

**MINUTES**  
**City of Newport Planning Commission**  
**Regular Session**  
**Newport City Hall Council Chambers**  
**Monday, November 9, 2015**

**Commissioners Present:** Jim Patrick, Rod Croteau, Lee Hardy, Bob Berman, Gary East, and Bill Branigan.

**Commissioners Absent:** Mike Franklin (*excused*).

**City Staff Present:** Community Development Director (CDD) Derrick Tokos, City Engineer and Public Works Director Tim Gross, and Executive Assistant Wanda Haney.

**A. Roll Call.** Chair Patrick called the meeting to order in the City Hall Council Chambers at 7:00 p.m. On roll call, Hardy, Berman, Croteau, Patrick, East, and Branigan were present. Franklin was absent but excused.

**B. Approval of Minutes.**

1. Approval of the Planning Commission regular session meeting minutes of October 12, 2015, and the work session meeting minutes of October 26, 2015.

**MOTION** was made by Commissioner Croteau, seconded by Commissioner Hardy, to approve the Planning Commission meeting minutes as presented. The motion carried unanimously in a voice vote.

**C. Citizen/Public Comment.** No public comments.

**D. Consent Calendar.** Nothing on the Consent Calendar.

**E. Action Items.** No items requiring action to be taken.

**F. Public Hearings.** Patrick opened the public hearing portion of the meeting at 7:02 p.m. by reading the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits. Berman, Croteau, Patrick, East, and Branigan declared site visits. Patrick called for objections to any member of the Planning Commission or the Commission as a whole hearing this matter; and none were heard.

1. **File No. 3-PAR-15-A.** A *de novo* hearing on an appeal of the Community Development Director's decision of denial by Final Order adopted 9/24/15 for the partition of Tax Lot 607 of Assessor's Map 10-11-20-BC filed by the applicant and property owner, Jonathan Holbrook.

Patrick opened the hearing for File No. 1-PAR-15-A at 7:03 p.m. by reading the summary of the file from the agenda. He called for the staff report. Tokos noted that in their packets was a memo dated November 4<sup>th</sup> outlining his thoughts on where things stand. He noted also that the packets contained a memo from City Engineer Tim Gross who was in attendance and available to answer questions as well. The packets also contained the applicant's appeal, the original decision; and he had the complete case record. Tokos said what the Commission has here that's in question, as he outlined in his memo, is what the public facilities requirements are for a partition. He said you have a request to divide an existing parcel into two. He said part of it is if it should go in this direction or all lots should be holistic. The parcel is served off a gravel roadway. He noted that the Commissioners had a copy of that map in their packet. He said the standards that apply are found in NMC 13.05.095(A)(5), which he walked through in his memo. He said that standard has two parts. One is that the public facilities are adequate under Section 13.05.045. The other is that the proposed streets within the partition comply with the standards under Section 13.05.015, including any allowed modifications or a variance has been obtained. In his memo, Tokos explained that the standard provides that the land division may only be approved if the public facility and utility providers confirm in writing that they can adequately provide service to the proposed land division. The Commissioners have in their packets utility provider letters indicating that they can serve the development; so it is reasonable for the Planning Commission to accept those letters as adequate to

satisfy that requirement. For public facilities (water, sewer, streets, and storm drainage) that falls to Public Works and is penned typically by the City Engineer. In the packet, the Commissioners have a letter from Tim Gross indicating that the existing private street would have to be improved with curb, gutter, drainage structures, an aggregate base, and paving in order to be adequate to serve additional parcels. Gross further notes that a roadside ditch storm drainage conveyance system was never installed as was proposed in the cross-section drawings on the maps identified as Partition 5-PAR-05 "Holbrook Estates." Lastly, Gross notes that each parcel is required to have separate sewer services that are contained within private sewer easements for maintenance purposes.

