N 89°32'03 E, 89.16 FEET TO A 5/8" IRON ROD; THENCE S 00°19'28" W, 200.81 FEET TO THE NORTHEAST CORNER OF PARCEL 1 OF PARTITION PLAT 95-89; THENCE S 00°21'20" W 133.80 FEET TO A 1/2" IRON PIPE MARKING THE SOUTHEAST CORNER OF SAID PARCEL 1; THENCE N 89°57'20" W, 150.00 FEET TO A 5/8" IRON ROD; THENCE N 00°21'20" E 25.17 FEET TO A 5/8" IRON ROD; THENCE N 89°57'20" W 135.58 FEET TO A 5/8" IRON ROD ON THE EAST MARGIN OF MAIN STREET; THENCE N 00°25'00" E 109.94 FEET; THENCE N 89°41'40" W 10.00 FEET; THENCE N 00°25'00" E 196.84 FEET; THENCE N 89°32'03" E 10.00 FEET TO THE POINT OF BEGINNING.

CONSENT AFFIDAVIT

A CONSENT AFFIDAVIT FROM First Federal S&L Assoc, A TRUST DEED BENEFICIARY, HAS BEEN RECORDED AS DOCUMENT NUMBER 200331204 YAMHILL COUNTY RECORDS.

NOTES

1. FOR BASIS OF BEARINGS AND BOUNDARY RESOLUTION REFER TO YAMHILL COUNTY SURVEY CS-11784
2. THIS SUBDIVISION PLAT IS SUBJECT TO THE CONDITIONS OF APPROVAL PER THE CITY OF NEWBERG CASE FILE NO. S-34-03.
3. YAMHILL COUNTY GEODETIC CONTROL STATION NUMBER 165 BEARS N 46°47'08" E, 1957.40' FROM THE INITIAL POINT OF THIS SUBDIVISION.
4. 25' WIDE ACCESS AND UTILITY EASEMENT HAS BEEN EXTINGUISHED AS RECORDED IN YAMHILL COUNTY DOCUMENT NUMBER 200326689.
5. 14' WIDE SEWER EASEMENT HAS BEEN EXTINGUISHED AS RECORDED IN YAMHILL COUNTY DOCUMENT NUMBER 200328610.

NARRATIVE

THE PURPOSE OF THS SURVEY IS TO REPLAT AND SUBDIVIDE PROPERTIES SURVEYED IN YAMHILL COUNTY SURVEY CS-11784.

MONNUMENTS FOUND AND SET IN CS-11784 WHERE FOUND AND HELD.

THE BASIS OF BEARINGS IS THE LINE BETWEEN A BRASS CAP IN MONUMENT BOX MARKING THE NORTHWEST CORNER OF THE DANIEL D. DESKINS DONATION LAND CLAIM AND A 5/8" IRON ROD IN A MONUMENT BOX AT THE INTERSECTION OF NORTH MAIN STREET AND EAST ILLINOIS STREET PER CSP 4022, PARTITION PLAT NO. 90-37 AND PARTITION PLAT NO. 95-89.

Received 12-11-03
County Surveyor

REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
June 30, 1997
JEFFREY L. DANIELSON
2836
RENEWABLE: 12/31/03

