

PLANNING COMMISSION REGULAR SESSION AGENDA Thursday, October 15, 2020 - 6:00 PM City Hall, Council Chambers, 169 SW Coast Hwy, Newport, OR 97365

This meeting will be held electronically. The public can live-stream this meeting at https://newportoregon.gov. To access the livestream, visit the Planning Commission page at https://www.newportoregon.gov/citygov/comm/pc.asp. Once there, an "in progress" note will appear if the meeting is underway; click on the "in progress" link to watch the livestream. It is not possible to get into a meeting that will be livestreamed before the meeting starts. The meeting will also be broadcast on Charter Channel 190.

Public comment may be made, via e-mail, by noon on the scheduled date of the meeting at publiccomment@newportoregon.gov. To make a "real time" comment during a meeting, a request to speak must be received by 2:00 P.M. on the scheduled date of the meeting. The request to speak should include the agenda item on which the requestor wishes to speak. If the comments are not related to a particular agenda item, the request to speak should include a notation that the request is for general public comment, and the general topic. The request should be e-mailed to publiccomment@newportoregon.gov. Once a request to speak has been received, staff will send the requestor the Zoom meeting link. This link will allow a requestor to participate via video or telephone.

The agenda may be amended during the meeting to add or delete items, change the order of agenda items, or discuss any other business deemed necessary at the time of the meeting.

- 1. CALL TO ORDER AND ROLL CALL
- APPROVAL OF MINUTES
- 2.A Approval of the Planning Commission Regular Session Meeting Minutes of September 28, 2020.

Draft PC Reg Session Meeting Minutes 09-28-2020

CITIZENS/PUBLIC COMMENT

A Public Comment Roster is available immediately inside the Council Chambers. Anyone who would like to address the Planning Commission on any matter not on the agenda will be given the opportunity after signing the Roster. Each speaker should limit comments to three minutes. The normal disposition of these items will be at the next scheduled Planning Commission meeting.

- 4. ACTION ITEMS
- 5. PUBLIC HEARINGS
- 5.A File 2-MISC-20-A: Appeal of Community Development Director Decision (Final Order for File No. 2-MISC-20).

Memorandum

Exhibit A

Exhibit B

Exhibit C

Exhibit D

Exhibit E

Appellant's Additional Testimony-Submitted by Christopher P. Koback, representative

Public Testimony-Chris Schneller

Public Testimony-Anne Sigleo

Public Testimony-Mona Linstromberg

- 6. NEW BUSINESS
- 7. UNFINISHED BUSINESS
- 8. DIRECTOR COMMENTS
- 9. ADJOURNMENT

Draft MINUTES

City of Newport Planning Commission

Regular Session

Newport City Hall Council Chambers by Video September 28, 2020

<u>Planning Commissioners Present by Video Conference</u>: Jim Patrick, Lee Hardy, Bob Berman, Jim Hanselman, Mike Franklin, and Bill Branigan.

Planning Commissioners Absent: Gary East (excused).

<u>City Staff Present</u>: Community Development Director (CDD), Derrick Tokos; and Executive Assistant, Sherri Marineau.

1. <u>Call to Order & Roll Call</u>. Chair Patrick called the meeting to order in the City Hall Council Chambers at 7:00 p.m. On roll call, Commissioners Hardy, Berman, Hanselman, Branigan, Franklin, and Patrick were present.

2. <u>Approval of Minutes.</u>

A. Approval of the Planning Commission Work Session and Regular Session Meeting Minutes of September 14, 2020.

Hardy noted one minor correction.

MOTION was made by Commissioner Berman, seconded by Commissioner Hardy to approve the Planning Commission Work Session and Regular Session Meeting Minutes of September 14, 2020 with minor corrections. The motion carried unanimously in a voice vote.

- **3. Citizen/Public Comment.** None were heard.
- 4. <u>Action Items.</u>
- A. <u>File 1-VAR-20</u>.

Patrick asked if they could take additional testimony. Tokos reported the Commission needed to decide if they wanted to adopt the final order as drafted or not, or to add amendments. If they were included to go the applicant's direction, then they would decline to do the final order and findings then reopen the public hearing and continue it out for a date they could do a notice.

MOTION was made by Commissioner Hardy, seconded by Commissioner Berman to approve the Final Order and Findings for File 1-VAR-20 as written to deny the variance. The motion carried unanimously in a voice vote.

- **Public Hearings.** None were heard.
- **New Business.** None were heard.
- 7. Unfinished Business. None were heard.
- **8.** <u>Director Comments.</u> Tokos thanked the Commission for accommodating the special public hearing that would be held on Oct 15th. Berman asked for details on what the hearing was about. Tokos explained the applicant was contesting an exaction, which was the public street and stormwater

requirements. They were also asserting that this was an unconstitutional taking. The applicant first submitted this as an administrative decision where staff had to explain why they were justified. Since then the applicant had appealed. Tokos wouldn't go into details because there would be a full evidentiary hearing. A discussion ensued regarding the procedures for the hearing.

| 9. | Adjournment. | Having no | further | business. | the meeting | adiourne | ed at 7:10 p.m. |
|----|--------------|-----------|---------|-----------|-------------|----------|-----------------|
| | | | | | | | |

Respectfully submitted,

Sherri Marineau Executive Assistant

City of Newport

Community Development Department

Memorandum

To: Planning Commission

From: Derrick I. Tokos, AICP, Community Development Director

Date: October 7, 2020

Re: Appeal of Community Development Director Decision (Final Order for File No. 2-MISC-20)

Enclosed is a copy of the written record, including the referenced Community Development Director ("Director") decision and notice of appeal. Please treat the Director decision, and this memo, as the staff report for the appeal hearing.

The Director decision that is the subject of this appeal determined that street and stormwater public improvement requirements the City is requiring appellants construct are directly related, and roughly proportional, to the impact of the development they have undertaken on the three lots they own, including the single-family dwelling now being built. Appellant's property is located at 1515, 1525, and 1535 NW Spring Street (Tax Lot 2300 of Lincoln County Assessor's Map 11-11-05-BB).

Appellants J.T. Roth and Theresa Roth filed a timely appeal of the Director decision on September 24, 2020. Specific grounds appellants are relying upon as a basis for the appeal are outlined in their narrative. At this time, staff is satisfied that the Director decision adequately addresses the issues raised by appellants and provides the Planning Commission with a sufficient body of evidence to support denial of the appeal.

The Director decision references specific sections of Chapter 13.05 and 14.44 of the Newport Municipal Code. Full copies of those code chapters are enclosed for your convenience.

A script will be prepared for the Planning Commission Chair to read at the start of the October 15, 2020 public hearing. The script will address the conduct and order of the appeal hearing proceedings in a manner consistent with the City of Newport's adopted procedures outlined in NMC 14.52.080 and its emergency policies related to the conduct of public meetings during the COVID-19 pandemic.

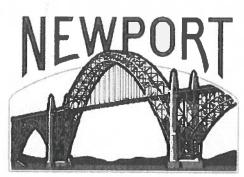
Materials submitted into the record by appellants, city staff, or other parties will be included in the Planning Commission hearing packet if they are received before the packet is posted on Friday, October 9, 2020. Materials submitted after the packets are posted on October 9, 2020, but before 12:00 noon on October 15, 2020 will be distributed to Commission members as they are received. They will also be uploaded to the meeting packet. This public hearing will be held by video-conference. Persons wishing to speak must notify the City by 2:00 pm on the date of the hearing. Requests to speak may be made via email to publiccomment@newportoregon.gov or s.marineau@newportoregon.gov. Once a request is received, the City will reply with a meeting link so that the requestor can participate by video or telephone.

If, after taking public testimony at the hearing, the Planning Commission believes that it has sufficient information to render a decision on the appeal then it may provide direction to staff to prepare findings of fact for consideration at its next meeting. The Commission should identify the direction it wants staff to take in preparing the findings (e.g. deny the appeal in a manner consistent with the Director decision, deny the appeal but include alternative or supplemental findings addressing specific issues, or approve the appeal). If the Commission is inclined to approve the appeal, it is reasonable for it to ask that the appellant prepare the findings.

The Commission may, at the request of a participant or on its own accord, continue the hearing to a date certain to provide an opportunity for persons to present and rebut new evidence, arguments or testimony related to the approval criteria. If, after taking testimony, the Commission believes that additional information is needed in order for it to act on the appeal then this would be an option that it could pursue. In such a case, the Commission should be clear about the additional information that it wants to see submitted. Prior to the conclusion of the hearing, any participant may request an opportunity to present additional evidence, arguments or testimony. If such a request is made, the Commission must, at a minimum, leave the record open for receipt of written materials for a period of 7 days. Unless waived, the City must also afford the appellant at least 7 days after the record is closed to all other parties to submit final written argument in support of the appeal.

Exhibits

| Exhibit # | escription | | | | |
|-----------|--|--|--|--|--|
| A | Community Development Director Decision in File No. 2-MISC-20, including the Notice of Decision, Final Order, Findings of Fact dated September 21, 2020, and Attachments | | | | |
| В | Appeal by the applicants/appellants, J.T. Roth Jr. and Theresa Roth, submitted September 24, 2020, including the application form and one-page appeal narrative | | | | |
| С | Copy of NMC Chapter 14.44, Transportation Standards | | | | |
| D | Copy of NMC Chapter 13.05, Subdivision | | | | |
| E | Notice of the Planning Commission public hearing to consider the appeal, with attachments | | | | |



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MOMBETSU, JAPAN, SISTER CITY

COMMUNITY DEVELOPMENT DEPARTMENT (541) 574-0629 FAX: (541) 574-0644

NOTICE OF DECISION

September 11, 2020

The Newport Community Development (Planning) Director, by final order signed today, September 11, 2020, has denied a request as described herein:

FILE NO: 2-MISC-20.

APPLICANT & OWNER: J. T. Roth. Jr. and Theresa Roth.

REQUEST: Denial of Order denying a request for relief from conditions imposed by the City of Newport requiring applicants/owners construct off-site public street and stormwater improvements in conjunction with a new single-family detached dwelling they are building at 1535 NW Spring Street.

PROPERTY LOCATION: The subject property is located at 1515, 1525, and 1535 NW Spring Street (Lots 1, 2 and 3, Block 49, Ocean View Subdivision). The property is further identified as Tax Lot 2300 on Lincoln County Assessor's Map 11-11-05-BB.

THIS DECISION MAY BE APPEALED TO THE NEWPORT PLANNING COMMISSION WITHIN 15 CALENDAR DAYS, OR THE NEXT BUSINESS DAY IF THE DATE FALLS ON A WEEKEND, AS IT DOES IN THIS CASE (5:00 P.M. ON MONDAY, SEPTEMBER 28, 2020). Contact the Community Development (Planning) Department, Newport City Hall, 169 SW Coast Hwy, Newport, Oregon 97365 (541-574-0629) for information on appeal procedures.

The applicant or other person may appeal a decision of the Community Development Director to the Planning Commission if that person appeared before the Community Development Department in writing during the period allowed for written comments from the public. Appeals from a decision of the Community Development Director are heard by the Planning Commission as a *de novo* hearing (a brand new public hearing).

Sincerely,

Sherri Marineau Executive Assistant

Enclosures

cc: J. T. Roth. Jr. and Theresa Roth (owners)

erri Mbrinove

Joseph B. Fahrendorf, Whales Spout Condo Association

EST.

Mona Linstromberg
Anne Sigleo
Susan Cooper
Joseph Lease, Building Official (letter only via email)
Derrick Tokos, Community Development Director (letter only via email)
Clare Paul, Assistant City Engineer (letter only via email)

BEFORE THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF NEWPORT, COUNTY OF LINCOLN, STATE OF OREGON

| IN THE MATTER OF LAND USE FILE NO. 2-MISC-20 |) |
|--|---------|
| APPLICATION FOR RELIEF FROM PUBLIC IMPROVEMENTS |) |
| REQUIRED AS A CONDITION OF APPROVAL FOR THE |) FINAL |
| DEVELOPMENT OF A SINGLE-FAMILY DWELLING | ORDER |
| (J.T. ROTH, JR. AND THERESA ROTH, APPLICANTS/OWNERS) |) |
| · · · · · · · · · · · · · · · · · · · | , |

Order denying a request for relief from conditions imposed by the City of Newport requiring applicants/owners construct off-site public street and stormwater improvements in conjunction with a new single-family detached dwelling they are building at 1535 NW Spring Street. The subject property is located at 1515, 1525, and 1535 NW Spring Street (Lots 1, 2 and 3, Block 49, Ocean View Subdivision). The property is further identified as Tax Lot 2300 on Lincoln County Assessor's Map 11-11-05-BB.

WHEREAS:

- 1.) The Community Development Director has duly accepted the application filed consistent with the Newport Municipal Code (NMC); and
- 2.) The Community Development Director has duly considered the request and has given proper and timely notice to affected property owners; and
- 3.) The Community Development Director allowed for evidence and recommendations from the applicants/owners, interested persons, various City departments, and the Community Development Department staff; and
- 4.) At the conclusion of said review, after consideration, the Community Development Director found the off-site public street and stormwater improvement requirements imposed by the City with Geologic Permit No. #8-GP-18, and carried forward as conditions associated with applicants/owners building permit for a single-family dwelling at 1535 NW Spring Street, to be consistent with the requirements of the Newport Municipal Code, that there is an essential nexus between the required off-site public improvements and the impact applicants/owners development will have on public facilities, and that the extent and scope of the required improvements is roughly proportional to said impact.

THEREFORE, LET IT BE RESOLVED by the Community Development Director that the attached findings of fact and conclusions (Exhibit "A") support denial of the applicant's request for relief from the off-site public improvement requirements.

BASED UPON THE ABOVE, the Community Development Director determines that the off-site public street and stormwater improvements applicants/owners are required to construct have been imposed by the City of Newport in conformance with the provisions of its Comprehensive Plan and the Newport Municipal Code.

Accepted and approved this 11th day of September 2020.

Derrick I. Tokos, AICP

Community Development Director

Attest:

Sherri Marineau
Executive Assistant

EXHIBIT "A"

Case File No. 2-MISC-20

FINDINGS OF FACT

- 1. J.T. Roth, Jr. and Theresa Roth, applicants, and Christopher Koback, their authorized representative, filed a land use application on July 14, 2020 seeking a determination that the City not impose conditions associated with their building permit for a single-family dwelling that requires applicants construct off-site public street and stormwater improvements because the requirements presented by the City, in their view, constitute an unlawful exaction under the 5th Amendment to the United States Constitution (Attachment "A1"). Applicants were promptly notified that payment included with the land use application was not sufficient to cover the full amount of the filing fee, and applicants remitted the unpaid balance on July 20, 2020 (Attachment "A29"). The land use application was complete as of this date.
- 2. The applicants' own real property identified as Lots 1, 2, and 3, Block 49, Ocean View Subdivision, platted April 5, 1884 in Book 1, Page 19 of the Lincoln County Records (Attachment "A2"). It is identified as Tax Lot 2300 on Lincoln County Assessor's Map 11-11-05-BB (Attachment "A3"). Addresses for the subject property are 1515 (Lot 1), 1525 (Lot 2), and 1535 (Lot 3) NW Spring Street, Newport Oregon.
- 3. Applicants intend to construct single family dwellings or duplex units on each of the lots that they own. Development undertaken by the applicant, to date, includes site clearing, tree removal, grading, installation of retaining walls, storm drain piping, and placement of erosion control measures across all three lots and a portion of the NW Spring Street road right-of-way adjacent to applicants' lots. The work is being performed under Building Permit #625-19-000420-SD, issued February 24, 2020, for the purpose of preparing the property for residential development (Attachment "A17"). Additionally, applicants were issued Building Permit #625-20-000193-DWL to build a single-family dwelling on Lot 3, Block 49, Ocean View Subdivision, addressed as 1535 NW Spring Street (Attachment "A19"). Applicants are in the process of constructing the dwelling.
- 4. The above referenced building permits were issued subject to the applicants complying with the conditions of approval of a City issued geologic permit (File #8-GP-18). The applicants applied for this land use permit because their lots are located within active landslide hazard and active erosion hazard overlay zones within the City of Newport (Attachment "A6"). The boundary of the overlay zones aligns with mapping and analysis performed by the Oregon Department of Geology and Mineral Industries (Open File Report #O-04-09). A principal component of a geologic permit application is a report prepared by a certified engineering geologist, at the applicants' expense, establishing that a site is suitable for proposed development (NMC 14.24.050(D)). If engineering remediation is needed to make a site suitable, then an engineering report prepared by a licensed civil engineer, geotechnical engineer, or certified engineering geologist (to the extent qualified) must also be submitted (NMC 14.24.050(E)). These requirements carry out the purpose of the overlay zones to "promote the public health, safety, and general welfare by minimizing public and private losses due to earth movement hazards and limiting erosion and related environmental damage...(NMC 14.21.010). Applicants submitted the required report, titled "Geotechnical Engineering Report and Geologic Hazards Assessment," dated February 5, 2019, by Michael Remboldt, P.E., G.E. and Gary Sandstrom, C.E.G., hereafter collectively referred to as "Geologic Report" (Attachment "A10"). The Geologic Report was included with the geologic permit application that they filed on February 20, 2019.

- 5. The predeveloped condition of applicants' lots and adjoining portions of the NW Spring Street road right-of-way is described in the Geologic Report. It points out that the eastern boundary of the lots is approximately 25-feet west of the NW Spring Street pavement, separated from the street by a 5-10-foot deep roadside ditch located within the road right-of-way. The report notes that the side slopes of the ditch are fairly steep at a 25-35 percent gradient. Applicants' property west of the ditch is described as slightly higher than NW Spring Street dropping in elevation to the west and southwest to a bluff overlooking the beach. This is the developable portion of the site, being 107 to 125 feet in depth (i.e. east to west). From the bluff, the property slopes down steeply to the beach. The Geologic Report notes that several springs were observed to exist on the property and that the site is forested.
- 6. Applicants note that NW Spring Street is currently improved to an approximate width of 21 feet of pavement along their property frontage (Attachment "A5"). It does not possess curb, gutter or sidewalks. The paved road surface was constructed tight to the east side of the right-of-way, with a drainage ditch separating the paved section of the road from the applicants' property. NW Spring Street at this location is a dead-end street segment that extends a little more than 300 feet north from the intersection of NW Spring Street and NW 15th Street. The road is classified in the Newport Transportation System Plan as a local road (Attachment "A9").
- 7. The Geologic Report points out that the roadside ditch adjacent to applicants' property collects run-off from NW Spring Street and gutter drains from private properties. It indicates that the ditch likely drained to the north and west down to the beach, but with development north of the applicants' property having blocked the drainage, the ditch transitioned into a storm runoff detention facility, with water being impounded until it could infiltrate into the ground. The Geologic Report notes that a neighbor observed the ditch functioning in this capacity, a statement that is supported by an email and attached photograph from Anne Sigleo, who owns a home immediately north of applicants' property (Attachment "A25"). The photograph shows the ditch during a rain event with standing water. This is prior to the recent grading performed by applicants. Ms. Sigleo notes that the photograph was taken on February 5, 2020, and that the ditch provided significant short-term water storage after heavy rainfall events.
- 8. At the south end of the dead-end section of NW Spring Street, immediately southeast of the applicants' property, is the intersection of NW Spring Street and NW 15th Street. The City of Newport maintains a structured storm drainage system at this location, collecting run-off from public streets and private properties upslope to the east and to the south. As noted in the applicants' narrative (Attachment "A5"), and graphically depicted on a City of Newport storm infrastructure map (Attachment "A7"), the closest catch basin is approximately 50 feet south of the southeast corner of the applicants' property. From that point, a 12-inch diameter storm drain line extends downslope to the west before outfalling at the beach. This portion of the City's storm drainage system, identified as "Basin R," was evaluated in a 2016 City of Newport Storm Water Master Plan. That document notes that this section of storm drain line, between the catch basin and beach, does not have the capacity to handle runoff for the design storm, a 25-year storm event, and recommends it be upsized to an 18-inch diameter pipe (Attachment "A8"). This segment of the storm drain line is situated within a utility easement between two residential buildings as shown on Attachment "A7." Its alignment was inaccurately mapped in the Storm Water Master Plan.
- 9. Applicants' Geologic Report points out that the springs observed on the property are a result of groundwater migrating downslope at the contact point between Marine Terrace deposits and underlying Nye Mudstone given the property is located at the toe of a west facing slope. It further notes that run-off collected in the drainage ditch between the property and NW Spring Street likely contributes to the seepage observed on the applicant's property. Continued infiltration of rainwater

is called out as a condition that could destabilize the subject property and nearby properties in the long term because the underlying soils possess poor drainage characteristics. Given these conditions, the Geologic Report recommends that gutter and foundation discharge, stormwater run-off, and any groundwater collected by horizontal drains in the site vicinity attributed to the development of the property be directed into drain lines that discharge at the head of the beach. Specifications for how this is to be accomplished are provided.

- 10. Applicants' site plan included with the Geologic Report, referenced as "Attachment 4," and their mass grading plan included with a letter by K&A Engineering, Inc., titled "Erosion Control Measures Review and Recommendations," dated May 8, 2019 (Attachment "A11"), illustrate how the three lots will be prepared for residential development. The roadside ditch is to be removed and the area leveled out so that driveways can be extended into each lot. The Geologic Report recommends that the roadside ditch be drained by installation of a trench drain prior to any filling of the ditch and that a 6-inch minimum diameter perforated pipe be placed within the trench to be connected to a solid drain pipe that routes the water into a structured storm drainage system. A Geotechnical Quality Assurance Inspection Summary, by K&A Engineering, Inc., dated April 27, 2020, summarizes their observations of applicants' site clearing and grading and excavation of foundations for the retaining wall system (Attachment "A18"). A photograph is embedded in the letter illustrating that they observed the striping of vegetation from the drainage ditch and the document includes a recommendation that native structural fill be used when filling the ditch. No reference is made as to whether or not they observed the storm drainage pipe being installed. Applicants' in their narrative contesting the required public improvements (Attachment "A5"), note that a City issued grading permit allows them to fill the swale to a grade consistent with the existing pavement of NW Spring Street, and that this permits the surface stormwater from NW Spring Street to drain across the frontage of all three lots where it can drain evenly and filter through the soil. No reference is made to the perforated pipe recommended in the Geologic Report that is to collect the "filtered" run-off and subsurface ground water and direct it into a piped system.
- 11. The piped drainage system for applicant's roof drains, retaining walls, and foundation drains is depicted on the mass grading plan (Attachment "A11"). Four-inch storm drain lines for roof and/or foundation drains on each lot extend downslope to the west where they connect to an 8-inch private storm drain line between a twin set of retaining walls. From there the 8-inch drain line flows south to the property line. Applicants possess an easement across private property to the south, as depicted on a survey of applicants' lots (Survey Record #18134, Attachment "A4"), and their plan at that time was to utilize this easement to extend the line south to tie into the 12-inch public storm drain line in Basin R.
- 12. City staff evaluated applicants' plan to pipe storm drainage to the existing 12-inch public storm drain line in Basin R as part of its review of the geologic permit application. It further identified the scope of required frontage improvements so that the run-off from those surfaces could be accounted for in the solution. The capacity constraint identified in the 2016 Storm Water Master Plan was confirmed and the storm drain line was televised to assess its condition. Applicants' in their narrative contesting the required public improvements (Attachment "A5"), note that the 12-inch galvanized metal pipe has corroded over time and that at least one sizable hole was observed. This rupture was identified when the line was televised by the City of Newport and the Newport Public Works Department applied a temporary patch.
- 13. In a May 21, 2019 letter to the applicants' titled "NW 15th and NW Spring St. Development," Assistant City Engineer, Clare Paul confirmed that the 12-inch line they wanted to connect to is not adequately sized to accept the additional drainage and that it is in poor condition. She pointed out that if applicants are to direct runoff from their development into the pipe then it will need to be

replaced and upsized to 18-inches. She further notes that NW Spring Street must be widened to 24-feet along the property frontage with curb and gutter, and that drainage attributed to these improvements would need to be addressed by directing it south to tie into the existing public system. Water and sewer services were confirmed to be in place along NW Spring Street and are adequate to serve the proposed development (Attachment "A12").

- 14. Applicants' consultant Lee Ritzman, with Civil West Engineering Services, Inc., in a letter dated May 30, 2019 (Attachment "A13"), outlined two options for managing stormwater assuming NW Spring Street would be widened to 24-feet along the property frontage, with curb and gutter and assuming applicants' private development would consist of one single-family unit and two duplex units. One option would have the applicants install a catch basin on the westerly edge of NW Spring Street with a new 8-inch storm line extending west, roughly 230-feet, through the applicants' property to an energy dissipater that they would install near the upper edge of the beach. Applicants' would connect the storm lines for their private development to the new 8-inch line downslope of the street. The 8-inch line would be placed in a public utility easement that applicants would dedicate to the City and the City would be responsible for maintenance of the line and outfall. The second option would be for the applicants to work with the City to replace roughly 200-feet of the 12-inch storm drain line further to the south, which they wanted to originally connect to, with a new 18-inch line. A catch basin along that 12-inch drain line alignment, between the street and beach, would have to be replaced. Applicants would also need to install a catch basin along the westerly edge of NW Spring Street and pipe the run-off to an existing City manhole southeast of their property, at which point it would flow into the newly upsized 18-inch line. Applicants would connect the storm lines for their private development to the new 18-inch line downslope of NW Spring Street. Mr. Ritzman acknowledged the capacity limitation and condition issues with 12-inch line, and noted that the second option would justify some participation from the City in upsizing the pipe.
- 15. City accepted Mr. Ritzman's letter as providing two viable options for managing storm run-off in a manner consistent with the recommendations of the Geologic Report and issued a land use decision approving the geologic permit on June 3, 2019 (Attachment "A14"). The decision included conditions of approval, with Condition #4 being directly related to the storm drainage and street improvements now contested by the applicants. That condition reads as follows:

"Owner shall install a structured storm drainage system to collect and manage run-off from development of the subject property and NW Spring Street, which the owner will improve to 24-feet in width with curb and gutter along the project frontage. Such system is to be consistent with one of the two options outlined in a letter from Lee Ritzman, Civil West Engineering Services, Inc., dated May 30, 2019. A written statement shall be provided by a certified engineering geologist confirming that the final alignment and extent of the storm drainage improvements conform to the recommendations of the Geologic Report. Right-of-way, plumbing and/or building permits shall be obtained from the City of Newport prior to construction (NMC 14.21.100)."

Applicants and other parties entitled to notice were given 15 calendar days to appeal the land use decision (NMC 14.52.100). No appeal was filed and the land use decision became final on Tuesday, June 18, 2019.

16. Applicants' applied for a second land use permit, a setback variance, to allow the dwellings to be built with a 10-foot front yard setback (File 1-VAR-19). This constitutes a 5-foot variance (33% deviation) from the 15-foot front yard setback and a 10-foot variance (50% deviation) from the 20-foot garage setback. The variance applies to the development of all three lots. Applicant's submitted a written narrative in support of approval of the variance (Attachment "A15"). The narrative points out that the variance will not interfere with the provision of, or access to, storm drainage facilities because a new curb line the City is requiring the applicants install in conjunction with widening the

street to 24-feet will direct run-off to a catch basin. This alleviates the need for the roadside storm drainage ditch, which applicants would fill, leaving at least 24-feet of what the narrative calls "unimproved public right-of-way fronting their property." Applicants asserted that this unimproved public right-of-way should be viewed as part of their yard, and that the driveways they would be constructing over the right-of-way would have sufficient depth for parking their private vehicles, such that the typical 15-foot (building) and 20-foot (garage) setbacks are not warranted. Applicants further pointed out that granting the setback variance would allow them to build further away from a steeply sloped embankment on the west side of their property, providing them with additional insurance from natural weather events.

17. On January 13, 2020 the Newport Planning Commission conducted a public hearing to consider the applicants' narrative and its attachments. At the beginning of the hearing, a statement of rights and relevance was read into the record. Such statement included the following statutory language:

"The failure of anyone to raise an issue accompanied by statements or evidence sufficient to afford the Planning Commission and the parties an opportunity to respond to the issue will preclude appeal to the Land Use Board of Appeals (LUBA) based on that issue. An issue which may be the basis for an appeal to LUBA shall be raised not later than the close of the record at, or following, this evidentiary hearing. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the city decision makers and the parties an adequate opportunity to respond to each issue. The 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."

The adopted minutes from the public hearing reflect that the requirement that applicants widen NW Spring Street to 24-feet with curb, and drainage improvements was discussed, as was their plan to fill the drainage ditch adjacent to the road so that they could construct driveways within the right-of-way (Attachment "A27"). The minutes further reflect that applicant J.T. Roth was present and participated in the hearing and that he did not object to the improvement requirements. After considering the testimony and information in the record, the Planning Commission approved the variance. A final order and findings were adopted by the Newport Planning Commission on January 28, 2020 (Attachment "A16"). No appeal was filed and the decision was final on February 11, 2020.

- 18. Applicants applied for, and City issued, Site Development Building Permit #625-19-000420-SD on February 24, 2020 (Attachment "A17"). As earlier noted, the permit authorized site clearing, tree removal, grading, installation of retaining walls, storm drain piping, and placement of erosion control measures across all three lots and a portion of the NW Spring Street road right-of-way adjacent to applicants' lots. Issuance of the permit was subject to conditions of Geologic Permit #8-GP-18. The approval further noted that execution of a public storm utility easement, the easement outlined in Option 1 in Mr. Ritzman's May 30, 2019 letter, and other improvements on the southern border of the property are pending. An April 27, 2020 Geotechnical Quality Assurance Inspection Summary for General Clearing, Stripping, and Grading, by Michael Remboldt, P.E., G.E., dated April 27, 2020 (Attachment "A18") was performed to verify that observed subsurface conditions were consistent with what was described in the Geologic Report, make recommendations for temporary cut embankments, and to approve the foundation subgrade and fill for the grade separated retaining walls applicants are constructing to facilitate residential development of the three lots.
- 19. Applicants applied for, and City issued, Residential 1 & 2 Family Dwelling Building Permit #625-20-000193-DWL on June 2, 2020 (Attachment "A19"). The permit authorized the construction of a single-family dwelling on applicants' northernmost lot (Lot 3, 1535 NW Spring Street). Issuance of the permit was subject to conditions of Geologic Permit #8-GP-18 and Variance Permit

- #1-VAR 19. The approval further noted that a certificate of occupancy would be dependent upon completion of storm improvements.
- 20. At the request of applicants' attorney Chris Koback, City Manager Spencer Nebel, in a June 5, 2020 email (Attachment "A20"), outlined the minimum level of public improvements required of applicants before the City will issue a certificate of occupancy for the single-family dwelling they are constructing on Lot 3. Those improvements are summarized as follows: (a) widening the paved section of NW Spring Street to 24-feet and installing curb and gutter along the frontage of Lot 3, (b) installing a new catch basin in the vicinity of the southeast corner of Lot 1, widen the street frontage along Lots 1 and 2 so that run-off from the curb along Lot 3 can flow to the new catch basin, and install a rolled asphalt curb to direct the run-off; (c) place a new 8-inch storm drain line west from the new catch basin through applicants property to a point just above the head of the beach; (d) install an energy dissipater at the pipe outfall; and (e) place the pipe in a 10-foot wide utility easement and dedicate the easement to the City so that it can maintain the pipe. Mr. Nebel then indicates that run-off from the development of applicants lots, which is to be collected in an 8-inch private line between the two retaining walls, would be directed into the new 18-inch public storm drain line. This appears to be a typographical error, as the new public storm drain line will be 8inches in diameter, which is the size proposed by applicants' engineer as "Option 1" in a May 30, 2019 letter (Attachment "A13") and accepted by the City with its decision issuing a Geologic Permit subject to a condition requiring the improvement be constructed (Attachment "A10").
- 21. On July 14, 2020, applicants filed a land use application contesting the minimum public improvement requirements as an unconstitutional exaction (Attachment "A1"). The application was supported by a written narrative (Attachment "A5"), within which they argue (a) the City does not have the lawful right to require Applicants to construct public street improvements; (b) because the City lacks the required nexus to exact street widening improvements; and because Applicants are retaining runoff from private improvements on site, there will be no additional storm water impacting any public facilities and the city cannot exact any storm water facility improvements; (c) even assuming for argument sake, the city could establish the required nexus, the condition requiring applicants to improve existing storm water facilities is not proportional to the impacts generated by the proposed development; and (d) the City's application of NMC 14.44.020 in this matter violates the Equal Protection Clause. The narrative further expands on these points and cites court decisions that Applicants believe support their arguments.
- 22. Provisions of the Newport Municipal Code that require transportation facilities be improved concurrent with development or redevelopment of property are listed in Chapter 14.44, Transportation Standards (Attachment "A26"). NMC 14.44.020 speaks to when the standards apply. It states, in relevant part, "The standards of this section apply to new development or redevelopment for which a building permit is required that places demands on public or private transportation facilities or city utilities."
- 23. When new development or redevelopment places demands on transportation facilities, the City requires, as a condition of development approval, that the developer mitigate the impact. This is addressed under NMC 14.44.040, which states:

"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. Findings in the development approval shall indicate how the required improvements are directly related and roughly proportional to the impact."