Tokos said, with respect to that second sentence of that original standard (13.05.095(A)(5)), the Director's decision finds that the existing private street is a "proposed street" because the parcels that it will serve don't exist yet, and it is located within the partition. Tokos noted that Mr. Holbrook argues that a street is "proposed" only if it is being modified or extended. The Planning Commission needs to determine which approach is the more appropriate interpretation. If the Commission agrees with the Director, the private street must be improved to a standard that meets the provision of NMC 13.05.015, which includes a 50-foot right-of-way and a 36-foot-wide roadway. That dovetails with the City Engineer's concerns as outlined in his letter. A variance wasn't applied for; and it's unlikely that one could have been approved because there's no hardship or practical difficulty here. It's a cost issue for the size of the street; and financial constraints aren't something you can consider with a variance. The approval authority can modify the standards; but that's typically through a planned development. In Wilder, for example, we allowed the 24-foot width. Gross and Tokos mentioned to Holbrook that that's an option for him. We can look at each of the parcels, which is proposed to be increased to ten, and consider the given length of the road what that should be; and that would be the standard for subsequent development that would occur out there, including the subject one. Tokos said the concern with accepting a holistic interpretation that it's a proposed street only if the existing is being extended is that it creates a loophole. Someone could plat in a lot at whatever standards they want and then come back and partition the property. Tokos said if the Commission believes it's not proposed because it's pre-existing and Holbrook should be able to utilize it as it exists, then he would really encourage the Commission to re-visit the land division code that's in place to make sure that when parcels are created, those are suitable for the intended use when done. In that way that person buying a parcel has confidence that they can build their home without incurring the cost of extending the street or sewer or water lines. That those are available and in place, and the buyer is just responsible for constructing their home and driveway and onsite utilities.

Tokos said in the appeal, there is a fair amount of talk about Chapter 14.44. Tokos explained why he doesn't believe that is applicable. He noted that those transportation standards were adopted as part of the update to the Transportation System Plan (TSP) when we were doing the South Beach work in order to create standards for infill lots. It has very specific language. Streets within or adjacent to a proposed partition or subdivision are to be improved in accordance with the TSP and have to meet the rules of the subdivision code. He called that out in his memo. Tokos said, considering what is outlined in his memo and the information in the case record, the Commission needs to determine if the application satisfies the approval standards, or can through the imposition of reasonable conditions. If the Commission can't find that the standards have been met, or can with reasonable conditions, then the application must be denied. The Commission should clearly articulate its reasoning and direct staff to prepare findings and a final order consistent with where the Commission wants to go with the appeal.

Tokos' recommendation is that the Planning Commission carefully consider the adequacy of the street and storm drainage conveyance system that would serve the proposed parcels. If the Commission accepts that the street must be improved to the current TSP standards of a 36-foot paved section, then you need to look at whether imposing the condition that the applicant construct those improvements is reasonable. Tokos noted that this stretch of private street is approximately 140 feet in length from US 101. He said, in determining whether or not the improvement is reasonable, the Commission has to consider if it appears to be roughly proportional to the impact of creating two new parcels. If the Commission believes that it is, then you should impose the condition. If not, then the Commission should deny the partition on the basis that the road access and associated storm drainage system is not adequate to serve additional parcels. He said if the Commission feels that the street improvement condition is reasonable, then you should also consider imposing a condition that individual sewer services be installed and private sewer maintenance easements be put in place as recommended by the City Engineer.

Branigan said part of the code says that if there are less than four residences, it's a private drive. If there are more than four, then it becomes a private street. He wondered how we got to that number for the code. Tokos said as he recalls we had the discussion that at what point do we care. If there are four or fewer, it can be a private driveway and

not subject to street standards. If there are more than four, it becomes a street and needs to be evaluated to make sure it's adequate. He said, infill or not, the one theme was four is as far as a driveway goes; then it becomes a private street and needs to be constructed to standards so that it's safe. At some point there's enough homes served that it's very important that it be more than just a private driveway. It becomes more challenging for maintenance.