DANIELSON LAND SURVEYING, INC.
4050 N. TERRACE DR.
NEWBERG, OR. 97132
(503) 538-5554

SEPTEMBER 20, 2003 | SHEET 2 OF 2

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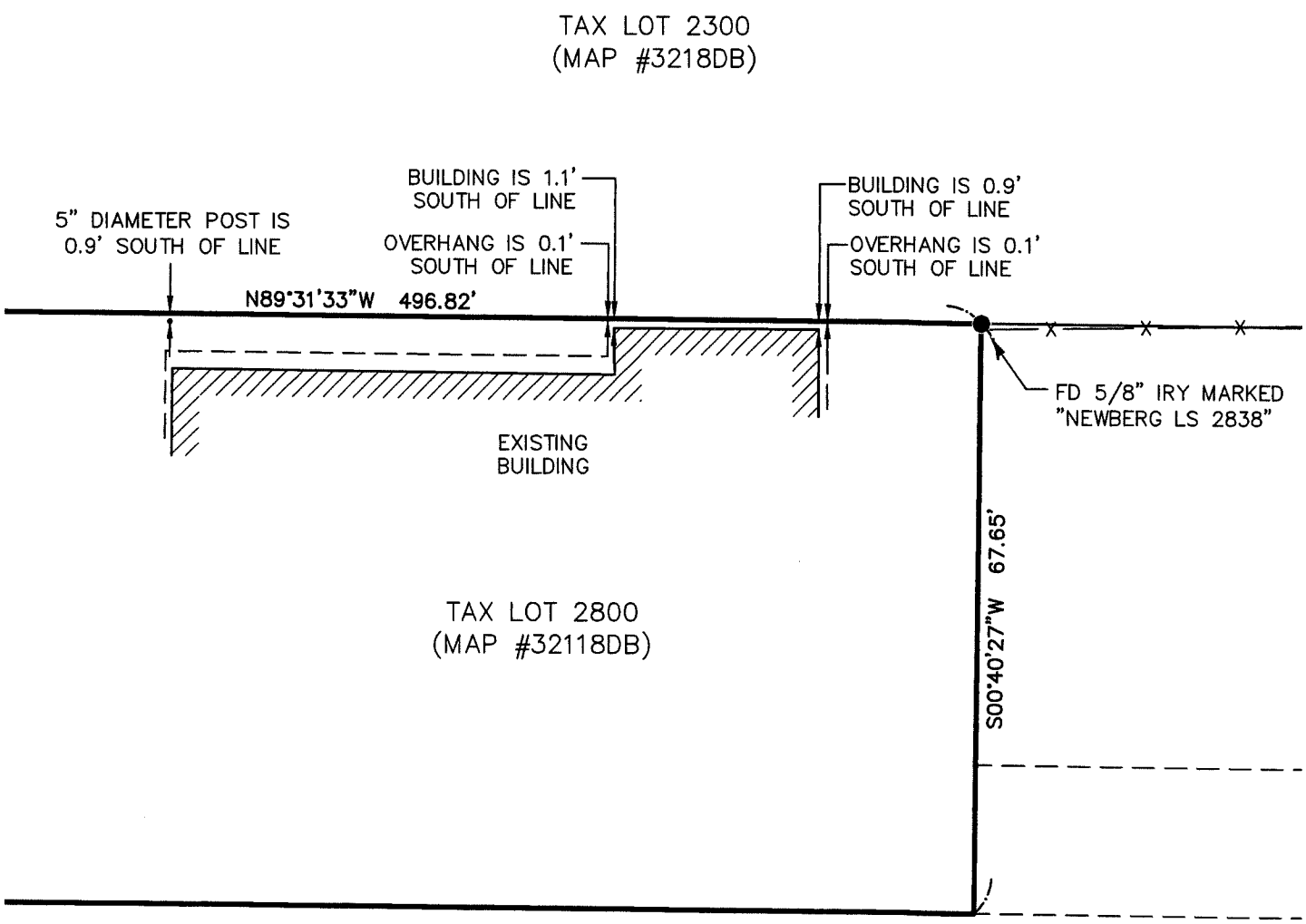
VOL. 12 PG. 89

ATTACHMENT 4

EXHIBIT MAP

LOCATED IN THE SE 1/4 OF SECTION 18
TOWNSHIP 3 SOUTH, RANGE 2 WEST, W.M.
CITY OF NEWBERG, YAMHILL COUNTY, OREGON

0 10' 20'
SCALE: 1"=20'



LEGEND

● FOUND MONUMENT AS NOTED

IRY IRON ROD WITH YELLOW PLASTIC CAP

FD "FOUND"