- 24. The extent to which new development or redevelopment must improve transportation facilities to mitigate impacts is addressed under NMC Section 14.44.050, Transportation Standards. NMC 14.44.050(A)(4), applies to new development or redevelopment adjacent to substandard streets, which are streets that do not conform to the City's standards for the type of street that they are classified. This subsection states "Substandard streets adjacent to existing lots and parcels shall be brought into conformance with the standards of Chapter 13.05."
- 25. NMC Chapter 13.05 is the City of Newport subdivision ordinance. Section 13.05.015 of that Chapter sets out the design requirements for streets. NW Spring Street is identified in the Newport Transportation System Plan as a local roadway, the equivalent of a "Minor Street" in the subdivision ordinance. A "Minor Street" is defined as a street intended primarily for access to abutting properties (NMC 13.05.005(J)(5)). The minimum required roadway width for a minor street is 36-feet, curb to curb, which is wide enough to accommodate two, 10-foot travel lanes with 8-feet of parallel parking to either side. The City may deviate from this requirement in response to topography, geology, or environmental constraints, or if the application of the requirements make it impractical to otherwise provide buildable lots ((NMC 13.05.015(B)).
- 26. Given the topographical and geological constraints of the area, well documented in applicants' Geologic Report, and the limited number of properties served by this dead-end portion of NW Spring Street, City exercised its option to allow a narrower street width of 24-feet with curb and gutter. City Engineer, Tim Gross, P.E. has identified 24-feet as the minimum width the City can allow that would still provide for two-way traffic to safely pass in the event large Fire Department or Public Works vehicles must deploy to this dead-end street segment, a perspective that is shared by Assistant City Engineer, Clare Paul, P.E. (Attachment "A30"). Applicants acknowledge in their narrative that the City utilized the exception provision of NMC 13.05.015(B) to allow a road narrower than 36-feet in width.
- 27. Applicants notes in their narrative that widening NW Spring Street by 3-feet, along the 55-foot Lot 3 frontage will add 165 square feet of new impervious surface. Applicants further calculate the existing impervious surface for the segment of NW Spring street north of NW 15th Street to be at least 6,000 square feet. The Geologic Report notes that surface run-off and gutter drains run over the NW Spring Street pavement onto the subject site, an observation supported by a topographic map by K&A Engineering included in the report, and a topographic map prepared by the City (Attachment "A7"). Contours on these maps illustrate that run-off flows in a westerly direction across NW Spring Street. Applicants lots constitute 162 of the 300 lineal feet (i.e. 54%) of property frontage along the west side of NW Spring Street, north of NW 15th Street. This means that the roadside ditch adjacent to applicants' property collects a little more than half of the street run-off, roughly 3,240 square feet, with the balance sheet flowing in the direction of property to the north and south of applicants lots. As noted in the Geologic Report, gutter drains from developed property on the opposite side of the street contribute storm runoff. Those properties, identified as 544 NW 15th Street and 1534 NW Spring Street, have about 3,300 square feet of impervious area, per Lincoln County Assessment Records. Gutter drains from these properties do not discharge directly onto NW Spring Street, therefore some of the run-off may infiltrate and flow downslope underneath NW Spring Street to applicants' property. Two driveways opposite applicants' lots drain toward NW Spring Street, contributing run-off to the roadside ditch, a 400 square foot paved driveway serving the residence at 1534 NW Spring Street and an 1,800 square foot gravel parking area located between 1534 NW Spring Street and 544 NW 15th Street. Both are shown on as illustrated on a street, driveway, and parking area impervious surface map prepared by the City (Attachment "A28"). Rather they discharge onto the subject lots. Considering the above, the roadside ditch adjacent to applicants'

property receives surface run-off from roughly 5,440 square feet for impervious surfaces, plus the 3,300 square feet of run-off from the homes across the street albeit that drainage appears to occur via a combination of surface and sub-surface run-off.

- 28. The International Traffic Engineer's (ITE) Trip Generation Manual, 10th Edition, is commonly used to determine the number of vehicle trips likely to be generated by different land uses. Single-family detached dwellings (Code 210), such as what applicants are constructing on Lot 3, have been observed to on average have a one-way trip generation rate of 10 trips per day during a weekday period. That is five (5) round trips per day.
- 29. There are presently four single-family dwellings that take vehicle access off of the dead-end portion of NW Spring Street that abuts applicants' lots, plus a duplex, which has comparable trip generation characteristics as a single-family dwelling when viewed collectively as a single unit (Attachment "A28"). Applicants proposed duplexes will similarly be viewed as single-family dwellings for the purpose of assessing vehicle trip generation.
- 30. In circumstances where improvements required as a condition of approval are not voluntarily accepted by an applicant, the City must establish that the work it is requesting is roughly proportional to the impact of the development on public facilities (NMC 14.44.040).
- 31. Upon acceptance of this land use application, the Community Development (Planning) Department mailed notice of the proposed action on July 20, 2020 to affected property owners required to receive such notice by the Newport Zoning Ordinance, and to various city departments, agencies, and public utilities. The notice referenced the criteria by which the application was to be assessed. The notice required that written comments on the application be submitted by 5:00 p.m., August 3, 2020. Four individuals submitted timely written comments in response to the public notice.
- 32. A letter by Joseph B. Fahrendorf, President of the Whales Spout Condo Association and Wizards of Sea Condo Association, dated July 30, 2020, addresses storm drainage issues relative to the 12-inch public storm drain line located within an easement on their property (Attachment "A23"). Mr. Fahrendorf asserts that the undersized line and related infrastructure fails during winter storm events causing flooding on potions of their property. Further, he points out that the poor condition of the line and related infrastructure may be causing erosion to occur in as yet undetected areas and that it may be contributing to leakage they have observed at the base of their retaining wall. Photographs included with the letter show a catch basin on their property, connected to the 12-inch line, with water bubbling out during a heavy rain event and leakage occurring at the base of the retaining wall. He believes that it is in the City's interest to work with applicants to fix the existing public storm drain system, that applicants should only bear a proportional share of those costs, and that in the event applicants develop a separate solution for managing storm runoff attributed to their project, City must still correct the problems with the existing, undersized 12-inch drain line.
- 33. A letter by Mona Linstromberg, dated July 30, 2020, points out that applicants missed their window to contest the storm drainage and street improvement requirements, as they had an opportunity to challenge them during the appeal period of the permit the City issued approving applicants geologic report ((Attachment "A24"). She notes that storm drainage and street public improvement requirements are called out in Condition #4 of that permit (File 8-GP-18), that the City factored in applicants own geologic report when considering stormwater drainage options, and that the applicants benefit from the stormwater improvements they are obligated to construct because they will have the effect of stabilizing the subject property and surrounding area. Ms. Linstromberg

further notes that the stormwater drainage solutions should have been resolved before applicants were allowed to clear the site of vegetation, before retaining wall permits were granted, and before the building permit for the dwelling on Lot 3 was issued.

- 34. An email by Anne Sigleo, dated August 3, 2020, indicates that they disagree with applicants for two principal reasons (Attachment "A25"). First, Ms. Sigleo notes that applicants fail to acknowledge that the swale (i.e. roadside ditch) along the frontage of their properties provided significant short-term water storage after heavy rainfall, and the email included an attached photograph of the ditch during a storm event. She points out that the swale has been eliminated and the property scalped to eliminate all vegetation, to be replaced with impermeable surfaces, making it critical that stormwater storage and control be addressed with the proposed development. Secondly, Ms. Sigleo argues that examples provided in the application are not comparable to the proposed construction and that a workable stormwater management plan needs to be included as a part of applicants' project.
- 35. An email by Mark and Susan Cooper, submitted August 3, 2020, indicates that after having reviewed applicants' lengthy application in regard to storm drain, piping, and road frontage improvements, they believe applicants need to follow the outline brought forward by the City to address the issues (Attachment "A26"). They further express their concern about the natural holding area (i.e. roadside ditch) and vegetation that has been removed and the impact applicants project will have on the larger area. Lastly, they believe applicants should have to enlarge the area, presumably the street, further to the south then what the city has required.

CONCLUSIONS

- 1. The land use application now filed by applicants contests off-site public street and stormwater improvements the City imposed with Geologic Permit #8-GP-18, which applicants had also relied upon to obtain Variance Permit #1-VAR-19. While City Manager, Spencer Nebel, has allowed the applicants to defer widening NW Spring Street adjacent to Lots 1 and 2 until such time as the dwellings on those lots are built (Attachment "A20"), he did not obviate the requirement that the street be widened. The off-site public improvements applicants are required to construct as a condition of their building permits are not new, rather they have been carried forward from the initial land use decision imposing them (i.e. Condition #4 of Geologic Permit #8-GP-18). Linstromberg, in her July 31, 2020 letter, accurately points out that applicants did not contest the required off-site public improvements during the appeal period for Geologic Permit #8-GP-18, and that this land use decision, and the land use decision authorizing the variance, are now final. Further, applicants have moved forward with their development in reliance upon the geologic and variance permits by performing site work, including the removal of the City's roadside ditch, under building permit #625-19-000420-SD, and initiating construction of a dwelling under building permit #625-20-000193-DWL. Even if applicants can now challenge off-site public improvement requirements from these prior permits (i.e. both final land use decisions), which they have not shown they can do, the analysis contained in this decision establishes that the off-site public improvement requirements imposed by the City align with the requirements of NMC Chapter 14.44, including the requisite rough proportionality findings.
- 2. In their narrative, applicants frame their development, and its impact on public services, as the construction of a single-family dwelling on Lot 3, and note that they have no immediate plans to improve Lots 1 and 2. This is accurate with regards to vehicle trips generated onto NW Spring Street; however, it is not correct with respect to the impact of applicants' project on the street storm drainage system. In acting upon Building Permit #625-19-000420, applicants have eliminated the

roadside ditch within the NW Spring Street public right-of-way adjacent to all three of their lots and installed private storm drainage infrastructure on those lots in a manner that is designed to discharge into a public storm drain line via one of the two options outlined by their consulting engineer's May 30, 2019 letter (Attachment "A13"). Applicants' Geologic Report points out that the roadside ditch served to collect and infiltrate run-off for the portion of NW Spring Street that adjoins applicants lots. Accordingly, it is appropriate for the City to view site development on and adjacent to all three lots as having an impact on the public street storm drainage infrastructure.

- 3. Off-site public improvements the City is requiring applicants to construct are appropriately characterized as exactions, and they are correct in pointing out that the City may only require exactions if it can establish an essential nexus between the improvement being sought and a legitimate governmental interest. Nollan v. California Coastal Commission, 483 US 825, 107 S Ct 3141, 97 L Ed2d 677 (1987). Further, assuming an essential nexus is established, the City must demonstrate that the requested improvements are roughly proportional to the impact of the development Dolan v. City of Tigard, 512 US 374, 114 S Ct 2309, 129 L Ed2d 304 (1994).
- 4. The purpose of the City of Newport's transportation standards is to, in part, ensure streets can safely accommodate vehicle traffic from planned growth (NMC 14.44.010). This includes managing storm run-off from streets in a manner that ensures they are not flooded (i.e. they are passable during storm events), and that storm run-off from streets does not damage or flood neighboring properties. Further, applicants' lots are located in a known geologically hazardous area with underlying slope stability issues where the City has adopted standards for new development and redevelopment that are designed to minimize public and private losses due to earth movement hazards, and limit erosion and related environmental damage (NMC 14.21.010). Applicants' Geologic Report was required and approved under these standards, and the document provides specific recommendations for how storm runoff should be handled within, and adjacent to, the subject lots to achieve these objectives. Collectively, these regulatory provisions carry out legitimate governmental interests.
- 5. Applicants' intend to construct a single-family dwelling on Lot 3, and duplexes on Lots 1 and 2. This is what is depicted on the applicants' site plan included with the Geologic Report that led to the requirement that NW Spring Street be widened by three feet from 21-feet to 24-feet (Attachment "A10" though "A14"). Applicants' later elected to move ahead with constructing a single-family home on Lot 3, and deferred construction of the duplex units to a later date. The City would be justified in requiring the NW Spring Street be widened adjacent to all three lots based upon traffic impacts attributable to the single-family dwelling under construction and projected future impacts from duplexes on Lots 1 and 2, given that no further land use approvals are required of applicants in order for them to construct those improvements J.C. Reeves Corp. v. Clackamas County, 131 Or App 615, 887 P2d 360 (1994). That said, when applicants informed the City that they would only be constructing the single-family dwelling on Lot 3, the City indicated that it was willing to limit the street widening requirement to the Lot 3 frontage, as outlined in the June 5, 2020 correspondence from City Manager Spencer Nebel (Attachment "A20").
- 6. Per the ITE Trip Generation Manual, 10th Edition, a single-family dwelling such as what applicants are constructing on Lot 3, will generate 10 one-way trips per day during a weekday period. Therefore, the use will generate vehicle trips onto, and off of, NW Spring Street, placing a demand on that public transportation facility. City Engineer, Tim Gross, P.E. and Assistant City Engineer Clare Paul, P.E. determined that NW Spring Street cannot safely accommodate the additional vehicles without first being widened to 24-feet. This is due to the fact that the road is a dead-end street segment, and given the size of modern fire engines and Public Works vehicles, 24-feet is the minimum width that will provide for two-traffic to safely pass should such vehicles need to mobilize

to the area. Accordingly, the City has appropriately evaluated the project for compliance with the provisions of NMC Chapter 14.44, that apply when new development or redevelopment, for which a building permit is required, place demands on transportation facilities. This also establishes a nexus, or rational basis for a requirement that the applicants widen NW Spring Street along the Lot 3 frontage to mitigate for the impacts.

- 7. Applicants' plan to develop all three lots relies upon the removal of the roadside drainage ditch adjacent to NW Spring Street. As noted in the Geologic Report (Attachment "A10") and illustrated with a photograph included with Ms. Sigleo's testimony (Attachment "A25"), the roadside ditch collected and infiltrated storm run-off from the segment of the street abutting their property. The roadside ditch has been removed from the public right-of-way by applicants' as part of the site work they have performed under Permit #625-19-000420-SD, constituting a direct impact to the street storm drainage system. Accordingly, the City has appropriately evaluated the project for compliance with the provisions of NMC Chapter 14.44, that apply when new development or redevelopment, for which a building permit is required, place demands on transportation facilities or public utilities. Further, City is justified in requiring applicants replace the publicly owned and maintained roadside ditch with a publicly owned and maintained piped conveyance system with equivalent capacity considering applicants Geologic Report which recommends that all run-off be piped given the poor drainage characteristics of the soils and risk of destabilizing the hillside. As Ms. Linstromberg accurately points out in her July 31, 2020 letter (Attachment "A24"), and as reflected in the letter from Assistant City Engineer Clare Paul, dated May 21, 2019 (Attachment "A12"), the City considered the applicants' Geologic Report when determining that a structed solution with curb and gutter was necessary.
- 8. Given that there is a nexus for both the public street and storm drainage improvements, the question then turns to whether the improvements the City is asking for as "mitigation" are roughly proportional to the impact of the development. As noted in *Lincoln City Chamber of Commerce v. City of Lincoln City, LUBA No. 98-153, 36 Or LUBA 399, 411 (1999)*, the City may consider the following factors when determining rough proportionality:
 - a. The extent to which the exaction will mitigate the impact of the development on the public infrastructure; and
 - b. The extent to which the exaction will benefit the proposed development; and
 - c. Whether the benefits and impacts, analyzed together, demonstrate that the exaction is roughly proportional to the impacts of the proposed development.
- 9. With respect to the requirement that applicants widen NW Spring Street from 21-feet to 24-feet in width along Lot 3, the following conclusions can be drawn.
 - a. Applicants are being required to construct 165 square feet of new street surface along a dead-end segment of NW Spring Street that is approximately 6,300 square feet in size. This constitutes a 2.62% increase in the travel area of the street segment. Meanwhile applicant's dwelling will contribute 10 vehicle trips per day on this same street segment, which is currently receiving 50 vehicle trips per day (i.e. the four existing dwellings and duplex). This amounts to a 20% increase in traffic demand on this street segment that is attributable to properties that abut the street.
 - b. Applicants' single-family dwelling on Lot 3 will directly access NW Spring Street at the point where they are required to widen NW Spring Street, meaning their development will

benefit from the improvement, including the fact that the additional street width ensures that the occupants will be able to safely access and leave the property should a fire engine or public works vehicle need to mobilize immediately across the street.

- c. The extent to which applicants are being required to improve NW Spring Street is quite modest when compared to the proportionate share of vehicle trips the single-family dwelling on Lot 3 will generate on this dead-end street segment. When considering that fact and that applicants' development directly benefits from the improvement, for the reason noted, it is evident that the requirement that applicants widen the street by 3-feet is roughly proportional to the impacts of the development.
- 10. With respect to the requirement that applicants install curb and gutter along the frontage of Lot 3, construct a new catch basin in the vicinity of the southeast corner of Lot 1, widen the street frontage along Lots 1 and 2 so that run-off from the curb along Lot 3 can flow to the new catch basin, install a rolled asphalt curb to direct the run-off, place a new 8-inch storm drain line west from the new catch basin through applicants property to a point just above the head of the beach, install an energy dissipater at the pipe outfall, and place the pipe in a 10-foot wide maintenance easement to the benefit of the City, the following conclusions can be drawn.
 - a. Applicants have elected to remove a roadside ditch from within the public road rights-of-way of NW Spring Street adjacent to their three lots for their own development related purposes. That roadside ditch served to manage storm run-off from roughly 3,240 square feet of NW Spring Street, plus about 2,200 square feet of run-off from contributing driveways and some portion of the 3,300 square feet of storm drainage attributed to gutter drains from homes across the street.
 - b. City is requiring that the roadside ditch be replaced with a structured, publicly maintained storm drainage solution, a decision that was clearly informed by applicants' Geologic Report which recommends that all storm run-off be managed in such a manner due to poor soil drainage characteristics and associated risk of the run-off destabilizing the subject property and nearby properties over the long term.
 - c. City of Newport's storm water master plan, testimony from city engineering staff, applicants' own engineer, and the property owner to the south establish that the existing 12-inch public storm drain line that applicants desired to connect to is undersized and in such a condition that it cannot accept run-off from storm drainage improvements the City is requiring the applicants construct, or run-off from the applicants' private development.
 - d. City's minimum requirement that an 8-inch public storm drain line be constructed through applicants' property as an alternative to the undersized 12-inch drain line is no larger than the 8-inch private drain line that applicants' engineer designed to manage run-off from their three lots, illustrating that it has been sized to specifically accommodate run-off from the portion of NW Spring Street that had been served by the roadside ditch, the nominal amount of additional run-off attributed to applicants widening the street, and applicants' own development.
 - e. Applicant's development directly benefits from the required public improvements because it provides a structured system by which storm run-off can be managed in line with the recommendations outlined in their Geologic Report and avoids an outcome that could potentially destabilize property the applicants are developing or nearby properties.

- f. Applicants' development further benefits from the required public improvements because they provide justification for the roadside ditch to be filled, so that they can construct driveways to park their private vehicles and effectively use the undeveloped right-of-way as part of their yard. These points were used by applicants to obtain a variance that allows new buildings on the lots to be constructed further away from the steeply sloped portions of their property that are at higher risk of coastal erosion.
- g. Considering the above, it is evident that the minimum storm drainage improvements applicants are required to install are roughly proportional to the impact of the development of their three lots.
- 11. Applicants' cites a number of court cases as relevant to whether or not the City can lawfully require they install the required public improvements. One such case is *Brown v. City of Medford*, 251 Or App 42, 283 P3d 367 (2012). As applicants note, in that case the City of Medford attempted to exact a right-of-way dedication in conjunction with a two-parcel partition along a street that the proposed development would not be accessing. This is materially different from the current situation where applicants' development is directly impacting the public street and storm drainage infrastructure the City is requiring they improve. Another cited case, Dan Hill v. City of Portland, 293 Or App 283, 428 P3d 986 (2018) involved a three-parcel partition where the City of Portland required street right-of-way dedications even though it found the affected transportation system as being capable of safely supporting the proposed development. No such finding of adequacy was made by the City of Newport in relation to the street and storm drainage public improvement requirements described herein.
- 12. Attachments listed below and referenced herein are included in the case record and are incorporated herein as part of the decision:

Attachment "A1" - Application form

Attachment "A2" - Ocean View Subdivision, platted April 5, 1884, in Book 1, at Page 19, Lincoln

County Records

Attachment "A3" - Lincoln County Assessor Property Report

Attachment "A4" - Survey of applicants' lots (Survey Record #18134)

Attachment "A5" - Applicants land use application narrative

Attachment "A6" - Geologic Hazards Overlay Zone Map (city produced)

Attachment "A7" - Public storm drain system at NW Spring & 15th Street (city produced)

Attachment "A8" - Basin R description and map from City of Newport Storm Water Master Plan, prepared by Civil West Engineering Services, Inc., dated October 2016

Attachment "A9" - Newport Transportation System Plan Road Functional Classification Map (Street Highlighted)

Attachment "A10" - Geotechnical Engineering Report and Geologic Hazards Assessment, by Michael Remboldt, P.E., G.E. and Gary Sandstrom, C.E.G., dated February 5, 2019

Attachment "A11" - Letter titled "Erosion Control Measures Review and Recommendations Site Development," by Michael Remboldt, P.E., G.E., dated May 8, 2019

Attachment "A12" - Letter titled "NW Spring St. Development," by Clare Paul, Assistant City Engineer, dated May 21, 2019

Attachment "A13" - Letter from Lee Ritzman, P.E., Civil West Engineering, Inc., dated May 30, 2019, outlining stormwater management options for applicants' lots

Attachment "A14" - City of Newport land use decision approving Geologic Permit #8-GP-18, issued
June 3, 2019

Attachment "A15" - Letter from JT Roth Construction, dated December 12, 2019, titled "Land Use Application *Front Setback Variance," with attachments

Attachment "A16" - City of Newport land use decision approving setback variance for the applicants' lots, issued January 28, 2020

Attachment "A17" - City of Newport Building Permit #625-19-000420-SD

Attachment "A18" - Geotechnical Quality Assurance Inspection Summary, by Michael Remboldt, P.E., G.E., dated April 27, 2020

Attachment "A19" - City of Newport Building Permit #625-20-000193-DWL

Attachment "A20" - Email from Spencer Nebel, City Manager, to Christopher Koback, dated June 5, 2020, listing minimum public improvement requirements

Attachment "A21" - Copy of NMC Chapter 14.44, Transportation Standards

Attachment "A22" - Public Notice of Application Contesting Public Improvement Requirements, mailed July 20, 2020

Attachment "A23" - Letter from Whale Spout Condominium Association and Wizards of Sea Condominium Association, dated July 30, 2020

Attachment "A24" - Email from Mona Linstromberg, dated July 31, 2020, with attached letter, dated July 30, 2020

Attachment "A25" - Email from Anne Sigleo, dated August 3, 2020

Attachment "A26" - Email from Susan Cooper, dated August 3, 2020

Attachment "A27" - Minutes from the January 13, 2020 Regular Session Meeting of the Newport Planning Commission

Attachment "A28" - Map of street, driveway, and parking area impervious surfaces prepared by the City of Newport

Attachment "A29" - Email from Sherri Marineau to applicants, dated July 14, 2020 advising that their payment did not cover the City's full review fee and July 20, 2020 receipt of payment from applicants for the unpaid balance

Attachment "A30" - Email from Assistant City Engineer Clare Paul, P.E., dated September 11, 2020

Applicants have not shown that they can now challenge off-site public improvement requirements imposed as a condition of the geologic permit and relied upon to obtain the variance permit (i.e. both final land use decisions). Nevertheless, for the reasons listed above, the City of Newport has appropriately applied the applicable provisions of NMC Chapter 14.44 and established that the "essential nexus" and "rough proportionality" tests in *Nollan* and *Dolan* have been satisfied. Accordingly, applicants' request for relief from the requirement that they (a) widen the paved section of NW Spring Street to 24-feet and installing curb and gutter along the frontage of Lot 3, (b) installing a new catch basin in the vicinity of the southeast corner of Lot 1, widen the street frontage along Lots 1 and 2 so that run-off from the curb along Lot 3 can flow to the new catch basin, and install a rolled asphalt curb to direct the run-off; (c) place a new 8-inch storm drain line west from the new catch basin through applicants property to a point just above the head of the beach; (d) install an energy dissipater at the pipe outfall; and (e) place the pipe in a 10-foot wide utility easement and dedicate the easement to the City so that it can maintain the pipe, is **DENIED**.

City of Newport **Land Use Application**

Attachment "A-1" 2-MISC-20

PLEASE PRINT OR TYPE · COMPLETE ALL BOXES · USE ADDITIONAL PAPER IF NEEDED

| Applicant Name(s): | \ | Property Owner Name(s): If of | | |
|---|--|---|-----------------------------------|--|
| J.T. Roth, Jr. and Theresa Roth | | | same as applicant | |
| Applicant Mailing Address: | | Property Owner Mailing Addres | s: If other than applicant | |
| | W 72nd Ave #200, Portland | 12600 SW 72nd Ave, #2 | 00, Portland, Or. 97223 | |
| Applicant Telephone No.: | 00.40 () 00 () | Property Owner Telephone No. | : If other than applicant | |
| E-mail: | -0943; timr@jtrothinc.com | E-mail: | <u></u> | |
| Authorized Representative(s): Perso Christopher P. Koback | | | | |
| Authorized Representative Mailing Ad | dress: Hathaway Larson LLP | , 1331 NW Lovejoy St., S | uite 950, Portland, OR 97209 | |
| Authorized Representative Telephone 503-303-3101 | No.: E-Mail: chris@f | nathawaylarson.com | | |
| Project information | | | | |
| Property Location: Street name if add | lress # not assigned 1515, 1525 | 5,1535 NW Spring Street, | Newport. Or. 97365 | |
| Tax Assessor's Map No.:11-11-05-I | ЗВ | Tax Lot(s):Tax Lot 2300 | | |
| Zone Designation: Leg | al Description: Add additional st | neets if necessary | | |
| Comp Plan Designation: | | Lots 1,2,3 E | Block 49, Oceanview Subdivision | |
| Examples: 1. Move north Property line 5 feet south, 2. Variance of 2 feet from the required 18 | associated requiring A improvem constitute States Co | s seek a determination that the City not impose conditions d with their building permit for a single-family dwelling Applicants to construct off-site public street and stormwater ents because the requirements presented by the City an unlawful exaction under the 5th Amendment to the United nstitution. See attached narrative. | | |
| Existing Structures: If any None | | | | |
| Topography and Vegetation: | | | | |
| | APPLICATION TYPE | (please check all that apply | | |
| Annexation | Interpretation |) | UGB Amendment | |
| Appeal | ☐ Minor Replat | | Vacation | |
| Comp Plan/Map Amendment | Partition | | ☐ Variance/Adjustment | |
| Conditional Use Permit | Planned Deve | elopment | □PC | |
| ∐PC □ □ · · · | Property Line | Adjustment | Staff | |
| Staff Design Review | Shoreland Im | pact | Zone Ord/Map Amendment | |
| Geologic Permit | Subdivision | | ✓ Other MISC. | |
| | Temporary U | se Permit | | |
| | FOR OFFI | CE USE ONLY | | |
| Date Received: 7/14/202 | · | MISC-20 504 - &19 Date Acc 4234 \$ 4245 | cepted as Complete: Accepted By: | |

(SEE REVERSE SIDE)

Community Development & Planning Department • 169 SW Coast Hwy, Newport, OR 97365 • Derrick I. Tokos, AICP, Director

I understand that I am responsible for addressing the legal criteria relevant to my application and that the burden of proof justifying an approval of my application is with me. I also understand that this responsibility is independent of any opinions expressed in the Community Development & Planning Department Staff Report concerning the applicable criteria.

I certify that, to the best of my knowledge, all information provided in this application is accurate.

| Applicant Signature(s) | 7-/3-20 Date Signed |
|--|------------------------|
| Property Owner Signature(s) (If other than applicant) | Date Signed |
| Authorized Representative Signature(s) (If other than applicant) | Date Signed |

Please note application will not be accepted without all applicable signatures.

Please ask staff for a list of application submittal requirements for your specific type of request.

I understand that I am responsible for addressing the legal criteria relevant to my application and that the burden of proof justifying an approval of my application is with me. I also understand that this responsibility is independent of any opinions expressed in the Community Development & Planning Department Staff Report concerning the applicable criteria.

