



CITY OF MILWAUKIE

April 4, 2023

Land Use File(s): MLP-2023-001

Permit(s): NA

NOTICE OF DECISION

This is official notice of action taken by the Milwaukie Planning Manager on April 4, 2023.

Traducciones de este documento e información sobre este proyecto están disponibles en español. Para solicitar información o preguntar en español, favor de email espanol@milwaukieoregon.gov.

Applicant(s):	Jennifer Garbely (City of Milwaukie)
Location(s):	West of western end of Kelvin & Balfour Streets
Tax ID:	Railroad right-of-way on Tax Map 1S1E25CA supplemental
Application Type(s):	Minor Land Partition
Decision:	Approved
Review Criteria:	Milwaukie Municipal Code (MMC): <ul style="list-style-type: none">• MMC Chapter 12.16 Access Management• MMC Title 17, including:<ul style="list-style-type: none">◦ MMC Chapter 17.12 Application Procedure & Approval Criteria◦ MMC Chapter 17.16 Application Requirements & Procedures◦ MMC Chapter 17.20 Preliminary Plat◦ MMC Chapter 17.28 Design Standards◦ MMC Chapter 17.32 Improvements• MMC Section 19.312 North Milwaukie Innovation Area (including NME)• MMC Chapter 19.700 Public Facility Improvements• MMC Section 19.1005 Type II Review
Neighborhood(s)	Ardenwald-Johnson Creek

Appeal period closes: 5:00 p.m., April 19, 2023

Conditions of Approval

None

Other requirements

1. MMC Section 17.04.120 Recording

As per MMC Section 17.04.120, partitions must be recorded by plat. An application for final plat must be submitted to both the City Planning Department and the County Surveyor within six months of the date of this approval. Once approved by the County Surveyor, a copy of the recorded final plat must be submitted to the City Planning Department.

Findings in Support of Approval

The Findings for this application are included as Exhibit 1.

Case File

This notice is issued in accordance with Milwaukie Municipal Code (MMC) Section 19.1005 Type II Review. The complete case file for this application is available for review between 8:00 a.m. and 5:00 p.m. on regular business days at the Planning Department, Johnson Creek Facility, 6101 SE Johnson Creek Blvd. Please contact Brett Kelter, Senior Planner, at 503-786-7657 or kelterb@milwaukieoregon.gov, if you wish to view this case file.

Appeal

This decision may be appealed by 5:00 p.m. on **April 19, 2023**, which is 15 days from the date of this decision.¹ An appeal of this decision would be heard by the Milwaukie Planning Commission following the procedures of MMC Section 19.1010 Appeals. This decision will become final on the date above if no appeal is filed during the appeal period. Milwaukie Planning staff can provide information regarding forms, fees, and the appeal process at 503-786-7630 or planning@milwaukieoregon.gov.

Expiration

Per MMC Section 17.04.050, all decisions on boundary changes and land divisions expire one year after the date of approval. Approvals may be extended up to six months upon submission of a formal request to the original decision-making authority. One extension of up to six months is allowed if there are no changes to the original approved plan or to related ordinances and if the applicant can show intent of recording the land division or boundary change within the six-month extension period.

Per MMC Section 17.04.120, an application for final plat must be submitted to both the City Planning Department and the County Surveyor within six months of the date of this approval. Note that submittal of a final plat application within this six-month timeframe is necessary to preserve the one-year validity of the decision established in MMC 17.04.050. The six-month deadline for final plat submittal cannot be extended.

¹ As per MMC Section 19.1010, if the 15th day falls on a weekend or legal holiday, the end of the appeal period shall be extended to the end of the next business day.

Manager’s Declaration of Impartiality

I certify that neither I nor any member of my immediate family has a material, personal, or financial relationship with the applicant. I further certify that no other relationship, bias, or ethical conflict exists which would have prevented me from evaluating the land use application solely on its merits and in accordance with the Milwaukie Municipal Code.

Decision

- Approved
- Approved with Conditions
- Denied



Laura Weigel, AICP
Planning Manager

Exhibits

1. Findings in support of approval
 2. Preliminary partition plat (with aerial photo)
- cc: Jennifer Garbely, applicant (for City), Assistant City Engineer (via email)
Chris Goodell, applicant’s representative, AKS Engineering & Forestry (via email)
Planning Commission (via email)
Joseph Briglio, Community Development Director (via email)
Steve Adams, City Engineer (via email)
Engineering Development Review (via email)
Patrick McLeod, Building Official (via email)
Stephanie Marcinkiewicz, Inspector/Plans Examiner (via email)
Harmony Drake, Permit Technician (via email)
Interested Persons
Land Use File(s): MLP-2023-001

EXHIBIT 1
Findings in Support of Approval
File #MLP-2023-001 (west of western end of Kelvin & Balfour Streets)

Sections of the Milwaukie Municipal Code not addressed in these findings are found to be inapplicable to the decision on this application.