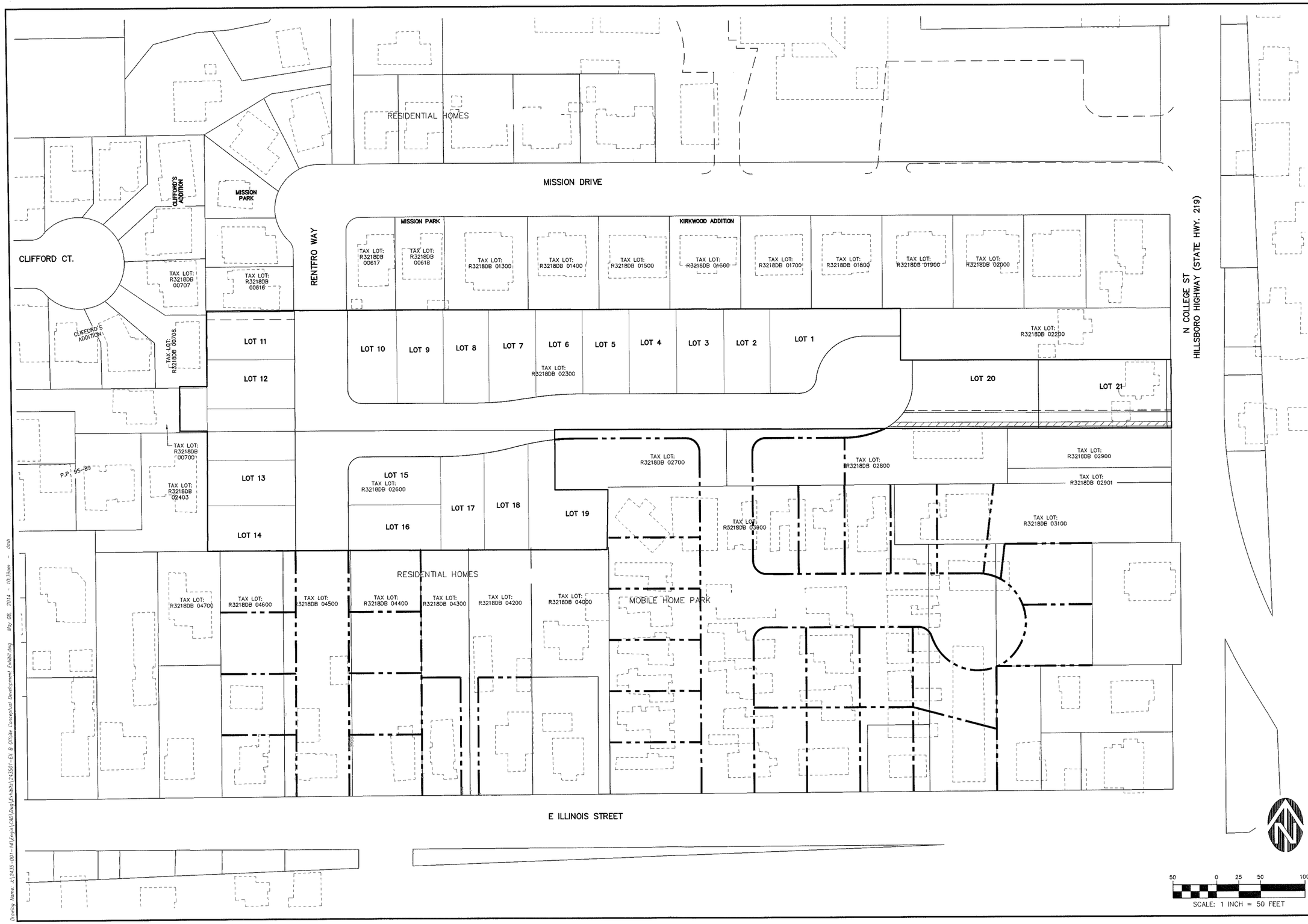
NOTE

HELD BOUNDARY AS PER SURVEY NUMBER 11501, YAMHILL COUNTY SURVEY RECORDS

DATE	5/7/14
DRAWN BY	SLH2
CHECKED BY	TGB
REVISION	0
JOB NO.	2435-001

WESTLAKE CONSULTANTS INC.
ENGINEERING ◆ SURVEYING ◆ PLANNING
PACIFIC CORPORATE CENTER
15115 S.W. SEQUOIA PARKWAY, SUITE 150
TIGARD, OREGON 97224
(503) 684-0652
FAX (503) 624-0157

Drawing Name: J:\2435-001-14\Survey\CAD\DWG\2435-001T.dwg May 07, 2014 - 11:24am - showell



WESTLAKE CONSULTANTS INC.

ENGINEERING ◆ SURVEYING ◆ PLANNING

PACIFIC CORPORATE CENTER
15115 S.W. SEQUOIA PARKWAY, SUITE 150
TIGARD, OREGON 97224

(503) 684-0652
FAX (503) 624-0157

SHELLIE PARK

NEWBERG, OR

CONCEPTUAL REDEVELOPMENT EXHIBIT B

PRELIMINARY

THESE DRAWINGS ARE THE PROPERTY OF WESTLAKE CONSULTANTS INC. (WCI) AND ARE NOT TO BE REPRODUCED IN ANY MANNER EXCEPT WITH THE WRITTEN PERMISSION OF WCI

REVISIONS			
NO.	DATE	DESCRIPTION	DRAFT BY: / CHECK BY:

SHEET

EX B

JOB NO. 2435.001

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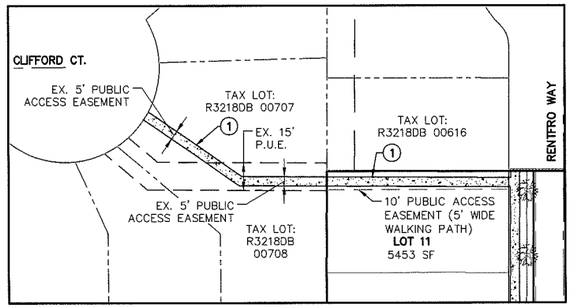
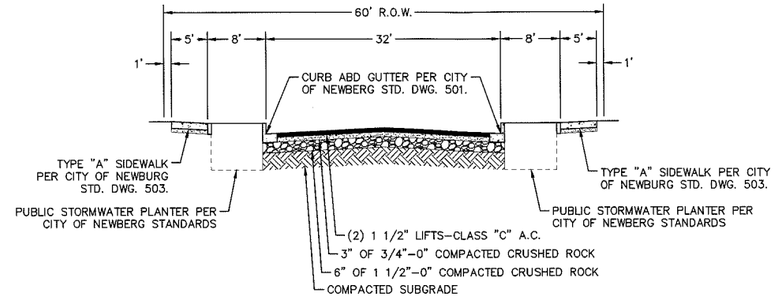
PLANNING SUBMITTAL – MARCH 2014

Drawing Name: J:\2435-001-14\Engin\CAD\Dwg\Exhibits\243501-EX B Offsite Conceptual Development Exhibit.dwg May 08, 2014 - 10:39am - dmh



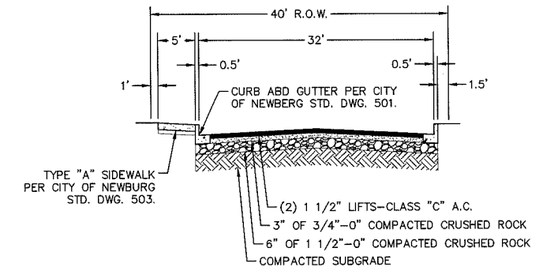
DETAIL 'A' - 5' WALK TO CLIFFORD COURT

SCALE: 1"=40'