Croteau asked if what he's hearing is at some point in the future when it's totally built out, this will become the city's responsibility. Tokos said this is a private street and not proposed to be in the city's hands. He said it's been the city's experience that over a long period of time, property owners will approach the city to take it on. Branigan asked if it's a private road but still has to meet the city's codes as far as depth of asphalt and such. Tokos said, but it's the city's view that it does unless a planned development is done or an alternate street section is done. The subdivision code does allow modification to the 50-foot right-of-way. That's typical with a planned development. That's when you look at it as a holistic thing and make a decision. Southshore is a private street system. There have also been some smaller streets like with the Coho/Brant project. From the audience, Holbrook noted that there is also the minimum fire code. Tokos said that the Commission has had that conversation. Berman asked if it only makes sense to vary the standards if an entire subdivision is resubmitted in a full buildout plan. Tokos said it allows for modification to those standards. The only way we've done it to date is with a planned development. That's not a requirement. Berman asked if there's something between what exists now and the full TSP standards that would be acceptable. City Engineer Gross said what he discussed with Wilder is the minimum he would accept is 24 feet. Thirty-six feet is the standard, and that's driven by parking on the street. With 24 feet, you have no parking. He said it depends on what you want the street to be. He said the city's design standards aren't to build a Cadillac of streets, but to allow the street to work as well as possible. The cross-section, thickness, and how it's constructed; you wouldn't deviate. The most he would deviate would probably be the width. He doesn't have much anxiety in how wide it is other than getting equipment in for maintenance and emergency response. He said it depends on the neighborhood. If there's off-street parking, and you're not parking on the street; it's no big deal. If there's no off-street parking, then you're parking on the street. That's why the 36-foot width was put in place; so you can park on the street without hindering traffic. He said the Planning Commission needs to consider that.

Hardy asked how this neighborhood is proposed to be developed if it's not a subdivision. Tokos said this is a partition at this point. He said as the Commissioners saw from this material, it's been a series that have over time continued to create additional parcels. Now there are nine. He had included a map showing the nine lots and the driveway that provides access to those existing nine lots that are there. Hardy asked if these are all the under the same ownership. Tokos confirmed, all one owner at this time. Hardy asked what the goal is. Tokos said that's something she could talk to Mr. Holbrook about.

**Proponents:** Jonathan Holbrook, 405 SE Scenic Loop, Newport, the applicant and property owner came forward to testify. He had materials that he handed out to the Commissioners. He read through the letter that was included, which he noted was very code-related. He noted that he's a local building designer and has read and interpreted planning and building codes on a daily basis for approximately 30 years. He said that at issue is the approval of a minor partition denied solely on the recommendation of the Public Works Director. Holbrook explained that he wishes to gain approval of the partition without having to provide the private access easement and storm drainage. He said he will present evidence that the partition meets the criteria of the NMC and should be approved without the road improvements. He noted that Section 13.05.095 states that if the tentative plan complies with the criteria, the plan shall be approved. Holbrook said in this situation, it boils down to one criterion that one individual, the City Engineer, believes the plan doesn't meet. Holbrook said the meaning of the second part of the criteria under Section 13.05.05(A)(5) boils down to the word "proposed." He said, when reading the code it's mandatory that you use literal definitions to interpret all parts of the code, which is extremely important to uniformly disseminate information and approvals. He believes that the clear intent of the code is that "proposed" refers to new construction or modification of roadways only. Holbrook explained that the dictionary defines "proposed" as "to form or put forward a plan;" and the definition of "planned" is "to arrange the part of: Design <plan a new layout." He noted that in this instance the highway access and private easement access road is an access to the property that was approved by the City, ODOT, the Fire Marshal, and Public Works; and there are no "proposed" or "new" streets or any modification to streets. Holbrook believes that the intent of the Municipal Code is to require street upgrades to subdivisions, which is a land division of four or more parcels; and only new streets, not existing streets, for minor partitions. He noted that to support this, Section 14.44.050(B) states that the City may accept a future improvement "guarantee" in the form of a surety bond, letter of credit, or non-remonstrance agreement in lieu of street improvements if it determines that one or more condition exists. The fourth condition listed is that the improvement is associated with an approved land partition

or minor replat and does not create any new streets. He believes that if a minor partition meets the criteria, which he feels that his does, and doesn't create any new streets, approval should fall back on the first part of Section 13.05.095(A)(5), which only requires that streets be "adequate." He said it makes sense why the code defines "subdivision" and "minor partition" as two separate approvals; it's to allow a lower level of criteria for approval.

