

DECISION OF THE MONROE CITY COUNCIL

CITY COUNCIL DECISION FOR RED HILLS SUBDIVISION 2018 TENTATIVE PLAN

Application Summary:

Subdivision Tentative Plan Approval to create 55 residential lots

Applicant:

North Santiam Paving Company

Applicant's Representative:

Mr. Bill Lulay, P.E.

Lead City Staff:

Rick A. Hohnbaum, City Planner/Administrator

Subject Property/Zoning/Location:

T14S, R5W, Section 33B, Tax Lot 800, Majority zoned GRB with one northern piece zoned GRA, Located South of Orchard Street intersecting at 9th and 10th Streets

Relevant Dates:

The applicant met with City Staff for a pre-application conference on December 4, 2017. City Staff initiated contact and invited Benton County Public Works Staff, Monroe Rural Fire Protection District Chief and also had the city contracted engineer of record present. On December 18, 2017 the City received the application. Public notice was mailed to all property owners (48) within 250 feet on December 19, 2017. On December 28, 2017, a public notice for both the Planning Commission Public Hearing and the City Council Public Hearing was posted in the city newspaper of record. On December 29, 2018, the City mailed out the public notice to all of the utility customers of the City of Monroe. On January 8, 2018, the Planning Commission held a public hearing, modified and adopted conditions of approval and recommended approval to the City Council. On January 22, 2018, the City Council conducted a public hearing and held the written record open for 7 additional days until January 29, 2018. Council directed staff to provide findings for council review at its February 26, 2018 Council meeting. The applicant was provided 10 days after the record closed, through February 8, 2018, to submit final written argument.

Summary of the Land Use Action Request:

The applicant is requesting the tentative plan approval for a subdivision which would include 55 buildable lots and several non-developed tracts. The proposed project, which has designated wetlands along the southern edge as well as a central tract, is planned with two access points off of Orchard Street, which is a Benton County Road. The proposed project includes 4 lots that are on a dead-end extension in the south west corner of the project. The property is zoned GRB (generally 6,000 square foot minimum lots) with the exception of the front 8 lots which are zoned GRA (generally 8,000 square foot minimum lots). However, the applicant's request for approval

of the proposed land use action is based upon conditions of approval imposed as part of a rezone to GRB granted for a portion of the subject property, by Council Ordinance (Ordinance 2007-250) on April 10, 2007. These conditions set different minimum lot sizes for that portion of the subject parcel than set in the later adopted Code.

Summary of the Planning Commission Public Hearing:

On January 8, 2018, the planning commission conducted a public hearing of almost two hours in length in which there were about ten people in the audience. Staff provided a 35-minute presentation including a recommendation for 32 conditions of approval if the commission was to approve the tentative plan. The applicant stated for the record that they were in agreement with all the proposed conditions of approvals with a suggested modification allowing for engineering flexibility on the water main requirements. The commission inquired significantly of the applicant regarding issues of utilities, storm water flows and street design plans. Benton County Engineering staff inquired about future street connections from the subdivision to the property west of the proposed development. Relatives of a neighboring property owner spoke in opposition regarding concerns of storm water drainage, a requirement for a fence around the project and the visual sight impact of houses instead of an empty field. In rebuttal, the applicant provided significant additional details relating to storm water management plans and their flexibility to meet any standards determined by city engineering staff. The Planning Commission added two additional conditions of approval beyond those proposed by staff including “Storm water plan to be approved by City Engineer with potential to connect to the City storm water system if feasible.” The Planning Commission discussed the fence request, planter street design option and pedestrian access on Orchard to the proposed project. Planning Commission unanimously approved the tentative plan with additional conditions, without requiring fencing, recommending no planter strip with curb lined sidewalks and with a pedestrian path along the entire front of the proposed project and to extend to the existing sidewalk near the United Methodist Church.

Summary of City Council Public Hearing:

On January 22, 2018, the Monroe City Council conducted a public hearing with a full-house in the audience of about 30 people, including the Planning Commission Chair, Vice Chair and Chairman of the Board for the Monroe Rural Fire Protection District. The hearing lasted about 1 hour and 45 minutes. Councilor Billings shared an ex parte contact and there was no challenge based upon his declaration. The extensive staff report included highlights from the Planning Commission hearing and a staff recommendation to the council to “...take their time in deliberating and that a final decision is not required tonight.” Staff shared information and input received from applicant, opposing citizens including their legal counsel and state and county agencies relating to the proposed project. The applicant stated its agreement with all of the drafted conditions of approval, including flexibility in the street design based upon council’s preference for curb side sidewalks or planter strips. Two people spoke in opposition. One read a prepared statement on behalf of a relative who owns a neighboring property relating to the visual impact of having houses next door rather than an open field. The other stated that the City did not need 55 new homes or that many more people, especially since there was no gas station or grocery store in

town. Both speakers also inquired about wetlands and expressed concern about where the increased storm water would flow.

The second speaker also referred to a letter from an attorney that was entered into the record regarding capacity of the existing city sewer system. The applicant, in rebuttal, offered additional information relating to storm water drainage plans and detention ponds and stated that the impact would be far less than the original 100 lots that the city approved on this same property in 2008. After the public hearing closed, council asked staff about the sewer system capacity concern that was raised. Staff reminded the council of the city work plan to address the inflow and infiltration (I & I) issues. Staff stated that, per the direction of council and based upon the existing wastewater master plan, city was moving forward with addressing the I & I problem which creates a significantly higher level of flow than is appropriate for the City transmission system. The adopted City budget includes avenues to define and deter any capacity issues (which are pump flow problems, not treatment issues.)

A motion was made to approve the applicant's requested land use action. It failed. A motion was made to keep the written record open for seven days and for staff to submit additional findings based upon the testimony received for the making of a decision at the next regular city council meeting. That motion passed unanimously. Council consensus was also reached to have the next council meeting at a location which allowed a more comfortable amount of space for the number of attendees to be in the room.