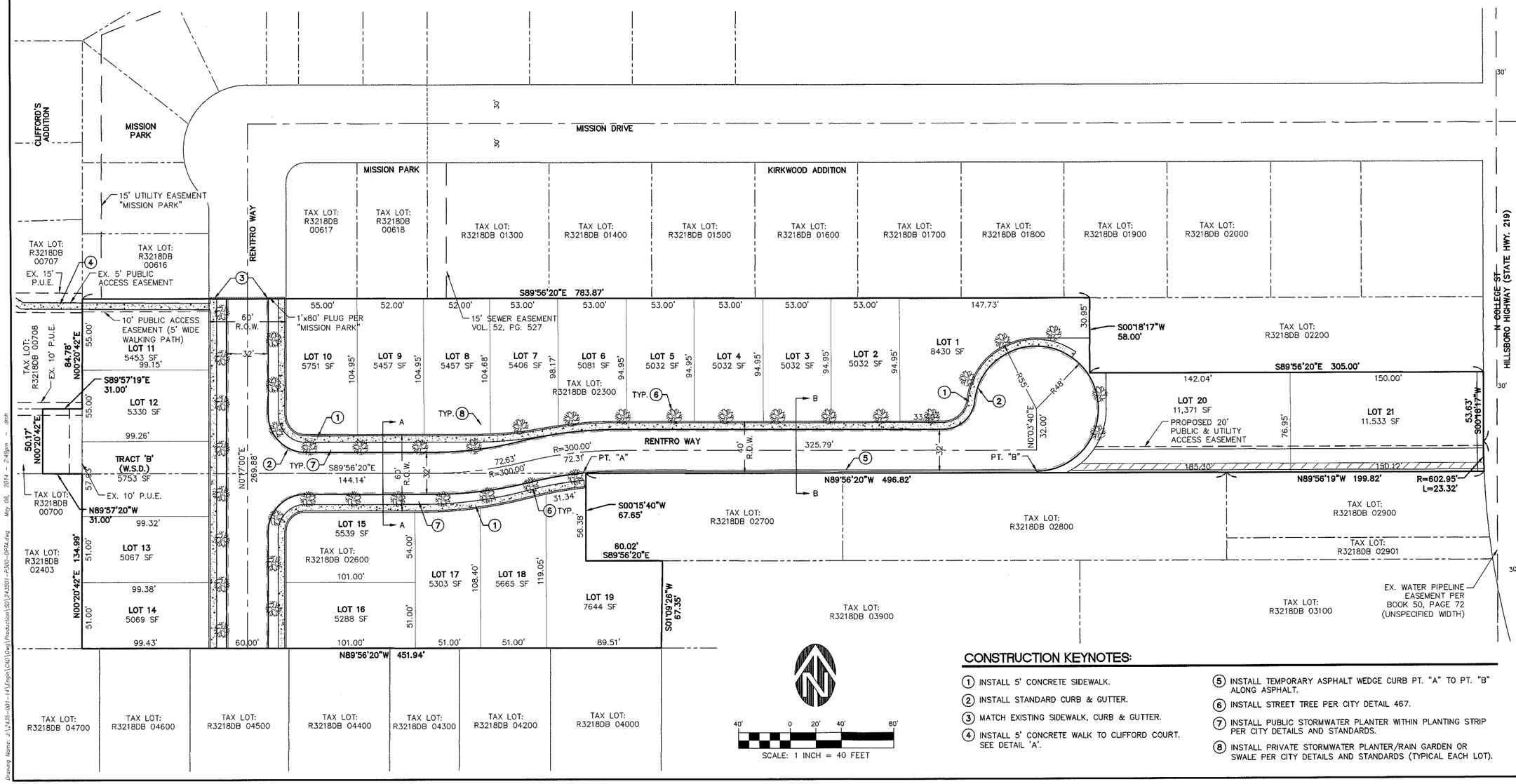
TYPICAL STREET SECTION 'A' - SIDEWALK WITH PLANTER STRIP

SCALE: HORIZONTAL: 1"=10'.
VERTICAL: NOT TO SCALE



TYPICAL STREET SECTION 'B' - SIDEWALK WITHOUT PLANTER STRIP

SCALE: HORIZONTAL: 1"=10'.
VERTICAL: NOT TO SCALE



CONSTRUCTION KEYNOTES:

1. INSTALL 5' CONCRETE SIDEWALK.
2. INSTALL STANDARD CURB & GUTTER.
3. MATCH EXISTING SIDEWALK, CURB & GUTTER.
4. INSTALL 5' CONCRETE WALK TO CLIFFORD COURT. SEE DETAIL 'A'.
5. INSTALL TEMPORARY ASPHALT WEDGE CURB PT. "A" TO PT. "B" ALONG ASPHALT.
6. INSTALL STREET TREE PER CITY DETAIL 467.
7. INSTALL PUBLIC STORMWATER PLANTER WITHIN PLANTING STRIP PER CITY DETAILS AND STANDARDS.
8. INSTALL PRIVATE STORMWATER PLANTER/RAIN GARDEN OR SWALE PER CITY DETAILS AND STANDARDS (TYPICAL EACH LOT).

WESTLAKE CONSULTANTS INC.
ENGINEERING ◆ SURVEYING ◆ PLANNING
PACIFIC CORPORATE CENTER
15115 S.W. SEQUOIA PARKWAY, SUITE 150
TIGARD, OREGON 97224
(503) 684-0652
FAX (503) 624-0157

SHELLIE PARK

NEWBERG, OR

SITE PLAN / PRELIMINARY PLAT

PRELIMINARY

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REVISIONS				
NO.	DATE	DESCRIPTION	DRAFT BY:	CHECK BY:

SHEET
P300 A

JOB NO.
2435.001

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PLANNING SUBMITTAL – MARCH 2014

Drawing Name: J:\2435-001-14\Engin\CAD\Dwg\Production\SD\2435D1-P300-OPTA.dwg May 08, 2014 - 2:45pm - emh

Petition in Opposition to Construction of Pedestrian Access from Proposed Shellie Park Development to Clifford Ct. File No. SUB2-14-005/VAR-14-002

RECEIVED
MAY 14 2014
Initial:

We the undersigned neighbors of Clifford Court are adamantly opposed to the construction of a pedestrian access way through the property at 126 Clifford Court.

The City of Newberg has not demonstrated a need to disrupt the neighborhood with this pedestrian access as there is sufficient east/west access with paved sidewalks a very short distance to the north and south of the proposed development, which those residents can reach by access to College Street. The residents of Clifford Court can already go east/west by going north to Pinehurst Drive (or through Jaquith Park) and/or south to Illinois Ave.

Furthermore, aside from an increase in unwanted foot traffic through what was supposed to be a quiet cul-de-sac (and the potential trash that goes along with it), there are numerous safety issues and the potential for increased crime right in our backyard due to very little visibility from the street, no lighting and a steep hill that will provide a "chute" for bicycle and skateboard traffic to rocket into the cul-de-sac with little or no warning.