Holbrook said that the pertinent portion of Section 13.05.045(B)(3) reads, "storm drainage facilities needed, if any, to handle any increased flow or concentration of surface drainage from the land division, or detention or retention facilities that could be used to eliminate the need for additional conveyance capacity, without increasing erosion or flooding." Holbrook said in his situation there is no increase in flow or concentration of surface drainage as there is no change to the roadway or the property; and any increased flow from future structures will be mitigated in the building permit process. Section 13.05.045(B)(4) reads "street improvements outside of the proposed development that may be needed to adequately handle traffic generated from the proposed development." He said this addresses city roadways outside the development; and as there are no city roadways outside the development, only Highway 101, he meets this criterion. For confirmation of this, Holbrook provided a letter from Public Works (Page A-1 of his submitted materials) and noted also that ODOT made no comment on his partition, meaning they approved it. Holbrook said that if the Commission does not agree with his interpretation of the code and feels that Holbrook should have to abide by Section 13.05.015, he asked the Commissioners to review item B of that section, which states "modifications to this requirement (minimum right-of-way and roadway width) may be made by the approving authority where conditions, particularly topography, geology, and/or environmental constraints, or the size and shape of the area of the subdivision or partition, make it impractical to otherwise provide buildable sites, narrower right-of-way and roadway width may be accepted." He referred the Commissioners to page A-22, the last page of his packet, with a site plan showing the parcels. It shows the 50-foot right-of-way requested by the Public Works Director. Highway 101 is on the right side. "PL" indicates property line. Then there's the line of the 50-foot edge of the right-of-way, the 20-foot garage setback, and a 15-foot rear setback line. He said this leaves an almost unbuildable piece of property. He believes it's physically impossible to install a road that the City is requesting at this time.

Going back to his letter, Holbrook noted that as stated previously, he feels that he meets the criteria; and as such, the code mandates approval. He said that both the Development Director and the Public Works Director continue to imply that his access road is inadequate; so he presented some attachments as further evidence of the adequacy of the roadway. He asked the Commissioners to turn to page A-1 of his packet, which was a letter of approval from the Public Works Department, dated October 12, 2015. Page A-2 is an approval letter from Toby Cole of the Fire Department, dated January 30, 2010. Page A-3 is an approval of the roadway from Rob Murphy, dated November 2, 2015. Pages A-4 through A-14 is the last minor partition for this piece of property, dated November 4, 2008, which also has approvals of the roadway by Community Development Director James Bassingthwaite and Public Works Director Lee Ritzman, and final approval by Community Development Director Derrick Tokos. He noted that at the bottom of page A-8 is criterion C. The code was updated in 2009, and this predates that update. He said if you review the criteria in 2008, they are basically the same as required now. In 2008, his partition was approved. He pointed out that page A-15 has a picture of the roadway of a minor partition approved in 2011 after the code change. This roadway is essentially the same as the roadway he is applying for now and was approved without requirements for road improvements. On NW 55<sup>th</sup>, the roadway is 19 feet wide, gravel, and has no storm drainage. Holbrook's current road is 21 feet, gravel, with no storm drainage also. His roadway is actually better than this roadway here. In preparing for this appeal, Holbrook did an impromptu Agate Beach road survey, which is shown on page A-18. He noted that his private easement road is at the very bottom. The Highway 101 road entrance is 27 feet wide. He obtained the permit, and it was approved by ODOT and the City. He said as you review the existing roads in Agate Beach in general, you'll see his 101 access is better than a majority of the city's public streets in north Newport. He noted that the next page, A-19, you'll see a visual of the property. It shows the highway entrance that is 27 feet wide. It's well-maintained. He put in the red lines to indicate where the driveway to the property is, which is immediately adjacent to the highway access. In dividing this into two parcels, the first would be on the left with direct access to the highway. The northerly parcel would have the driveway access, which is immediately to the right of the electrical box shown there. It's pretty much adjacent to the highway access. If he doesn't divide the property, this driveway will still be the driveway for the development. Holbrook noted that the division of this property is not adding any more traffic to the private roadway easement shown here. Page A-20 shows the gravel private easement access from the south looking north. Page A-21 is a photo taken from near the northerly property line looking south up the private easement access. The highway access is to the left just past the hill. He showed red lines to give an idea of what it would look like installing 35 feet. Between the utility pole on top of the hill and the electrical box is approximately 39 feet. In order