Documents for the Record:

Application and Application Narrative and Attachments (Title Report not attached)

Public Notice and Mailing List

City Engineer Memo Dated January 2, 2018

Correspondence from Benton County Public Works Engineering

Correspondence from Monroe Rural Fire Protection District

Planning Commission Staff Report

Draft Planning Commission Minutes January 8, 2018

City Council Staff Report

Draft City Council January Minutes January 22, 2018

Written Correspondence from Zack P. Mittge dated January 22, 2018

Written Testimony by William Treloar for Don Soderquist Received January 22, 2018

Written Correspondence from Zack P. Mittge dated January 29, 2018

Final Written Testimony by North Santiam Paving Co. Received February 7, 2018

Quasi-Judicial Land Use Hearings Script-City of Monroe

Monroe Land Use Development Code (on city website)

Ordinance 2007-250/LU-06-125

Wastewater Data Flow Charts emailed to Zack P. Mittge (on city website)

Wastewater Master Plan (available on city website)

Evaluation of the Request for Tentative Plan Land Use Approval:

Monroe Land Use Development Code (MLUDC)

According to Section 2.320 ***Subdivision or Partition Tentative Plan***, there is a clear and sustaining process and criteria for review of said request. Section 2.321, A land divider shall prepare a Tentative Plan together with improvement plans and other supplementary material as may be required to indicate the general idea and objectives of the project. The Applicant shall submit Tentative Plan and supplementary data to the City Planner following preliminary consultation as recommended in Sections 2.110 and 2.120. According to Section 2.328 ***Decision Criteria, A Tentative Plan may be approved by the Planning Commission*** based upon the findings related to 8 separate criteria. ***According to Section 2.329 Decision Process (13) Following the action of any subdivision by the Planning Commission, the City Council shall review and take action on the tentative plan. The City Council shall either confirm the action of the Planning Commission without a Public Hearing or if the council feels further consideration is necessary, it shall hold a public hearing, per the hearing procedures as specified for the Planning Commission.*** Since this land use action request is based upon existing City Code in conjunction with a rezone and quasi-judicial conditions of approval imposed on the subject parcel (Ordinance 2007-250), staff recommended holding a public hearing at council level for a more comprehensive review. Note: The Council hearing was not the initial evidentiary hearing subject to all ORS 197.763 procedures. Regardless, in response to Opponents' request to continue the hearing, the record was left opened to all interested parties for seven days, and thereafter to the Applicant for rebuttal of information submitted into the record. Contrary to Opponents' attorney's assertions in his letter dated January 29, 2018, no procedural error occurred. Rather, copious opportunities were provided to all participants to testify regarding this application.

Findings:

2.328 (1) Any undeveloped portion of the proposed land division can be developed in accordance with City ordinances.

In Mr. Mittge's letter dated January 29, 2018, Opponent's attorney argues that applicant does not demonstrate that future development of tract B is feasible.

The proposed land use action does not alter or affect any non-developed areas of the property for which this land use action is being requested. While there are undeveloped areas within this proposed land use action (subdivision) there is no alteration affecting any future development in accordance with City ordinances.

The undeveloped areas would be a challenge to develop based upon the wetlands known to exist, but no element of the proposed land use action prohibits or affects the ability of the land to be developed in the future.

As noted in Condition of Approval 10, phased development of the full lot is anticipated and allowed. Applicant is granted five years within which to secure final plat approval of the entire tentative plat area or the approval shall be null and void. This condition addresses concerns raised that the remainder lot is undevelopable.

Opponents argue that the subdivision may not be approved, as at least 20 of the proposed subdivision lots are too small to meet current Code requirements. However, the Zoning Code, when adopted, did not repeal Ordinance 2007-250. Rather, Ordinance 2007-250 not only rezoned the parcel to GRB, but also set unique minimum lot sizes for the subject parcel of 5700 square feet, with a minimum “average” lot size of 6087 square feet or larger to comply with the comprehensive plan. Ordinance 2007-250 was provided to DLCD, which considered the Ordinance acknowledged as of May 10, 2007. Even if Ordinance 2007-250 was adopted with procedural irregularities, as opponents argue, any associated appeal needed to be filed within 10 years after the date of the decision. ORS 197.830(6). Ordinance 2007-250 is acknowledged and still binding on the subject parcel.

Based upon these findings, the standard has been met.

2.328 (2) The proposed development and all adjoining land can be developed in accordance with this Code and City Ordinances.

As noted under the prior criteria, written testimony argued that some proposed lot sizes do not meet city code. The standard for lot sizes is based upon on an average of units by acreage. Ordinance 2007-250 LU-06-125 Monroe Zone Change provides that, for this parcel of land, the average lot size needs to meet the set standard-- not each individual lot. The “average” standard is met and exceeded per city requirements. Ordinance 2007-250 LU-06-125 was adopted in 2007. Any opportunity for repeal or reconsideration has passed, as noted within the findings under criteria 2.328 (1).

Written testimony also argued that this standard is not met on another basis, but provided no supporting explanation. Some properties (tracts) are not proposed to be developed, but there is no indication that those remainders cannot be developed at a later date in accordance with city standards, whatever they may be at a future date.

The application submitted for the proposed land use action includes and addresses all the criteria elements for a proposed subdivision within the City of Monroe. The requirements for a tentative plan includes providing

a general plan and objectives for the project. While the city engineer's review and acceptance will be ongoing up to and after final plat approval, as proposed, applicant's development can proceed in accordance with this Code and City Ordinances. The proposed land use action and all adjoining land that is within the jurisdiction of the City can be developed in accordance with this Code and City Ordinances.

Based upon these findings the standards have been met.

2.328 (3) The proposed street plan is in conformance with City standards and provided the most economic, safe and efficient circulation of traffic in relation to the existing City street system and future plans.

The City of Monroe has adopted by reference the City of Corvallis street standards, as well as that Code's references to professional engineering standards. The applicant proposed street standard designs per the Corvallis Code, which include the option for a planter strip between the street curb and the side walk. The Planning Commission, after hearing public concerns regarding the use of planter strips being used for parking instead of plants, suggested removal of the planter strips and replacement with curb-edged sidewalks. The applicant has made it clear to both the Planning Commission and City Council that he is flexible and that it would be the city's choice as it relates to the sidewalk locations.