1. The applicant, Jennifer Garbely on behalf of the City of Milwaukie, has applied for approval to partition existing railroad right-of-way (ROW) owned by the Union Pacific Railroad to create a new parcel that will be used for stormwater management as part of the City's Meek Street stormwater capital improvement project. The site is within the North Milwaukie Innovation Area (NMIA) and is zoned North Milwaukie Employment (NME). The land use application file number MLP-2023-001.
2. The subject property is approximately 17.5 acres of existing railroad ROW that extends north-south along the eastern edge of the NMIA. The railroad ROW varies in width along this part of the alignment, ranging from approximately 55 ft to several hundred feet wide depending on the location. In general, the railroad ROW is developed only with a railroad bed and tracks. Between the western termini of Kelvin and Balfour Streets, the railroad ROW extends uphill away from the tracks and is not developed. The proposed partition would establish one new parcel (Parcel 1) comprised of the undeveloped slope between Kelvin and Balfour Streets and separated from the railroad tracks. The City has arranged to buy the new parcel and utilize it for stormwater management as part of its larger public infrastructure project centered on Meek Street.
3. The proposed land division constitutes a partition as per the definitions in Milwaukie Municipal Code (MMC) Chapter 17.08. The proposal is subject to the following provisions of the MMC:
 - MMC Chapter 12.16 Access Management
 - MMC Title 17 Land Division, including:
 - MMC Chapter 17.12 Application Procedure & Approval Criteria
 - MMC Chapter 17.16 Application Requirements and Procedures
 - MMC Chapter 17.20 Preliminary Plat
 - MMC Chapter 17.28 Design Standards
 - MMC Chapter 17.32 Improvements
 - MMC Section 19.312 North Milwaukie Innovation Area, incl. North Milwaukie Employment Zone (NME)
 - MMC Chapter 19.700 Public Facility Improvements
 - MMC Section 19.1005 Type II Review

The application was submitted on March 2, 2023, and deemed complete on March 10, 2023. The application has been processed and public notice provided in accordance with MMC Section 19.1005 Type II Review as required by law, with a decision by the Planning Manager.

4. MMC Chapter 12.16 Access Management

MMC 12.16 regulates access from private property onto public streets, with specific requirements and standards provided in MMC Section 12.16.040, including for access spacing, location, number, design, and size. The City Engineer has the authority to restrict the location of accessways.

The subject property abuts Kelvin and Balfour Streets at the western terminus of each roadway, with reflective barriers installed to limit access to the railroad ROW. The new parcel (Parcel 1) will be developed as a public stormwater management facility (several planted swales/ponds). During construction, access to Parcel 1 will be provided from the undeveloped terminus of one or both streets. Once platted and developed as a stormwater facility, Parcel 1 will be accessed only occasionally as needed for maintenance, with some form of reflective barrier remaining in place at each street terminus and gates or similar measures installed to allow limited access by authorized personnel. The City Engineer has determined that the specific standards of MMC 12.16 are not applicable to the proposed Parcel 1, as access will be restricted.

The Planning Manager finds that the applicable standards of MMC 12.16 are met.

5. MMC Title 17 Land Division

MMC Title 17 establishes the standards and procedures for land division and property boundary changes.

a. MMC Chapter 17.12 Application Procedure and Approval Criteria

MMC 17.12 specifies the process and procedures for lot consolidation, property line adjustment, partition, subdivision, and replat.

The subject property is a 17.5-acre portion of railroad ROW. The proposed land division would create a new parcel from the railroad ROW. This action constitutes a partition as per the definitions of MMC Chapter 17.08 and the guidance of MMC Table 17.12.020.

MMC Section 17.12.040 establishes the approval criteria for preliminary plat. The proposed partition meets these criteria as described below.

- (1) The proposed preliminary plat complies with Title 19 and other applicable ordinances, regulations, and design standards.

As demonstrated by the applicant's submittal materials and evidenced by these findings, the proposed replat complies with all applicable standards of MMC Titles 17 and 19. As proposed, this criterion is met.

- (2) The proposed division will allow reasonable development and will not create the need for a variance of any land division or zoning standard.

The proposed partition will establish a new parcel that will be developed as a public stormwater management facility, leaving the remainder of the subject property to continue serving as part of the larger railroad ROW alignment. The proposed partition does not create the need for any variances. As proposed, this criterion is met.

- (3) The proposed subdivision plat name is not duplicative and the plat otherwise satisfies the provisions of Oregon Revised Statutes (ORS) 92.090(1).

The proposed partition will be assigned a filing number by the Clackamas County Surveyor and does not require a plat name. As required for the final plat submittal, the plat will meet all applicable provisions of the ORS. As proposed, this criterion is met.