to install a 50-foot right-of-way and a 36-foot roadway, he would have to remove the electrical box and possibly the telephone pole.

Going back to his letter, Holbrook said that when reading the code, the first step is to do a literal interpretation of how the code reads and follow it as closely as possible. He said unfortunately when you have well-defined rules, they will rarely be all-inclusive to all conditions in the field; and that's why codes typically include "exceptions" to allow conditions that fall outside of the narrow definition of a specific code regulation. He noted that Section 14.44.010 states that the purpose is to provide planning and design standards for the implementation of public and private transportation facilities and city utilities and to indicate when and where they are required. Section 14.44.040 reads that no development may occur unless required public facilities are in place or guaranteed in conformance with the provisions of this code. Improvements required as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of the development on public facilities. Holbrook said in his case there is negligible impact on public facilities. He's invested approximately \$250 thousand installing sewer, water, electrical, phone, cable, gas, a new highway access, and roadways. All of which were recently approved by the City and ODOT. There are no city streets adjacent to this property to be impacted. Holbrook said the Public Works Director's condition of approval would necessitate moving existing utilities, building a 36-foot by 170-foot paved roadway with storm system. There is no city storm water system to be impacted in this area. He said that those improvements would run into the tens of thousands of dollars, and would very likely exceed the value of the parcel created; which would clearly not be proportional to the negligible impact. Holbrook said that the Development Director's contention that he should then be denied approval is not stated in this provision of the code; only that improvements shall be roughly proportional to the impact of the development on public facilities. Holbrook has also agreed to sign a non-remonstrance agreement to participate in any future road district, which he'd gladly do. Holbrook said in the Public Works Director's denial, he fails to recognize any of the code-allowed exceptions to the rule. He believes that this last exception that he quoted is a direct mandate to protect property owners from excessive conditions of approval such as this.

Holbrook said an even larger issue is the setting of precedent that will allow one individual, the Public Works Director, to set completely unreasonable conditions on property owners who simply want to divide a piece of property into two. He noted that as shown on his impromptu road survey, a clear majority of the roads in north Newport do not meet the city standards quoted by the Public Works Director. Many roads are gravel with no storm drainage. Holbrook believes that if these conditions of approval are enforced, it would effectively shut down a large portion of minor partitions applied for because the street improvements required could potentially cost more than the value of the land created. He stated that this will create a further shortage of buildable land, which we are already experiencing. He said that he believes it should be part of the Planning Commission's job to provide a check and balance to the city administration. He said if the Commission agrees with the conditions set forth by the Public Works Director, this will have a huge impact on the ability of citizens of Newport to develop their property, reducing the value of their property, while substantially reducing potential property tax income for the City. Clearly a lose-lose situation.

In closing, Holbrook said that he believes he has demonstrated multiple Municipal Code options for the Planning Commission to allow his partition without the road or drainage improvements; and hopes that it will be approved.