Name	Address	Phone #
Sonda Martin	126 Clifford Ct	503-537-4511
Barbara A. Westervelt	116 Clifford Ct.	971-832-8412
James M. Westervelt	116 Clifford Ct.	971-832-8412
Marika Conrad	109 Clifford Ct.	503-925-5395
Staci Jaquith	120 Clifford Ct	503-577-4967
[illegible]	"	"
[illegible]	109 Clifford Ct.	503-925-5395
Mykee Smith	105 Clifford Ct.	503-922-1161
[illegible]	115 Clifford Ct	503 538 6097
Brandon Hamel	130 Clifford Ct	503 538 3703
Teresa Hamel	130 Clifford Ct.	503-538-3703
Julie Brelsin	125 Clifford Ct.	503. 550-3593
Michael B. Brelsin	125 Clifford Ct.	503-550-3592
[illegible]	119 Clifford Ct.	503-869-5232
[illegible]	119 Clifford Ct.	503-720-7729
Kenneth Waldo	129 Clifford Ct	503-538-2342
Janice Waldo	129 Clifford Ct	503-538-2342

Sonda Martin
126 Clifford Ct.
Newberg, OR 97132

Newberg Planning Commission
414 E First St.
Newberg, OR 97132

Re: the proposed Shellie Park development, file No: SUB3-14-005/VAR-14-002

Dear Members of the Planning Commission,

I would like to reiterate that I am not in opposition to the development of the property to the east of us and bordering on our property at 126 Clifford Ct. Newberg is in need of affordable housing and my husband and I have always been aware that the field would eventually be developed. However, due to the nature and scope of the variance that's being applied for and the fact that the city claims it necessitates a walkway that connects Clifford Ct. to the development through our property, I feel compelled to further call your attention to the applicable codes which apply to the safety concerns I raised in front of you at the hearing on May 8, 2014.

As this is your line of business not mine, I am aware that you probably know the code backward and forward. However, having spent some considerable time now researching this issue, I also know that it is a lot of code to memorize. For everyone's ease of understanding, I have listed the applicable codes and my response follows each one proceeded by asterisks. I apologize for the length of this letter but note it is still much shorter than the staff report or the initial application.

Newberg Development Code 15.505.120 Cul-de-sacs.

A. Cul-de-sacs shall only be permitted when one or more of the circumstances listed in this section exist. When cul-de-sacs are justified, public walkway connections shall be provided to connect with another street, greenway, school, or similar destination unless one or more of the circumstances listed in this section exist.

1. Physical or topographic conditions make a street or walkway connection impracticable. These conditions include but are not limited to controlled access streets, railroads, steep slopes, wetlands, or water bodies where a connection could not be reasonably made.

****When the City first approved the Clifford Ct. cul-de-sac and required the public access easement and walkway, it is obvious that the physical and topographic conditions were not considered. While the walkway may look good on paper, it does not take into account the slope, shape, lack of visibility, or safety. It does not address the standards required by

the Americans with Disabilities Act. At the time of the Clifford Ct. design, these issues should have been addressed. Now, there is no room left to address them as the size and contour of the easement as well as the proximity to existing dwellings does not permit the changes necessary to provide for the safety of the future users of this walkway.

Newberg Development Code 15.05.030 Definitions.

For the purpose of this title, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

"**Sidewalk**" means a pathway adjacent to a public or private street with a durable, hard, smooth surface intended for pedestrian use.

"**Walkway, public**" means a pedestrian path within a public right-of-way or a dedicated public easement other than sidewalks adjacent to a street, that is designed to allow travel through a block.

****Without a doubt, this proposed pathway meets the definition of a public walkway, not a sidewalk, and is subject to NDC 15.505.220. In fact, this is clearly referenced as a walkway on page 10 of the Shellie Park Subdivision Application dated 3/10/2014. This is also clearly referenced in the Planning Commission Staff Report in sections B7 and F3, as well as the comments section from the city Engineering Services Department. (It is in a couple other places referenced as a sidewalk, but clearly does not meet that definition in the code as shown above.)

Newberg Development Code 15.505.220 Public walkways.

A. The review body for a design review or land division may require easements for and construction of public walkways where such walkway is needed for the public safety and convenience or where the walkway is necessary to meet the standards of this code or a walkway plan. Public walkways are to connect to cul-de-sacs, to pass through oddly shaped or unusually long blocks, to provide for networks of public paths according to adopted plans, or to provide access to schools, parks or other community destinations or public areas of such design, width, and location as reasonably required to facilitate public use. Where possible, said dedications may also be employed to accommodate public utilities.