- (4) The streets and roads are laid out so as to conform to the plats of subdivisions already approved for adjoining property as to width, general direction, and in all other respects unless the City determines it is in the public interest to modify the street or road pattern.

No new streets or roads are included in the proposed partition. This standard is not applicable.

- (5) A detailed narrative description demonstrating how the proposal conforms to all applicable code sections and design standards.

The applicant's submittal materials include a narrative that addresses all applicable code sections and design standards.

As proposed, the Planning Manager finds that the preliminary plat meets the applicable criteria.

b. MMC Chapter 17.16 Application Requirements and Procedures

MMC Section 17.16.060 establishes the application requirements for preliminary plat, including completed application forms and checklists, applicable fees, and the information specified in MMC Chapter 17.20 Preliminary Plat.

The applicant's submittal materials include the necessary forms, checklists, and fees, as well as a narrative, preliminary plat document, and other information sufficient to demonstrate compliance with the applicable standards and criteria.

As proposed, the Planning Manager finds that the application meets the applicable requirements for preliminary plat submittal.

c. MMC Chapter 17.20 Preliminary Plat

MMC 17.20 establishes the information required for a preliminary plat, including general information to be shown on the plat and existing and proposed conditions.

The applicant's preliminary plat submittal is to scale and includes a map of existing conditions, contour lines, utilities, and other general information.

As proposed, the Planning Manager finds that the proposed preliminary plat includes the relevant and necessary information as outlined in MMC 17.20.

d. MMC Chapter 17.28 Design Standards

MMC 17.28, particularly MMC Section 17.28.040, establishes standards for lot design for land divisions and boundary changes.

- (1) MMC Subsection 17.28.040.A requires that the lot size, width, shape, and orientation must be appropriate for the location and the type of use contemplated, as well as that minimum lot standards must conform to Title 19.

As discussed in Finding 6, the proposed new parcel meets the minimum area and dimensional requirements for the underlying NME zone. As proposed, this standard is met.

- (2) MMC Subsection 17.28.040.B requires that lot shape must be rectilinear, except where not practicable due to location along a street radius, or existing lot shape. The sidelines of lots, as far as practicable, must run at right angles to the street upon which the lots face. As far as practicable, the rear lot line must run parallel to the street.

The proposed new parcel (Parcel 1) is not rectilinear in shape, as the larger subject property is not rectilinear to begin with. The railroad ROW is generally long and narrow but bulges to the east in this location. Parcel 1 captures the non-rectilinear bulge and resets the adjacent portion of the eastern boundary of the remaining railroad ROW to be more in line with the extended eastern ROW boundary. As proposed, this standard is met as much as is practicable.

- (3) MMC Subsection 17.28.040.C limits compound lot lines for side or rear lot lines. Cumulative lateral changes in direction exceeding 10% of the distance between opposing lot corners along a given lot line may only be permitted through the variance provisions of MMC Subsection 19.911.

The proposed partition does result in two small compound line segments along the eastern boundary of the larger railroad ROW. However, given the extended and linear nature of the railroad ROW, the cumulative lateral changes are well under 10% of the distance along the eastern railroad ROW boundary. This standard is met.

- (4) MMC Subsection 17.28.040.D allows lot shape standards to be varied pursuant to MMC 19.911.

No variance to the lot shape standards is requested in this application. This standard is not applicable.

- (5) MMC Subsection 17.28.040.E limits double frontage and reversed frontage lots, stating that they should be avoided except in certain situations.

Due to its size and linear nature, the proposed new parcel has frontage on both Kelvin and Balfour Streets but is not a double frontage or reversed frontage lot. This standard is not applicable.

- (6) MMC Subsection 17.28.040.F requires that, pursuant to the definition and development standards contained in Title 19 for frontage, required frontage shall be measured along the street upon which the lot takes access. This standard applies when a lot has frontage on more than one street.

The underlying NME zone has no minimum requirement for street frontage. As proposed and as discussed in Finding 4, the new parcel (Parcel 1) has frontage on both Kelvin and Balfour Streets (approximately 50 ft each), but access will be restricted. Parcel 1 will only be accessed occasionally as needed for maintenance of the stormwater management facility that will be developed on the site. This standard is met.

As proposed, the Planning Manager finds that the new parcel and remaining railroad ROW presented in the applicant's preliminary plat meet the applicable design standards established in MMC 17.28.

e. MMC Chapter 17.32 Improvements

MMC 17.32 establishes procedures for public improvements, including a requirement that work will not begin until plans have been approved by the City.

As discussed in Finding 4, access to the new parcel (Parcel 1) from Kelvin and Balfour Streets will be restricted to authorized personnel performing maintenance on the new stormwater management facility that will be developed on Parcel 1. Construction of any necessary public improvements will be done in conjunction with the review and approval of any associated permits.