Written testimony stated that the proposed land use action did not meet city code, based upon the applicants failure to provide "...sidewalks to connect the proposed development along Orchard Street."

Orchard Street is actually a county road and the applicant has already agreed to meet all county standards for connectivity and access for both City Streets (9th and 10th) that the project will develop. In addition, the applicant will develop sidewalks on properties not being developed within the project, extending along existing developed residential properties to allow safe pedestrian access between the development and Orchard Street.

Since the development of Orchard is pursuant to county, not city, standards, the applicant has also accepted the condition to install a pedestrian hard surface 5' path extending the length of Orchard from the western edge of the proposed development to the existing side walk approximately two blocks beyond the project to meet existing hard surface sidewalks in order to access the core area of the community and schools. While a hard surface path is proposed instead of a "sidewalk", the amount and length of said hard surface path is approximately three times greater

than the frontage of the project on Orchard Street, far exceeding minimum standards in order to provide safe pedestrian access for what could be about 15% of the city's population.

Written testimony argues that the appropriate amount of street connections are not being established outside of the proposed project for the future benefit of safe transportation. The property to the west of the proposed development is outside city limits and the urban growth boundary, and there are no future plans or expectations for city development to extend in that direction. However, the city requested and the applicant agreed to extend the width of a drainage tract that could be encapsulated in the future for the purpose of extending a street access outside of the current city's urban growth boundary to the west.

Applicant proposes circulation options in three of the four directions in and out of the proposed development, and council finds this adequate to address the applicable criteria.

The applicant, during the pre-application conference, agreed to address concerns regarding traffic safety related issues raised by the fire department, county staff and city staff. All street standards are met by the proposal and future development will be accommodated by the two streets shown extending to the eastern edge of the proposed project.

Based upon these findings, including consideration of applicant offered improvements beyond what the City could require under its applicable standards and criteria, this criteria is met.

2.328 (4) The proposed utility connections are available, adequate and provide the most efficient and convenient connections to the existing utility systems and the proposed utilities can be extended in the future to accommodate future growth beyond the proposed land division.

City utilities for both water and wastewater exist within 100 feet of the proposed subdivision. There are two 6-inch water mains extending from Orchard into this proposed project which might be adequate. However, for assurance of appropriate fire flow and increased water circulation for both the project and this segment of the community north of the subdivision, the applicant is proposing installing an additional main. This new 8-inch main would intersect and loop with both of the two existing mains. The applicant has agreed and offered to install a line larger than the existing ones, instead of adjusting the existing water system lines providing circulation, in order to benefit water circulation for both the

proposed project and this southwest corner of the community water system.

City is requiring installation of street lights and hydrants per City standards; which applicant has agreed to. A condition of approval required outreach to Pacific Power and Light and the Monroe Telephone Company for installation of those public utilities.

Storm water concerns were expressed by staff, applicant and the public. Storm water standards can be complicated and challenging. The City Engineer has submitted testimony stating that the proposed application can and will comply with applicable federal, state and local rules and regulations. The City Engineer of Record has addressed local concerns raised in testimony. The Engineer's comments have been relied upon to impose conditions of approval to address community concerns related to storm water. Moreover, actual development drainage impacts will also be addressed at the time of development, rather than at the time of subdivision.

The Planning Commission, upon closing its public hearing, not only discussed and deliberated regarding storm water standards, but crafted an additional condition of approval specifically to address the concerns raised by opponents, staff and public testimony. No additional storm water flow will be permitted; all such impacts must be mitigated by Applicant's construction of two detention basins into which all impervious surface drainage will be collected and piped. Outfall rates from said detention ponds will comply with City standards, and will be verified at time of construction.

In his two letters dated January 22 and 29, attorney for opponent, Zack Mittge, expressed concerns related to City wastewater system capacity. To the extent any arguments raised therein pertain to applicable criteria, staff pointed out and Council agrees that city capacity issues are in the process of being mitigated and pertain only to pump flow, which can be corrected at or before the time of development, and do not involve treatment capacity. Staff consistently provided data showing that the proposed subdivision will not cause or contribute towards pump flow capacity issues. The City finds that any system constructed to serve the proposed subdivision will be far superior to the existing City system. Therefore, approval of this application, even without any wider system improvements prior to construction, will have no to negligible impacts on the existing pump flow problem. Moreover, development approval can be

conditioned upon improvements to the City's pump flow system, as needed.

Lastly, a wastewater master plan was completed in 2015, which included recommendations regarding a transfer line. Background for the Master Plan did not include televising the lines or addressing inflow and infiltration (I & I) issues. For the past 14 months, the City has been resolving its pump flow problems directly by addressing its I & I issues. The City has budgeted the funds needed to address this issue and resolve identified capacity issues relating to the pump and line. The plan to address I & I is available on the city's website, as are city budget documents evidencing the city's intent to address this problem this budget year.

Written testimony from Attorney Zach Mittge, on behalf of opponents, states, "This Master Plan indicates that the City does not have adequate capacity to meet the needs for existing residents...". City staff has been diligently working to address deficiencies identified in the Master Plan over the past year. Moreover, the last line of the executive summary of the 2015 Wastewater Master Plan states "Based upon a collection system flow capacity analysis the collection system seems to have adequate capacity for current and future flows, with the exception of one mainline that may be near full capacity."

Mr. Mittge's interpretation of the City Wastewater Master Plan does not appear to provide an accurate assessment of the state of the City's system. Mr. Mittge requested (and was provided) city flow data information. City staff consistently tracks flows and capacity to measure the improvements based upon past data. This data reflects significant differences in peak flow this year. So far this winter, at no time has the flow demand required both pumps to operate simultaneously. This is a first within at least the last four years of data that has been shared and discussed throughout this review process, evidencing the positive effect of city improvements.

In the Wastewater Master Plan (Table 4.1.7) **Summary of Current and Projected Wastewater Flows**, the projected flow associated with the projected growth of 109 people (projected growth figure included in the plan) reflects an increase of less than 9,000 gallons per day. When looking at peak flow due to high amounts of rain and I & I, it is in the range of 1 million gallons a day. The 9000-gallon increase is relatively insignificant as documented by the report.