****These conditions are not met because this walkway actually causes a risk to public safety due to topography, lack of lighting at night, narrowness of the proposed walkway, a blind corner, lack of visibility from the street, and risk for bicyclists, skateboarders, and other users to lose control on the slope down to Clifford Ct. and end up in the street, potentially in front of cars backing out of the driveways along the cul-de-sac. It also creates an attractive avenue for crime of all sorts due to its isolation and lack of visibility from the street.

It is also not necessary because:

- residents of Clifford Ct have only to go a little ways North or South on Main St. to reach an adequate East/West street or walkway.

3/5

- There is no need for the residents of Clifford Ct. to have access through to the new development as there are no schools, parks, or other community destinations directly East. All such destinations require going further North or South and adequate access to these already exists by using Main St.
- A flat, wide, well lit and SAFE public access way is already part of the plan for the development. Pedestrians originating in that development can leave it by this route or by going up and through Mission Drive to College and continuing to their destination or an already existing East/West access in that manner.
- There is no need for the future residents of the Shellie Park development to have access through to Clifford Ct. as there are no schools, parks, or other community destinations directly East. All such destinations require going further North or South and adequate access to these already exists by using College Street's new sidewalks.
- Residents outside of Clifford Ct. or the proposed subdivision do not need access through these neighborhoods as there are no schools, parks or other community destinations within them or surrounding them that do not already have adequate access directly surrounding via Illinois Ave, Main St, College St, or Jaquith Park

B. Public walkways shall be located within a public access easement a minimum of 15 feet in width.

****This public walkway in not in a public access easement that meets the minimum required width. It is only partially in a public utility easement, but it is NOT given over for public ACCESS for more than 5 feet. It is obvious that it was plugged into the development just for the sake of having it, not through careful design.

C. A walk strip, not less than five feet in width, shall be paved in the center of all public walkway easements. Such paving shall conform to specifications adopted by the city council under NMC 15.510.030.

****The proposed walk strip is being allowed to decrease from the minimum to 4 feet in width, but it is not in the center of a 15 ft. easement as required in section B

D. Public walkways shall be designed, as far as practical, to meet the Americans with Disabilities Act requirements.

****The Americans with Disabilities Act generally recommends that a public walkway be a minimum of 5 ft. wide in tread-width, on a slope no greater than 5% and a cross-slope no greater than 2%. It also generally requires room for wheelchairs to be able to pass other pedestrians and users of the path safely. This walkway is only 4-5 feet wide and allows no room for wheeled users (including bicycles, strollers, wheelchairs, and walkers) to pass each other safely. It will have a slope between 7.5 and 10%. It provides no room for disabled users (or any other user) to get safely out of the way when an out-of-control or reckless user comes at them from either in front or behind. It features very poor visibility around a corner that will further decrease the ability of users to safely get out of the way of danger. The fences that will be on either side (5 feet apart) will present a danger to both pedestrians having to get out of the way or to the out-of-control users themselves.

E. Public walkways connecting one right-of-way to another shall be designed to provide as short and straight of a route as practical.

****This route is neither short nor is it straight, and presents all of the safety hazards previously mentioned. A relatively short and straight route could connect through to Illinois if Washington Street were extended.

F. The developer of the public walkway shall provide a homeowners' association or similar entity to maintain the public walkway and associated improvements.

****The city is not requiring the developer to provide a homeowners' association or similar entity to maintain this public walkway, and is instead putting all of the maintenance and liability on the homeowner, contrary to this requirement. It is, in fact, acquiescing to the desires of one group (Brown/Nielsen/Grahn) to the detriment of the homeowners being made responsible for the maintenance and liability of this completely unsafe public walkway.

G. Lighting may be required for public walkways in excess of 250 feet in length.

****This public walkway is not in excess of 250 feet in length, but placing lighting where it is most needed is likely to shrink the paved surface. Also, lighting solves only one of the major safety issues.

H. The review body may modify these requirements where it finds that topographic, preexisting development, or similar constraints exist. [Ord. 2619, 5-16-05; Ord. 2451, 12-2-96. Code 2001 § 151.705.]

****There are so many topographic and safety constraints that make this walkway both hazardous and burdensome in a way that is unfair to the homeowner and the public, for whom the review body is charged to consider.

Newberg Municipal Code 8.15.020 Unenumerated nuisances.

A. In addition to the acts and conditions specifically enumerated in this chapter, any condition, thing, substance or activity which is detrimental to, injurious to or constitutes a danger to the public health, safety or welfare is declared to be a nuisance and is subject to the abatement procedures set forth in this chapter.