Hardy asked what Holbrook's overall goals are with this property. Holbrook said he's a life-long resident born and raised here. On those parcels, he is building single-family residences; a nice low-density buildout. He said the parcels are fairly large. He's keeping many of the trees, and has created public space. There's a trail. It will be a very nice development, and a low-density development. He attempted a partition earlier this year, which was going to be denied; so he withdrew it. This is a partition he feels should be approved. It meets the criteria. It's directly on the highway. He said that it doesn't impact the road further in the subdivision at all. He intends to do a very nice, well-developed subdivision. His daughter has a house in there; and there's a family in there. He intends to sell single-family residences in there. Hardy said, so you're essentially creating a subdivision. Holbrook said the issue tonight is a minor partition; he's not creating a subdivision tonight. This is a partition on one piece of property on the highway with minimal impact in there. Hardy asked him why not do a holistic development instead of piecemealing it. Holbrook said it's a combination of things. The property has huge gullies; and doing a proper city street wouldn't be feasible. For one, physically; the topography wouldn't allow it and have buildable sites. The other issue is money; it absolutely would be impossible to recover any money he used if he's required to build the streets they want. He said, looking at the broader picture, if the City requires a developer to spend so much money developing their property what will happen is developers won't develop in Newport; and there will be a huge shortage. Our children won't be able

to afford homes here soon. He thinks that's a big issue. Part of it is the cost of developing property; it's extremely high. For him to install this road would be more than the property is worth. He will have to get approval; if not this won't happen. He said that's the nature of things in Newport. He said he's heavily in debt to do this project. To lay out more money to do these types of improvements is not going to happen.

Patrick said that in the first part of Holbrook's letter, he's talking about a minor partition and what has to be done. Patrick said that the Commission specifically discussed somebody minor partitioning their way into a subdivision. That is how we came up with four lots. He said if you did a driveway in and have thirty acres; at what point does that become a street and not a driveway. Holbrook said everything he did was with City approval. Patrick said the code now says if you have more than four lots, it's now a street. Holbrook said that's if you're developing more than four. Patrick said that's not what it means; not what it says. If there are more than four on it; it's now a street, not a driveway anymore. The Commission had a discussion about how a developer could build out and call it a private driveway. It falls back on the adequacy of the road. Croteau thought that anybody who lives in Agate Beach knows that those streets are inadequate. Patrick said most have fifty feet, but are built out to nineteen feet and built badly. He said if you do a minor partition on an existing street, we look at the traffic and what's going to happen. Holbrook said the number of lots he has in there are extremely low usage. It's over four, but that minor partition approved in 2011 serves approximately fifty residences; and his is not larger than that one. He said the street has been adequate for fifty years or he thinks something would have been done with it. Patrick said it all comes down to money. The Commission's thinking is not to create new problems. Holbrook said he's fine with a non-remonstrance agreement and building the road out at a later date; but at this point he can't financially do it. Later on when he's sold the properties, you can get the people together and do a road district.

Holbrook said a whole other issue going on out there that the Commission should be aware of also has to do with NW 70<sup>th</sup> Street; and we're talking about a historical thing. He said right after the City turned down his previous partition, the City representatives met with him on NW 70<sup>th</sup> Street. He said it has a very interesting history. It was a private roadway. It was platted as NW 70<sup>th</sup> Street but was owned by private individuals. The property went into foreclosure, and the County owned it for a while and then deeded it to the City. Holbrook was interested in the plans the City had for it; and when he met with the City they told him the City is not going to touch it and he could have it back as a private easement to access all these properties. He said that NW 70<sup>th</sup> is currently going across his property. He was surprised the City would say he could have this city street back and at the same time tell him that he can't do any more partitions because his access isn't good enough. He said his access is directly on the highway, and the roadway is fine. He feels put out by the fact that they won't allow this minor partition right on the highway.

Croteau asked Tokos for his input. Tokos said NW 70<sup>th</sup> is not a city street; it's a strip of land that's privately owned. It goes back to before the City annexed it. Eventually the County obtained it; probably through foreclosure. The County later conveyed it to the City; but the City never accepted it. The City owns it free title, but the gravel road is a private road. A number of properties there have easement rights to that road that they can maintain to access their properties on that strip of land that happens to be owned by the City. The City won't accept the street until it's improved to standards we accept for maintenance purposes on an ongoing basis.