Inflow: Flows that enter the collection system above ground paths. (downspouts)

Per EPA Standards any flow greater than 120 gpcd indicates excessive-
Monroe was 376.

Infiltration: Flows that enter the collection system through underground
paths. (cracked lines)

Per EPA Standards any flow greater than 275 gpcd indicates excessive-
Monroe was at 1,444 when the study was done in 2015.

GPCD=Gallons Per Capita per Day

With a flow level that can increase by up to 3 times above average/normal
flows after a heavy rain, the issue is addressing the I & I problem. The city
has budgeted the funds to address this issue, addressed a significant
source of I & I during the summer of 2017 and is moving forward to avoid
potential capacity issues relating to the pump and line. The plan to address
this issue is based upon the master plan report and has continued to be a
city staff priority, as outlined in testimony regarding City wastewater
capacity issues.

The above findings show compliance with this criteria and address
opponents' concerns. Any development associated with the proposed
subdivision will not contribute to the City's overall pump flow issues.
Further, because systemic issues are in the process of being addressed and
should be resolved prior to any development associated with the proposed
subdivision, Council finds this criteria can be met.

2.328 (5) Special site features have been considered and utilized.

There are several special site features which have been considered
throughout the review and consideration of this proposed land use action
(subdivision).

The access street to this project is a county road. County staff was invited
and encouraged to attend the pre-application meeting. A Benton County
Engineering employee attended and participated in the pre-application
meeting and at the first public hearing as well and provided testimony.
Standards involving connecting to county roads as well as other standards
have been a part of the subdivision application review.

There are WETLANDS within the proposed project and bordering the south
side of the project. There was public testimony that raised the concerns
of kids playing in the wetlands. To the extent wetlands are privately
owned, City cannot regulate how individuals use or access them. If publicly
owned, the City can regulate access and address most issues to address

public safety and potential liability concerns. The testimony received seemed more concerned with wetlands constituting a “nuisance.” To that extent, that element will be addressed below, under criterion (7).

In his January 22, 2018 letter, opponent’s attorney, Zack Mittge references inapplicable criteria 4.111(4)(a) and 5.130(4). As those comments that were raised do not pertain to applicable criteria, those comments are not addressed in this decision. Even if applicable, Applicant has resolved those issues with Department of State Lands, and is able to proceed with any development of the proposed subdivision.

Because all identified special site features have been considered and all associated issues resolved, based upon the above findings, the Council finds this criteria has been met.

2.328 (6) Drainage ways are protected and required drainage facilities are provided in conformance with State erosion control regulations.

Throughout the review process and consideration of this land use action, the most significant issue and concern relates to drainage ways and drainage facilities. No other element of this entire proposed action has received more attention and consideration than existing and proposed drainage ways. Public testimony cited to inapplicable criteria 4.111 (4)(a) which prohibits development “...likely to disrupt or cause contamination of a stream, lake, or other body of water.” Staff believes the intended reference was to 4.111 (4) (b), as opposition urged denial of the application based on the failure to “preserve...wetlands”.

While the cited criteria is inapplicable to the proposal before the council, nonetheless, the Council has tried to address neighbors’ concerns. The City has clearly and repeatedly stated that the applicant will be required to conform to all state erosion control regulations. The applicant has agreed to meet those standard, and provided additional documentation addressing wetland and drainage concerns. The city believes these conditions and assurances adequately addressed the opposition’s concerns, as their final 35-page summary did not reference or raise concerns regarding the wetland issue.

The application includes written documentation of the years of work that the applicant/land owner has dedicated to address this issue, which resulted in the Oregon Department of Lands agreeing to the proposed mitigation map for this project.

Based upon findings under criteria 2.328(5) (addressed above) and this 2.328(6), the Council finds that, to the extent testimony received pertains to applicable criteria, those concerns have been addressed by Applicant's efforts, DSL's comments and associated approvals. Therefore, the council finds the applicable criteria has been met.

2.328 (7) The extent of possible emission or nuisance characteristics are compatible with the land use zoning district, adjacent properties and the applicable standards of all regulatory agencies having jurisdiction.

The initial staff report for the planning commission did not identify any perceived nuisance characteristics or possible emission issues. Based upon the applicant's requested land use action and site visits by staff, no known nuisance characteristics are apparent. During public testimony at the City Council hearing, concerns were raised regarding the extent of possible emissions or nuisance characteristics which could affect a current resident living on the neighboring property. This neighbor is a "...proud Marine Corp. Veteran..." who is having some medical challenges. The concerns referenced a change of scenery from a "country view" to having neighbors, increased traffic, increased housing density, construction noise, parking on the streets and changes in the flow of storm drainage somewhere in the proposed development but not on the property of the retired veteran.

Such testimony associated with potential impacts of new development on the subdivided parcel is understandable; similar concerns are commonly raised by neighbors of undeveloped land. The City's Code is drafted to ensure development according to set standards—but development of private property in conformance with City Code must be allowed. It is the property owner, not the City, which is entitled to determine the appropriate time, manner and extent by which to develop private property, based upon an owners' evaluation of what the market will bear. City cannot consider the inappropriateness of the proposed subdivision, as raised by neighbors under this criteria. To the extent "not in my backyard" concerns were raised, they do not weigh against approval of the application before the council.

Based upon these findings, the council finds that this criteria has been met.

2.328 (8) Potential adverse impacts have been mitigated to the maximum extent possible.

While this application for land use action is a new one filed in December of 2017, it is a follow-up request from one which was approved by the City in

2008. For the last nine years, the property owner has been working to mitigate the potential adverse impacts to the maximum extent possible. During the public hearing at the Planning Commission, there was considerable discussion, deliberation and inquiry of the applicant by the planning commission regarding potential adverse impacts. This deliberation resulted in an additional condition of approval relating to potential storm water impact.

The applicant included the permit for the Storm Water Discharge Permit and the 1200-C Issuance in the application.

In written testimony presented prior to the City Council Public Hearing there is a statement that this standard has not been met by the applicant.