8.15.030 Nuisances affecting public health.

A. No person shall cause or permit on property owned or controlled by the person a nuisance affecting the public health.

****Causing this walkway to be built will effectively result in an "attractive nuisance" that does not currently exist. The slope of this walkway will attract users of bicycles, scooters,

skateboards, and roller skates in the same way that ordinary steep streets and other hills do, creating a safety risk to other users of the path as well as to the current residents of the cul-de-sac. It also creates a huge liability that the city is essentially foisting off on the homeowners as it has not provided for the creation of a homeowner's association or similar entity that would be responsible and liable for the maintenance and safety of this walkway.

As I believe it was mentioned at the hearing on May 8, the planning commission has the ability to make recommendations regarding the plan. The fact that there is an easement and that the city desires connectivity does not mean that a walkway in this location with these safety concerns is the best move here. It creates more problems than it solves.

Tacking on an awkward and unsafe public walkway to an already awkward development just for the sake of putting in a path does not seem to be good planning. There have already been too many planning mistakes in this particular area including the failure so many years ago to require the connection of Markris way to Mission Drive as it apparently was originally designed or by requiring Washington Street to be extended to this site. If the city had really wished there to be eventual connectivity between the now-named Shellie Park subdivision and Clifford Ct, than it should have required a better plan for the walkway at the time of development of Clifford Ct. That carefully designed plan would not make such a narrow, unlit, steep walkway as is currently proposed. Two (or more) wrongs in this case do not make a right.

Again, I would reiterate, if you can set aside city code in so many ways (block length, # of houses to a block, sidewalks up next to the curb,) to approve this application, then you can easily set aside this particular requirement in favor of the safety of the general public and the integrity of our cul-de-sac. This is especially true in light of the numerous violations of existing municipal and development codes that will occur if this pathway is pushed through to meet a need that does not exist.

Thank you very much for your time and careful consideration of these major safety concerns.

Sincerely,

Sonda Martin

City of Newberg

TYPE III APPLICATION - 2014
(QUASI-JUDICIAL REVIEW)

File #: _____

TYPES – PLEASE CHECK ONE:

___ **Annexation**
___ **Comprehensive Plan Amendment (site specific)**
___ **Zoning Amendment (site specific)**
___ **Historic Landmark Modification/alteration**
___ **Conditional Use Permit**
___ **Type III Major Modification**
___ **Planned Unit Development**
___ **Other: (Explain)** _____

APPLICANT INFORMATION:

APPLICANT: Brown/Nielsen
ADDRESS: 12670 SW 68th Pl, Tigard, OR 97223
EMAIL ADDRESS: RKBBrown@ATT.Net
PHONE: 503-620-8860 MOBILE: 503-789-2010 FAX: _____
OWNER (if different from above): Grahn/Nielsen PHONE: 503-949-9278 (cell)
ADDRESS: Dave Nielsen 31947 W. Ocean Lane, Arch Cape, OR 97102
ENGINEER/SURVEYOR: Westlake Consultants, Inc. PHONE: 503-684-0652
ADDRESS: 15115 SW Sequoia Pkwy., #150, Tigard, OR 97224

GENERAL INFORMATION:

PROJECT NAME: Shellie Park PROJECT LOCATION: Rentfro Way & Mission Dr.
PROJECT DESCRIPTION/USE: 21 lot residential subdivision
MAP/TAX LOT NO. (i.e.3200AB-400): 32 18 DB ZONE: R-1 SITE SIZE: 4.31 SQ. FT. ☐ ACRE ☒
COMP PLAN DESIGNATION: Residential TOPOGRAPHY: Slopes downhill east to west
CURRENT USE: Vacant/pasture
SURROUNDING USES:
NORTH: Single family residential SOUTH: s.f. residential
EAST: College Street WEST: s.f. residential

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:

Annexation ..... **p. 15**
Comprehensive Plan / Zoning Map Amendment (site specific) ..... **p. 19**
Conditional Use Permit ..... **p. 21**
Historic Landmark Modification/Alteration ..... **p. 23**
Planned Unit Development **p.26**

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.

Richard K B 3/14/14
Applicant Signature Date

Roger L. Grahn 3/20/14
David D Nielsen 3/20/14
Owner Signature Date

RICHARD K. BROWN
Print Name

David D Nielsen ROGER L. GRAHN
Print Name

Attachments: General Information, Fee Schedule, Noticing Procedures, Planning Commission Schedule, Criteria, Checklists