Berman asked if the State knows about the traffic impact because would the existing gravel driveway serve the traffic. He noted that he couldn't find that driveway. Holbrook said that the highway access is the driveway. He noted that the City put a "NW 70<sup>th</sup> Street" sign on his property even though there is no such thing. Berman asked if driving south, you could turn right onto Parcel 2. Holbrook said yes, he permitted and installed that highway access; the existing access. He said the driveway is considered NW 70<sup>th</sup>, but is his property. Berman was confused about the access. The Commission spent some time looking at the maps trying to place the location of the driveway.

Berman noted that several of Holbrook's comments in writing were personal in nature; and he felt they were inappropriate. He doesn't think those things belong in a civil discussion. He told Holbrook that he doesn't believe either Tokos or Gross bear a grudge against Holbrook. Croteau agreed with Berman.

Croteau noted that that land has drainage swales and wondered where they empty into the ocean. Holbrook said out by 68<sup>th</sup> Street. Croteau said, so on somebody else's property. Patrick said that he saw somewhere that in one of the previous partitions, there was some storm swale work that was supposed to be done that wasn't. Gross said he discussed that in the memo he provided. It was in the initial partition. He said there's really no storm drainage along the side of the road. There is no way for storm water runoff to get to the canyon that takes it down to 68<sup>th</sup> Street; it's

inadequate. Constructing new homes creates impervious surfaces, and the runoff is discharged to the street; and there's no storm drainage on the street. Those homes starting to develop will increase the runoff in the development; and the development is not constructed to handle the runoff. There's no way to get it to the storm drainage system. Branigan asked if all of that water doesn't come out by the pump station at the bottom of 68<sup>th</sup> Street. Gross believes it ties into Schooner Creek.

There were no other proponents present to testify.

**Opponents or Interested Parties:** There were no opponents or interested parties present to testify.

Patrick closed the hearing at 8:09 for Commission deliberation. Hardy said she's somewhat troubled by the apparent attempt to piecemeal a subdivision without a holistic plan that incorporates the current City requirements. So she's reluctant to get enthusiastic about it at this point. She said if an individual is buried in a piece of property and can't do the right thing by it, there are other options. They could try to liquidate the property and go try somewhere else. She doesn't think you want to necessarily hold the City hostage for the sake of trying to do it in a way that's essentially substandard today. Berman said he has a lot of sympathy for Holbrook's situation; but it seems to him that Holbrook's original thoughts on the total buildout should probably have gone into a full subdivision land division proceedings and gotten all the requirements at that point for the road, which were less at the time the first action began. He would still like to see that happen; and he can see the Commission being quite flexible on those design standards if we could see the whole picture (how many lots are there going to be, where are all of the sewer accesses; all those kinds of things). He thinks the Commission would have some flexibility to try to make it feasible from a cost point of view for Holbrook to continue this development. Berman agrees with Hardy that the divisions of one lot into two on an ongoing basis just isn't the way the City would like to see that buildout go. Croteau agreed with Hardy and Berman. He just doesn't see this as responsible development at this time. East agreed; you just can't partition your way into a subdivision. At this point it's private. It does have less than four lots at this point. He's wondering if the Commission sets a limit that Holbrook can't go any further at this point without putting in a full plan so we know what his future plans are; not let it go any further than that. Do we stop it at this point? Berman clarified that there are nine total parcels in there now. East said yes, nine total; but at this point Holbrook is in the process of building two houses or has built one. Holbrook explained one house is built that accesses on NW 70<sup>th</sup>, the private access easement. East asked, and one under construction? Holbrook confirmed that. Berman agreed with Hardy, Berman, and Croteau. There's a reason that we put in four properties so we don't piecemeal our way to a subdivision. Looking at this, we have nine parcels; and Holbrook is coming in for a minor partition for one of the parcels. Next year Holbrook will come in with yet another request for another partition; and suddenly we end up with a subdivision, but we got there piecemeal-wise. Branigan really thinks that if Holbrook is going to go forward with this, he just needs to bite the bullet and come back and make this a subdivision because that's what it's going to become. With all the gullies and ravines, he thinks that storm water will be a major issue back there. He said he would request that Holbrook come back with a full subdivision plan holistically where he wants to go with this instead of coming at us one at a time. Patrick agreed with the others. He pointed out that this is already up to nine units and could possibly be as high as twelve. He knows the Commission put the rules in place to keep people from doing exactly that. He drove down that road and has some fire access issues; although technically there is supposed to be another access back to the highway so it's a loop road, but he didn't see it. Patrick's thinking is if Holbrook comes back with something, the Commission will be willing to work with him and give him something. We've given skinny streets up in Wilder. This has to be built correctly. Most of these rules we're doing now is because we see the kind of problems we've created in the past. We put these rules in place because we've been looking at what we have, and we have to fix it. We don't want to create any more problems in the future. About half of our discussions as a Planning Commission is what we've done wrong. We're looking at the past and what we've done wrong, and we don't want to do it again.