“Mitigating potential adverse impacts to the maximum extent possible is a demanding standard, and one that the applicant ignores entirely in its application. Instead, the applicant is seeking to pack in lotss [sic] in excess of City code and comprehensive plan limits, and without regard to the impacts on neighboring property owners, or the City’s inadequate sewage system; fill almost an acre and a half of wetlands without regard to area drainage; and to concentrate additional traffic and pedestrians without providing adequate access to City streets or infrastructure.”

The issues raised are not only mitigated but are also compatible with the acknowledged land use zoning and special conditions of approval set in Ordinance 2007-250; have been approved by regulatory agencies, as documented by the applicant with state agencies permits included in the record; comply with the required permitting process to access a county road in two locations in order to build streets that exceed current city standards; and are compatible with adjacent properties which are protected by the proposed drainage plan. No testimony submitted before the record was closed provided any evidence that this standard has not been met. All mitigating conditions imposed are required to meet City standards, as confirmed by the City Engineer prior to actual development of the subdivided property. This does not constitute an inappropriate deferral of analysis, as claimed by opponents’ attorney, but instead ensures compliance with appropriately imposed mitigating conditions.

The proposal is a result of nine years of negotiations and work between the property owner with numerous local, state and federal agencies. The council is satisfied that all concerns raised have or can be met via the imposed conditions of approval. There was no evidence submitted in opposition to applicant’s carefully vetted plans, rather opponent’s argued

that perceived omissions in submittals require denial. Based upon its careful review, the council finds all concerns have been addressed and that adequate safeguards are in place to ensure any potential adverse impacts will be mitigated to the maximum extent possible.

Based upon these findings, the council finds this criteria has been met.

5.010 Development Standards Matrix

Minimum Lot Size 6,000 square feet.

As noted under the prior criteria, written testimony argued that some proposed lot sizes do not meet city code. The standard for lot sizes is based upon an average of units by acreage. Ordinance 2007-250 LU-06-125 Monroe Zone Change provides that, for this parcel of land, the average lot size needs to meet the set standard-- not each individual lot. The "average" standard is met and exceeded per city requirements. Ordinance 2007-250 LU-06-125 was adopted in 2007. Any opportunity for repeal or reconsideration has passed, as noted within the findings under criteria 2.328 (1).

5.030 Plan Conformance

All developments within the City shall conform to any approved development plan adopted by the City. Developments located within an area that has an approved plan shall comply with the design and construction standards of that approved plan in addition to those contained in this City Code. In cases of conflict, the approved plan shall control.

This criteria is met and affirmed by establishing a condition of approval.

Section 5.123(2) Streets

Street design shall conform to the design standards of the City of Corvallis adopted by the City of Monroe. Street design shall include curb, gutters, sidewalks and utility easements unless specifically excepted by the Planning Commission.

The City of Monroe has adopted by reference the City of Corvallis street standards, as well as that Code's references to professional engineering standards. The applicant proposed street standard designs per the Corvallis Code, which include the option for a planter strip between the street curb and the side walk. The Planning Commission, after hearing public concerns regarding the use of planter strips being used for parking instead of plants, suggested removal of the planter strips and replacement with curb-edged sidewalks. The applicant has made it clear to both the

Planning Commission and City Council that he is flexible and that it would be the city's choice as it relates to the sidewalk locations.

Based upon these findings, this criteria has been met.

Section 5.123 (6) Streets

Future Extensions of Streets: Where necessary to give access to or permit a satisfactory future division of adjoining land, streets shall be extended to the boundary of the subdivisions or partition and the resulting dead-end streets may be approved without a turn-around.

Written testimony argues that the appropriate amount of street connections are not being established outside of the proposed project for the future benefit of safe transportation. The property to the west of the proposed development is outside city limits and the urban growth boundary, and there are no future plans or expectations for city development to extend in that direction. However, the city requested and the applicant agreed to extend the width of a drainage tract that could be encapsulated in the future for the purpose of extending a street access outside of the current city's urban growth boundary to the west.

Applicant proposes circulation options in three of the four directions in and out of the proposed development, and council finds this adequate to address the applicable criteria.

Based upon these findings, including consideration of applicant offered improvements beyond what the City could require under its applicable standards and criteria, this criteria is met.

Section 5.123 (9) Half Streets

Half streets, while not acceptable, may be approved where essential to the reasonable development of the subdivision or partition when in conformity with the other requirements of these regulations and when the Planning Commission finds it well be practical to require the dedication of the other half when the adjoining property is divided.

There are no public half streets being proposed by the applicant and thus this criteria has been met.

5.124 Sidewalks

Public Sidewalk improvements are required for all land divisions and property development in the City of Monroe. Under approved conditions, the City may defer sidewalks.

The City has not deferred any sidewalks and the proposed project by the applicant brought with their initial plan to provide sidewalks throughout the entire interior of the subdivision in front of developed and non-developed properties and sidewalks on already developed properties between the subdivision and the nearest major street (Orchard Street). Since the development of Orchard is pursuant to county, not city, standards, the applicant has also accepted the condition to install a pedestrian hard surface 5' path extending the length of Orchard from the western edge of the proposed development to the existing side walk approximately two blocks beyond the project to meet existing hard surface sidewalks in order to access the core area of the community and schools. While a hard surface path is proposed instead of a "sidewalk", the amount and length of said hard surface path is approximately three times greater than the frontage of the project on Orchard Street, far exceeding minimum standards in order to provide safe pedestrian access for what could be about 15% of the city's population.

The findings conclude that in all segments within, along and outside of the proposed development, the standard for this criteria has been met.

5.125 Bikeways

Developments adjoining existing or proposed bikeways shall include provisions for connections and extensions of such bikeways through dedication or easements or rights-of-way. The City may include bikeway improvements as conditions of approval for developments that will benefit from bikeways. Where possible, bikeways should be separated from other modes of travel, including pedestrian ways.

The applicant offered a bike path option during the pre-application meeting and during the initial public hearing. Orchard Street being a county road and administered by county standards it was the consensus of the Planning Commission and the county engineering staff that a hard surface path would provide the safest route for bike use. The applicant has accepted their recommendations and has clearly stated their willingness to provide per the City's and County's request. It is the findings of the City Council that these criteria have been met by the applicant.