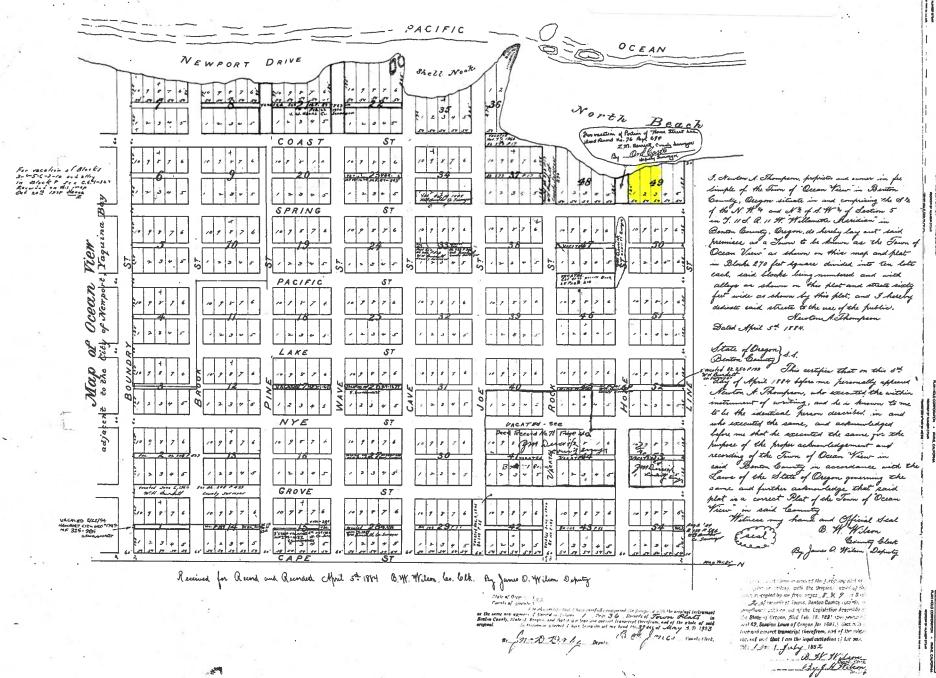
I certify that, to the best of my knowledge, all information provided in this application is accurate.

| Shusse A Roth | 7-13-20 |
|--|-------------|
| Applicant Signature(s) | Date Signed |
| Property Owner Signature(s) (If other than applicant) | Date Signed |
| /s/ Christopher P. Koback | 7-13-20 |
| Authorized Representative Signature(s) (if other than applicant) | Date Signed |

Please note application will not be accepted without all applicable signatures.

Please ask staff for a list of application submittal requirements for your specific type of request.

TEAN TIE WI



27

Lincoln County Property Report

Attachment "A-3"

2-MISC-20

| Account # & Prop. Info | | Account Details | | Owner & Address | |
|------------------------|---|-----------------|------|-------------------|---|
| Account #: | R427767 | Neighborhood: | NNOB | Owner and | ROTH J T JR & |
| Map Taxlot: 00 | 11-11-05-BB-02300- | Property Class: | 100 | Mailing Address: | ROTH THERESA PO BOX 4564 TUALATIN, OR 97062 |
| Тах Мар: | 11s11w05BB | | | Site Address(es): | 1515 NW SPRING ST ;1525 NW SPRING |
| Web Map: | View Map | | | | ST ;1535 NW SPRING ST |
| Info: | OCEANVIEW, BLOCK 49, LOT 1-3, MF209-1923 LESS DOC200713004 | | | | |
| Document: | MF209-1923, | | | | |
| DOC200713004 | | | | | |
| Tax Code: | 104 | | | | |
| Acres: | | | | | |

Improvements

No Inventory

Value History

| Year | lmp. | Land | Total Market | Total Assessed | Levied Tax |
|----------|-------|---------|--------------|----------------|------------|
| 2019 | 0 | 258,190 | 258,190 | 194,870 | 3,542.36 |
| 2018 | 0 | 258,190 | 258,190 | 189,200 | 3,433.48 |
| 2017 | 0 | 281,650 | 281,650 | 183,690 | 3,402.92 |
| 2016 | 0 | 281,650 | 281,650 | 178,340 | 3,330.75 |
| 2015 | 0 | 281,650 | 281,650 | 173,150 | 3,088.01 |
| 2014 | 0 | 281,650 | 281,650 | 168,110 | 3,018.55 |
| 2013 | 0 | 281,650 | 281,650 | 163,220 | 2,862.57 |
| 2012 | 0 | 328,560 | 328,560 | 158,470 | 2,747.69 |
| Sales Hi | story | | | | |

No Sales Data

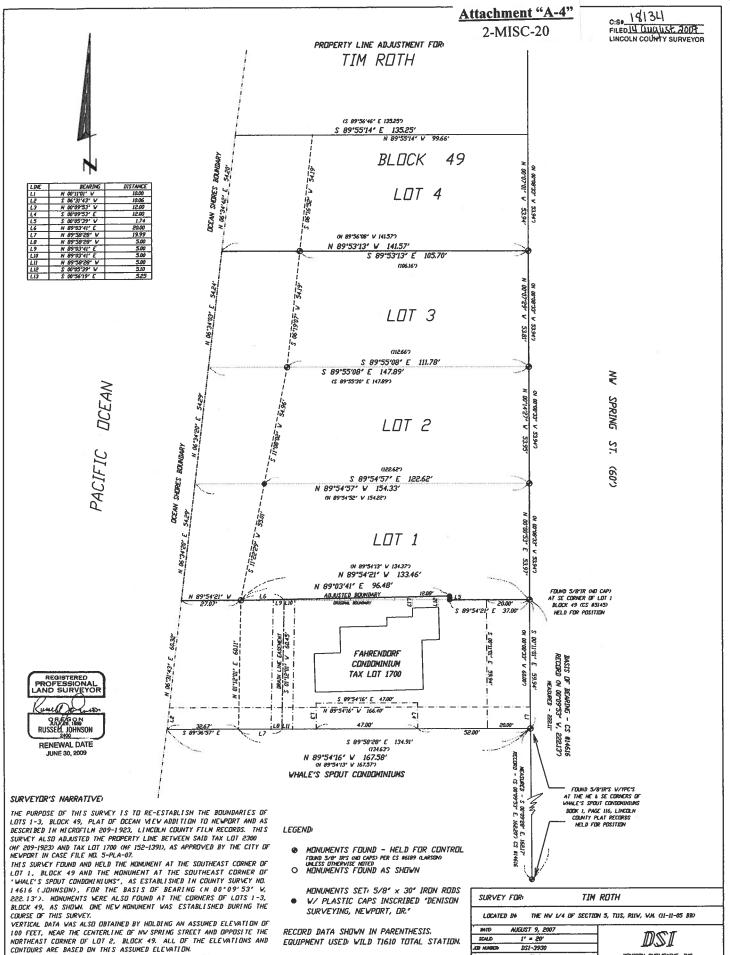
| Land | | | Related Accounts | Disclaimer |
|----------------------------|--|-----------|---|--|
| Description | Market Lincoln Acres Use warran Value the info | | For assessment purposes only Lincoln County makes no warranty as to the accuracy of the information provided. Users should consult with the | |
| UNDEV OCEANFRONT SITE | 0.46 25 | 6 258,010 | | appropriate City, County or |
| MISC | | | State Department or Agency concerning allowed land uses, | |
| VALUE;UNBUILDABLE,EXCESS,S | MALL0.09 18 | 30 | | required permits or licenses, and development rights on |
| PARCELS,ROADWAYS | | | | specific properties before |
| WEST OF VEG LINE | 0.67 | | | making decisions based on this information. Tax data exported 10/2019. |

Today's Date: 08/25/2020

DENISON SURVEYING, INC. 720 SV ANGLE ST. NEVPORT, DREGON 97365 (\$41) 265-9308

OECICE IN

AD



Land Use Application Narrative

Background

J.T. Roth, Jr. and Theresa Roth are applicants for a building permit for a single-family dwelling on a residentially zoned lot on NW Spring Street (From hereinafter the Roths will be referred to as "Applicants"). The City of Newport (the "City") issued a building permit to Applicants to construct a new single-family dwelling. However, in communications surrounding the issuance of that permit City staff informed Applicants that as a condition of issuing a certificate of occupancy, Applicants must complete certain off-site public street improvements to widen NW Spring Street, install concrete curb/gutter and construct certain storm water improvements.

Applicants own three lots on a segment of NW Spring Street north of NW 15th Street referred to as Lots 1, 2 and 3. NW Spring Street dead ends about 110 feet north of Applicants property. Lot 3 is the northern most lot and Lot 1 is the southernmost lot. Applicants building permit is for a single-family home on Lot 3. They have no immediate plans to improve Lots 1 & 2.

NW Spring Street is currently improved at an approx. width of 21 feet of pavement and has no curb/gutter. The storm water run-off from NW Spring Street flows generally in a southwesterly direction towards Lot 1. The City has an existing catch basin in the right-of-way near the intersection of NW Spring Street and NW 15th Street about 50 feet south of Lot 1. That catch basin connects to a 12-inch storm line that extends west where it outfalls to the beach. However, because the land on the west of NW Spring Street is at a lower grade than the land on the east, and there are no curbs anywhere along NW Spring Street (or anywhere in the residential areas of the City) most of the storm water run-off from the relevant segment of NW Spring Street historically did not reach the existing public catch basin located at the intersection at NW 15th Street. Most of that run-off flowed onto the unimproved public right-of-way in front of Lots 1, 2 and 3. The run-off entered Lot 1 about at the mid-point. There was a depression or swale that ran along the front of the lots and drained to the north toward Lot 3. During heavy rains, the runoff accumulated on Lot 1 to the point where it flowed back north over the front of Lot 2 into that depression. At least two private dwellings on the east side of NW Spring Street have driveways that drain surface water into NW Spring Street where it follows the existing path. Applicants were issued a grading permit by the City of Newport allowing them to fill the swale to a grade consistent with the existing pavement of NW Spring Street. This permits the surface storm water from NW Spring Street to drain across the frontage of all three lots where is can drain evenly and filter through the soils.

Since Applicants began the permitting process, the City has advised them that they will be required to complete certain public improvements. Initially, the City stated that Applicants will be required to add about 3 feet of street improvements along the frontages of Lots 1, 2 and 3, consisting of about 2 feet of pavement and 1-foot of curb/gutter. However, the City has acknowledged, that because Applicants are only permitted to perform improvements on their Lot 3 at this time, the City has limited their requirements of off-site street improvements to that single Lot 3 frontage. Lot 3 is approx. 55 feet wide and thus, the required street improvements, if constructed, will add about 165 square feet of new impervious surface to NW Spring Street. The City's minimum requirements called for Applicants to install a new catch basin at the low point

of the street, along the frontage of Lot 1, including an 8-inch drain pipe to convey the storm water to the west and outfall to the beach. Because the facilities were to be public, the City required Applicants to grant an easement over part of their Lot 1.

The minimum requirements, as first stated, anticipated standard street improvements (approx. 3 feet of pavement and curb/gutter) along the frontage of Applicants' Lots 1, 2 and 3. However in June 2020, apparently recognizing there are no development applications submitted for Lots 1 and 2 and thus, no basis to condition them, the City stated that it would only require Applicants to construct a rolled asphalt curb along Lots 1 and 2 frontage to direct surface storm water from Spring Street to the city's required new catch basin. Thus, over and above capturing the run-off from the 165 square feet of new impervious surface, the City's additional requirement of the Applicants to construct the rolled curb would effectively direct and convey essentially all of the run-off from the segment of NW Spring Street north of NW 15th Street to the additional storm water facilities it was requiring Applicants to construct. Applicants calculate that the existing impervious surface within that segment of NW Spring Street is at least 6,000 square feet. Thus, under the city's basic requirements, almost all (over 97%) of the run-off that would drain into the facilities Applicants would have paid to construct would come from the existing public street rather than the additional surface related to Applicants development.

However, the City recognized that just imposing the basic requirements (a new catch basin near Lot 1 and an 8-inch outflow pipe) did not address a major problem it discovered with its existing public storm water facilities that drains Basin R (see City of Newport Storm Water Master Plan). The storm water run-off from Basin R flows to a city catch basin located in the intersection of NW 15th and Spring Street. It then out-flows to a 12-inch pipe west to the beach. The City's Storm Water Master Plan documents that the entire storm water drainage system in Basin R is under sized and needs upgrading. In addition to the current storm system being undersized the City has recently discovered that the 12" galvanized storm pipe, that drains the catch basin in NW 15th Street to the point of outfall to the ocean, has developed at least one sizable hole apparently through the galvanized pipe corroding over time. This hole is allowing large amounts of the storm water flowing through this pipe to escape, eroding the soils supporting and surrounding this pipe. It is uncertain how long this hole has existed, however, over time this erosion will undermine the soils supporting the existing retaining walls, asphalt driveways, and structural foundations within the immediate area of this damaged pipe.

The pre-existing problems with the City's existing facilities led to the two options the City has demanded of Applicants, both designed in part to address a larger City problem with its undersized system in Basin R. Under the first option the City expected Applicants to install a new catch basin along the frontage of their Lot 1. That catch basin would connect to a new 18-inch pipe (city requirement to upsize from an 8" pipe) located within an easement over Applicants' Lot 1, draining to the beach. The City would then direct the storm water from their existing catch basin in NW 15th Street to the new 18-inch pipe basin, to be installed by Applicants, increasing capacity to its existing system and addressing the potential property damage from its damaged 12-inch pipe.

Under the second option the City presented, Applicants would replace the existing damaged 12-inch storm line with a new upsized 18-inch pipe, connecting from the existing city catch basin in NW 15th Street to the outfall to the ocean, which is approximately 200 feet west. The City expected Applicants to still construct the new catch basin at the frontage of their Lot 1. Presumably the run-off that used to drain along the frontage of Lots 1, 2 and 3 will now flow to

that new catch basin and the City expected Applicants to install a new connecting pipe from that new catch basin to the city catch basin in NW 15th. The City expressed an interest in entering into a cost sharing agreement for the proposed work recognizing that either option included significant enhancements to its existing system unrelated to Applicants' proposed development.

Applicants presented an estimate for the first option because, although it was expensive (approx. \$80,000), it was significantly less expensive to both parties than the second option. Applicants understood that the City agreed in principle to that proposal, however, it has become clear now that the City expects a cost sharing agreement that places most of the cost of upgrading its old system on the Applicants. In a June 5, 2020 email the City informed Applicants that notwithstanding what it believes are the minimum requirements, it is going to require Applicants to install the new catch basin at the end of Lot 1 and install a new 18-inch pipe within an easement over Lot 1. The City manager wrote: "As we have discussed with Mr. Roth, while an 8" storm sewer is required for the property being developed, the City will require an 18-inch public storm drain line installed." The City proposes to pay for just the difference in the cost of the larger pipe, and some engineering cost.

Pursuant to its Code, if an applicant does not voluntarily accept a condition requiring it to complete off-site improvements, the City is required to make findings demonstrating that the condition, which is an exaction of property, complies with the constitutional requirements applicable to exactions. Applicants understand that the City policy is to require applicants to submit a land use application setting forth the reason the applicant does not believe the City's condition satisfies the constitutional requirements. The City then, in a land use appeal process, makes findings on whether the challenged condition or conditions meets the constitutional requirements.

As a preliminary matter, by submitting this application, Applicants do not concede that the City's process is lawful. Applicants believe that under controlling federal and state case law, local governments have the burden of showing that a condition exacting property from an applicant satisfies the federal constitutional requirements before it imposes a condition that exacts private property. Applicants assert that the City did not do that in this matter. Nevertheless, because the controlling precedent requires an applicant to exhaust all local proceeding made available before seeking relief in a different forum, to avoid any claim that they did not exhaust local appeals, Applicants are proceeding with the City's required process.

Analysis

1. The City does not have the lawful right to require Applicants to construct public street improvements.

Any analysis of the constitutionality of the City's storm water requirements must begin with its requirement that Applicants widen NW Spring Street with curb/gutters. But for those improvements, the City could not claim that Applicants are appreciably increasing any storm water runoff that impacts its existing public facilities. Applicants assert that the City does not have the legal basis to exact the underlying street improvements.

In imposing a condition requiring Applicants to widen the public street surface, the City relied on two provisions in its code. First, the City proceeded under Newport City Code section

14.44.020 and 14.44.040. The City explained that under NCC 14.44.020, for any development requiring a building permit, if the development places a demand on public transportation facilities or public utilities, a review is required to determine whether the utilities in place conform to current standards. If they do, under NCC 14.44.040, the City does not require any new public improvements. However, if the City determines that the existing facilities do not conform, it requires the applicant to make public improvements to bring the facilities into conformance.

In this matter, NW Spring Street is a local street. The City asserts that in determining whether NW Spring Street conforms to standards, it can refer to the public street standards in NCC 13.05. That section recites that local streets must be 36 feet wide, although it allows for exceptions based on various circumstances. It appears that the City determined that circumstances support NW Spring Street being less than 36 feet because its condition requires Applicants to widen NW Spring Street to 24 feet along the site's frontage. To Applicants' knowledge, the City has not required any owner of a lot along NW Spring Street (or NW 15th Street) who has pulled a building permit for new development or redevelopment to perform street improvements, or install concrete curb/gutters.

The City's requirement that Applicants pay to widen a public street is an off-site improvement that constitutes an exaction. In 2013, the United States Supreme Court held that requiring an applicant to pay money for off-site public improvements is an exaction of property that is treated, under the law, the same as a condition that requires an applicant to dedicate real property. Koontz v. St. John River Water District, 570 US 595, 133 S Ct 2586 (2013). As such, the City bears the burden of showing that its condition satisfies the essential nexus and rough proportionality test first announced in Nollan v. California Coastal Commission and Dolan v. City of Tigard. 1 In Nollan the Court explained the essential nexus part of the test; local government must show that it has a legitimate governmental purpose and demonstrate how the exaction furthers that legitimate governmental interest. The essential nexus test requires an impact analysis. A local government must demonstrate that the proposed exaction furthers the governmental interest by addressing the impacts that relate to that interest. In Nollan the Coastal Commission tried to exact an easement along the beach behind a proposed house based upon its policy that promoted views of the ocean from the public right of way in front of the proposed house. The Court rejected the Commission's justification because it found no nexus between the governmental interest of having views from the right-of-way and the need for the easement. In other words, the easement was not required to mitigate visual impacts created by the large house the owner wanted to build.

The Oregon Court of Appeals more recently provided relevant guidance related to public street improvements. Brown v. City of Medford, 251 Or App 42, 283 P3d 367 (2012). In Brown, the applicant applied for a two-lot partition. He proposed that both parcels would access an existing street in front of the proposed parcels. Yet, the City tried to exact a 30-foot wide easement on the back of the property because its general transportation standards called for future street connectivity and argued that someday, it may want a street in that location to further its general connectivity goals. The City argued that its general transportation policies expressed a legitimate governmental interest is having safe and connected streets.

¹ Nollan v. California Coastal Commission, 483 US 825, 107 S Ct 3141 (1987); Dolan v. City of Tigard, 512 US 374, 114 S Ct 2309.

The court rejected the City's argument. The court first corrected the City's view of the essential nexus required to exact private property noting that it is not enough for local government to show just some legitimate governmental purpose. The local government must show that the proposed exaction relates to the same legitimate governmental interest that would allow it to deny the application. Only then, can a local government exact improvements or property as mitigation. Brown, 251 Or App at 53. The court went on to confirm that for a local government to have a basis to deny an application it must be able to make findings that the proposed development will generate impacts that cause the application to not meet relevant criteria. In Brown, the court also noted how unlikely it was that the City could ever make such findings because the possible impacts on the transportation facilities from dividing one parcel into two was negligible. Brown, 251 Or App at 56.

More recently the court of appeals explained that local governments cannot rely solely on their general road designs as justification for making exactions. Dan Hill v. City of Portland, 293 Or App 283, 428 P3d 986 (2018). Hill involved a three-lot partition which would result in two new dwellings on the newly created parcels. The City did not make any findings that project impacts rendered the existing adjacent street inadequate to serve the proposal. It never found that the existing street was not wide enough to accommodate traffic from two new dwellings. Yet, the City tried to impose a condition exacting right-of-way for future street improvements. Without any evidence of negative impacts that rendered the existing street inadequate in width, all the City could rely on were its basic street standards that recited that the street classification of the adjacent street required a certain street width.

The court rejected the City's argument holding that the City failed to identify any impacts that would provide a basis to deny the application if the adjacent street were not widened. It held firmly that the City could not simply rely on its general street design standards in lieu of finding on impacts. *Hill*, 293 Or App at 290-291.

In this matter, the City has not made any findings that NW Spring Street is inadequate to serve the existing dwellings and one new dwelling. Nor could the City ever make such a finding. The City must concede that street width is primarily, if not exclusively, related to capacity. Thus, to even attempt to derive a basis to deny the application for a building permit, the City must show that impacts from one additional dwelling will result in NW Spring Street having insufficient capacity for all of the existing and anticipated vehicle trips. Even at its current width, NW Spring Street is a limited use street that serves a handful of dwellings. Because NW Spring Street dead ends with nowhere to extend, there is very little development potential that will add to impacts. Further, NW Spring Street north of NW 15th Street is as wide as the other streets in the area, most of which serve many more dwellings than the number served by the relevant segment of NW Spring Street. There is no evidence that the nearby streets lack capacity for the traffic volume they receive. Applicants found no evidence of any safety issues on NW Spring Street or the nearby local streets. The City has no evidence it has provided demonstrating that adding one additional dwelling will render NW Spring Street incapable of accommodating the demand for vehicles or that it will render NW Spring Street unsafe.

The City's basis for exacting street improvements is almost identical to the basis Portland tried to use in *Hill* and the Court of Appeals squarely rejected. The City is attempting to use its basic design standards in lieu of the required impact-based analysis. The court held that the approach the City is taking is not lawful under the 5th Amendment case law.

Consequently, the City can never make supportable findings that a proposal to construct one new dwelling will generate impacts on NW Spring Street that renders its current width incapable of supporting the proposed development, it has no legitimate basis to deny any application, or in this case, withhold a certificate of occupancy. As a result, the City cannot establish the essential nexus required by the United States Supreme Court and Oregon Court of Appeals precedent to exact public street widening improvements from Applicants. Thus, the City has no link to require any storm water improvements.

2. Because the City lacks the required nexus to exact street widening improvements, and because Applicants are retaining runoff from private improvements on site, there will be no additional storm water impacting any public facilities and the City cannot exact any storm water facility improvements.

Absent the new impervious surface that would result from the City's condition requiring Applicants to widen NW Spring Street, the City has no basis to require any improvements or upgrades to its public storm water facilities. Under NCC 14.44.020, there would be no basis for the City to even conduct a review, because the proposed development would not be adding any new demand on any City utility. The storm water runoff from the roof and foundation drains of proposed private development will be managed on site. Thus, the proposed development will not add any appreciable demand on City utilities which is the trigger for the City to even review the need for public storm water improvements.

Furthermore, beyond the City code provisions, applying the law discussed above, without the additional impervious surface from the street widening improvements, the City could never establish that there will be project impacts to the stormwater facilities that would provide a basis to deny the Applicants' proposal absent mitigation in the form of public improvements.

3. Even assuming for argument sake, the City could establish the required nexus, the condition requiring Applicants to improve the existing storm water facilities is not proportionate to the impacts generated by the proposed development.

In Dolan v. City of Tigard, the Supreme Court set forth the second prong of the required constitutional test entitled the rough proportionality test. Under the second prong, even if a local government can show that it has the requisite essential nexus for an exaction, it must still demonstrate that the impacts of the exaction on the applicant are roughly proportionate in nature and extent to the impacts created by the proposed development. While Dolan does not require a precise mathematical equation local governments must meet, it does require that local government conduct an individualized impact analysis. For example, if a local government is trying to exact public street improvements, it must evaluate impacts from vehicular traffic and if it is trying to exact sidewalk improvements, it must examine pedestrian impacts from the proposed development. It cannot lump impacts together and exact improvements under the general transportation policies promoting safety or connectivity. Brown, 251 Or App at 54, citing, McClure v. City of Springfield, 175 Or App 425, 28 P 3d 1222 (2001).

In this matter, if the City could require the street widening improvements for the frontage of Lot 3, and thus, could show an increase in run-off associated with the currently permitted development, those improvements would add 165 square feet of impervious surface. Even if the City could require improvements along all three of Applicants' lots, the increase in impervious

surface would be limited to about 450 square feet. Yet, the City is now requiring Applicants to construct storm water improvements that will receive the storm water from Basin R which covers an area of approximately 17 acres. Under the option the City is now requiring, according to its June 5, 2020 email, the Applicants are expected to also grant an easement over their property for the new City 18-inch storm line out-falling to the beach.

A simple calculation demonstrates that the City can never satisfy the rough proportionality test. Using just the segment of NW Spring Street from NW 15th Street north to where NW Spring terminates, there is about 6,000 square feet of impervious surface. The City expects Applicants to add 165 square feet, which is less than 3% of the total impervious surface. Thus, the most the City could charge the Applicants for public storm water facilities that receive and convey run-off from NW Spring Street is 3%. The required storm water improvements, without the street widening costs, is estimated at about \$80,000.00, and where the City is only willing to cost-share the price increase to upsize the storm pipe from 8" to 18" (approx. \$500.00) that is grossly disproportionate under any analysis.

The City's position gets much worse when it has to acknowledge that the new facilities it is requiring Applicants to construct will receive the run-off from the larger area in Basin R. If just the surface area in the block of NW 15th Street, east of NW Spring, is added to the equation, Applicants' percentage drops to about 1% or less. The improvements under the second option (described above in this narrative) will receive storm water run-off from streets in addition to the segments of NW Spring and NW 15 discussed above. One can easily see that when any additional area in Basin R is added to the equation, Applicants' percentage will drop to a negligible amount. Indeed, the City's Master Plan reveals that in addition to run-off from its public street surfaces, Basin R received a significant amount of run-off from existing private development that was allowed to drain storm water from roofs and other private improvements into the streets and ultimately into the undersized public storm system.

Applicants are not going to offer any discussion to the proportionality of the improvements the City set forth under the second option where Applicants would be expected to replace the existing 12-inch line with a new 18-inch line, and then connect a pipe from the new catch basin at Applicants' Lot 1 to the city catch basin in NW 15th because the cost vastly exceeds the City's first option. If the first (and current) option cannot pass the rough proportionality test, the second option does not merit discussion.

Under the required legal analysis, the City cannot demonstrate that the impact on the Applicants of having to construct the new facilities the City demands is anywhere close to proportionate to the insignificant impacts of runoff from about 165 feet of new impervious surface.

4. The City's application of NCC 14.44.020 in this matter violates the Equal Protection Clause.

As illustrated above, assuming the City can require Applicants to widen NW Spring Street to 24 feet, the resultant new asphalt will generate an inconsequential impact on the City's existing storm water utilities. It is obvious though that the City is trying to exact much broader improvements to address a larger issue. Even when it was proceeding with its base requirements, the City was exacting new improvements to capture, treat and convey much more run-off than just that generated by the new asphalt. Then, in the City Manager's June 5, 2020

email, the City advised that it is requiring Applicants to install a new 18" storm line within an easement to be located on Applicants' Lot 1. According to the City, it must require the improvements as there is no capacity in its system for any additional stormwater runoff from public or private improvements.

However, the City recently allowed development on NW 15th Street that is generating new storm water run-off that will flow into the City's system and eventually to the existing 12-inch pipe the City claims is undersized and cannot take on any additional storm water. There is a new driveway associated with a new garage that did not exist prior to the city issuing their permits for this work. Photographs of the new development leave no doubt that new storm water will run off from the driveway into NW 15th Street. It appears that the driveway is about 400 square feet, exceeding the area of the new street improvements the City is trying to exact from Applicants. The City rationalized this by stating that the improvements within the alley into which the driveway run-off flows were recently improved and there is a public catch basin that will capture the runoff.

The City is missing the relevant point. The new run-off from the driveway will go into the same system that connects to the pipe it claims is undersized. The additional run-off from the NW 15th Street project will flow into the existing 12-inch pipe that the City wants Applicants to replace claiming it has no capacity. The City cannot justify treating the property owner on NW 15th Street different than Applicants in this matter. If, as the City claims, there is no capacity in the system for the inconsequential amount of new runoff from the required NW Spring Street widening, it cannot then claim there is capacity for the NW 15th Street improvements. No capacity means no capacity. If the City's representations to Applicants is accurate and there is no capacity, the City must require the property owner at NW 15th Street to participate in constructing the new 18-inch pipe designed to address the lack of capacity. Conversely, if the City is allowing the property owner at NW 15th Street to add run-off to the system because it admits there is now some capacity, it must afford that same treatment to Applicants.

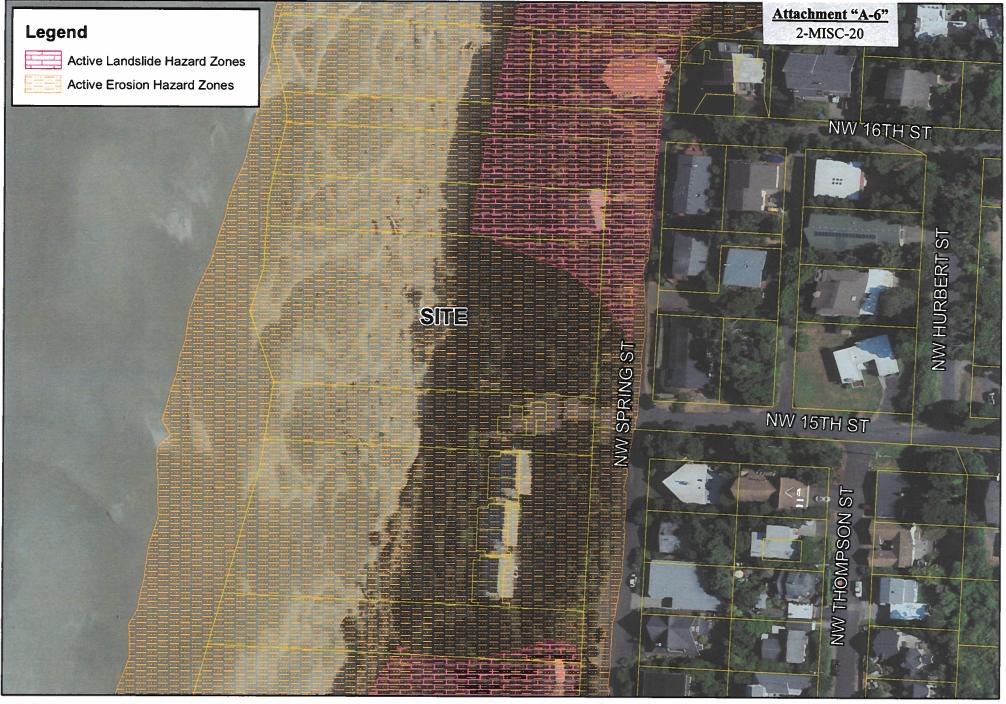
Applicants' Recommended Action

The Applicants assert in this proceeding that the City must conclude that there is no essential nexus to require any public street widening improvements and thus, there is no basis to require Applicants to construct any public storm water facilities. In the alternative, Applicants assert that the City must determine that the cost of the public storm water improvements, assuming only for argument sake and without agreeing the City can require street widening, is not roughly proportional to impacts of the development on public facilities by the permitted development, thus, the City cannot exact public storm water improvements.

If, notwithstanding, its inability to satisfy the constitutional requirements for exacting improvements, the City desires to proceed with an improvement agreement to construct public storm water facilities to address its larger problem in Basin R, Applicants will agree to participate at a conservative 3% of the total cost associated with the limited improvements to the public stormwater system, which includes a new catch basin located along the frontage of their Lot 1 with added storm piping outfall approximately 200 feet west of the new catch basin. As discussed above, the 165 square feet of new impervious surface is likely less than 1% of the total amount of run-off from Basin R that will contribute to the new storm water facilities. Under this scenario, Applicants would evaluate selling the City a public stormwater easement over Lot 1, based upon property values the City has historically used when it acquires easement rights.