**MOTION** was made by Commissioner Croteau, seconded by Commissioner Hardy, that the appeal be denied and that the Planning Director's decision stands. The motion carried unanimously in a voice vote.

Holbrook thanked the Commission and apologized for wasting their time. Patrick said it's not a waste. He told Holbrook he thinks that he has an opportunity to find another way to make this work. Holbrook apologized to Gross and Tokos for some of his comments. Tokos noted that he will bring findings and final order reflecting the Commission's decision back at the next meeting.

**G. New Business.** No new business to discuss.

**H. Unfinished Business.**

1. **Recreational marijuana.** Tokos noted that the City Council had a work session on recreational marijuana, and he believes that they are going basically in the same direction as the Planning Commission recommended. They will consider a package of changes as business license changes at their next meeting. At their last meeting, they passed a motion that if we get any of the Land Use Compatibility Statements (LUCS) we are just to date stamp them and note the time they came in and sit on them until the City rules are in place. The Council did agree to add some language that would give the existing medical marijuana dispensaries basically first dibs at getting the recreational licenses. It's crafted in basically that we're treating them as retailers as long as they have that limited retail sales provision under the Health Authority. Somebody else would have to be 1,000 feet from them. If they choose not to pursue retail sales, then they are just back to being a medical dispensary. The Council agreed the 1,000-foot separation would be appropriate. They weighed whether or not it might be advantageous to do a land use regulation simply so we could check the "no" box on the LUCS forms; but they decided no, we can simply indicate that if it's within 1,000 feet of one of those retail facilities, a business license isn't going to be issued. The endorsement process for those will look very similar to what's already in place for medical marijuana dispensaries. Berman asked if the Council had discussed fees. Tokos said no; other than it's likely going to be something comparable to what medical marijuana dispensaries are paying, which he believes is a modest endorsement fee intended to cover the background checks.

2. **Street vacation.** Tokos noted that the street vacation for the hospital was approved by the Council, and the ordinance has been recorded so that's all finalized.

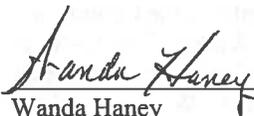
3. Berman said in the hearing matter there was a reference to erosion. He wondered what happened to that whole undertaking. Tokos said it's still on the shelf until the Storm Water Master Plan is done. That's done in the technical sense but not in a policy sense. Tokos said now that he has a fulltime building official, he actually has resources. The other thing about erosion control is if you put in rules, there's an expectation that they are enforced; and we have to have the resources to do it. Tokos noted that we're in the process of actually getting the mechanical program. We applied to have it transferred from the County to the City. That's in a public comment period. We met with the County and offered a way through an intergovernmental agreement that it wouldn't hurt them too much cost-wise; although it's not a lot of revenue. We are seeking this so we can offer all permits in-house so somebody can get a combination without having to deal with both the City and the County. We'll see how that goes. It's moving along.

4. Croteau asked if we have applicants for our advisory committee. Tokos said we have only one, and there are two vacancies; so he asked the Commissioners to please beat the bushes.

**I. Director Comments.** No additional director comments.

**J. Adjournment.** Having no further business, the meeting adjourned at 8:22 p.m.

Respectfully submitted,

  
Wanda Haney  
Executive Assistant