5.126 Storm Drainage

It is the obligation of the property owner to provide proper drainage and protect all runoff and drainage ways from disruption or contamination.

Storm water concerns were expressed by staff, applicant and the public. Storm water standards can be complicated and challenging. The City

Engineer has submitted testimony stating that the proposed application can and will comply with applicable federal, state and local rules and regulations. The City Engineer of Record has addressed local concerns raised in testimony. The Engineer's comments have been relied upon to impose conditions of approval to address community concerns related to storm water. Moreover, actual development drainage impacts will also be addressed at the time of development, rather than at the time of subdivision.

The Planning Commission, upon closing its public hearing, not only discussed and deliberated regarding storm water standards, but crafted an additional condition of approval specifically to address the concerns raised by opponents, staff and public testimony. No additional storm water flow will be permitted; all such impacts must be mitigated by Applicant's construction of two detention basins into which all impervious surface drainage will be collected and piped. Outfall rates from said detention ponds will comply with City standards, and will be verified at time of construction.

The council concludes that these findings have addressed the criteria of city development code.

5.127 Water (1) Water Plan Approval

All proposed water plans and systems must be approved by the City as part of the review and approval process.

This criteria is addressed with a condition of approval.

5.127 Water (2) Design Requirements for New development

All new development within the City shall make provisions for the extension of public water lines to serve adjacent areas, and as provided in the Water System Master Plan.

City utilities for both water and wastewater exist within 100 feet of the proposed subdivision. The applicant has agreed and offered to install a line larger than the existing ones, instead of adjusting the existing water system lines. This new 8-inch line will significantly increase circulation and provide an immediate impact for the entire water system in this segment of the community both within the proposed project and beyond in to the community. The findings conclude that the proposed plan with extensive water line looping and an additional condition of approval the criteria for standard has been met.

5.128 Sewer (1) Sewer Plan Approval

All proposed waste water plans and systems must be approved by the City as part of the review and approval process.

This criteria is addressed with a condition of approval.

5.128 Sewer (2) Design Requirements for New development

All new development within the City shall make provisions for the extension of public waste water lines to serve adjacent areas, and as provided in the Waste Water System Master Plan.

This criteria is addressed with a condition of approval.

7.100 Improvement Procedures

In addition to other requirements, public improvements and connections to public facilities installed by a developer or land divider shall conform to the requirements of this Code and all design standards and construction specifications of the City, and shall be installed in accordance with the following procedures.

This criteria refers to the standard professional engineering procedures which are being documented as a city requirement. This includes prior written plans, appropriate notice of work to public agency (city, county, state), inspection of completed work by permitting agency, "as-built" drawings required, off site requirements and other appropriate administrative management standards. The applicant to date has meet all these standards throughout the planning process. The City wishes to document the expectation that these practices will continue during the public improvement process of installing utilities that the public agency's will be accepting in ownership at some point to operate and maintain.

This criteria is addressed with a condition of approval.

7.400 Public Use Dedication

Within or adjacent to a residential subdivision, a parcel of land of not less than six percent of the gross area of the subdivision shall be set aside and dedicated to the public by the developer for park use. The parcel shall be approved by the Planning Commission as being suitable for park and recreation purposes, the developer shall in lieu of setting aside land, pay into a public land acquisition fund a sum of money equal to \$11,000 per gross acre for each acre in the subdivision. The sums so contributed shall be used to aid in securing suitable areas for park and recreation purposes to serve the area containing the subdivision. If the nature of the

subdivision is such that over 34 per cent of the tract to be subdivided is being dedicated to the public for streets, the requirements of this section shall be reduced so that the total obligation of the sub divider does not exceed 40 per cent.

The proposed land use action/subdivision reflects 2.81 acres being given to the City which more than doubles the amount of land required by this condition of approval. The council finds that this land proposed for dedication is "... suitable for park and recreation purposes..." .

This criteria is met with the imposed condition of approval.

Evaluation:

Section 2.321, A land divider shall prepare a Tentative Plan together with improvement plans and other supplementary material as may be required to indicate the general idea and objectives of the project.

The only substantive additional testimony received from parties other than the applicant after the public hearing, submits that proposed conditions are not feasible based upon the "...applicant has not provided adequate information to demonstrate consistency with these criteria...".

The Red Hills 2018 Subdivision Tentative Plan, having been subject to two public hearings, considerable review, deliberation and research over the past two months has clearly met the threshold of Section 2.321 of the Monroe Land Use Development Code.

Conclusion:

Based upon the available information and findings as set forth in the preceding evaluation and review, it is concluded that the proposed tentative subdivision plan for the Red Hills 2018 Project will conform to the applicable standards required by the City of Monroe Land Use Development Code. Tentative subdivision approval is therefore granted subject to the conditions of approval noted below.

CONDITIONS OF APPROVAL

- 1. Comprehensive construction drawings for all proposed utilities (sewer, water, storm water, electric) shall be provided and approved by the City Engineer prior to any developments on the site and final plat approval.**

This is to address criteria(s) 2.328 (2)-code, 2,328 (3)-streets, 2,328 (4)-utilities, 2.328 (5)-site, 2.328 (6)-drainage, 2.328 (8)-impacts, 5.010-standards, 5.030-plans, 5.123(2)-streets, 5.123 (6)-streets, 5.124-sidewalks, 5.126-storm, 5.127-water, 5.128-sewer, 7.100-improvements.

2. The applicant's street plan will conform to the City standards, per city code and referenced by code to other municipal and state codes with the proposed project. Tentative approved plan is for 30 feet wide street, 6" curb, 5' sidewalk. (no planter strip)

This is to address criteria(s) 2.328 (2)-code, 2,328 (3)-streets, 2,328 (4)-utilities, 2.328 (6)-drainage, 2.328 (7)-nuisance, 2.328 (8)-impacts, 5.010-standards, 5.030-plans, 5.123(2)-streets, 5.123 (6)-streets, 5.124-sidewalks, 5.125-bikeways, 5.126-storm, 5.127-water, 5.128-sewer, 7.100-improvements.

3. The applicant and future owners will protect and require drainage facilities in conformance to local and state erosion control regulations.