Finally, if the City does not wish to contribute its proportionate share of the cost of the storm water improvements it has conditioned the Applicant to install, to address the capacity issues in Basin R, Applicants would agree to construct the street widening and will manage the storm water run-off from NW Spring Street in a drainage swale located in the unimproved public right-of-way fronting the lot(s). The street improvements will be limited to the frontage of the lot(s) as they are permitted for construction of a new residence, and at this time, it would apply only to Lot 3. Additionally, the timing on completing these public street improvements cannot be a condition of the issuance of the certificate of occupancy for the building being constructed on the Lot 3.

Should the city reject the Applicants' recommended actions, the Applicants will reserve their rights to process their claim to the extent allowed by the law.

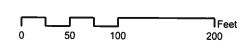




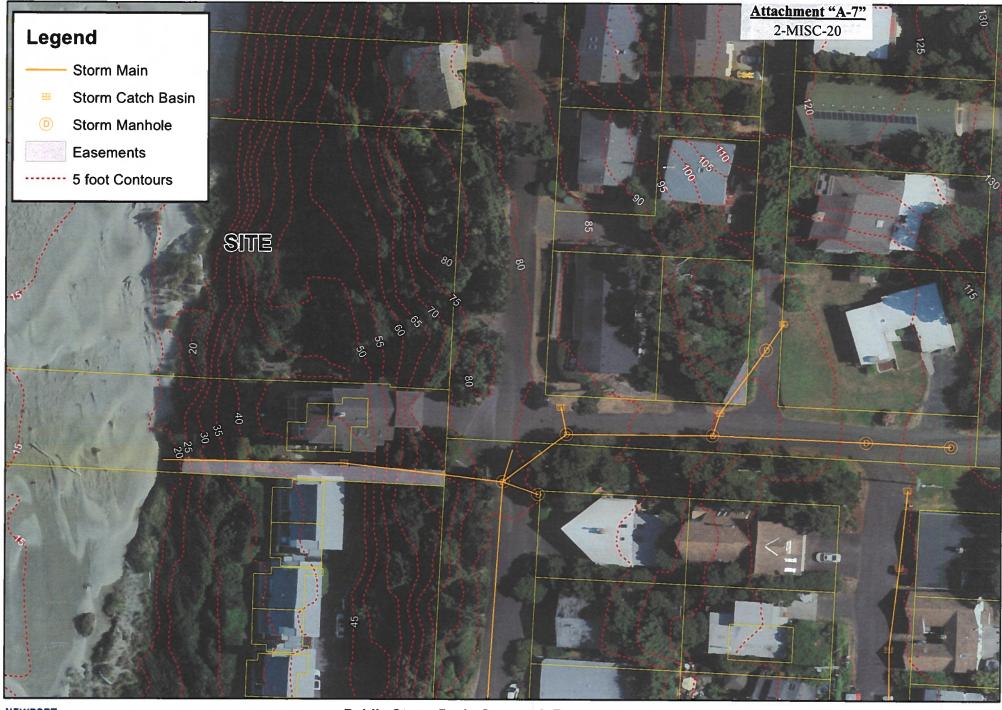
City of Newport
Community Development Department
169 SW Coast Highway
Newport, 08 97365
Fax: 1541.574.0629
Fax: 1541.574.0644

Geologic Hazards Zoning Overlay Lots 1-3, Block 49, Ocean View Subdivision

> image Taken July 2018 4-inch, 4-band Digital Orthophotos Quantum Spatial, Inc. Corvallis, OR









City of Newport
Community Development Department
169 SW Coast Highway
Newport, OR 97365
Pax:1.541.574.0629
Fax:1.541.574.0634

Public Storm Drain System & Easements Lots 1-3, Block 49, Ocean View Subdivision

0 30 60



TFeet

120

Section 5
System Performance

5.2.18 Basin R

Basin R includes a total of about 17.7 acres, all within the Newport City Limits, and lies west and east of NW Ocean View Dr. from NW 12th St. to NW 18th St.. The west boundary is NW Spring St. and on the east NW Lake Street. The basin covers a residential area filled with sections that are densely developed and leave little room for natural vegetation while other portions of the area are more sparsely developed, and contain native shrubs, trees, and grass. The average slope across the developed areas range from 2% to 6% while the undeveloped areas are more aggressively sloped at 8% to 15%.

Soil Type

Urban land-Bandon complex (Map Unit 58E) Urban land-Nelscott complex (Map Unit 59C)

Slope

2-18%

Current Land Use

17.69 Acres - Medium Density Single Family (R-2)

Peak Runoff

| 25-Year Storm (Exist.) | 10.94 cfs |
|------------------------|-----------|
| 50-Year Storm (Exist.) | 13.20 cfs |
| 25-Year Storm (Future) | 10.98 cfs |
| 50-Year Storm (Future) | 13.24 cfs |

Existing Storm Drain System

This system is typical for a residential zone as the storm water typically flows along the ground, or out of roof drains, onto the roadway, flows down the gutter, and collects in a catch basin. The storm water moves from the southeast corner of the basin toward the 10" R1 outfall in the northwest corner.

Present Problems

Pipes along and downstream of NW 14th St. lack capacity extending all the way to outfall R1. These pipes need to be increased in size.

Future System

There are 6 vacant LDR parcels and 1.77 acres of undeveloped land. These areas are projected to experience a growth of 1EDU.

Table Q.1 – Cost Estimate

| 1 1 | PROJECT Q1 COST ESTIMATE | | | | | | | | |
|----------|--|-------------------|----------|-------------|-----------|--------------|--|--|--|
| Item No. | Description | <u>Units</u> | Quantity | Unit Cost | | Total Cost | | | |
| 1 | Bonds, Insurance, Overhead, Mobilization Costs | ls | 1 | \$27,377.82 | | \$27,377.82 | | | |
| 2 | Construction Facilities/Temporary Controls | ls | 1 | \$6,083.96 | | \$6,083.96 | | | |
| 3 | Demolition & Site Prep | ls | 1 | \$12,167.92 | | \$12,167.92 | | | |
| 4 | 12" PVC Storm Drain Piping | lf | 314 | \$125.00 | | \$39,250.00 | | | |
| 5 | 18" RCP Storm Drain Piping | lf | 217 | \$136.00 | | \$29,512.00 | | | |
| 5 | 24" RCP Storm Drain Piping | lf | 359 | \$163.00 | | \$58,517.00 | | | |
| 6 | New 48" SD MH | ea | 2 | \$4,000.00 | | \$8,000.00 | | | |
| 7 | Tee Connections | ea | 2 | \$600.00 | | \$1,200.00 | | | |
| 8 | Ditch Repair-Trapezoidal | lf | 200 | \$6.00 | | \$1,200.00 | | | |
| 9 | AC Pavement Repair/Trench Patching | sf | 3605 | \$4.00 | | \$14,420.00 | | | |
| | | Construction | Total | | \$ | 197,728.70 | | | |
| | | Contingency (20%) | | | | \$39,545.74 | | | |
| | | Subtotal | | | \$ | 237,274.44 | | | |
| | | Engineering (20%) | | | | \$47,454.89 | | | |
| | Administrative Costs (3%) | | |) | eye serie | \$7,118.23 | | | |
| | | Total Projec | t Cost | | | \$291,847.56 | | | |

8.1.10 Basin R

Project R1 - Storm Drain capacity increase along NW Spring St.

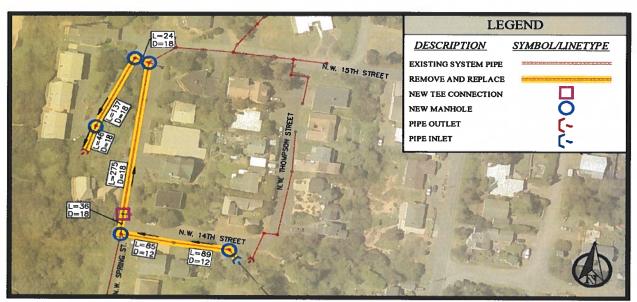
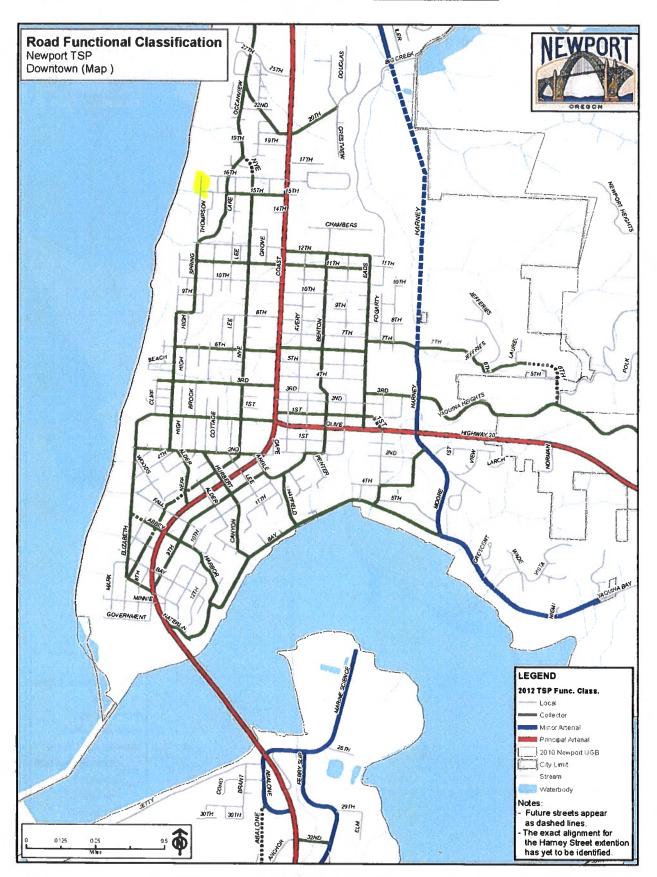


Figure R.1 - Project Area Image

This system lacks capacity. All pipes but the two nearest the outfall are 8". The 8" pipe running along NW 14th St. experiences a peak runoff flow of 4.22 CFS, while only having the capacity for 1.85 CFS (assuming a 2% slope). The 8" pipe running north from the intersection of NW 14th Street & NW Spring Street experiences a peak runoff rate of 7.43 CFS, while also having a capacity of 1.85 CFS. Downstream of this section of pipe, the 10" pipe leading to the outfall also lack sufficient capacity for a 25-year storm event.

To address these system deficiencies the 8" pipe along these runs must be removed and replaced, and will include the following: Installment of 175' of 12" PVC pipe, and 500' of 18" pipe. The project's cost estimate is shown in Table R.1 and depiction is displayed in Figure R.1.

Figure 2: Functional Classification of Roadways - Downtown Map



Attachment "A-10" 2-MISC-20

Exhibit 6
101 pages

Geotechnical Engineering Report And Geologic Hazard Assessment

Tax Lot 2300, Tax Map 11-11-05-BB NW Spring St., Newport, Oregon

Project: 18011 February 5, 2019

Prepared for:

Jacob T. Roth, Jr. and Theresa A. Roth 12600 SW 72nd Ave., Suite 200 Portland, OR 97223

Prepared by:

Michael Remboldt, P.E., G.E.

K & A Engineering, Inc.

Coburg, Oregon



K & A Engineering, Inc. 91051 S. Willamette Street P. O. Box 8486, Coburg, OR 97408 (541) 684-9399 Voice (541) 684-9358 FAX kaengineers.com



February 5, 2019

Project: 18011

Jacob T. Roth, Jr. and Theresa A. Roth 12600 SW 72nd Ave., Suite 200 Portland, OR 97223

Subject: Geotechnical Site Investigation and Report and Geologic Hazard Assessment Proposed Residential Development
Tax Lot 2300, Tax Map 11-11-05-BB
NW Spring St., Newport, Oregon

K & A Engineering, Inc. is pleased to present our Geotechnical Engineering Report for the subject development.

Our Services were completed in accordance with our Contract for Engineering Services, dated March 28, 2018 and meet the requirements of 2014 Oregon Structural Specialty Code, Section 1803, Geotechnical Investigations. Our report:

- Presents a summary of the existing subsurface conditions at the subject project site,
- Provides a detailed Geologic Hazard Assessment,
- Identifies and characterizes geologic hazards, and
- Presents recommendations for the design and construction of foundation support for the proposed single-family residences.

Thank you for the opportunity to be involved with your project. Please call us if you have any questions.

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SECTECHNICAL

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EXPIRES: <u>DECEMBER 31. 2020</u>
Michael Remboldt, P.E., G.E.
K & A Engineering, Inc.



Gary C. Sandstrom, C.E.G. Gary C. Sandstrom, Geologist, LLC

Geotechnical Engineering Report

Proposed Residential Development

Tax Lot 2300, Tax Map 11-11-05-BB

NW Spring St., Newport, Oregon

February 5, 2019

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Executive Summary

We have carefully evaluated the project site and have determined that the site can be developed to include (3) residential structures having the stability and safety normally expected for this use, provided that the recommendations in this report are implemented in design and construction.

Hazards that exist at the site include:

- High horizontal peak ground acceleration and very strong ground shaking from the design earthquake (Cascadian Subduction Zone event),
- High hazard of sliding on the west-facing slope of existing loose (disturbed) terrace sands on siltstone/claystone of the Nye Formation, in the existing condition,
- Moderate hazard of excessive total and differential settlement for conventional spread footings supported on unimproved loose terrace sands, and
- High surface erosion potential in the sloped sands if vegetation is disturbed.

To mitigate these hazards and ensure reasonable reliability and safety to the development, occupants, and the surrounding infrastructure, we have made recommendations for design and construction of the proposed development including:

- Structural support consisting of vertical and battered micropiles that are embedded into hard siltstone/claystone of the underlying Nye Formation. This will mitigate the high hazard of slope movement and reduce hazards associated with differential settlement.
- Installation of drainage features to limit groundwater seepage pressure,
- Interim erosion control measures during construction to minimize surface erosion and sediment transport,
- Re-vegetation of all disturbed areas after final grading is complete to minimize surface erosion and improve shallow slope stability.

1 Introduction

This report documents our geotechnical investigation of site conditions that exist on tax lot 2300 located on the west side of NW Spring Street just north of NW 15th Street in Newport, Oregon.

The purpose of our investigation included:

- Characterization of surface and subsurface soil, rock, and groundwater conditions,
- Evaluating current slope stability,



- Delineating geologic hazards, and
- Development of recommendations for suitable development of the properties for single-family residences.

The scope of our services included:

- Fieldwork to characterize subsurface conditions,
- Analysis of field data,
- Evaluation and determination of the nature of slope stability.
- Development of geotechnical design and construction criteria, and
- This written Geotechnical Engineering Report.

Our services meet the requirements of the 2014 Oregon Structural Specialty Code, Section 1803 – Geotechnical Investigations.

2 Investigation and Findings

2.1 SITE LOCATION

The project site is located between NW Spring Street (to the east) and the Pacific Ocean (to the west) and bounded by and existing condominium complex (to the south) and an existing single-family residence to the north. See the attached Vicinity Map.

2.2 SITE SURFACE CONDITIONS

The ground surface of the project site can generally be described as consisting of four distinct zones described as:

- Zone 1: A west facing slope descending approximately 4 to 8-feet from the west edge of the pavement to the bottom of a swale, slope gradient in the approximate range of 30 to 40-percent. Vegetation in this area consists of moderately dense grasses, low shrubs, and blackberry.
- Zone 2: An east-facing slope ascending from the bottom of the swale approximately 7 to 10-feet to a gentle, rounded ridge that parallels the road, slope gradient in the approximate range of 25 to 35-percent. Vegetation in this area consists of moderately dense grasses, shrubs, and tree canopy.
- Zone 3: A concave west-facing slope with slopes ranging from approximately 9-deg. (15%) to 40-deg. (85%). We believe the concave shape of Zone 3 resulted from ancient movement of surficial terrace sands on underlying Nye Formation siltstone. The height of this zone is approximately 40-feet. Vegetation in this zone consists of dense grasses, low shrubs, and tree canopy. The south 1/3 of Zone 3 was especially marshy evidence of shallow siltstone and groundwater near the siltstone surface with very soft near surface soil, and hydrophytes (plants adapted to year-round shallow groundwater such as Equisetum).
- Zone 4: A steep west-facing (linear) slope descending from the toe of the old concave slope movement to the beach. The height of this slope is approximately 25-feet with a gradient in the



approximate range of 30 to 35-degrees (55 to 70-percent). Vegetation in this zone consists mostly of very dense low native shrubs (Salal).

Aside from erosion due to disturbance on the few foot-trails that exist on the site, there is little evidence of on-going severe surface erosion or mass slope movement. We did observe cracking along Spring Street parallel with the ditch located on the west side of the pavement. These cracks are almost hairline in width and show virtually no elevation difference across the crack. We believe these are the result of normal pavement deterioration and rutting and not indicative of slope movement. We saw no other evidence of recent slope movement at the site.

See the Typical Geotechnical Section, Appendix A.

2.3 Previous Site Investigations

Since 1989, several Geotechnical and Geological Hazard Assessment reports have been completed for the project site. Many of these reports discussed land features, geomorphology, and characterized subsurface conditions in the lower terrace. These reports, however, did not characterize soils in the upper terrace, and more importantly the location of mudstone and groundwater.

This section briefly summarizes the findings and interpretation of observed land features of each report.

2.3.1 John McDonald Engineering Report (1989)

McDonald¹ completed three (3) borings in in the lower bench found in the west half of the project site. McDonald observed the following subsurface conditions:

- 0.5 to 1.0-ft of black, organic-laden soil, over
- 0 to 4.8-ft of sand, over
- Dark gray "silt, hard to auger" (Nye Formation).

McDonald opined that the west-facing slope of the project site was formed from ancient land sliding, which occurred as a result of over-saturation at the mudstone surface and possibly a large seismic event.

Our probes and boring generally confirm the nature and depth of terrace sands and siltstone as described by McDonald.

2.3.2 Braun Intertec Northwest Report (1994)

The Braun Intertec Report (by Charles Lane, P.E.) included a Geologic Hazards Report by H.G. Schlicker & Assoc. (written by Douglas Gless, P.G., C.E.G.).

¹ McDonald, J.K., "Geotechnical Investigation of Lots 1, 2, & 3 Oceanview Estates, Newport", *John McDonald Engineering* (1989).

² Lane, C.R., "A Report for J.T. Roth Construction – Site Reconnaissance for a Single-Family Residence", *Braun Intertec Northwest* (1994)

³ Gless, J.D., "Geologic Hazards Report Lots 1, 2, and 3, Block 49, NW Spring Street and 15th, Newport, Oregon", H.G. Schlicker & Associates (1994).



Lane did not perform any subsurface investigation as part of his investigations. Gless completed (2) hand-auger borings in the lower bench of the project site. Subsurface conditions in these borings included:

- 1.0-ft of black, organic-laden soil, over
- 0 to 2.0-ft of sand, over
- "Silty claystone" (Nye Formation).

Claystone was encountered at depths ranging from 1.0 to 3.0-ft (west to east). Gless also observed exposed claystone 10 to 20-ft above the beach level in along adjacent properties.

Both Lane and Gless opined that the project site was the location of an old landslide caused by sliding of upper terrace sands on underlying Nye siltstone/claystone which formed the steep west-facing slope. Gless stated that the rise in the ground surface near the west edge of NW Spring Street is part of a "back-rotated" landslide block. Gless noted cracking in the pavement and at the end of NW Spring Street which he believed were evidence of "ongoing movement adjacent to the site."

2.4 SITE SUBSURFACE SOIL CONDITIONS

2.4.1 Landform Zones

For convenience we have subdivided the project site into four distinct geomorphologic zones as follows:

- Zone 1: The east margin of the project site that has been influenced by recent road construction (NW Spring Street) including road fills and grading;
- Zone 2: The east-facing slope ascending from Zone 1 to the crest of what we believe is the top of a block of soils that moved laterally in response to the last slope movement on the site;
- Zone 3: The west-facing slope descending from the crest of Zone 2 which was the predominant sliding surface for the last (ancient) slope movement;
- Zone 4 The west-facing steep exposed siltstone embankment descending to the beach.

The Typical Geotechnical Section attached in Appendix A identifies the location and extend of these zones.

2.4.2 Methods of Investigation

We investigated subsurface soil conditions by making three (3) probes⁴ (FC-1 through FC-3) and two (2) continuous sample boring⁵ (B-2 and B-3) using our track-mounted geotechnical drill. Additionally, (4) shallow probes⁶ (FC-4 through FC-7) were made to verify the depth of siltstone in Zone 3.

⁴ A 3.55-in² cone is pushed into the soil using a 140-lb. hammer falling 30-in. The energy required to advance the cone is recorded in the field as the number of blows per 6-inches of penetration. Soil friction on the side of the cone is measured using a torque wrench. Calculated cone tip pressure is used to estimate soil engineering ⁵ 1.5-inch diameter x 4-foot continuous samples obtained using a G7 2-3/8" direct push dual tube system

^{3 1.5-}inch diameter x 4-foot continuous samples obtained using a G7 2-3/8" direct push dual tube system manufactured by AMS, Inc.

⁶ A 10.2-cm² cone is pushed into the soil using a 15.9-kg hammer failing 38.1-cm. The energy required to advance the cone is recorded in the field as the number of blows per 10-cm of penetration



See the attached Geotechnical Site Plan for approximate locations of these probes and borings.

Graphic logs of the probes and borings are attached to this report. The approximate location of the probes and borings are shown on the attached Site Plan.

2.4.3 Zone 1

Zone 1, east of the steep embankment, consists both of road fill and undisturbed, lightly-cemented sandy marine terrace deposits. Subsurface conditions generally consist of (approximately):

• Undocumented road FILL:

- 1.5-ft of dark brown, damp, moderately dense, organic-laden silty-SAND, over
- 5.5-ft of orange, gray, and tan, moist, loose/soft, uncemented, SILT & SAND, over

Sands:

- 1-ft of dark brown, moist, soft, low plasticity, organic SILT and sandy-SILT, over
- 8-ft of brown, gray, and tan, moist to wet, moderately dense, poorly-graded, lightly cemented SAND (Marine Terrace Deposit), over
- 1-ft of gray and white, wet, dense, lightly cemented, gravelly-SAND, over
- Bedrock (Nye Formation): Dark gray, damp, very stiff to hard, claystone/siltstone with interbeds of hard dark brown sandstone.

We were unable to observe in-situ groundwater due to the use of drilling fluid and the collapse of bore holes. Laboratory analyses from our B-2 sample indicate that moisture content increases around 14-ft below the ground surface, within 3 to 4-ft of relatively impermeable mudstone. We assume that groundwater is at this depth.

2.4.4 Zone 2

Subsurface conditions at Zone 2 generally consist of (approximately):

Sands:

- 0 to 3-ft of brown to light brown, moist, loose, organic or organic-laden, sandy-SILT and silty-SAND – possibly wind-blown sand deposits (dune), over
- 14-ft of tan, gray and white, moist, loose, poorly-graded, SAND (Marine Terrace Deposits), over
- 2-ft of gray, moist to wet, loose to moderately dense, SAND with trace to some gravel (Marine Terrace Deposits), over

Bedrock (Nye Formation):

- 4-ft of dark gray, damp, moderately stiff to stiff, friable, decomposed claystone/siltstone, over
- Dark gray dry, hard, weathered claystone/siltstone/sandstone.

Based on boring B-3 we estimate groundwater is 17 to 18-ft below the ground surface, within 2-ft of relatively impermeable mudstone.

2.4.5 Zone 3

Our observations indicate that subsurface conditions generally consist of (approximately):

Sands and Silts



- 0.5 to 2-ft of brown, wet to saturated, soft, organic sandy-SILT, over
- 3 to 4-ft of wet to saturated, loose, poorly-graded SAND, over
- Bedrock (Nye Formation): Dark gray dry, hard, weathered claystone/siltstone/sandstone

Standing water was observed near the west and south side of the terrace. The south side and west 1/3rd was especially marshy, with very soft near surface soil, and hydrophytes.

2.4.6 Zone 4

Observations at the slope, from the beach, indicate exposed hard siltstone at elevations approximately 20-feet above the toe of the steep slope at the edge of the beach.

Groundwater is likely at or near the ground surface in this zone, with springs terminating at the face of the slope.

2.4.7 General Remarks

2.4.7.1 Terrace Deposits – Cementation

The marine terrace deposits are typically lightly cemented, evidence of which can be seen in the many vertical or near-vertical cut embankments in the Oregon coast line that remain relatively stable. This light cementation produces a friction ratio that is typically higher than normal for sands, with the result that these formations classify as a "clay" soil behavior type in the probe logs. Light cementation is often difficult to verify in the boring samples, which are highly disturbed because of the method of drilling.

2.4.7.2 Terrace Deposits - Shearing

We believe there is evidence in the probe logs of disturbed zones in the underlying marine deposits of past shearing, evidenced by isolated thin zones of dramatic reductions in tip pressure. These suspected shear zones are highlighted (in gray) on the probe logs.

2.5 LOCAL GEOLOGY

Surficial geology of the site consists of Quaternary Marine Terrace deposits overlying early Miocene Nye Mudstone. The geologic setting for the site is described in detail in the <u>Geologic Hazard Assessment</u> for this project, by Gary C. Sandstrom, Certified Engineering Geologist, which is included in Appendix D to this report.

Our probes and borings confirm these two mapped geologic units – Marine Terrace (lightly-cemented sands and silts) overlying siltstone/claystone. See the Typical Geotechnical Section (Appendix A) and graphic probe and boring logs (Appendix B) for more detail regarding depth and consistency of subsurface soil and rock conditions.



3 RECOMMENDATIONS FOR DESIGN AND CONSTRUCTION

3.1 GEOLOGIC HAZARDS

3.1.1 Geologic Hazard Assessment

The project site is located within a coastal environment that is documented to have active erosional processes at work on a continuous or intermittent basis. These processes include:

- Wave action which causes erosion of the toe of slopes ascending from beaches, eventually resulting in slope instability,
- Mass slope movement. These are more often the result of erosion but can also be caused by earthquake ground motion,
- Tsunami, and
- Surface erosion from concentrated surface runoff.

Other hazards typical for coastal geology include faulting, liquefaction, and lateral spreading.

A complete geologic hazard assessment for this site, written by Gary C. Sandstrom, C.E.G. (certified engineering geologist), is attached to this report, Appendix D.

3.1.2 Slope Movement

3.1.2.1 General Vicinity

The project site is well within the area of high coastal erosion hazard and existing land sliding identified by the Oregon Department of Geology and Minerals Industries (DOGAMI)⁷. The project site is within the influence of the large "Jump-off Joe" landslide complex - a rather large, linear slide zone. See Figure 1. This landslide complex consists of numerous individual slope movements that likely occurred individually over long periods of time – thus the overlapping appearance. Slope movement in the area including the project site is believed to be Quaternary in age (sometime in the last 2.8 million years).

Severe slope movement, associated with this general feature, has been observed south of the intersection of NW Spring Street and NW 12th Street at the northwest side of existing condominiums.

3.1.2.2 Project Site

We observed evidence of old slope movement on the site that may include:

The slope descending from the roadway (Zone 1). This slope has been identified as a possible slide scarp by others (Gless, 1994). However, due to the discovery of gravels underneath this slope, we are more inclined to believe that this slope may be the result of road construction and the creation of a road ditch. There was also no consistent evidence of a slide surface extending from this slope in probe FC-3.

⁷ Open-file report O-04-09 and on-line geologic hazard viewer published by the Oregon Department of Geology and Minerals Industries (DOGAMI), HazVue. See http://www.oregongeology.org/hazvu/



- Thin zones of low cone tip pressure indicating zones of weakness within that Marine Terrace deposits (zones 1, 2, and 3) that could have been caused by translation of the block in response to the ancient landslide that did occur at the site (zone 3).
- A concave shape to the west-facing ground surface at the site (zone 3) that is typical for slope movements. See the Typical Geotechnical Section, Appendix A.



Figure 1 - HazVu Mapping of Jump-off Joe Landslide Area

We modeled slope stability of the existing ground surface condition using common methods of limit equilibrium analysis.⁸ Limit equilibrium assesses stability based on a "factor of safety" (FOS) – the ratio of forces resisting movement to forces driving movement. Our modeling included:

- Ground surface boundaries defined by our field-developed cross section,
- Subsurface boundaries and material properties estimated from our probes and borings,
- Groundwater levels estimated from the probes and borings,
- Earthquake peak ground acceleration based on deaggregation of earthquake ground motion data⁹.

We made a one-point direct shear test of loose (disturbed) terrace sands obtained in samples obtained from boring B-2. The calculated angle of internal friction, assuming no cohesion, is summarized as follows:

⁸ We use proprietary software SLIDE, published by Roc Science, http://www.rocscience.com

⁹ U.S. Geological Survey - Earthquake Hazards Program. https://earthquake.usgs.gov/hazards/interactive/



- Peak Strength 35-degree angle of internal friction
- Residual Strength 30-degree angle of internal friction.

Material properties used for our slope analysis were selected to reflect conservative lower-boundary values for soils typical of those found in the borings and probes, including a residual shear strength envelope for the (assumed) disturbed Marine Terrace deposits found overlying Siltstone/Sandstone at the site. These are summarized below in Table 1.

Table 1 - Material Properties for Slope Stability Modeling

| Material | Moist Unit Weight (pcf) | Saturated Unit Weight (pcf) | Phi (deg) | Cohesion (psf) |
|---------------------|----------------------------|--------------------------------|-----------|----------------|
| Organic Sands | 110 | 120 | 33 | 25 |
| Marine Terrace | 115 | 120 | 30 | 50 |
| Siltstone/Claystone | 120 | 120 | 33 | 1500 |

We assumed some apparent root cohesion for the upper layer of organic sands due to the moderate to dense vegetative cover. We used a lower (residual) strength for the Marine Terrace sands because of the assumed history of disturbance, and we included a small value for apparent cohesion from capillary forces of soil moisture.

The calculated factors of safety (FOS) area as follows:

- Static Condition (no earthquake): FOS is slightly less than 1.1. This is a marginal value and makes sense considering the steepness of the upper portion of the zone 3 slope.
- Earthquake Loading: The FOS falls roughly 50% to slightly more than 0.5.

Given these conditions, the existing ground surface is NOT suitable to support additional loads from conventional spread footing systems.

Graphic summaries of our analysis are attached in Appendix A to this report.

3.1.3 Beach Regression

The general rate of beach regression, at one standard deviation from the mean, for this area has been estimated to be in range of 0.0 to 0.3-feet/year in this area.¹⁰ For this site, we believe that long-term regression is very close to the lower bound of this range due to several mitigating features:

- The protection of the toe of the Zone 4 slope by the terminal (hard, massive) siltstone exposure found at the east edge of the beach area,
- The high elevation of the ground in the Zone 3 area, and
- Dense existing vegetation throughout the project site.

¹⁰ George R. Priest, Erosion and Flood Hazard Map of the Newport Area, Coastal Lincoln County, Oregon. Open File Report OFR O-97-26, Department of Oregon Geology and Minerals Industries. 1997.



Visual (photographic) evidence supports this recommendation as seen in Figures 2 through 5 which span a period of 29-years. These photographs indicate actual accretion at the toe of the slope in the form of Dune deposits, rather than regression.