As conditioned, the Planning Manager finds that the applicable standards of MMC 17.32 are met.

The Planning Manager finds that the proposed partition meets all applicable standards of MMC Title 17.

6. MMC Section 19.312 North Milwaukie Innovation Area, including North Milwaukie Employment Zone (NME)

MMC 19.312 establishes standards for the North Milwaukie Innovation Area, including for the North Milwaukie Employment Zone (NME).

a. MMC Subsection 19.312.2 Allowed Uses

MMC 19.312.2 establishes the uses allowed outright in the NME zone, including a mix of office, commercial, industrial, and repair and service uses. Public utilities, such as water, sewer, and stormwater facilities are allowed outright.

As proposed, the new parcel (Parcel 1) will be developed as a public stormwater management facility (several planted swales/ponds), which is an outright permitted use in the NME zone.

As proposed, this standard is met.

b. MMC Subsection 19.312.5 Development Standards

MMC 19.312.5 establishes development standards for the NME zone. For new lots, there is no minimum lot size and no minimum required public street frontage.

The proposed new parcel is approximately 1.13 acres and has approximately 50 ft of frontage on each of Kelvin and Balfour Streets.

As proposed, the applicable development standards are met.

The Planning Manager finds that the proposed partition meets all applicable standards of MMC 19.312.

7. MMC Chapter 19.700 Public Facility Improvements

MMC 19.700 establishes provisions to ensure that development provides public facilities that are safe, convenient, and adequate in rough proportion to their public facility impacts.

MMC Section 19.702 establishes the applicability of MMC 19.700, including for land divisions, new construction, and modification or expansion of an existing structure or a change or intensification in use that results in any projected increase in vehicle trips or any increase in gross floor area on the site. However, MMC Subsection 19.702.4 provides exemptions from MMC 19.700, including for public capital improvement projects.

The applicant proposes to partition the subject property to create a new parcel that will be developed as a public stormwater management facility. The proposed partition is exempt from the requirements of MMC 19.700.

The Planning Manager finds that the standards of MMC 19.700 are not applicable to the proposed partition.

8. The application was referred to the following departments and agencies on March 10, 2023:

- Milwaukie Community Development Department
- Milwaukie Building Department
- Milwaukie Engineering Department
- Milwaukie Public Works Department
- Milwaukie Police Department
- Milwaukie City Attorney
- Clackamas Fire District #1 (CFD#1)
- Ardenwald-Johnson Creek Neighborhood District Association (NDA) and Land Use Committee (LUC)
- Oregon Department of Transportation (ODOT, including ODOT Rail Division)
- TriMet
- NW Natural

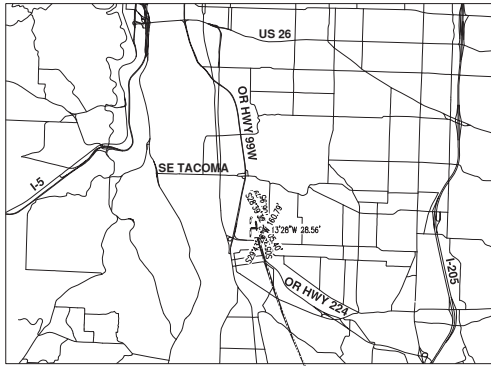
In addition, notice of the public hearing was mailed to owners and residents of properties within 300 ft of the subject property on March 10, 2023.

The comments received are summarized as follows:

- **Laura Walter, owner/resident at 2722 SE Kelvin St:** Unclear about the proposal and concerned about potential impacts to her property.

Staff Response: Staff clarified the nature of the proposed stormwater management facility to the commenter's satisfaction.

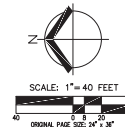
Exhibit 2



VICINITY MAP
NOT TO SCALE



NOTES:
1. AERIAL IMAGE FROM METRO (2016).
2. CONTOURS DISPLAYED WERE CREATED USING TOPOGRAPHIC SURVEY DATA COLLECTED BY AKS ENGINEERING ON MARCH 27 - APRIL 21, 2017.



CITY OF MILWAUKIE
MEEK STREET PIPE INSTALLATION
PARTITION APPLICATION
MILWAUKIE, OREGON
11238A, 11235D, 11238B, 11238C, 11238E, 11238F, 11238G, 11238H

PRELIMINARY PARTITION PLAT
WITH AERIAL PHOTOGRAPH

DESIGNED BY: JPC
DRAWN BY: NAD
CHECKED BY: JPC
SCALE: AS NOTED
DATE: 01/04/2023
REVISION:
REVISION DATE: 12/21/23

JOB NUMBER:
5122
SHEET:
3 OF 3