This is to address criteria(s) 2.328(1)-Undeveloped, 2.328 (2)-code, 2,328 (3)-streets, 2.328 (5)-site, 2.328 (6)-drainage, 2.328 (7)-nuisance, 2.328 (8)-impacts, 5.010-standards, 5.030-plans, 5.126-storm, 5.127-water, 5.128-sewer, 7.100-improvements, 7.400-public.

4. That the applicant meets the standards set by the Monroe Land Use Development Code (MLUDC) 5.030 Plan Conformance with the exceptions of specific allowances granted by the City which include lot size as defined by Ordinance 2007-250. This would include but is not limited to all elements of the MLUDC such as streets, sidewalks, storm drain, water, sewer and Article 7 Improvement Procedures.

This is to address criteria(s) 2.328(1)-Undeveloped, 2.328 (2)-code, 2,328 (3)-streets, 2,328 (4)-utilities, 2.328 (5)-site, 2.328 (6)-drainage, 2.328 (7)-nuisance, 2.328 (8)-impacts, 5.010-standards, 5.030-plans, 5.123(2)-streets, 5.123 (6)-streets, 5.124-sidewalks, 5.125-bikeways, 5.126-storm, 5.127-water, 5.128-sewer, 7.100-improvements, 7.400-public.

5. A subdivision plat shall be prepared by an Oregon land surveyor in accordance with ORS 92 and County Surveyor Plat standards. The surveyor shall submit the original plat and a true reproducible of the plat, and the filing fee to the County Surveyor.
6. That the applicant submits a final subdivision plat for the city planner to review and if significant changes from the tentative plan, submit those changes to the planning commission to approve per Monroe Land Use Development Code Section 2.339.

This is to address criteria(s) 2.328(1)-Undeveloped, 2.328 (2)-code, 2,328 (3)-streets, 2,328 (4)-utilities, 2.328 (5)-site, 2.328 (6)-drainage, 2.328 (7)-nuisance, 2.328 (8)-impacts, 5.010-standards, 5.030-plans, 5.123(2)-streets, 5.123 (6)-streets, 5.124-sidewalks, 5.125-bikeways, 5.126-storm, 5.127-water, 5.128-sewer, 7.100-improvements, 7.400-public.

7. The final plat shall comply with the plat standards for Benton County and monuments shall be established on property corners.
8. The applicant shall record the approved plat at the County Recorder's Office and provide a copy of the plat to the City Recorder.
9. The preliminary approval shall be effective for one year from the date of the decision.
10. Phased development shall be allowed; however, the applicant shall secure final plat approval of the entire tentative plat within 5 years of the date decision or the remaining undeveloped portion of the tentative plat shall become null and void.

This is to address criteria(s) 2.328(1)-Undeveloped, 2.328 (2)-code, 5.010-standards, 5.030-plans.

11. The applicant shall make necessary arrangements with the City, utility companies including but not limited to the Monroe Telephone Company or other persons or corporations for the installation of streetlights and for underground lines and facilities. Electrical lines and other wires, including, but not limited to communication, street lighting, internet and cable television, shall be placed underground.

This is to address criteria(s) 2,328 (3)-streets, 2,328 (4)-utilities, 2.328 (5)-site, 2.328 (7)-nuisance, 7.100-improvements.

12. The applicant shall install or provide financial assurance that all private utilities, such as electrical power, cable television, internet and telephone service are or will be provided for each lot.

This is to address criteria(s) 2.328(1)-Undeveloped, 2.328 (2)-code, 2,328 (3)-streets, 2,328 (4)-utilities, 2.328 (5)-site, 2.328 (6)-drainage, 2.328 (7)-nuisance, 2.328 (8)-impacts, 5.010-standards, 5.030-plans, 5.123(2)-streets, 5.123 (6)-streets, 5.124-sidewalks, 5.125-bikeways, 5.126-storm, 5.127-water, 5.128-sewer, 7.100-improvements, 7.400-public.

13. Fire hydrants shall be installed, fully operational to City standards and shall comply will all recommendations of the Fire District.

This is to address criteria(s) 2.328(1)-Undeveloped, 2.328 (2)-code, 2,328 2,328 (4)-utilities, 2.328 (7)-nuisance, 2.328 (8)-impacts, 5.010-standards, 5.030-plans, 5.127-water, 7.100-improvements.

14. The fire suppression system shall be installed, fully operational and looped prior to combustible construction unless otherwise approved in writing by the Monroe Fire Chief or his representative.

15. All water lines shall be capable of producing 1250 gallons per minute at 20 PSI. For homes exceeding 3500 square feet the nearest hydrant shall be capable of producing 1500 gallons per minute or the home shall be provided with an approved sprinkler system. Certified engineered test results of water flow standards will be provided to the City and the Fire District prior to the approval of the final plat.

16. The applicant shall be responsible for installing sidewalks adjacent to all currently developed properties along 9th and 10th Streets within the tentative plat.

This is to address criteria(s) 2.328(1)-Undeveloped, 2.328 (2)-code, 2,328 (3)-streets, 2,328 (4)-utilities, 2.328 (5)-site, 2.328 (6)-drainage, 2.328 (7)-nuisance, 2.328 (8)-impacts, 5.010-standards, 5.030-plans, 5.123(2)-streets, 5.123 (6)-streets, 5.124-sidewalks, 5.125-bikeways, 7.100-improvements, 7.400-public.

17. A lot grading plan shall be reviewed and approved by the City Engineer prior to construction to roads or utilities. The plan shall comply with all the applicable provisions of state and local law, rules and regulations including but not limited to DEQ and DSL. It shall address erosion control mechanisms during construction.

This is to address criteria(s) 2.328(1)-Undeveloped, 2.328 (2)-code, 2,328 (3)-streets, 2,328 (4)-utilities, 2.328 (5)-site, 2.328 (6)-drainage, 2.328 (7)-nuisance, 2.328 (8)-impacts, 5.010-standards, 5.030-plans, 7.100-improvements.

18. The internal streets shall be constructed to City standards for neighborhood streets, including curb, gutters and sidewalks. No street right-of-way within the subdivision need exceed 50 feet unless otherwise required by City Engineer.