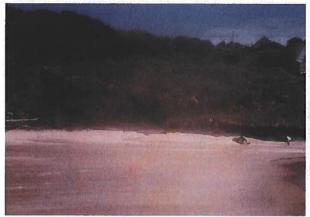




Figure 2 - 1989

Figure 3 - 1998







Figure 5 - 2018

3.1.4 Design Earthquake

The design earthquake was determined using criteria including an event having a 10-percent chance, or higher, of occurring within a 50-year period¹¹. Based on analysis using current modeling of local sources of earthquake ground motion (crustal, deep, and subduction zone)¹², the design earthquake has a

¹¹ This criterion reflects a return interval of 475-years which is consistent with current practice for slope stability under earthquake loads. See "Guidelines for Evaluating and Mitigating Seismic Hazards in California," Special Publication 117A, California Geologic Survey. 2008.

¹² 2014 Dynamic Conterminous NSHMP PSHA interactive deaggregation analysis, on-line at the USGS Geologic Earthquake Hazards Program. https://earthquake.usgs.gov/hazards/interactive/



(modal) magnitude of 9.08 with a peak ground acceleration of 0.43g. A summary of the deaggregation analysis is attached to this report in Appendix D.

3.1.5 Liquefaction

The project site is mapped ¹³ as having a "low" relative liquefaction hazard. We agree with this description of relative hazard for the project site. Our lab work indicates that groundwater may be perched just above the mudstone contact. If this is the case, there is a small lens of SAND and gravelly-SAND in the upper terrace that may be prone to liquefaction.

We have evaluated liquefaction hazard during the design earthquake using a pseudo-static peak ground acceleration of 0.43g. Our analyses suggest that the greatest hazard of liquefaction is on the east side of the property (FC-1 and FC-2), and relatively small mid-slope (FC-3 and FC-4). Our understanding is that the proposed structures will be supported directly on mudstone in the lower terrace, therefore mitigating this hazard.

3.1.6 Faulting and Lateral Spreading

Table 1 summarizes nearby mapped active faults^{14,15,16} within a 50-mile radius of the project site. Several prominent seismic events (M > 4.0) have occurred within 50-miles of the project site^{17,18,19}. These events are summarized in Table 2 below. It is evident that most of these events have occurred offshore in the Cascadia Fault System, emphasizing the active nature of this physiographic region.

¹³ Madin, I.P., and Wang, Z., "Relative Earthquake Hazard Maps for Selected Urban Areas in Western Oregon – Newport Urban Area", Oregon Department of Geology and Mineral Industries, IMS-10.

¹⁴ Active defined as having ruptured within the current geologic age (Quaternary – 1.5Ma).

¹⁵ Personius, S.F., Dark, R.L., Bradley, L.A., and Haller, K.M., "Map of Quaternary Faults and Folds in Oregon", U.S. Geologic Survey, OFR-03-095 (2003).

¹⁶ U.S. Geological Survey, 2006, Quaternary fault and fold database for the United States, accessed May 9, 2018, from USGS web site: http://earthquake.usgs.gov/hazards/qfaults.

¹⁷ University of Washington (1963): Pacific Northwest Seismic Network. International Federation of Digital Seismograph Networks. Other/Seismic Network. 10.7914/SN/UW

¹⁸ Johnson, A.G., Schofield, D.H., and Madin, I.P., "Earthquake Database for Oregon, 1833 through October 25, 1993", Oregon Department of Geology and Mineral Industries, OFR 94-04 (1994).

¹⁹ NCEDC (2016), Northern California Earthquake Data Center. UC Berkeley Seismological Laboratory. Dataset. doi:10.7932/NCEDC



Table 2. Nearby Quaternary Faults.

| | Fault Name | Fault ID | Length (km) | Slip Rate (mm/yr) | Type ²⁰ | Distance ²¹ from Site (miles) |
|--------------------------------------|---------------------------------|----------|----------------|----------------------|--------------------|---|
| 4 | Cascadia Fold and Fault Belt | 784 | 484 | 1.0 - 5.0 | Т | 5 (W) |
| Cascadia Fault System | Unnamed Offshore Faults | 785 | 280 | 1.0 - 5.0 | LL, RL, N, R | 13 (S-SW) |
| cadia Fa System | Stonewall Anticline | 786 | 70 | 1.0 - 5.0 | A | 14 (W) |
| sca S | Alvin Canyon Fault | 797 | 71 | > 5.0 | LL | 31 (SW) |
| Ö | Daisy Banks Fault | 798 | 80 | > 5.0 | LL | 32 (W) |
| | Wecoma Fault | 799 | 96 | > 5.0 | LL | 28 (NW) |
| ē | Corvallis Fault Zone | 869 | 40 | < 0.2 | T, LL | 29 (SE) |
| | Owl Creek Fault | 870 | 15 | < 0.2 | R | 43 (E) |
| ler 20 | Siletz Bay Faults | 883 | 10 | < 0.2 | N | 13 (N) |
| orc hic | Cape Foulweather Fault | 884 | 10 | < 0.2 | R, LL | 10 (N-NE) |
| Pacific Border Physiographic Zone | Yaquina Faults | 885 | 13 | 0.2 - 1.0 | R, LL | 1.7 (N) and 1.7 (SE) |
| | Waldport Faults | 886 | 14 | < 0.2 | R, LL, N | 15 (S) |
| | Unnamed Siuslaw River Anticline | 887 | 12 | 0.2 - 1.0 | A | 41 (S-SW) |

The nearest mapped faults are the Yaquina Faults, which consist of two east-west trending strike-slip faults. These faults are mapped over 1-mile to the north and south of the project site and the location is generally well understood. As there are no active faults mapped through or in the near vicinity of the project site, there is not a significant hazard of ground rupture.

Table 3. Nearby seismic events with M > 4.0.

| Date | Time ²² | Latitude | Longitude | Magnitude | Type ²³ | Nearby Fault(s) |
|-----------------|--------------------|----------|-----------|-----------|--------------------|-----------------|
| July 23, 1959 | 08:15:12.00 | 44.5000 | -124.5000 | 4.3 | N/A | 786 |
| July 23, 1959 | 00:28:17.00 | 44.8000 | -124.6830 | 4.6 | N/A | 786, 798 |
| March 7, 1963 | 23:53:25.00 | 44.9000 | -123.5000 | 4.6 | Mb | None |
| June 11, 1989 | 12:00:32.92 | 44.4770 | -124.8950 | 4.1 | Mb | 797 |
| July 12, 2004 | 16:44:59.84 | 44.3157 | -124.5668 | 4.9 | Mc | 785 |
| August 19, 2004 | 06:06:03.63 | 44.6647 | -124.3003 | 4.7 | Mc | 784, 786 |

²⁰ Types of Faults: T = thrust, LL = left lateral (strike-slip), RL = right lateral (strike slip), N = normal, R = reverse, A = anticline.

²¹ Distance was measured from the site to the (approximate) closest location along the fault or collection of faults.

²² Time expressed in coordinated universal time (8-hrs ahead of PTS).

²³ Various methods of characterizing the relative size of an earthquake: M_L = "Local Magnitude (Richter Magnitude)", M_s = "Surface-wave Magnitude", M_b = "Body-wave magnitude", M_w = "Moment Magnitude", and M_c = "Coda Magnitude".



As stated above, some liquefaction is likely to occur at the project site. The amount of liquefiable material mid-slope, where the mudstone begins to dip west, is less than 1 to 2-ft. Minor lateral spreading may occur (several feet or less) due to strong earthquake ground motion is likely, based on our pseudo-static stability analysis using the expected peak ground acceleration of 0.43g.

3.1.7 Tsunami

Current mapping for expected Tsunami inundation for the area²⁴ indicates that the expected elevation that a tsunami would reach, *commensurate with an approximate return interval of 500-years*, is in the range of 40 to 43-feet.²⁵ This elevation is at the lower 1/3rd of the Zone 4 slope along the beach, and more then 20-feet lower than the foundation for the proposed development.

3.1.8 Expansive Soils

Subsurface soils (sands) at this site are not expansive. The underlying claystone/siltstone could exhibit expansive qualities if exposed to seasonal drying/wetting.

3.1.9 Foundation Settlement

The loose, unconsolidated sands and colluvium in Zone 2 and 3 represent a hazard of excessive total and differential foundation settlement for conventional shallow spread footing systems. Our recommendations for Foundations, below, are made to mitigate this hazard.

3.2 SEISMIC DESIGN CRITERIA

For designing lateral bracing systems and other structural elements for earthquake ground motion, we recommend that design criteria be selected based on a site class "D – Stiff soil profile." The recommended design spectral response acceleration parameters²⁷ are shown on Table 2.

Table 4. Recommended Seismic Design Parameters

| Design Parameter | Design Value | | | |
|----------------------------------|--------------|--|--|--|
| Sмs (site class "D") | 1.739 | | | |
| Sмı (site class "D") | 1.148 | | | |
| Sos (site class "D") | 1.159 | | | |
| S _{D1} (site class "D") | 0.765 | | | |

²⁴ Tsunami Inundation Map Linc-06, Local Source (Cascadia Subduction Zone) Tsunami Inundation Map – Newport, North, Oregon. Oregon Department of Geology and Minerals Industries (DOGAMI). 2013.

²⁵ This inundation elevation is for an "M" earthquake (classified in the tsunami inundation mapping) having a recurrence in the range of 425 to 525-years. This earthquake is consistent with our recommendations for the project design earthquake (which has a recurrence interval of 475-years). A bigger "XXL" earthquake, having a recurrence of approximately 1,200-years, would yield an expected (mapped) inundation elevation of approximately 80-feet, and represents an extreme event outside of the scope of typical residential development.

²⁶ Section 1613.3.2 of the 2014 Oregon Structural Specialty Code.

²⁷ http://earthquake.usgs.gov/designmaps/us/application.php?



3.3 FOUNDATIONS

3.3.1 General Foundation Recommendations

To mitigate the existing site geologic hazards, we recommend that all permanent structures be supported on deep foundation elements that extend into underlying bedrock for support. These foundation elements would support an integrated reinforced concrete grade beam system. The recommended concept for structural support is shown on the Typical Section – Proposed Development in Appendix A to this report. The deep foundation elements must not only provide vertical support but must also provide the lateral support necessary to ensure lateral stability against transient earthquake loads.

We recommend use of micropiles for the deep foundation elements. Micropiles offer excellent of service load capacity in both tension and compression and can be battered for lateral loads.

As we understand it, the proposed concept for development on the project site consists of conventionally-framed 2 to 3-level structures that conform to the natural ground form.

3.3.2 Micropiles

3.3.2.1 Design Criteria

For design purposes, micropiles shall be designed for an ultimate design grout-to-bedrock bond strength of 4,000-pounds/square foot of bond. Load testing is required to verify actual bond capacity. Based on our preliminary analysis, micropiles having a 5-inch nominal diameter grout bond zone and a 32-mm hollow bar²⁸ reinforcing element should achieve allowable load capacities in the range of:

- 24 to 45-kips in compression
- 24 to 27-kips in tension

for bond lengths of 10 to 20-feet in underlying claystone/siltstone.

To achieve high individual micropile load capacity, we recommend the following design criteria:

- Minimum diameter of the grout-siltstone bond zone of 5-inches,
- 4-inch x 0.25 tubular steel casing extending from the ground surface (grade beam or load pad) to 1-foot below the surface of bedrock, having a minimum yield strength of 36-ksi;
- Micropile reinforcement consisting of a 32-mm hollow reinforcing bar, minimum yield strength of 80-ksi;
- Ultimate design grout-to-bedrock bond strength of 4.0-ksf with a minimum FOS of 2.0.

²⁸ Williams Form Engineering Corp. B7X Geo-Drill Bar. See
<a href="http://www.williamsform.com/Ground-Anchors/Hollow-Bar Ground-Anchors/Hollow-Bar Ground-Anchors/Hollow-Bar



3.3.2.2 Load Testing

Prior to installation of production micropiles, a minimum of one test pile should be installed into Mudstone and load tested to verify actual ultimate and allowable load capacity.²⁹ Each load test shall include:

- Ultimate load, in tension, to a minimum 200-percent of the maximum specified working load.
 The load test shall be made in increments of 10, 25, 50, 100, 150, and 200-percent of maximum specified working load.
- Creep Testing. A creep test shall be made a 133-percent of the maximum specified working load. Criteria for successful creep is less than 2-mm of creep over one log-cycle of time.

A minimum of one (1) test pile shall be load tested for each building proposed for the site. K & A Engineering, Inc. may require additional "proof" load tests depending on the observed consistency of micropile drilling and installation.

K & A Engineering, Inc. shall:

- Review and approve materials and construction methods submitted by Contractor prior to construction,
- Inspect installation of test piles,
- Inspect load testing and verify ultimate load at failure or that no failure occurred.
- Verify the validity of the preliminary allowable grout bond strength based on load test results,
 and make recommendations for embedment lengths of the production piles, accordingly, and
- Inspect and approve micropile construction.

3.4 GENERAL SITE DEVELOPMENT

3.4.1 General Recommendations

Our understanding is that the plan for development consists of building two or three-level conventionally framed structures that will generally conform to the existing ground surface. See the drawing Typical Section – Proposed Development in Appendix A which is a general depiction of the development concept. This proposal has several advantages for the site from a geotechnical perspective including:

- Removal of a substantial volume of the loose sands on the west-facing zone 3 slope which will significantly increase the FOS against slope movement, and
- A concrete grade beam system anchored into underlying claystone/siltstone which will ensure interception of groundwater and excellent anchorage into bedrock.

The proposal also includes a low retaining wall on the west end of zone three to allow for a low fill (estimated 1 to 3-feet) to accommodate minimal grade in this area.

²⁹ Load testing shall conform to the requirements of "Micropile Design and Construction Reference Manual, U.S. Dept. of Transportation Federal Highway Administration, Publication FHWA NHI-05-039. December 2005.



3.4.2 Fills

No unsupported fills are planned for this proposal.

Retained fill, consisting of native structural fill (sands), are proposed for:

- Grading behind a low concrete wall at the west end of Zone 3 to create a more-or-less level backyard area,
- Drainage gallery behind the lower retaining wall to intercept groundwater consisting of Drain Rock,
- Native Structural Fill behind the retaining wall and underneath the proposed garage/storage rooms at the east end of the proposed structure(s). This fill will replace loose or unsuitable native soils that have to be removed for construction.
- Mechanically-stabilized earth (MSE) retention of the upper retaining wall supporting the west end of the structure. The MSE will be constructed using native structural fill (clean sands) excavated from the foundation area.

Other fills will include:

- Clean sands or select granular fill to fill the existing ditch located along the west edge of NW
 Spring Street to allow for driveway construction. This fill will include a drain system.
- Aggregate Base Rock for driveway surfacing.

Note that final grading, between buildings and at the north and south ends, shall match existing grade.

NOTE: This project, as conceived on of the date of this report, requires a net *reduction* in soil mass at the top of the slope (east end of the proposed buildings). Additionally, the east foundation will be firmly supported on bedrock and tied to bedrock with soil nails, resulting in virtually eliminating a failure surface in soils above bedrock at the building sites.

3.4.3 Cuts

No permanent unsupported cut embankments are anticipated. The only permanent cut embankments proposed are those for the foundation, which will be supported with concrete walls.

We do anticipate temporary cut embankments to facilitate foundation construction. Temporary cut embankments shall have a gradient no steeper than 1.5H: 1.0V or shall be shored. Temporary cuts shall not be left exposed during rain events unless covered or otherwise protected with temporary erosion control measures.

3.5 RETAINING WALLS

3.5.1 Garage Retaining Wall

A retaining wall supporting the permanent cut for the upper retaining wall supporting the west end of the garage will be a mechanically-stabilized earth wall consisting of geogrid and compacted native structural fill (sands). For this retaining wall, we recommend the following design criteria:

- At-rest lateral earth pressure: 49-pcf/ft (equivalent fluid pressure),
- Uniform lateral earth pressure from traffic loading: 60-psf



- Coefficient of Sliding: Not applicable (foundation restrained by micropiles).
- Bearing Capacity: 5-ksf

The MSE embankment must be designed by a qualified engineer and reviewed and approved by K & A Engineering, Inc. prior to construction.

3.5.2 Lower Retaining Wall

The lower concrete retaining wall (supporting the west end of the garage/storage area) is restrained from movement at the top (floor system for the storage area) and bottom (foundation anchored with micropiles). For wall design we recommend the following design criteria:

At-rest lateral earth pressure: 49-pcf/ft (equivalent fluid pressure).

Note that this the lateral pressure envelope must take into account the depth of the top and bottom of the wall. K & A Engineering, Inc. should be consulted to review and approve of the design earth pressure envelop.

Our recommendations for lateral earth pressure, if followed, will prevent slope movement from occurring in retained soils.

3.5.3 West Zone Grade Separation Retaining Wall

Our understanding is that this retaining wall will likely be a low concrete wall and supported with micropiles. For this retaining wall, we recommend the following design criteria:

- Active lateral earth pressure: 30-pcf/ft (equivalent fluid pressure),
- Coefficient of Sliding: Not applicable (foundation restrained by micropiles).
- Bearing Capacity: Not applicable (foundation restrained by micropiles).

3.6 DRAINAGE

3.6.1 General Description of Site Drainage

In general, the site will be graded to conform to the existing ground surface topography. Drainage features that we recommend be constructed for general site drainage include:

- The ditch that parallels the west site of NW Spring Street,
- The west foundation(s),
- The zone 3 grade separation retaining wall and
- Roofs.

Our understanding is that you have secured easements to route intercepted drainge to an existing corrugated storm line that is located at the west edge of the existing development directly adjacent to the south property boundary of the project site.

3.6.2 Road Ditch Drainage

We recommend that the ditch be drained by installation of a trench drain *prior* to any filling of the ditch. This drain system consists of the following elements:



- 1-foot (minimum) wide x 2-foot deep trench, which is lined with
- Separation Geotextile, in which is placed
- 6-inch min. diameter perforated drain pipe and filled with
- Drain Rock.

The perforated pipe shall be connected to a solid Drainpipe that routes water to the designated disposal point for storm water runoff (the existing pipe system).

3.6.3 West Foundation Drain System

The lower retaining wall, which is firmly embedded below the surface of siltstone/claystone, shall be drained as follows:

- Apply water proofing membrane to wall exterior,
- Apply vertical composite drain material to wall, and
- Terminate bottom of wall to perforated Drain Pile.

Alternatively, Drain Rock that is wrapped with Separation geotextile may replace vertical composite drain material.

The perforated pipe shall be connected to a solid Drainpipe that routes water to the designated disposal point for storm water runoff (the existing pipe system). Foundation drainage shall NOT be combined with roof drainage unless appropriate back-flow prevention systems are installed.

3.6.4 Zone 3 Grade Separation Wall

The grade separation wall shall be drained by installation of weep holes at the base of the wall. Weep holes shall be 3-inches (minimum) diameter and spaced at 6-feet o.c. The fill side of the weep holes shall be covered with a minimum of 12-inches of drain rock wrapped in Separation Geotextile.

3.6.5 Roof Drainage

Roof drainage shall be "hard-piped" and routed to the designated disposal point for storm water runoff (the existing pipe system).

3.7 EROSION CONTROL

3.7.1 Temporary Erosion Control

Temporary erosion control may be necessary depending on the time of year of construction and ground disturbance. Temporary erosion control shall consist of a combination of:

- Natural fiber woven mats,
- Straw wattling, and
- Seed/mulch.

Temporary erosion control shall be specified by K & A Engineering, Inc. as needed.



3.7.2 Permanent Erosion Control

We recommend establishment of species of grasses and shrubs that are either native to or well adapted to the coastal environment. Root structures of vegetation is highly effective in minimizing surface erosion and providing slope stability in the upper 1 to 4-feet of the soil profile.

4 SPECIFICATIONS

4.1 SELECT GRANULAR FILL

4.1.1 General Requirements

Select granular fill may consist entirely of fine select granular fill or a minimum of 9-inches of coarse select granular fill covered with a minimum of 3-inches of fine select granular fill.

4.1.2 Coarse Select Granular Fill

Coarse select granular fill shall consist of clean, well-graded quarry stone having a maximum particle size of 5-inches. Quarry stone should be durable and have 100-percent fractured faces.

4.1.3 Fine Select Granular Fill

Fine select granular fill should consist of clean, durable, well-graded material with a maximum particle size of 3/4-inches and a maximum of 10-percent passing the no. 200 sieve. Select granular fill shall be placed in layers not to exceed 12-inches (loose) and mechanically compacted to a dry density exceeding 95-percent of maximum as determined by ASTM D698 (Std. Proctor).

4.2 NATIVE STRUCTURAL FILL

Native Structural Fill for this project consists of

Clean native SANDS with no organic matter.

All materials proposed for use as Native Structural Fill shall be inspected and approved by K & A Engineering, Inc. prior to placement.

Native structural fill, as required for this project behind retaining walls, shall be compacted using a vibratory plate compactor to a minimum of 95% of maximum dry density as determined by ASMT D698 (standard Proctor) except for the zone within 4-feet of the soil side of retaining walls, where the minimum dry density shall be 90% of maximum dry density as determined by ASMT D698 (standard Proctor).

K & A Engineering, Inc. shall observe and approve of compaction of Native Structural Fill by observation only (i.e. no compaction testing is required).

4.3 Drain Rock

Drain rock shall consist of crushed, open-graded quarry stone having a maximum particle size of 1 ½-inches. Drain Rock shall be free of clays, silts, and sands.



4.4 AGGREGATE BASE ROCK

Aggregate base rock, used to support pavements, shall consist of a clean, durable, well-graded material with a maximum particle size of 1.5-inches and a maximum of 5-percent passing the no. 200 sieve. Aggregate Base rock shall be placed in layers not to exceed 12-inches (loose) and mechanically compacted to a dry density exceeding 95-percent of maximum as determined by ASTM D1557 (Modified Proctor).

4.5 SUBGRADE

Subgrade consists of:

- Undisturbed or compacted native non-organic SAND, or
- Undisturbed weathered siltstone/claystone.

All Subgrades shall be inspected and approved by K & A Engineering, Inc. prior to placement of fills or foundations.

4.6 DRAIN PIPE

Drainpipe for foundation and retaining wall drain systems shall consist of schedule 40 PVC or an equivalent rigid plastic pipe, 4-in. minimum diameter (or as required in the report body). Perforations should be either prefabricated by the pipe supplier or constructed by drilling ½-inch diameter holes spaced at 8" into solid pipe. Perforations should be placed down.

K & A Engineering, Inc. should be contacted to review and approve perforated drainpipe prior to installation.

4.7 SEPARATION GEOTEXTILE

Separation geotextile should consist of a non-woven, needle-punched, polypropylene fabric meeting the specifications in Table 4.

Property **Test Method** Specification **Grab Strength ASTM D4632** > 115-lb Tear Strength **ASTM D4533** > 60-lbPuncture Strength **ASTM D4833** > 370-lb Permittivity **ASTM D4491** > 0.5 sec⁻¹ Apparent Opening Size (AOS) ASTM D4571 US Std. Sieve 70 Ultraviolet Stability **ASTM D4355** > 50% ret. After 500 hr. exposure

Table 5 - Separation Geotextile Specifications

A manufacturer's printed certification is acceptable as proof of compliance in lieu of laboratory testing.



Separation geotextile should be placed free of wrinkles or other discontinuities. Torn, punctured, or damaged fabric should be replaced. Separation geotextile should have a minimum lap at seams of 12-inches.

4.8 Vertical Composite Drain

Vertical composite drain material for application of retaining wall drainage shall consist of Delta®-Drain or an equivalent product.

See http://www.deltams.ca/pdf/DELTA-DRAIN.pdf for the manufacturer's product description and installation recommendations.

5 LIMITATION AND USE OF GEOTECHNICAL RECOMMENDATIONS

This report has been prepared for the exclusive use of J.T. Roth Construction, Inc. for the subject project.

This geotechnical investigation, analysis, and recommendations meet the standards of care of competent geotechnical engineers providing similar services at the time these services were provided.

We do not warrant or guarantee site surface or subsurface conditions. Exploration test holes indicate soil conditions only at specific locations (i.e. the test hole locations) to the depths penetrated. They do not necessarily reflect soil/rock materials or groundwater conditions that exist between or beyond exploration locations or limits.

The scope of our services does not include construction safety precautions, techniques, sequences, or procedures, except as specifically recommended in this report. Our services should not be interpreted as an environmental assessment of site conditions.

Appendix A

Drawings and Figures

- Vicinity Map
- Geotechnical Site Plan
- Typical Geotechnical Section
- Typical Section Proposed Development
- Site Topographic Survey Denison Surveying, Inc. 2007
- Slope Stability Modeling Existing Ground Surface Condition

Geotechnical Engineering Report Proposed Residential Development Tax Lot 2300, Tax Map 11-11-05-BB NW Spring St., Newport, Oregon

> Project: 18011 February 5, 2019

Prepared for:

Jacob T. Roth, Jr. and Theresa A. Roth 12600 SW 72nd Ave., Suite 200 Portland, OR 97223

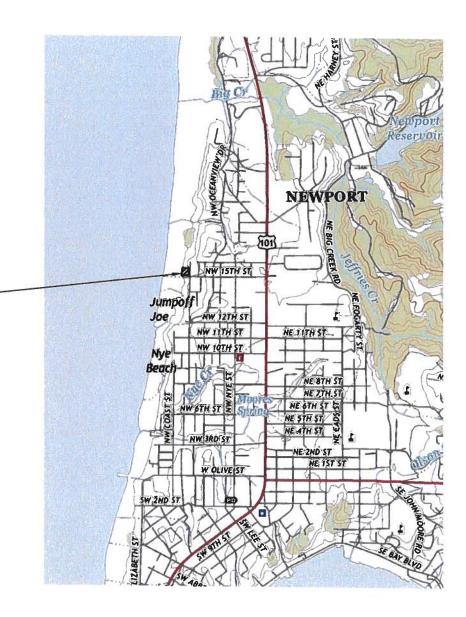
Prepared by:

Michael Remboldt, P.E., G.E.

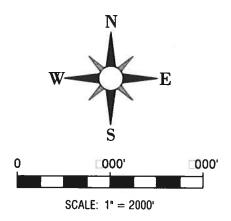
K & A Engineering, Inc.

Coburg, Oregon





PROJECT SITE LOCATION: TAX LOT 2300 TAX MAP 11-11-05-BB



K & A Engineering,Inc

91051 S. Willamette St. Coburg, OR 97408 541 684 9399 541 684 9358 fax



VICINITY MAP Geotechnical Site Investigation Residential Development - Tax Lot 2300 Map 11-11-05-BB; NW Spring St., Newport, O

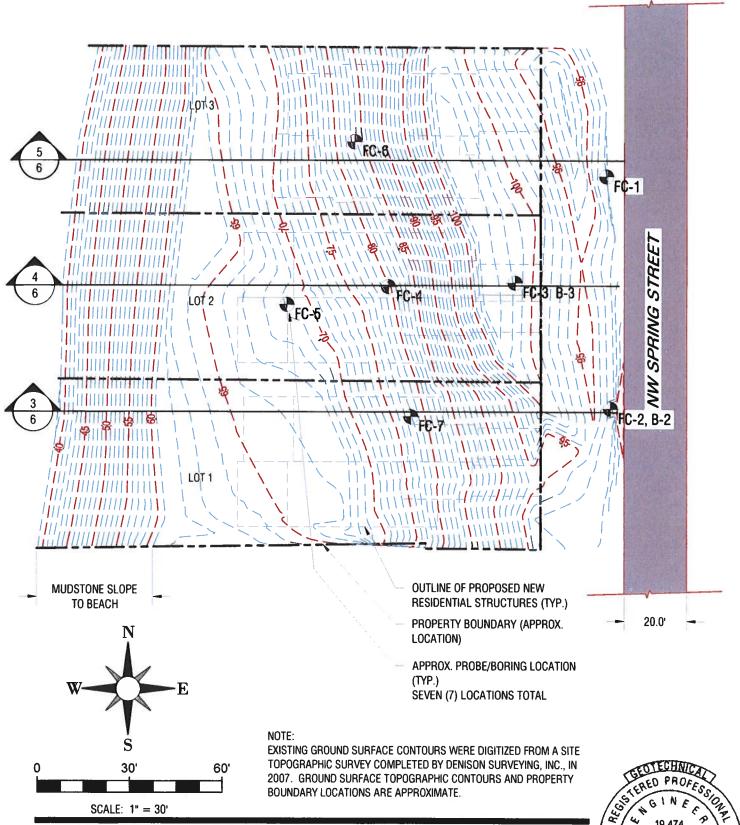
Tax Map 11-11-05-BB; NW Spring St., Newport, OR

1/29/19 Project: 18011

Drawing 1 / 6



EXPIRES: DECEMBER 31, 2020



K & A Engineering,Inc

91051 S. Willamette St. **Coburg, OR 97408** 541 684 9399 541 684 9358 fax



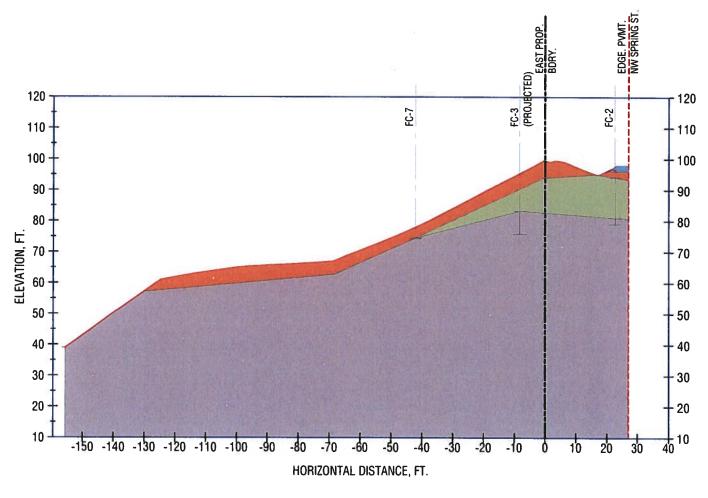
GEOTECHNICAL SITE PLAN Geotechnical Site Investigation Residential Development - Tax Lot 2300

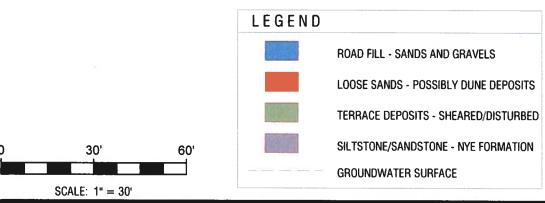
Tax Map 11-11-05-BB; NW Spring St., Newport, OR

1/29/19 Project: 18011 Drawing 2 / 6



EXPIRES: DECEMBER 31, 2020





K & A Engineering,Inc 91051 S. Willamette St.

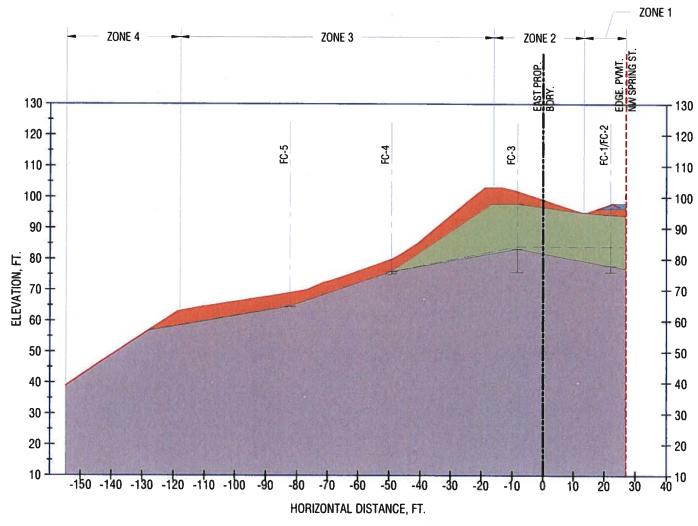
Coburg, OR 97408 541 684 9399 541 684 9358 fax

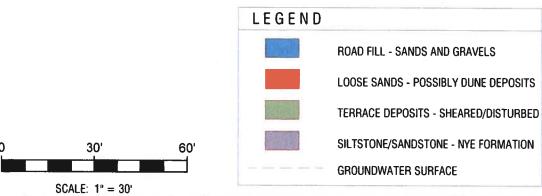


GEOTECHNICAL SECTION - LOT 1
Geotechnical Site Investigation
Residential Development - Tax Lot 2300
Tax Map 11-11-05-BB; NW Spring St., Newport, OR
1/29/19 Project: 18011 Drawing 3 / 6



EXPIRES: DECEMBER 31, 2020





K & A Engineering,Inc

91051 S. Willamette St. Coburg, OR 97408 541 684 9399 541 684 9358 fax

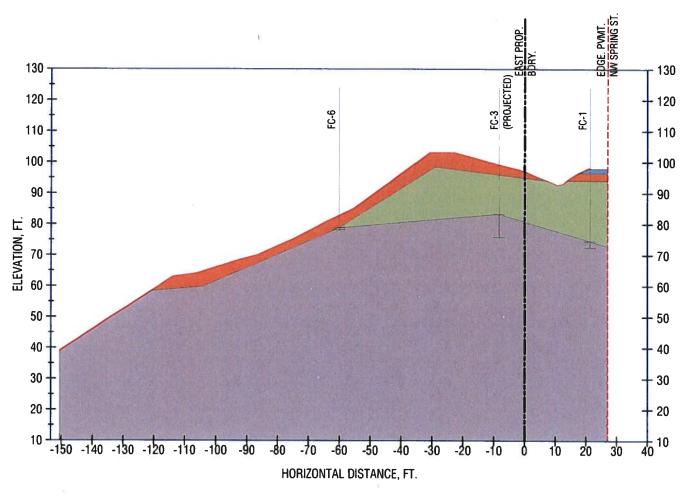


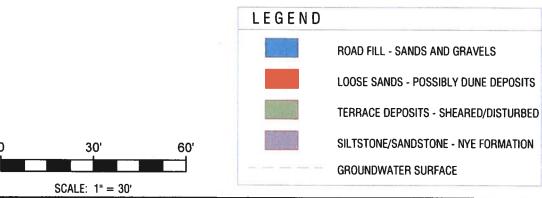
GEOTECHNICAL SECTION - LOT 2 Geotechnical Site Investigation Residential Development - Tax Lot 2300 Tax Map 11-11-05-BB; NW Spring St., Newport, OR

1/29/19 Project: 18011 Drawing 4 / 6



EXPIRES: DECEMBER 31, 2020





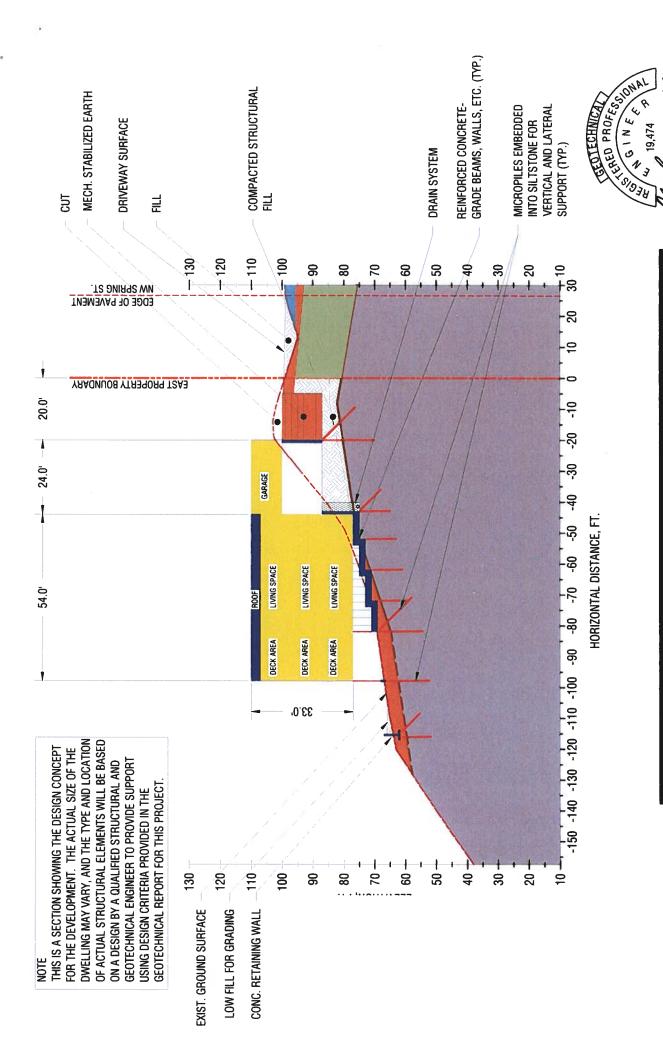
K & A Engineering, Inc 91051 S. Willamette St. Coburg, OR 97408 541 684 9399 541 684 9358 fax



GEOTECHNICAL SECTION - LOT 3
Geotechnical Site Investigation
Residential Development - Tax Lot 2300
Tax Map 11-11-05-BB; NW Spring St., Newport, OR
1/29/19 Project: 18011 Drawing 5 / 6



EXPIRES: DECEMBER 31, 2020



& A Engineering, Inc 91051 S. Willamette St. **Coburg, OR 97408**

90

SCALE: 1" = 30



Fax Map 11-11-05-BB; NW Spring St., Newport, OR Geotechnical Site Investigation Residential Development - Tax Lot 2300

Drawing 6 / 6 1/29/19 Project: 18011



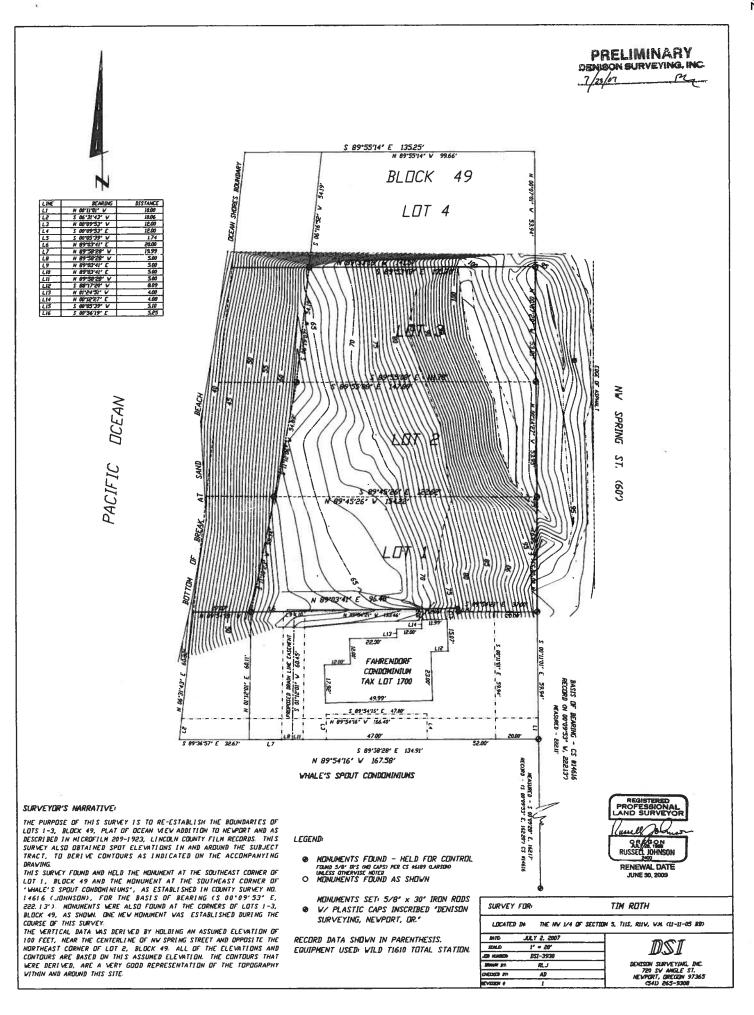


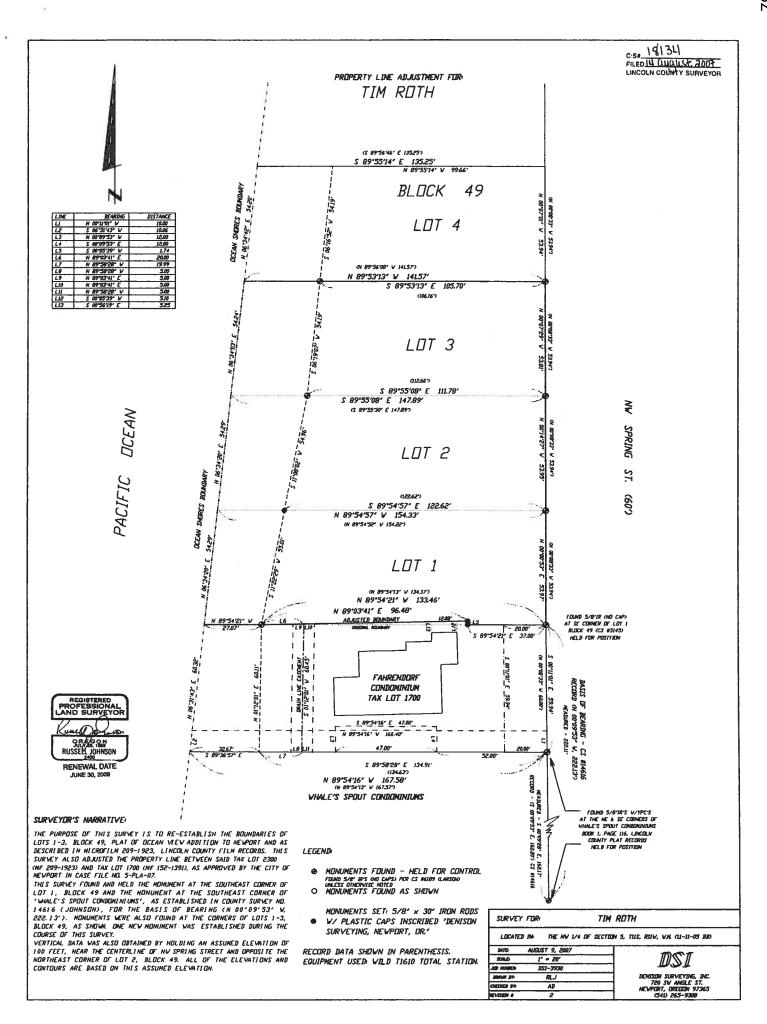


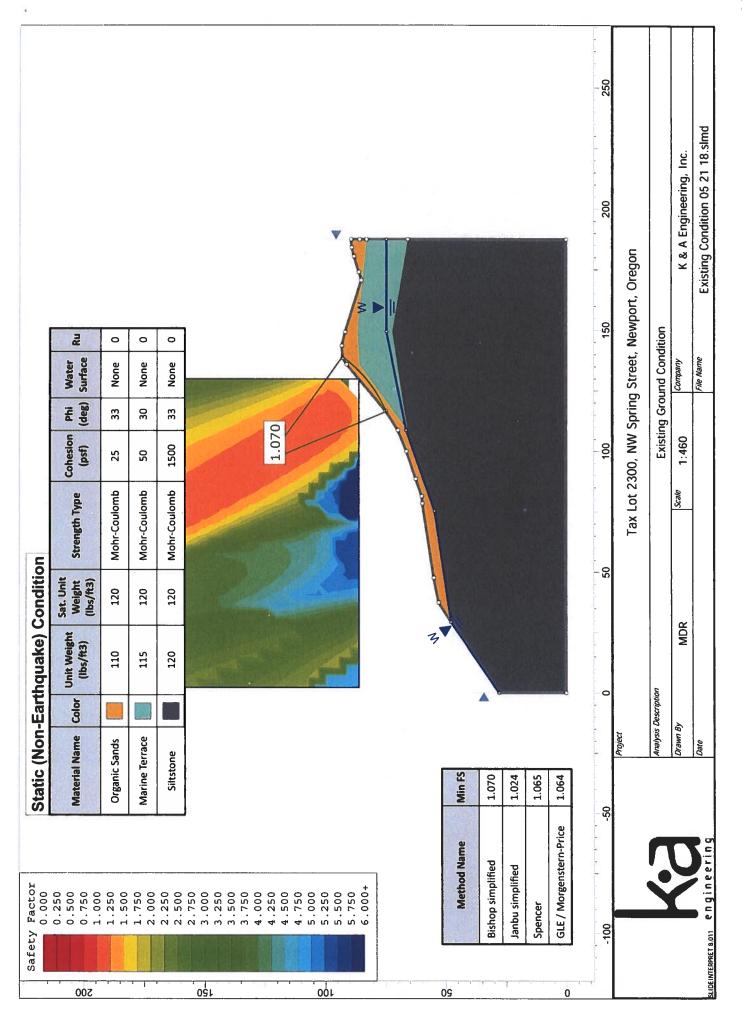
EXPIRES: DECEMBER 31, 2020

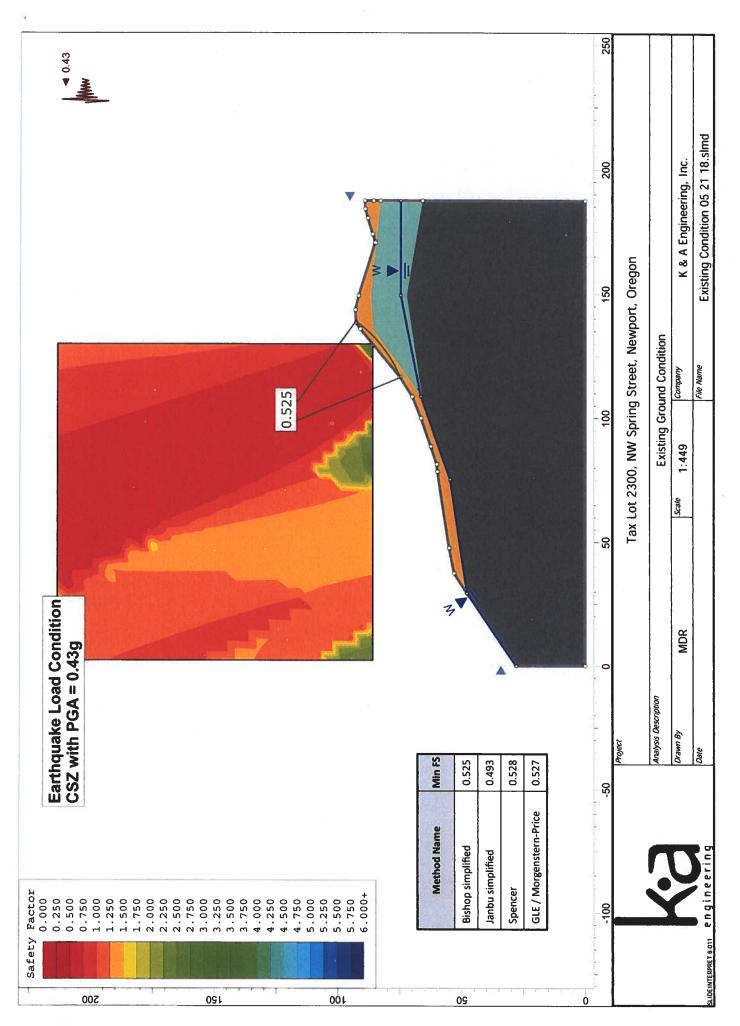
SA UNEGUN SA











Appendix B

Probes and Boring Logs

Geotechnical Engineering Report Proposed Residential Development Tax Lot 2300, Tax Map 11-11-05-BB NW Spring St., Newport, Oregon

> Project: 18011 February 5, 2019

Prepared for:

Jacob T. Roth, Jr. and Theresa A. Roth 12600 SW 72nd Ave., Suite 200 Portland, OR 97223

Prepared by:

Michael Remboldt, P.E., G.E. K & A Engineering, Inc. Coburg, Oregon



| | | | K & A | Engir | neering. Inc | | | | CLI | ENT: | | J.T. Ro | h Con | struction | n, Inc | | | |
|---|------------|-----------------|-------------------------|------------------|--|--|---------------------|--------------|--------------|---|---------------|-------------|--|-------------------|----------|--|--------------|-------------|
| | _ | J | PO Box 8 | 3486 | neering, Inc | • | | | PRO |)JECT: | | | _ | idential | | | ent | |
| IK | | | Coburg, Felenhoi | | 08 -852-6939 | | | | SIT | E ADDR | | • | | reet, Ne | | • | | |
| engine | erin | | Fax: | 10. 041 | 002 0000 | | Job No. | 18011 | | | | | | | • | | _ | |
| | | Ť | | BORIN | G NUMBER | | | | +- | (| Unconfi | ined Con | pressiv | e Strength | tons/f | t.² | | |
| | | | | | | B-2 Sheet 1 | of 1 | | | | | | -0- | | | | _ | |
| # | 8 | F | RECOVERY GRAPHIC LOG | SURFA | CE ELEVATION | | 00.00 | UNIT DRY WT. | - | 1 | | 2 | 3 | 4 | | 5 | | _ |
| ОЕРТН, ft | SAMPLE NO. | Ш | PHIC | NORTH | <u> </u> | EAST | 98.00 | IIT DRY W | | | PL X | | MC | | LL | • | | DEPTH m. |
| ^ | SAI | SAM | RECOVERY GRAPHIC LOG | | | | | | | | × | N V | ALUE, bi | owe #t | | | | |
| | | | | | | OF MATERIALS | | | | _ | | 14 47 | - < - | | | _ | | |
| \vdash | - | - | | Dark h | (LABORATORY rown, damp & moist | CLASSIFICATION) | | | - | 10 2 | 20 3 | 0 40 | 50 | 60 | 70 | 80 ! | 90 | |
| | 1 | 1 | | | -laden, silty-SAND. | | & | | : | |] ! | | i | | | | | - |
| | 1, | IV | 988 | Orange | , tan and brown, mo | ist, moderately stiff | or dense, | | | i | | | <u> </u> | | Ì | } | İ | [|
| 2.5- | ┤ ' | I٨ | | gravel | sticity, silty-SAND a (possible road FILL). | no sanoy-SILT WITH : | some | | | ! | | | 1 | | 1 | 1 | | |
| | 1 | $I \Lambda$ | | | | | | | | 8 | | | 1 | - } - | 1 | 1 | 1 | - 1.0 |
| | 1 | | | | | - | | | <u> </u> | - | | - | - | _ <u> </u> _ + | 1 | | + | 1,0 |
| | - | 1 | | つ (possit | noist, moderately stil ble road FILL). | • | | | ╂ | <u> </u> | | Ĺ l | - <u>i</u> - | _ i | <u>i</u> | <u> </u> | <u>i</u> – – | 1 |
| 5.0- | ┨ | M | | | , tan and brown, mo ty, silty-SAND and s | | | | | į | | | į | | | | 1 | |
| ł | 2 | IV | | (possit | le road FILL). | - | • | L | 1 | | <u> </u> | | | _ <u> </u> | <u></u> | l L | ! ! | |
| | ` | ۱٨ | | | oist, loose, poorly-gi rs to be dune/beach | | | | 1 | | | | | _ T | d 1 | 1 | T | - 2.0 |
| | 1 | $I \setminus I$ | | Dark bi | own, moist, soft, lov nd grading to sandy- | v plasticity, organic, | SILT | | | 1 | | | | | | 1 | 1 |] |
| 7.5- | | | | with th | n roots. | | | | 0 | İ | | (| ⊐ i | į | i | İ | | } |
| | - | 1 | | Brown/ to mod | gray with dark browi erately dense, SAND | n organic spots, moi with some or trace | ist, loose silt. | İ | İ | | | | 1 | 1 | 1 | | 1 |] |
| | | M | | Transit | ion layer to terrace sa sliding). | | | | | ¦ 🗆 | | | ļ | l I | 1 | | | } |
| 10.0 - | 3 | V | | Gray, n | noist to wet, modera | tely dense, poorly-gi | raded, | | + | J ! | L J | L | - <u>- </u> | _ + | | <u>L</u> | <u> </u> | - 3.0 |
| 1 | - | $ \Lambda $ | | SAND. 1% fine | Wash sieve from 10 s. | .2 to 11-ft indicates | less than | | [| 1 | | | I | İ | 1 | 1 | 1 | - |
| | | $I \setminus I$ | | | | | | | | <u>.</u> | | | į | į | į | | į | } |
| | | | | | | | | | | | | | į | į | | | ! | } |
| 12.5 - | 1 | 1 | | | | | | | | | | | I I | - | i | | 1 | } |
| . 18 | | M | | | n stained red, wet, n | | | | | - | - | - | | -+-= | | ⊢ − - | + — — | - 4.0 |
| 4/30 | 4 | 11 | | having | ided, SAND with trac greater gravel conter | nt spaced every 0.5- | ft. Fine | | | 1 [| | | 1 | İ | | | l l | - |
| 9 | 1 | \mathbb{N} | | | ium sized rounded to e light cementation. | subrounded gravel. | | | | į | 1 | | į | į | 1 | | į | - |
| S 15.0 - | 1 | V | | | • | | | , | | | | | - | | | | | - |
| S S | - | | - | | | | | | | 1 _ | 1 | ! | 1 | | | 1 | | - |
| 9 | 1 | 1 | ۰۰ | | ay with white sand, | | | _==- | 1-0 | <u> </u> | | L - | - <u>- </u> | | | L- | <u> </u> =_ | - 5,0 |
| 교 17.5 - | | W | . 0 | | y-SAND. Some mixe on layer to Nye Muds | | /clumps - | | | | | | i I | 1 | j | | İ | - |
| 27 18 | 5 | I X | | | ay, damp, hard, wea | | ie | | | | | | | i | 1 | | | 1 |
| 8 | 1 | M | | (bearon | ·n). | | | | | ! | | | | | | | 1 | - |
| Ŏ | | $I \setminus$ | | | | | | | İ | 1 | | | | i i | 1 | | i | |
| 20.0 - | | | | | End of Bori | ng @ 20 feet | | | - | ! | <u> </u> | <u> </u> | ! | ! | 8 | ! | ! | 6.0 |
| B IS | <u>L</u> _ | L | | | | | | | | | | | | | | <u> Zanandolita</u> | السوي | |
| NI NI NI NI NI NI NI NI NI NI NI NI NI N | | | | | | | | 0 | Calibrat | ted Pen | etromet | er Uncor | fined Co | ompressio | n | | | - |
| LOG A GNGN03 ROTH SPRING ST BORING LOGS 04 27 18 GPJ LOG A GNGN03 GDT 4/30/18 - 0.02 - 0.02 | | | _ | • | WATER LEVEL N | MEASUREMENTS | | | | | | BORING | STARTE | 0 | 4/2 | 4/18 | | |
| S DA | TE | \Box | TIN | IE | SAMPLED | CASING | CAVE | -IN | W | ATER | | BORING | COMPLE | TED | | | | |
| NO NO NO NO NO NO NO NO NO NO NO NO NO N | | | | | | | | | | | _ - | DRILLER | | 14 4 | RI | <u>4/18</u> G | | 40 : |
| δ Θ | | 4 | | | - | | | | | | _ - | ENGINEE | R | K & / | AF | AI PROVE | | 10-VTR |
| Ž | | | | | | | 1 | | | | | | • | K & / | A | | | |

| | | K | & A | \ Enai | neering, Inc | C. | | <u> </u> | CLIE | NT: | | J.T. | Roth (| Constr | uction | . Inc. | | | |
|----------------------------|------------|------------------------------|-------------|-----------------------------------|---|--|-----------------------|--------------|------------|---------------------|-----------|--------------|----------|--------------------------|----------|--------------|--|--------------------------------|-------------|
| | _ | P | O Box | 8486 | 400 | - | | | PRO | JECT: | | | _ | | | | opmen | t | |
| K | | | | , OR 97- one: 541 | 408 -852-6939 | | | | SITE | ADDR | RESS: | | | | | | Orego | | |
| ngine | erin | S C | ax: | | | | Job No | . 18011 | | | | | | | | • | | | |
| | | | | BORII | NG NUMBER | B-3 Sheet 1 | | | | 1 | Uncor | nfined (| Compre | ssive S | trength, | tons/ft.2 | | | |
| | | w | ي ا | SURF | ACE ELEVATION | D-9 sucer | 01 1 | - | | 1 | | 2 | |) 1 | 4 | | | | |
| DEPTH, # | N N | R T | | | | | 100.30 | M L | | -i | | Ť | | Ť | Ť | Ĭ | | コ | Ξ |
| 귀 | SAMPLE NO. | SAMPLER TYPE | GRAPHIC LOG | NORT | Н | EAST | | UNIT DRY WT. | ¥ | | PL X | | | MC | | LL | | | DEPTH m. |
| | | S | | | DESCRIPTION | N OF MATERIALS | | | | | _ | | | E, blow | s/ft. | | | | |
| | _ | | | Drawe | | CLASSIFICATION) | | | 1 | 0 2 | 20 | 30 | | | 60 7 | 0 80 | 90 | | |
| | 1 | ΛA | | organ | n, damp to moist, sof ic, silty-SAND or san | t or loose, low plasti dy-SILT. | icity, | | | | | 1 | h | 1 | | [| 1 | 7 | |
| 2.5- | 1 | | | (trans | orown, moist, moder ition to terrace depos | its). | | | | | | | | | | | | - | |
| | | Ц | | Tan, n | noist, loose, SAND w its). Trace organic bl | rith some silt (terrace | e sand | | | | | 1 | | 1 | 1 () | | + | 1 | 1.0 |
| E 0 | 1 | 1 | | dopos | | won motumy. | | | | | 1 | 1 | 1 | | | 1 | 1 | - | |
| 5.0- |] | \mathbb{V} | | | | | | | | | | | 1 | | | į | į | - | |
| | 2 | X | | | and tan, moist, loose | e/very loose, poorly- | graded, | | + | | - | + | -i | | | | | - + | |
| - | - | $\ \cdot \ ^2$ | | SAND | | | | | | | <u>.</u> | | | | | 8 | | F | 2.0 |
| 7.5 - | | | | L | | | | | | | | 7 | | 1 | | 1 | I | į | |
| - - - 10.0 - | 3 | | | to 12- | ith red staining (8 to ft), moist, loose, poo ered extending to 11- | rly-graded, SAND. T | ing (11,5 hin root | | | | | | | | | | | | 3,0 |
| 12.5 | 4 | | | Gray, Possit | moist, moderately de bly lightly cemented. | nse, poorly-graded, | SAND. | | | | | | | | | | - - - - - - - - - - | - - - - - - | 4.0 |
| 15.0 – | | Λ | | | | | | | |] [- | | | |] | | 1 | 1 | - | |
| - | | 1 | | | ~ | | | | <u> </u> | | J L - | | 1 | i L | | į | į | ! | 5.0 |
| 17.5 – - - - - | 5 | $\left\langle \right\rangle$ | | moder SAND conten rounde | nd white with red sta ately dense, lightly co with some gravel. Le at spaced every 0.5-fi ed/subrounded and fi i indicates less than | emented, poorly-gradenses of greater gravet. Gravels generally ne. Wash sieve from | el | | | | | | | | | | | | |
| 20.0 – | | | | Dark g | ray, damp, moderate | ly stiff to stiff, friable | 3, . OLAY | | | I | | | | | | + | | 7 | 6.0 |
| 22.5 | 6 | | | decom | posea nye muastoni | e (oedrock) or sandy | /-CLAY. | | 1 | | | - - - | 1 | | | | | - | |
| } | | $\backslash \backslash$ | | Dark o | ray, damp or dry, hai | rd weathered Nuc A | Audstone | | ↓ ¦ | | L | ļ | <u> </u> | <u> </u> | | | 4 _ | ; | 7.0 |
| 1 | | | | (bedro | ck). | | nuusiolit | | | | | 1 | 1 | | 1 1 | 8 | !_ | _ | |
| 25.0 | | | L | J | | ng @ 24 feet | | l | <u>L</u> | | | | | | | | | _ [| |
| | | | | | <u> </u> | | | 0 | Calibrate | d Pene | etrome | eter Und | confine | d Comp | ression | | | | |
| | | | | | WATER LEVEL N | MEASUREMENTS | | | | | | BORIN | IG STAI | RTED | | A/25 / | 10 | | |
| DAT | Έ | floor | TIP | ΛE | SAMPLED | CASING | CAVE | -IN | WA | TER | 7 | BORIN | G COM | PLETE |) | 4/25/ | | | |
| | | | | | | | | | | | | DRILL | FR | | | 4/25/ RIG | 18 | | |
| | | \perp | | | | | | | | | | | | | K & A | | AMS | 9410 | -VTR |
| | | | | | | | | | - | | \exists | ENGIN | EER | | K & A | APP | ROVED | | |

DYNAMIC PROBE LOG FC-1



HOLE #: FC-1
CREW K & A Engineering, Inc.
PROJECT: Roth Spring St. Residential Development
ADDRESS Tax Lot 2300, Tax Map 11-11-05-B8
LOCATION Newport, Oregon

| PROJECT NUMBER: | 18011 |
|---------------------------------------|------------|
| DATE STARTED: | 04-24-2018 |
| DATE COMPLETED: | 04-24-2018 |
| DEPTH COMPLETED (It): | 26.0 |
| SURFACE ELEVATION: | 98.5 ft |
| STATIC WATER DEPTH ON COMPLETION (R): | 14,5 |
| FIRST ENCOUNTERED WATER DEPTH (ft): | 14.5 |
| HAMMER WEIGHT: | 63.5 kg |
| CONT ADTA | 55 A |

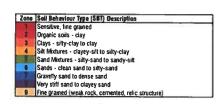
| | | | | | | HAMMER WEIGHT CONE AREA | 63.5 kg 22.9 sq. cm |
|--------------|--------------|----------------------------|---|--|--|--|---|
| DEPTH ft. | PER 6-in. | SLEEVE TORQUE (1(bs. | Tip Pressure q _c kg/cm2 (Raw and 1 1d ^{Hormalize} 1000 | Friction Ratio, % 0% 5% 10% 15% 20% | Equiv. SPT N ₆₀ ² (Raw and Normalized) 1 10 100 | SOIL BEHAVIOUR TYPE (SBT) ZONE ^{1,3} | REMARKS |
| -1 | 5 4 | 2 2 | , | | | 6 6 | Loose to Mod. Dense |
| - 2 | 2 | 2 | | | | 5 Table | Silts, Sands, Gravels |
| .3 | 1 2 | 3 4 | | | K | 5 | Loose Dune Sands? |
| -4 | 2 | 5 6 | | | | 5 | Dane Sungs: |
| | 2 | 7 | | | | 4 | Loose |
| - 5 | 1 2 | 7 | | | 1 2 2 | 4 | Lightly Cemented |
| -6 | 2 | 7 | | | | | Terrace Silts, Sands, Gravels |
| ., | 1 2 | 7 6 | | | 71 | 4 | 0110, 02103, 02103 |
| - | 2 | 12 | | - [] | N S S S S S S S S S S S S S S S S S S S | 4 | |
| - 8 | 12 | 18 | | | | 3 | |
| - 9 | 15 | 49 | | | | 4 9 | |
| -10 | 19 22 | 56 63 | | | | 9 | |
| - | 22 | 57 | | | | 9 | Mod. Dense |
| - 11 | 24 | 52 47 | | | . [1] [1] [1] | 9 | Terrace |
| - 12 | 22 | 42 | | | | OTTO STATE OF THE PARTY OF | Partially Cemented Sands, Silts |
| - 13 | 23 24 | 42 42 | | | | 5 | outus, onto |
| - | 21 | 42 | | | | 4 | |
| - 14 | 24 | 42 | | | The state of the s | 6 | |
| - 15 | 24 | 49 | 4 | | | 5 | - |
| - 16 | 23 17 | 34 19 | | | | AND SERVE | |
| - 1 | 13 | 16 | | | | 5 | Loose |
| - 17 | 14 11 | 14 16 | | | | 8 | Terrace |
| - 18 | 7 | 18 | | | 4 | 4 | Lightly Cemented Sands; Silts |
| - - 19 | 4 | 16 15 | | | | 3 | 99.00, 0110 |
| - | 7 | 16 | | | | 3 | |
| - 20 | 8 | 16 22 | | | | 4 | |
| - 21 | 15 | 28 | | | | 4 | |
| - 22 | 18 12 | 25 21 | | | | 5 | |
| | 9 | 33 | | | | 4 | Mod. Dense Terrace |
| - 23 | 14 19 | 45 | | | | 3 | Lightly Cemented |
| - 24 | 17 | 50 | | | | 4 | Sands, Gravels |
| - - 25 | 21 26 | 75 100 | | | | 9 | Stiff to Hard |
| . 1 | 40 | 182 | | | | 9 | Weathered Sandstone/Silstone Nya Formation |
| - 26 | 125 | 264 | | | | 9 | |
| . 27 | | | | | The second secon | | |

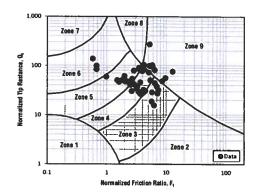
¹P.K. Robertson, 2010. "Evaluation of flow inquefactor and inquefied strength using Cone Penatration Test." ASCE Journal of Geotechnical and Geoenvironmental Engineering, Vol 136, No. 6. and P.K. Robertson, 2000, "Soit classification using the cone penetration test," Canadian Geotechnical Journal, 27(1).