19. The owner shall provide for sidewalks adjacent to all common tracts or open spaces.

This is to address criteria(s) 2.328(1)-Undeveloped, 2.328 (2)-code, 2,328 (3)-streets, 2,328 (4)-utilities, 2.328 (5)-site, 2.328 (6)-drainage, 2.328 (7)-nuisance, 2.328 (8)-impacts, 5.010-standards, 5.030-plans, 5.123(2)-streets, 5.123 (6)-streets, 5.124-sidewalks, 5.125-bikeways, 7.100-improvements, 7.400-public.

20. The applicant shall be responsible for the installation of all traffic signs, street signs, indicators, warning devices as required by the City Engineer.

21. All streets shall be named in conformance with the request of the Monroe Rural Fire Protection District and Benton County Emergency Services.

22. The applicant shall consult with the Monroe School District for the provision of bus stops and shall design and construct such within the public rights-of-way as requested by the Monroe School District.

23. The applicant shall submit a drainage plan that demonstrates the system has the necessary capacity and grade to maintain unrestricted flow from areas draining through the property. The plan shall

demonstrate that the system, will adequately connect to the existing drainage system downstream and shall include design of any improvements to the existing system downstream if any are necessary. The plan shall be reviewed and approved by the City Engineer prior to construction.

This is to address criteria(s) 2.328(1)-Undeveloped, 2.328 (2)-code, 2,328 (3)-streets, 2.328 (5)-site, 2.328 (6)-drainage, 2.328 (7)-nuisance, 2.328 (8)-impacts, 5.010-standards, 5.030-plans, 5.123(2)-streets, 5.126-storm, 5.127-water, 5.128-sewer, 7.100-improvements.

24. The storm drainage system shall retain run-off from the development on the site so that the outlet flow does not exceed the flow from the site in an undeveloped condition. Hydraulic calculations shall be based on current ODOT policies and procedures for hydraulic design and shall be designed for a 25-year storm event.

25. Sanitary sewer lines shall be installed in substantial compliance with the approved preliminary plan. All lines shall be 8 inch and allow for gravity services unless otherwise approved by the City Engineer.

This is to address criteria(s) 2.328(1)-Undeveloped, 2.328 (2)-code, 2,328 2,328 (4)-utilities, 2.328 (6)-drainage, 2.328 (7)-nuisance, 2.328 (8)-impacts, 5.010-standards, 5.030-plans, 5.126-storm, 5.127-water, 5.128-sewer, 7.100-improvements.

26. The applicant is required to obtain a Benton County road approach permit for each of the proposed accesses to Orchard Street.

27. The applicant is required to obtain a Permit to Perform Work in the County Right of Way for any and all construction within the Benton County right of way.

28. The applicant is required to obtain an Erosion and Sediment Control Permit from Benton County Public Works prior to initiating any work within Benton County right-of-way.

This is to address criteria(s) 2.328(1)-Undeveloped, 2.328 (2)-code, 2,328 (3)-streets, 2,328 (4)-utilities, 2.328 (5)-site, 2.328 (6)-drainage, 2.328 (7)-nuisance, 2.328 (8)-impacts, 5.010-standards, 5.030-plans,

5.123(2)-streets, 5.124-sidewalks, 5.125-bikeways, 5.126-storm, 5.127-water, 5.128-sewer, 7.100-improvements.

29. Improvements done within the Benton County right-of-way must be detailed and agreed upon between County engineering staff and the City Engineer of Record and the Applicant's Engineer. The Applicant's engineer must be licensed within the State of Oregon. The design drawings, specifications and details shall be reviewed and approved by Benton County Public Works engineering staff prior to the pre-construction meeting.

30. The applicant/owner must meet all Benton County Agreement for Improvement standards as determined by Benton County.

31. The applicant/owner will meet the required standards for the United States Postal Service in providing and installing any mail receptacles they require other than individual mail boxes located on each property.

32. The applicant/owner will provide a 6-foot wide hard surface sidewalk with grade separation or physical barrier along the south side of Orchard Street from the western edge of the subdivision to the existing sidewalk on Orchard Street near the United Methodist Church. Such improvements to Orchard Street shall be required before any final platting that exceeds 25% of the approved tentative plan.

This is to address criteria(s) 2.328(1)-Undeveloped, 2.328 (2)-code, 2,328 (3)-streets, 2,328 (4)-utilities, 2.328 (5)-site, 2.328 (7)-nuisance, 2.328 (8)-impacts, 5.010-standards, 5.030-plans, 5.124-sidewalks, 5.125-bikeways, 7.100-improvements.

33. Applicant will meet the park land standards before final plat approval.

This is to address criteria(s) 2.328(1)-Undeveloped, 2.328 (2)-code, 7.100-improvements, 7.400-public.

34. Storm water plan be approved by City Engineer with potential to connect to the City storm water system if feasible.

This is to address criteria(s) 2.328(1)-Undeveloped, 2.328 (2)-code, 2,328 (3)-streets, 2,328 (4)-utilities, 2.328 (5)-site, 2.328 (6)-drainage, 2.328 (7)-nuisance, 2.328 (8)-impacts, 5.010-standards, 5.030-plans, 5.126-storm, 7.100-improvements.

MOTIONS:

1. APPROVAL: To approve application:

- a. I move that the City Council approve the subdivision tentative plan submitted by North Santiam Paving Co. for the Red Hills 2018 Subdivision Project., to create and develop 55 buildable lots based upon the findings contained in the Staff Report and subject to the Conditions of Approval contained in the Staff Report.

2. DENIAL: To deny the application:

- a. I move that the City Council deny approval of the subdivision tentative plan submitted by North Santiam Paving Co. to create and develop 55 buildable acres and direct staff to develop findings supporting a denial based upon the oral and written testimony received in the underlying proceeding.

This approval shall become final on the date this decision and supporting findings of fact are signed by the Monroe City Council, below. This Council decision may be appealed to the Land Use Board of Appeals (LUBA) within 21 days after the final order has been signed and mailed.

Failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the City to respond to the issue precludes an action for damages in circuit court.