²John H. Schmertmann, "Statics of SPT", Journal of the Geotechnical Engineering Division, American Society of Civil Engineers May 1979.

³P. K. Robertson, K.L. Cabal (Robertson), 2015, "Guide to Cone Penetration Testing for Geotechnical Engineering, 6th Edition" Gregg Drilling and Testing, Inc.

Note: Dashed lines show tip pressure and N normalized for overburden pressure $% \left(\mathbf{r}_{\mathbf{r}}\right) =\mathbf{r}_{\mathbf{r}}$





K & A Engineering, Inc.

Project: 18011 Client: J.T. Roth Construction, Inc.

DYNAMIC PROBE LOG FC-2



K & A Engineering, Inc. 541-684-6966 kaengineers.com

CREW K & A Engineering, Inc.
PROJECT: Roth Spring St. Residential Development
ADDRESS: Tax Lot 2300, Tax Map 11-11-05-88
LOCATION: Newport, Oregon

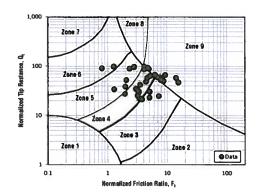
| PROJECT NUMBER: | 18011 |
|---------------------------------------|------------|
| DATE STARTED: | 04-24-2018 |
| DATE COMPLETED: | 04-24-2018 |
| DEPTH COMPLETED (ft): | 19.0 |
| SURFACE ELEVATION: | 98.0 ft |
| STATIC WATER DEPTH ON COMPLETION (II) | 14,0 |
| FIRST ENCOUNTERED WATER DEPTH (ft): | 14.0 |
| HAMMER WEIGHT: | 63.5 kg |
| COME ADEA: | 22.0 |

| | | | | | | HAMMER WEIGHT: CONE AREA: | 63.5 kg 22.9 sq. cm |
|--|--|--|--|--|---|--|---|
| DEPTH (1. | BLOWS PER 6-in. | SLEEVE TORQUE ftlbs. | Tip Pressure q _c kg/cm2 (Raw and 1 Normalized) 100 | Friction Ratio, % 0% 5% 10% 15% 20% | Equiv. SPT N ₆₀ ² (Raw and Normalized) 100 | SOIL BEHAVIOUR TYPE (SBT) ZONE ^{1,3} | REMARKS |
| -1 -2 | 1 3 3 4 | 2 2 8 13 | | | | 6 6 5 | Loose to Mod. Dense FILL Silts, Sands, Gravels |
| -3 -4 | 5 2 1 | 9 5 4 2 | | | | 5 5 6 | Loose Dune Sands? |
| -5 -6 -7 -8 -9 | 1 0 1 1 2 2 1 1 1 | 5 8 6 4 7 11 8 6 | | | | 4 4 4 4 3 3 3 4 4 4 3 3 4 4 4 4 4 4 4 4 | Loose Lightly Cemented Terrace Silts, Sands, Gravets |
| - 10 - 11 - 11 - 12 - 13 | 6 8 11 13 14 14 14 13 15 | 15 22 29 36 45 54 55 55 55 | | | | 4 4 4 4 9 9 9 9 | Mod. Dense Terrace Lightly Cemented to Cemented Sits, Sands, Gravels |
| - 1 <u>4</u> - - 15 - - 16 | 17 15 19 20 27 | 56 56 56 60 65 | | | | 9 9 9 9 9 | <u> </u> |
| - 17 - 18 - 19 | 27 31 31 24 19 24 | 53 42 69 95 112 129 | | | | 9 9 9 | Mod. Dense Sands, Gravels Very Stiff to Hard Weathered Sandstone/Silstone Nye Formation |
| - 20 - - 21 | | | | | | | |
| - 22 - 23 | | | | | | | |
| - 24 - 25 | | | | | | } | |
| - 26 - 27 | | | | | | | |

¹P.K. Robertson, 2010. "Evaluation of flow liquefactor and liquefied strength using Cone Penetration Test." ASCE Journal of Geotechnical and Geoenvironmental Engineering, Vol. 136, No. 6, and P.K. Robertson, 2000. "Soil classification using the cone penetration test," Canadian Geotechnical Journal, 27(1).

Note: Dashed lines show tip pressure and N normalized for overburden





K & A Engineering, Inc.

Project: 18011 Client: J.T. Roth Construction, Inc.

²John H. Schmertmann, "Statics of SPT", Journal of the Geolechnical Engineering Division, American Society of Civil Engineers. May 1979.

³P.K. Robertson, K.L. Cabal (Robertson), 2015. "Guide to Cone Penetration Testing for Geotechnical Engineering, 6th Edition" Gregg Drilling and Testing, Inc.

DYNAMIC PROBE LOG FC-3



K & A Engineering, Inc. 541-684-6966 kaengineers.com

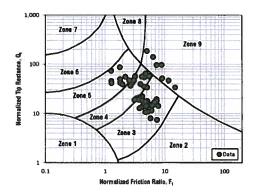
HOLE # FC-3
CREW K & A Engineering, Inc.
PROJECT. Roth Spring St. Residential Development
ADDRESS: Tax Lot 2300, Tax Mag 11-11-05-8B
LOCATION
Newport, Oregon

| PROJECT NUMBER: | 18011 |
|---------------------------------------|------------|
| DATE STARTED | 04-25-2018 |
| DATE COMPLETED: | 04-25-2018 |
| DEPTH COMPLETED (ft): | 27.0 |
| SURFACE ELEVATION: | 100,3 ft |
| STATIC WATER DEPTH ON COMPLETION (N): | 17.0 |
| FIRST ENCOUNTERED WATER DEPTH (II): | 17.0 |
| HAMMER WEIGHT | 63 5 kg |
| CONT ADDA | 00.0 |

| | Countries 2000 | | | - | | | CONE AREA | 22.9 sq. cm |
|--------------|----------------|----------------------------|--|---|--|--|---|--|
| DEPTH ft. | PER 6-in. | SLEEVE TORQUE 11lbs. | Tip Pressure q _c kg/cm2 (Haw 1 1diormalize@0 | 1006 | Friction Ratio, % 0% 5% 10% 15% 20% | Equiv. SPT N _{se} ² (Raw and Normalized) 1 10 100 | SOIL BEHAVIOUR TYPE (SBT) ZONE ^{1, 3} | REMARKS |
| | - 0 1 | 2 2 | | 1 | | | 5 | |
| 1-1- | 0 | 2 | | | | | 5 | Very Loose |
| - 2 | 0 | 2 | | | | | 5 | Sands, Sitts |
| . 3 | 1 | 2 2 | | | | | 5 | Dune Sands? |
| - | 1 | 4 | | | A STATE OF THE STA | | 5 | |
| -4 | 2 | 5 7 | | 11111 | | | | |
| - 5 | 3 | 8 | | | | | 4 (200) | |
| - 6 | 5 4 | 8 | - | | | | 5 | |
| | 0 | 8 | | | | | 3 | |
| - 7 | 0 | 8 | | | | | 3 | Loose to Mod. Dense |
| - 8 | - 1 | 7 | | | | | 3 | Terrace |
| -9 | 1 | 7 | | | | | 3 | Lightly Cemented Sands, Silts |
| | 1 | 6 | | | | | | 34105, 3115 |
| - 10 | 0 | 5 | 1. | | | | 3 | |
| - 11 | 0 | 5 | | | | | 3 | |
| - 12 | 0 | 7 10 | | | | V. | 3 | |
| | 1 | 10 | | - | | - -N:- - - - | 3 | |
| - 13 | 2 | 11 | | | 1000 | | 3 | |
| - 14 | 3 | 10 | | | | | 3 | |
| - - 15 | 2 | 10 10 | | | | () | 3 | |
| - 13 | 3 | 11 | | | | | 3 3 | |
| - 16 | 3 | 12 | | | | 1 | 3 | |
| - 17 | 2 | 11 9 | | | | | 3 | • |
| | 0 | 7 | | | | 1 | 3 | - |
| - 18 - | 0 | 8 9 | | - | | | 3 | |
| - 19 | 4 | 10 | | | | | 4 Carrie | |
| - 20 | - 3 11 | 18. 27 | | | | | 3 | |
| | 11 | 29 | | | | | 3 7 8 8 8 | |
| - 21 - | 20 | 32 43 | | | | | | Mod. Bense/Stiff Sifts, Sands, Clay |
| - 22 | 25 | 55 | | | | | 4.0 | Decomposed |
| · · 23 | 21 14 | 42 28 | | | | | | Nye Mudstone |
| - | 23 | 57 | | | | | 4 | |
| - 24 - | 23 17 | 87 94 | | | | | 9 | Stiff to Hard |
| - 25 | 23 | 102 | | | | 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - | 9 | Weathered |
| - 26 | 46 49 | 134 165 | | | | 1 | 9 | Silststone/Sandstone |
| - | 68 | 174 | | | | | 9 | Nye Formation |
| - 27 | 88 | 182 | | ROLL | | | 9 | - |

P.K. Robertson, 2010. "Evaluation of flow liquefacton and liquefied strength using Cone Penetration Test." ASCE Journal of Geotechnical and Geoenvironmental Engineering, Vol 135, No. 6. and P.K. Robertson, 2000. "Soil classification using the cone penetration test." Canadian Geotechnical Journal, 27(1).

Note: Cashed lines show tip pressure and N normalized for overburden



K & A Engineering, Inc.

Project: 18011 Client: J.T. Roth Construction, Inc.

³John H. Schmertmann, "Statics of SPT", Journal of the Geotechnical Engineering Division, American Society of Civil Engineers. May 1979.

P.K. Robertson, K.L. Cabal (Robertson), 2015. "Guide to Cone Penetration Testing for Geotechnical Engineering, 6th Edition". Gregg Drilling and Testing, Inc.

DYNAMIC PROBE LOG FC-4



K & A Engineering, Inc. 541-684-6966 kaengineers.com

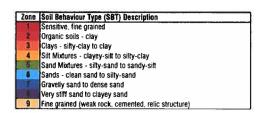
HOLE #: FC-4
CREW K & A Engineering, Inc.
PROJECT: Roth Spring St. Residential Development
ADDRESS: Tax Lot 2300, Tax Lot 11-11-05-BB
LOCATION: Springs St., Newport, OR

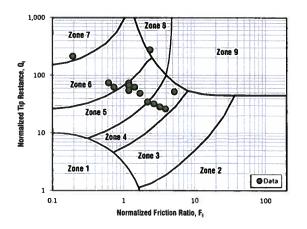
| PROJECT NUMBER: | 18011 |
|---------------------------------------|---------------|
| DATE STARTED: | 04-25-2018 |
| DATE COMPLETED: | 04-25-2018 |
| DEPTH COMPLETED (m): | 1.4 |
| SURFACE ELEVATION: | 80.2 ft |
| STATIC WATER DEPTH ON COMPLETION (m): | None Observed |
| FIRST ENCOUNTERED WATER DEPTH (m): | None Observed |
| HAMMER WEIGHT: | 15.9 kg |
| CONE AREA | 9.9 sq. cm |

| | CONE AREA | | | | | | |
|------------|-----------|----------------------------|--|-----------------------------|--|---|--|
| DEPTH m | | SLEEVE TORQUE ftlbs. | Tip Pressure q _c kg/cm2 (Raw and Normalized) 1 100 1000 | Friction Ratio, % 0% 5% 10% | | SOIL BEHAVIOUR TYPE (SBT) ZONE ^{1, 3} | REMARKS |
| - - 0.2 | 0 2 | 2 3 | | | | 5 | Organic Silts |
| - - 0.4 | 2 3 | 3 | | | | 5 5 | Loose |
| - - 0.6 | 2 3 | 3 | | | | 5 5 | Silty-Sandy Colluvium |
| - - 0.8 | 6 5 | 3 3 | | | | 6 | |
| 1.0 | 2 2 | 3 | | | | 4 | |
| 1.2 | 2 | 5 | | | | 4 | |
| - 1.4 | 45 50 | 5 42 | | | | | Very Stiff/Hard Sandstone/Siltstone |
| 1.6 | | | | | | | |
| 1.8 | | | | | | | |
| 2.0 | | | | | | | |
| 2.2 | | | | | | | |

¹P.K. Robertson, 2010. "Evaluation of flow liquefacton and liquefied strength using Cone Penetration Test." ASCE Journal of Geotechnical and Geoenvironmental Engineering, Vol 136, No. 6. and P.K. Robertson, 2000. "Soil classification using the cone penetration test," Canadian Geotechnical Journal, 27(1).

Note: Dashed lines show tip pressure and N normalized for overburden pressure $% \left(\mathbf{n}\right) =\left(\mathbf{n}\right) +\left(\mathbf{n}\right)$





Project: 18011 Client: Tim Roth

² John H. Schmertmann, "Statics of SPT", Journal of the Geotechnical Engineering Division, American Society of Civil Engineers. May 1979.

³P.K. Robertson, K.L. Cabal (Robertson), 2015. "Guide to Cone Penetration Testing for Geotechnical Engineering, 6th Edition". Gregg Drilling and Testing, Inc.

DYNAMIC PROBE LOG FC-5



K & A Engineering, Inc. 541-684-6966 kaengineers.com

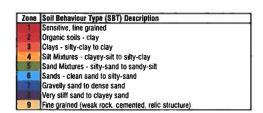
HOLE #: FC-5
CREW K & A Engineering, Inc.
PROJECT: Roth Spring St. Residential Development
ADDRESS: Tax Lot 2300, Tax Lot 11-11-05-BB
LOCATION: Springs St., Newport, OR

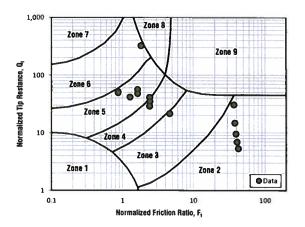
| PROJECT NUMBER: | 18011 |
|---------------------------------------|---------------|
| DATE STARTED: | 04-25-2018 |
| DATE COMPLETED: | 04-25-2018 |
| DEPTH COMPLETED (m): | 1.5 |
| SURFACE ELEVATION: | 69.3 ft |
| STATIC WATER DEPTH ON COMPLETION (m): | None Observed |
| FIRST ENCOUNTERED WATER DEPTH (m): | None Observed |
| HAMMER WEIGHT: | 15.9 kg |
| CONF AREA | 9.9 sr. cm |

| DEPTH M | PER 10-cm | SLEEVE TORQUE ftlbs. | Tip Pressure q _C kg/cm2 (Raw and Mormalized) 0 (Raw 100 100 1000 | Friction Ratio, % 0% 20% 40% | Equiv. SPT N _{ed} ² (Raw and Normatized) 0 1 10 100 | SOIL BEHAVIOUR TYPE (SBT) ZONE ^{1, 3} | REMARKS |
|------------|--------------|----------------------------|---|---------------------------------|--|---|---|
| - 0.2 | 0 0 | 4 4 | | | | 2 2 | Wet Organic |
| - 0.4 | 0 | 4 | | | | 2 2 | Sandy-SILT |
| 0.6 | 0 | 4 | | | | 2 | |
| 0.8 | 2 | 4 4 | | | 4 () | 5 | Very Loose to Loose |
| 1.0 | 2 | 4 4 | | | | 4 3 | Silty-SAND Colluvium |
| 1.2 | 2 | 4 4 | | / | | 4 | 20112112 |
| 1.4 | 6 | 4 4 | | | | 5 5 | |
| 1.6 | 62 | 42 | | | | 6 | Very Stiff to Hard Sandstone/Siltstone |
| 1.8 | | | | | | 1 | |
| 2.0 | | | | | | 1 | |
| 2.2 | | | | | | | |

P.K. Robertson, 2010. "Evaluation of flow liquefactor and liquefied strength using Cone Penetration Test." ASCE Journal of Geotechnical and Geoenvironmental Engineering, Vol 136, No. 6. and P.K. Robertson, 2000. "Soil classification using the cone penetration test," Canadian Geotechnical Journal. 27(1).

Note: Dashed lines show tip pressure and N normalized for overburden pressure $% \left(\mathbf{n}\right) =\left(\mathbf{n}\right) +\left(\mathbf{n}\right)$





Project: 18011 Client: Tim Roth

² John H. Schmertmann, "Statics of SPT", Journal of the Geotechnical Engineering Division, American Society of Civil Engineers, May 1979.

³P.K. Robertson, K.L. Cabal (Robertson), 2015. "Guide to Cone Penetration Testing for Geotechnical Engineering, 6th Edition" Gregg Drilling and Testing, Inc.

DYNAMIC PROBE LOG FC-6



K & A Engineering, Inc. 541-684-6966 kaengineers.com

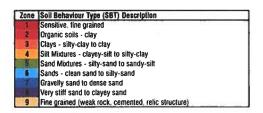
HOLE # FC-6
CREW K & A Engineering, Inc.
PROJECT: Roth Spring St. Residential Development
ADDRESS: Tax Lot 2300, Tax Lot 11-11-05-BB
LOCATION: Springs St., Newport, OR

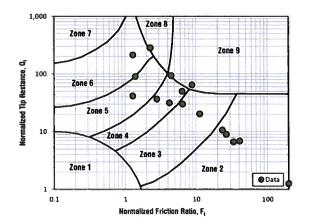
| PROJECT NUMBER: | 18011 | |
|---------------------------------------|---------------|---|
| DATE STARTED: | 01-14-2019 | _ |
| DATE COMPLETED: | 01-14-2019 | _ |
| DEPTH COMPLETED (m): | 1.6 | _ |
| SURFACE ELEVATION: | 86,6 ft | _ |
| STATIC WATER DEPTH ON COMPLETION (m): | None Observed | _ |
| FIRST ENCOUNTERED WATER DEPTH (m): | None Observed | _ |
| HAMMER WEIGHT: | 15.9 kg | _ |
| CONE AREA: | 9.9 sq. cm | _ |

| DEPTH m | | SLEEVE TORQUE ftlbs. | Tip Pressure q _C kg/cm2 (Raw and Normalized) 1 100 100 1000 | Friction Ratio, % 0% 29% 40% 60% | Equiv. SPT N ₈₆ ² (Raw and Normalized) 0 1 10 100 | SOIL BEHAVIOUR TYPE (SBT) ZONE ^{1, 3} | REMARKS |
|------------|----------|----------------------------|--|-------------------------------------|--|--|---|
| - 0.2 | 1 | 5 | | | | 9 | |
| - 0.4 | 1 0 | 4 | | | | 2 | Very Soft |
| - - 0.6 | 0 | 4 4 | | | | 2 2 | Organic SILT |
| - - 0.8 | 0 1 | 5 5 | | - | | 3 | |
| - - 1.0 | 0 2 | 6 | | | | 3 | |
| - - 1.2 | 3 4 | 5 4 | | | | 5 | Very Loose Sity-SAND |
| - - 1.4 | 3 13 | 6 8 | | | | 5 | |
| - - 1.6 | 39 55 | 20 44 | | | 77 | 8 | Very Stiff to Hard Sandstone/Siltstone |
| - - 1.8 | | | | | | AND ASSESSMENT OF THE PROPERTY | |
| - - 2.0 | | | | | | | |
| - - 2.2 | | | | | | | |

¹ P.K. Robertson, 2010. "Evaluation of flow liquefactor and liquefied strength using Cone Penetration Test." ASCE Journal of Geotechnical and Geoenvironmental Engineering, Vol 136, No. 6, and P.K. Robertson, 2000. "Soil classification using the cone penetration test," Canadian Geotechnical Journal, 27(1).

Note: Dashed lines show tip pressure and N normalized for overburden pressure $% \left(\mathbf{n}\right) =\left(\mathbf{n}\right)$





² John H. Schmertmann, "Statics of SPT". Journal of the Geotechnical Engineering Division, American Society of Civil Engineers. May 1979.

³ P.K. Robertson, K.L. Cabal (Robertson), 2015, "Guide to Cone Penetration Testing for Geotechnical Engineering, 6th Edition" Gregg Drilling and Testing, Inc.

DYNAMIC PROBE LOG FC-7



K & A Engineering, Inc. 541-684-6966 kaengineers.com

HOLE # FC-7
CREW K & A Engineering, Inc.
PROJECT: Roth Spring St. Residential Development
ADDRESS: Tax Lot 2300, Tax Lot 11-11-05-BB
LOCATION
Springs St., Newport, OR

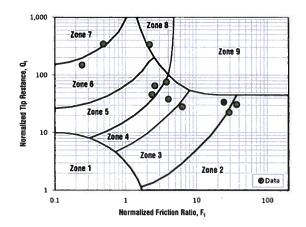
| PROJECT NUMBER: | 18011 |
|---------------------------------------|---------------|
| DATE STARTED: | 01-14-2019 |
| DATE COMPLETED: | 01-14-2019 |
| DEPTH COMPLETED (m): | . 1.1 |
| SURFACE ELEVATION: | 77.8 ft |
| STATIC WATER DEPTH ON COMPLETION (m): | None Observed |
| FIRST ENCOUNTERED WATER DEPTH (m): | None Observed |
| HAMMER WEIGHT: | 15.9 kg |
| CONE AREA | 9.9 sq. cm |

| DEPTH m | | SLEEVE TORQUE ftlbs. | essure q _c kg/cm2 (and Normalized) 100 | 1000 | Fr 0% 10% | iction Ratio, % 20% 30% 40% | Equiv. SPT N _{so} ² (Raw and Normalized) 1 10 100 | SOIL BEHAVIOUR TYPE (SBT) ZONE ^{1,3} | REMARKS |
|------------|----------|----------------------------|--|----------|--------------|--------------------------------|--|--|---------------------|
| - 0.2 | 0 | 5 | | | | | A Contractor | 3 | Very Soft |
| - 0.4 | 0 3 | 5 6 | 444 | A. Maria | | -+-1 | | 4 | Organic SILT |
| 0.6 | 3 2 | 5 4 | | | | | | 5 5 | Very Loose |
| - 0.8 | 1 2 | 5 | | | | | | 3 | Silty-SAND |
| · · 1.0 | 20 56 | 4 14 | | | | | | 6 | |
| 1.2 | 54 | 43 | | | \ | | | | Sandstone/Siltstone |
| 1.4 | | | | | | | | | |
| 1.6 | | | | | | | | | |
| - - 1.8 | | | | | | | | | |
| 2.0 | | | | | | | | | |
| - - 2.2 | | | | | | | | | |

¹ P.K. Robertson, 2010. "Evaluation of flow liquefacton and fiquefied strength using Cone Penetration Test." ASCE Journal of Geotechnical and Geoenvironmental Engineering, Vol 136, No. 6, and P.K. Robertson, 2000. "Soil classification using the cone penetration test," Canadian Geotechnical Journal, 27(1).

Note: Dashed lines show tip pressure and N normalized for overburden pressure





Project: 18011 Client: Tim Roth

² John H. Schmertmann, "Statics of SPT", Journal of the Geotechnical Engineering Division, American Society of Civil Engineers. May 1979.

³P.K. Robertson, K.L. Cabal (Robertson), 2015, "Guide to Cone Penetration Testing for Geotechnical Engineering, 6th Edition" Gregg Drilling and Testing, Inc.

Sieve Analysis

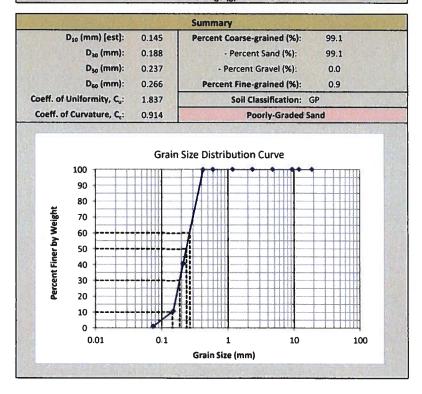
Wash and Dry Sieve Analyses

Date: 5/2/2018
Sample No.: B-2 from 10.2 to 11.0-ft
Client: J.T. Roth Construction, Inc.

Project: 18011

Wash Sieve Analysis Pan Weight (g): 128.0 Pan + Moist Soil Weight (g): 488.5 Pan + Dry Unwashed Sample Wt. (g): 458.1 Water Content (%): 9.2 Pan + Dry Washed Sample Wt. (g): 455.4 Dry Washed Sample Wt. (g): 327.4 Weight of Fines (g): 2.7 Percent Fines (%): 0.8

| Dry Sieve Analysis | | | | | | |
|--------------------|----------------------|-------------------|-----------------------------------|-----------------------------|------------|-----------|
| Sieve Size | Opening Size (mm) | Pan Weight (g) | Retained Soil + Pan Weight (g) | Retained Soil Weight (g) | % Retained | % Passing |
| 3/4" | 19 | 559.1 | 559.1 | 0.0 | 0.0 | 100.0 |
| 1/2" | 12 | 773.7 | 773.7 | 0.0 | 0.0 | 100.0 |
| 3/8" | 9.5 | 823.8 | 823.8 | 0.0 | 0.0 | 100.0 |
| No. 4 | 4.75 | 503.5 | 503.5 | 0.0 | 0.0 | 100.0 |
| No. 8 | 2.36 | 434.7 | 434.7 | 0.0 | 0.0 | 100.0 |
| No. 16 | 1.18 | 423.3 | 423.3 | 0.0 | 0.0 | 100.0 |
| No. 30 | 0.60 | 361.0 | 361.1 | 0.1 | 0.0 | 100.0 |
| No. 40 | 0.425 | 370.7 | 370.9 | 0.2 | 0.1 | 99.9 |
| No. 70 | 0.212 | 355.1 | 551.3 | 196.2 | 59.4 | 40.6 |
| No. 100 | 0.15 | 309.6 | 409.1 | 99.5 | 89.5 | 10.5 |
| No. 200 | 0.074 | 337.2 | 368.8 | 31.6 | 99.1 | 0.9 |
| Pan | 0 | 501.9 | 502.2 | 0.3 | 100 | 0 |
| | | | Total (g): | 327.9 | | |
| | | | Change (g): | 0.5 | | |



Sieve Analysis

Wash and Dry Sieve Analyses

Date: 5/2/2018

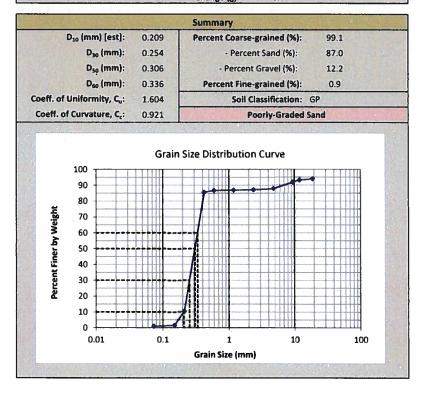
Sample No.: 8-3 from 17.3 to 18.7-ft

Client: J.T. Roth Construction, Inc.

Project: 18011

| Wash Sieve Analysis | | |
|------------------------------------|-------|--|
| Pan Weight (g): | 120.0 | |
| Pan + Moist Soil Weight (g): | 556.3 | |
| Pan + Dry Unwashed Sample Wt. (g): | 478.5 | |
| Water Content (%): | 21.7 | |
| Pan + Dry Washed Sample Wt. (g): | 475.7 | |
| Dry Washed Sample Wt. (g): | 355.7 | |
| Weight of Fines (g): | 2.8 | |
| Percent Fines (%): | 0.8 | |

| Dry Sieve Analysis | | | | | | |
|--------------------|----------------------|--------------------|-----------------------------------|-----------------------------|------------|-----------|
| Sieve Size | Opening Size (mm) | Pan Weight (g) | Retained Soil + Pan Weight (g) | Retained Soil Weight (g) | % Retained | % Passing |
| 3/4" | 19 | 559.1 | 581 | 21.9 | 6.1 | 93.9 |
| 1/2" | 12 | 773.7 | 776.3 | 2.6 | 6.8 | 93.2 |
| 3/8" | 9.5 | 823.8 | 828.5 | 4.7 | 8.2 | 91.8 |
| No. 4 | 4.75 | 503.5 | 517.9 | 14.4 | 12.2 | 87.8 |
| No. 8 | 2.36 | 434.8 | 437.3 | 2.5 | 12.9 | 87.1 |
| No. 16 | 1.18 | 423.4 | 424.1 | 0.7 | 13.1 | 86.9 |
| No. 30 | 0.60 | 361.2 | 361.9 | 0.7 | 13.3 | 86.7 |
| No. 40 | 0.425 | 370.9 | 375.2 | 4.3 | 14.5 | 85.5 |
| No. 70 | 0.212 | 355.6 | 624.9 | 269.3 | 89.7 | 10.3 |
| No. 100 | 0.15 | 309.9 | 341.9 | 32.0 | 98.6 | 1.4 |
| No. 200 | 0.074 | 337.4 | 339.3 | 1.9 | 99.1 | 0.9 |
| Pan | 0 | 501.9 | 502.2 | 0.3 | 100 | 0 |
| 13/3/2 | | and the latest the | Total (g): | 355.3 | | |
| | | | Change (g): | -0.4 | | |



Appendix C Geologic Hazard Assessment

Proposed Residential Development Tax Lot 2300, Tax Map 11-11-05-BB NW Spring St., Newport, Oregon

Project: 18011 February 5, 2019

Prepared for:

Jacob T. Roth, Jr. and Theresa A. Roth 12600 SW 72nd Ave., Suite 200 Portland, OR 97223

Prepared by:

Gary C. Sandstrom, C.E.G., R.P.G.

K & A Engineering, Inc.

Coburg, Oregon





Lot 2300 NW Spring Street, Newport, Oregon 97365 January 30, 2019

1.0 Introduction

At the request of Jacob (Tim) Roth, Jr. and Theresa A. Roth (owner), Gary C. Sandstrom, Geologist, LLC, working with K&A Engineering Inc., of Coburg, Oregon, observed site conditions at Lot 2300 immediately north of 1507 NW Spring St., Newport, Oregon, 97365. The site is situated in a geologic hazard zone defined by the City of Newport and Lincoln County and this report has been prepared to assess geologic hazard conditions relevant to the proposed development of the property.

2.0 Scope of Work

A site visit and geologic reconnaissance of surface features was conducted on April 25, 2018. In addition, the following literature and internet sources were reviewed:

- Google Maps, http://maps.google.com/maps
- Google Earth, earth.google.com
- USGS, http://store.usgs.gov, 1984 and 2014 Newport North Topographic Quadrangle maps from US Dept. of Interior, Geological Survey
- ORMAP GIS, http://www.ormap.org Oregon Map website listing tax lot numbers
- Lincoln County Assessor's Maps, tax maps and site surveys, www.co.lincoln.or.us
- City of Newport Public Works, photo and line maps of sewer locations in site vicinity
- City of Newport, Municipal Code
- John McDonald Engineering, Geotechnical Investigation of Lots 1, 2, & 3 Oceanview Estates, Newport, July, 1989
- Braun Intertec Northwest, Site Reconnaissance for a Single-Family Residence Lots 1,2 & 3, Block 49, Oceanview Addition at the intersection of NW 15th Avenue and NW Spring Street, Newport, Oregon, October, 1999
- H.G. Schlicker & Associates, Inc., Subsurface Investigation and Update to a Geologic Hazards Investigation Tax Lot 1700, Map 11-11-5BC, Newport, Oregon, December, 2000
- H.G. Schlicker & Associates, Inc., Geologic Reconnaissance of Lots 1, 2, 3, 4, 5, Block 37, NW Spring St, Newport, Oregon, August, 1991
- Schlicker, H.G., Olcott, G.W., Beaulieu, J.D. and Deacon, R.J., Environmental Geology of Lincoln County, Oregon, State of Oregon, DOGAMI, Bulletin 81, 1973

Lot 2300 NW Spring Street, Newport, Oregon 97365 January 30, 2019

- Snavely, P.D., MacLeod, N.S., Wagner, H.C. and Rau, W.W., Geologic Map of the Yaquina and Toledo Quadrangles, Lincoln County, Oregon, US Dept. of the Interior, Geological Survey, Misc. Investigation I-867, 1976
- Snavely, P.D., MacLeod, N.S. and Wagner, H.C., Preliminary Bedrock Geologic Map of the Yaquina and Toledo Quadrangles, Lincoln County, Oregon, US Dept. of the Interior, Geological Survey, Open File Report 72-352, 1972
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This report was written to summarize the investigations. Geotechnical site explorations were conducted by K&A Engineering Inc.

3.0 Project Location and Description

The vacant subject property is situated on the bluff above the Pacific Ocean on the west side of NW Spring Street north of NW 15th Avenue in Newport, Oregon approximately ¾ mile north-northwest of the junction of US Highway 101 and US Highway 20, and a mile and a half north of the US 101 Yaquina River Bridge (see Google Earth Location Map and USGS 1984 and 2014 Newport Topographic Quadrangle Maps). The property (see the ORMAP and Lincoln County Photo tax maps and plat tax map) is listed as tax lot 2300 (Parcels 1, 2 and 3 of Ocean View Block 49) in T11S, R11W, Section 5 NW ¼ of NW ¼. Lot 2300 is generally rectangular and measures approximately 162 feet north-south and 155 feet east-west (to the vegetation line). It is bounded on the east by NW Spring Street and neighboring properties are occupied by single-family residences. Our understanding is the proposed construction consists of three buildings founded on piles set into competent mudstone with possible tiebacks for lateral support.

The eastern boundary of the subject parcel (see Site Plan, Cross-Section and LIDAR Slope Image) is situated approximately 25 feet west of the NW Spring Street pavement and an approximately 5-10 foot-

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deep ditch is situated in the intervening space. East- to north-northeast-facing slopes rise westward from the ditch at an average of about 30% to a narrow ridge-crest a few feet above the level of NW Spring Street, and extend generally from the southeastern corner of lot 2 to a point approximately 35 feet west of the northeastern corner of the parcel (and lot 3). Both the ditch and ridge-crest have been altered by site development on the northern neighboring property and east of lot 1. Steep to moderately steep, generally west-southwest-facing slopes descend about 20 to 25 feet from the ridge-crest, becoming moderate to gentle in the middle of the site on what has been called an excavated bench in an earlier site report. Relatively steep west-facing slopes extend down to the beach sands from a line connecting a point about 125 feet west of the southeast property and a point about 107 feet west of the northeast property corner. Site elevation estimated from Google Earth imaging ranges from approximately 80 feet on the NW Spring Street pavement to approximately 19 feet at the vegetation line at the head of the beach. Eastern site slopes are wooded with spruce and lodgepole pines and generally low-growing, relatively sparse native woodland species, and the steeper western slopes are vegetated with heavy brush consisting generally of salal, salmonberries and grasses. Horsetail plants (equisetum), indicative of very shallow groundwater, are very common on the moderate to gentle slopes and several running springs were observed near the base of the steeper eastern slopes.

4.0 Geologic Setting

The slopes underlying the project site are classified in the geologic literature as Quaternary (less than 2.6 million years before present) Marine Terrace deposits overlying early Miocene (16.5-23.0 million years before present) Nye Mudstone (see DOGAMI Bulletin 81-3, OFR-O-04-09, USGS-OF-72-352-1 and USGS I-867 geologic maps). USGS OF-72-352-1 maps Nye Mudstone underlying the Marine Terrace deposits in the site vicinity and DOGAMI B-81 maps Nye Mudstone deposits at the base of the bluffs at the head of the beach west of the subject site. Middle Miocene (10.4-16.5 million years old) Astoria Formation deposits are mapped overlying the Nye Mudstone a short distance to the south and in the wave zone west of the site. Nye Mudstone dips in the site vicinity are mapped at generally 11 to 15 degrees to the west to southwest and Astoria Formation deposits are mapped at 23 degrees to the west a few hundred feet to the south at Jump-Off Joe

The Marine Terrace deposits are described in B-81 as up to 75 feet (in Lincoln County) of semiconsolidated uplifted beach sand overlain locally by fine-grained dune deposits, with occasional localized gravel lenses. Nye Mudstone is described as indurated, massive to indistinctly bedded clayey siltstone rich in organic matter with common iron staining, close jointing, talus deposits of shaley rubble and clay-rich soils prone to land-sliding.

Terrace deposits are described in O-04-09 as unconsolidated to moderately consolidated gravel, beach and dune sand; locally containing minor consolidated clay-rich paleosols, colluvium, debris flows, and alluvial interbeds. Nye Mudstone is described as massive to poorly bedded gray fossiliferous marine mudstone to very fine-grained silty sandstone, commonly highly fractured, weak and prone to land-sliding.

The USDA National Resource Conservation Service Pacific Northwest Soils website classifies the soils underlying the site as Urban land-Bandon complex on 12 to 50% slopes to the west, described as colluvium derived from sedimentary rock. No further information is provided on the NRCS website.

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5.0 Geologic Hazard Mapping

DOGAMI 0-04-09 and the HazVu website map an active block landslide underlying the northern margin of the subject site, a potentially active block landslide underlying the majority of the site, and a large Quaternary (sometime in the last 1.6 million years) landslide underlying much of the site vicinity. The active block landslide is mapped along the northern margin of the site generally west of NW Spring Street and continues northward and eastward to approximately NW 20th Court. The potentially active block landslide appears to be an extension of the active slide mentioned above and underlies the majority of the subject site west of NW Spring Street and continuing southward almost to NW 14th Street and includes the 4 residences south of the subject parcel. The Quaternary landslide extends from about NW 12th Street on the south northward past NW 22nd Street and eastward to the intersection of NW 15th Street and NW Thompson Street. The eastern margin of the two block landslides generally coincide with the ditch along the eastern margin of the subject site. The landslide hazard rating of the subject site is very high due to underlying landslides.

The DOGAMI HazVu website maps an ENE-WSW trending active fault approximately 1.5 miles southeast of the subject site and rates the site vicinity susceptible to severe shaking in the event of both Cascadia subduction zone earthquakes and lesser earthquakes. The majority of the site is situated above the statutory tsunami inundation line (at 30 feet elevation). DOGAMI's Tsunami Inundation Map Linc-06 shows inundation scenarios for earthquakes of several different magnitudes, including a Cascadia Subduction Zone earthquake which could reach an elevation of approximately 80 feet, past the eastern property line. The site is mapped by HazVu west of the low risk liquefaction and the Flood Hazard zone for ocean flooding extends into the western margin of site, but not the proposed homesite vicinity.

The HazVu Coastal Erosion Hazard map, based on O-04-09 and not intended to be site-specific, maps the entire subject site as an active erosion zone. The attached OFR-04-09 Dune and Bluff Erosion Hazard diagrams are a pictorial explanation of the erosional hazard zones. The site vicinity is estimated (O-04-09) to be subsiding relative to sea level at a rate of approximately one and a half millimeters a year.

6.0 **Previous Site Studies**

A Geotechnical Investigation of the subject parcel was conducted by John McDonald Engineering in 1989. Three borings were excavated on the moderate to gentle slopes west of the moderately steep to steep slopes, at locations shown on a site cross-section diagram, presumably near the boundary between lots 1 and 2. Materials encountered were logged generally as medium-grained sand to an approximate depth of 5 feet in borings 1 and 3, and 2 feet in boring 2. Refusal on relatively hard silt was encountered below the sand. The report interprets these materials as dune sand overlying weathered Nye Mudstone with the contact sloping generally westward at 13°. The steeper slopes to the east of the borings were interpreted as dune sands displaced by an ancient landslide, age estimated by the maturity of the trees observed in that vicinity. Groundwater was noted at the contact between the sand and the mudstone, and the slide was attributed to displacement westward along the contact. Construction recommendations included setting footings on the mudstone with trenches and drains to control groundwater.

Braun Intertec conducted a Site Reconnaissance in 1994 that did not include any explorations borings or excavations. An engineering geology report compiled by H.G. Schlicker and Associates was included in

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the report. The Braun Intertec report notes a 10 to 20 foot-high landslide scarp situated immediately west of NW Spring Street and extending from Jump-Off Joe on the south to a point "some distance north of the property", which apparently coincides with the scarp of the active and potentially active landslides mapped on the DOGAMI SLIDO website (SLIDO Images 1 and 3 of the present report). Nye mudstone deposits were observed on the steeper slopes immediately above the beach and a regional dip of approximately 20 to 25 degrees to the west was noted. The report states movement of the entire block was noted in 1922 and 1942-43. Construction recommendations included partial removal of the steeper ridge and slopes underlain by sand in the eastern site margin and concluded structures founded on the upper bench at the level of NW Spring Street would probably remain intact during and translational movement but structures on the gentle to moderate middle slopes would move with the lower mass. Installation of a storm sewer system along NW Spring Street was highly recommended along with possible installation of horizontal drains. Structure support options included spread footing supported on native soils or engineered clean granular fill, or H-piles driven to practical refusal. Retaining wall and foundation drain systems were recommended. The accompanying H.G. Schlicker & Associates report dated November, 1994 characterized the topography as an elevated, gently-undulating marine terrace. The eastern block (steeper ridge and slopes) is characterized as a back-rotated landslide block that is approximately 40-50 feet wide on the north end and pinching out to the south. Common seepage and hydrophytic (water-loving) vegetation was noted on the gentler middle slopes. Two shallow subsurface explorations were performed on the middle, gentler slopes and encountered hard claystone beneath a foot or two of sand. Highly-fractured silty claystone deposits were noted in exposures at the toe of the bluff extending 10 to 20 feet above the beach sands. The report mentions the Jump-Off Joe landslides and a more recent landslide on Spring Street south of the subject site in the 1960's and 1970's. Another landslide that occurred sometime before 1967 was noted approximately 150 feet north of the subject site. The ditch along NW Spring Street at the eastern site margin is interpreted as a scarp and the ridge and steep slopes west of the ditch are interpreted as a rotated landslide block approximately 250 feet long with intermediate scarps and fractures observed on the steeper western slopes. Tilted trees and pavement cracking in the site vicinity is interpreted as recent ongoing movement. Erosion rates in the site vicinity range from negligible to 1.5 feet per year, and the rate at the subject site was estimated at 6 inches per year. The report concludes that movement of the landslide on the subject site in the next 30-50 years is likely and recommends additional subsurface explorational borings. Placement of rip rap at the toe of the bluff at the head of the beach was strongly recommended but acknowledged to be difficult without the cooperation of neighbors and the City of Newport.

H.G. Schlicker and Associates performed a Subsurface Investigation and Update to a Geologic Hazards Investigation of the site with findings summarized in a report dated December, 2000. Four hand-auger test pits were excavated on the subject parcel at locations described generally as the four corners of the gently sloping middle bench (called a graded bench in the report) situated between the steeper eastern and western site slopes (no mapped excavation locations were available). Materials were interpreted as fill overlying Nye Mudstone. Fills along the eastern margin of the bench measured 4 feet thick at the northeast corner with a 6-inch diameter perforated drain pipe at 4 feet; 1.5 feet at the southeast corner; approximately 7 feet at the northwest corner and 12 feet at the southwest corner. No evidence of interpreted recent landslide movement was observed along the eastern ditch/scarp, but recent wave erosion at the base of the western scarp at the beach was noted. The report noted indications of recent movement 500 feet north and 700 feet south of the subject site. Report recommendations included placement of rip rap at the base of the western slopes at the head of the beach and setbacks from both eastern and western steeper slopes. Steel-reinforced spread footings placed on competent native soils or

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compacted crushed rock fill were recommended, with higher loads allowed on hard siltstone. Drain systems at the eastern ditch area were recommended as well as footing drains. The report noted the recommendations were intended to reduce the geologic hazards but were not intended to stabilize the landslide; occasional maintenance of settled pavements and foundations should be expected.

7.0 Soils Observed

Soils observed on the site surface consisted generally of sandy silt topsoil with organics ranging to fine-grained sand consistent with classification as Marine Terrace Deposits. Exposures of Nye Mudstone were observed on the western margin of the subject site near the vegetation line and up to 20 feet above the sand. Geotechnical borings on the subject site by K&A Engineering encountered interpreted disturbed Marine Terrace deposits overlying Nye Mudstone. Materials observed near the base of the steeper western slopes of the subject site consisted generally of relatively loose fine-grained sand interpreted as disturbed Marine Terrace deposits weathered to or covered by dune sand. Rock exposures were observed in the surf zone corresponding to exposures of Astoria Formation materials mapped in the literature. A relatively dense, undisturbed cut-face of Marine Terrace sand was observed next to the driveway of a neighboring lot on the east side of NW Spring Street.

8.0 K&A Geotechnical Borings

Geotechnical borings were performed on the subject site by K&A Engineering on April 24 and 25, 2018. A geologic cross section (see Geotechnical Section) was generated from the findings of the explorational borings.

A dynamic probe penetrometer was driven on the west shoulder of NW Spring Street just north of the boundary between lots 2 and 3 and encountered interpreted sand, silt and organic fill to 7 feet, and organic topsoil between 7 and 8 feet. Moderately dense, lightly cemented Marine Terrace sands were interpreted below 8 feet, becoming loose below approximately 15.5 feet and moderately dense with occasional gravel to approximately 24 feet, where relatively hard interpreted mudstone was encountered. The probe was terminated at 26 feet.

Boring B-2, drilled with an AMS 9410-VTR on the west shoulder of NW Spring Street just south of the boundary between lots 1 and 2 encountered sandy silt to silty sand with traces of gravel interpreted as road fill to a depth of approximately 7 feet overlying dark brown, soft, low plasticity organic silt topsoil to 8 feet. Brown/gray, loose to moderately dense sand with some silt encountered below 8 graded about 9 feet to gray, moderately dense sand with trace silt and occasional thin gravelly layers interpreted as Marine Terrace deposits lightly cemented below 13 feet was encountered to about 16.5 feet, becoming wet and transitioning to dark gray, damp, hard mudstone interpreted as weathered Nye Mudstone. The boring was terminated at 20 feet. A dynamic probe penetrometer, FC-2, was driven next to B-2 to further characterize the soils.

Boring B-3 with associated penetrometer probe FC-3 was drilled on the moderate east-facing slopes of the ditch near the middle of the eastern boundary of lot 2 and encountered organic silty sand to sandy silt topsoil to approximately 1 foot transitioning to tan, loose to very loose sand with some silt interpreted as Marine Terrace sand deposits below 3.5 feet. Materials became gray below 12 feet, and gravelly and moister below 17 feet. Dark gray moderately stiff to stiff, damp, friable clay interpreted as residual Nye

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Mudstone was encountered below 19.5 feet and hard, damp to dry, weathered Nye Mudstone bedrock was encountered below about 23 feet, and the boring was terminated at 24 feet.

A Wildcat dynamic cone penetrometer test, FC-4, was performed near the middle of the moderately steep west-facing slopes near the middle of lot 2 and encountered interpreted loose silty sand to a depth of approximately 1.25 meters (4.25 feet), and hard Nye Mudstone for approximately one half foot.

Another Wildcat cone penetrometer test, FC-5, was performed near the eastern margin the gentler slopes in the west margin of lot 2 and encountered about a foot and a half of saturated organic sandy silt overlying loose silty sand, with hard Nye Mudstone at approximately 4 ¾ feet.

Materials observed in the geotechnical borings and during the site reconnaissance are consistent with descriptions in the geologic literature.

9.0 Drainage and Groundwater

Several springs were observed at the base of the steeper eastern slopes discharging onto the relatively gentle slopes near the middle of the site. The springs are a result of groundwater migrating downslope at the contact between the Marine Terrace deposits and underlying Nye Mudstone, with the resultant water ponding somewhat on the relatively impermeable weathered mudstone/siltstone/claystone before soaking into the fractured near-surface bedrock. No significant seepage was observed at the base of the western slopes above the sand.

Historical Google Earth imaging shows flow from a large diameter drain line that was observed during the reconnaissance at beach-level below the boundary between the south neighboring parcels, and collector grates were observed in the parking area east of the three condominiums in lot 8000. Gutter drains from lot 7000, the southern neighboring parcel, appear to be connected to that systems, as well as retaining wall drains in that vicinity and possibly the municipal storm-water system on NW 15 Street, all likely feeding into the observed drain. A spring with a rounded-cobble bed is situated near the southern boundary of the subject site, and topography and LIDAR imaging suggest a drainage/channel may connect from the middle bench to the eastern ditch at or near that location. No drainages traversing the subject site are mapped on the Newport North 1984 and 2014 USGS Topographic Quadrangle Maps, but the 2014 map shows a seasonal drainage corresponding to the location of the above-mentioned drain near the boundaries of lots 7000 and 8000.

A storm-water collection grate was observed at the intersection of NW 15th Street and NW Spring Street, but no collector grates were observed in the pavement east of the subject site. Surface run-off and gutter drains apparently run over the NW Spring Street pavement onto the subject site and likely contribute to the seepage observed on site. Water bars were observed at the driveways of the northern and southern neighboring parcels. The resident of the northern neighboring parcel 2200 said he has seen water pond in the ditch on the eastern site margin during periods of heavy rainfall and on one occasion he siphoned the standing water out of the ditch onto the slopes near the boundary shared with the subject parcel.

No well logs for borings in the immediate site vicinity were listed on the Oregon Water Resources Department Well Log Query website.

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10.0 Geohazard Inspection

A geohazard site inspection was performed on April 25, 2018 (see Recon Photos and LIDAR Image). These included traversing the subject site and site vicinity where accessible observing conditions for evidence of instability.

Slopes to the east of the subject parcel are relatively gentle to moderately gentle and underlain by Marine Terrace sand deposits. No curbs are present in the site vicinity and pavement runoff generally infiltrates into the sandy soil on the road shoulders. Several utility boxes/vaults and a retaining wall on the east side of NW Spring Street appear to have settled, and some tension/settlement cracks were observed in the pavement. As mentioned above, a storm-water collection inlet grate was observed in the pavement near the south end of the subject site and the presumed outfall of the drain was observed discharging onto the beach below the boundary line between lots 7000 and 8000.

The ditch along the eastern margin of the subject site generally coincides with the landslide head-scarp mapped by DOGAMI SLIDO imaging and O-04-09 along the NW Spring Street right-of-way. The south end of the ditch has apparently been filled in at some time during site development and slopes in this vicinity are obscured by heavy brush. Relatively tall retaining walls are present in south-neighboring lot 7000 as well as a cobble-lined drainage channel mentioned above in the Section 6. A seasonal drainage mapped on the USGS 2014 Newport North topo map generally underlies the southern margin of lot 7000 and appears to coincide with the collector grates and outfall also mentioned in Section 6. The northern end of the ditch has been filled in to provide access to the residence in lot 2200 but it appears the ditch previously continued to the north side of that lot before veering westward towards the ocean. Relatively steep slopes with cobble armoring and common exposed tree roots lead down to a west-trending drainage north of lot 2200. The residents of lot 2200 report the piles supporting the structure may have shifted laterally slightly and small slumps have occurred relatively recently on the slopes below their residence, suggesting movement of the block slide is still occurring.

The slopes immediately west of the ditch were interpreted in a previous report as the rotated toe of a landslide, but interpretation as graben and horst features created by translational sliding (see OFR-O-04-09 Bluff Erosion Rates diagram) is a more reasonable interpretation in my opinion. The relatively loose sands encountered in the boring on the ridge and the contorted shapes and common non-vertical growth habits of relatively mature lodgepole pines observed on the western slopes of the ridge are suggestive of instability. It is likely that construction of NW Spring Street has lowered grades east of the graben resulting in the ridge-crest at a slightly higher elevation than the current right-of-way. The steep western face of the ridge may have been formed during a previous episode of sliding.

The gently-sloping bench below the steeper slopes of the graben and horst exhibited springs with common horsetail plants indicative of perennially shallow groundwater, and exploratory drive probes and borings encountered relatively hard siltstone/claystone at shallow depths. Bedded fractured siltstone/claystone was observed south of the wooden stairway on the north neighbor lot 2200 up to approximately 20 feet above the sand beach and in places on the steep slopes opposite the subject parcel. Thick vegetation consisting of salmonberry, salal, and grass obscured the face of the slope but the steepness suggests relatively hard underlying materials, likely weathered and fractured siltstone/claystone. Low dunes with grass observed at the head of the beach are interpreted in part as displaced Marine Terrace deposits and talus from such deposits. No seeps or running water were

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observed below the subject parcel at the head of the beach but the drainline observed at the base of the slope to the south below the boundary between lots 7000 and 8000 appears to be situated in the seasonal drainage mapped on the USGS 2014 Newport North topo map.

11.0 Conclusions

The subject property is situated at the seaward edge of Quaternary (less than 2.6 million years old) Marine Terrace deposits, which are essentially beach sands compacted by wave action that have been uplifted due to regional tectonic movement from subduction of the Pacific Plate under the North American Plate. The terrace sands overlie early-Miocene age (approximately 16.5-23 million years old) Nye Mudstone deposits that were observed at the base of the bluffs at the head of the beach, near the top of the steeper slopes immediately above the beach and in explorational borings. The Nye Mudstone dips generally 10-15° westward to southwestward in the site vicinity and cross-sections drafted for the geotechnical report suggests a generally-similar contact orientation with the overlying Marine Terrace deposits. Groundwater flowing down the relatively-impermeable inclined contact between the terrace deposits and underlying siltstone/claystone generates the springs observed near the middle of the subject site and has promoted land-sliding.

Geologic literature and the State of Oregon Geologic Hazards website suggest at least two stages of land-sliding have occurred at the site. A relatively large landslide extending a few hundred feet east of NW Spring Street occurred at some point within the last 2.6 million years but is considered relatively stable (H.G. Schlicker 1991 site reconnaissance for lots 1800, 1900 and 1903 to the south). Slope stability analysis based on the K&A geotechnical borings show low likelihood of re-mobilization of the of the slide.

A more recent landslide, classified as active near the northern site margin and potentially active under the remainder of the site, has apparently translated a block of Marine Terrace deposits forming the scarp noted along the east margin of the site, the minor ridge-crest (horst) above the ditch (graben) and west of the scarp. The translated Marine Terrace sand deposits were significantly disturbed by the slide and the relatively steep slopes on the west face of the ridge were likely formed by a previous translational slide. Translated material from the earlier slide resulted in shallow soils overlying relatively hard siltstone/claystone materials from the uplifted wave terrace. The geotechnical boring on the west shoulder of NW Spring Street (east of the scarp and ditch) encountered hard siltstone/claystone at an approximate depth of 24 feet.

Alternative interpretations of the loose sands immediately west of the ditch on the eastern margin of the site include dune sand (John McDonald Engineering, 1989) and back-rotated toe debris (Braun Intertec and H.G. Schlicker and Associates, 1994). In our opinion, the translated slide-block interpretation best fits the geometry of the contact with the underlying mudstone and observed site conditions.

The site is situated within the very high hazard – active erosion zone of the Coastal Erosion Hazard Zone defined by the State of Oregon (DOGAMI - OFR O-04-09 and HazVu website) see also attached Bluff Recession Diagram. The mean erosion rate of the Nye Mudstone at the base of the bluff is estimated at 0.30 (DOGAMI OFR-97-26 and previous H.G. Schlicker and Associates report on the subject parcel) to 0.50 foot per year (O-04-09), or about 6-10 feet every 20 years. Astoria Formation deposits are also mapped in the surf zone, and sand dunes are forming in places west of the siltstone

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exposures at the base of the bluff. Rising sea levels from global warming combined with coastal subsidence in the Newport vicinity suggests that erosion will eventually undercut the cliff/bluff in the site vicinity, but in our opinion at a rate not likely to significantly effect the homesite vicinity within the design life of the structure if the recommended mitigations are followed.

The loose sands of the horst are also likely to have a soil liquefaction hazard in the event of an earthquake. The homesite location is not considered at risk from ocean flooding or most tsunamis, but a rupture of the Cascadia Subduction Zone, an event with a probability of 1 in 3 or 4 in the next 50 years estimated by OSU researcher Chris Goldfinger, could generate a surge of up to 80 feet high which could cover most if not all the subject site. The last subduction zone earthquake in the Pacific northwest with major tsunami and subsidence occurred January 26, 1700, and 19 such earthquakes are thought to have occurred over the last 10,000 years, leading to an estimated repeat interval of 530 years or so (DOGAMI IMS 28). Other research estimates an average interval of 240 years. A large subduction zone earthquake and resulting tsunami would cause widespread damage on the coast, especially if paired with high tides, major storms and saturated soils. Geologists believe such an event would remobilize old landslides and generate new slides in areas prone to sliding. Near-instantaneous subsidence of the coast of 3 to 5 feet is a possibility discussed in Open File Report O-04-09 and in more recent research. Any resident of the Oregon coast must acknowledge the possibility and probability of earthquakes and tsunamis and the substantial damage they would cause and weigh that against their enjoyment of the coast environment.

12.0 Recommendations

Relatively hard siltstone bedrock was encountered at shallow to moderate depths at the proposed homesite location but is overlain by relatively weak sand that is very prone to slumping and erosion by wind and rain. Deep foundations such as drilled piles set several feet into competent siltstone bedrock would likely provide adequate vertical support for single-family residences but relatively little lateral support to resist lateral translation. Construction of a daylight basement with the upslope wall doubling as a retaining wall would provide some buttressing, and tieback anchors set into competent siltstone/claystone would strengthen the basement retaining wall and make possible translation of Marine Terrace sands at NW Spring Street less likely to be life-threatening. Removal of the upper layers of loose sand deposits in the horst and replacement with GeoFoam blocks would lower the likelihood of slumping and lessen erosion in the immediate homesite vicinity but would also lower the buttressing effect of those deposits on the scarp along NW Spring Street.

In order to minimize erosion during site development, regulations listed in the City of Newport Municipal Code Chapter 14.21.090 Erosion Control Measures (attached) should be followed.

The Marine Terrace deposits in the site vicinity east of NW Spring Avenue in my opinion have poor to non-existent storm-water drainage systems (see City of Newport Public Works sewer location maps) and continued infiltration of rainwater could destabilize the global landslide underlying the vicinity in the long term; better storm-water disposal would probably mitigate this somewhat. Horizontal drains set into the contact between the Marine Terrace Deposits and the Nye Mudstone beneath NW Spring Avenue and the eastern margin of the subject site would also help. It is recommended gutter and foundation discharge, storm-water run-off and any groundwater collected by horizontal drains in the site vicinity be directed into drainlines that discharge at the head of the beach.

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The siltstone exposed at the head of the beach is expected to erode at approximately 0.3 to 0.5 feet per year, which could be mitigated by placement of a rip rap sea wall at the head of the beach in the unlikely event such a wall is permitted.

Maintaining deep-rooted, densely foliated vegetation on site slopes will help reduce the severity of wind and rain erosion. Bark mulch or other organic material held in place by jute netting can help protect bare soils until vegetation is established. Surface gravel can also reduce erosion in places where vegetation is not maintained. Impermeable soil should be placed against the footing and stemwalls, sloping outward, to reduce erosion and runoff infiltration to the footing subgrade.

13.0 Report Limitations

This report presents site observations, site research, site explorations, and recommendations for the proposed site development by Gary C. Sandstrom, Geologist LLC. The conclusions in this report are based on the conditions described in this report and are intended for the exclusive use of the client(s) and their representatives for use in their evaluation of the site. The analysis and general recommendations provided herein may not be suitable for structures or purposes other than those described herein. Services performed by the geologist for this project have been conducted with the level of care and skill exercised by other current geotechnical professionals in this area under similar budget and time constraints. No warranty or guarantee is herein expressed or implied. The conclusions in this report are based on the site conditions as they currently exist and it is assumed that the limited site locations that were physically investigated generally represent the subsurface conditions at the site. Should site development or site conditions change, or if a substantial amount of time goes by between my site investigation and site development, I reserve the right to review this report for its applicability. If you have any questions regarding the contents of this report, or if I can be of further assistance, please contact me.



Gary C. Sandstrom, Geologist, LLC

Appendix D

Reference Reports

- USGS Earthquake Deaggregation
- USGS Seismic Design Summary Report
- John McDonald Engineering Report July 9, 1989
- Braun Intertec Northwest Report October 31, 1994

Geotechnical Engineering Report Proposed Residential Development Tax Lot 2300, Tax Map 11-11-05-BB NW Spring St., Newport, Oregon

> Project: 18011 February 5, 2019

Prepared for:

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Prepared by:

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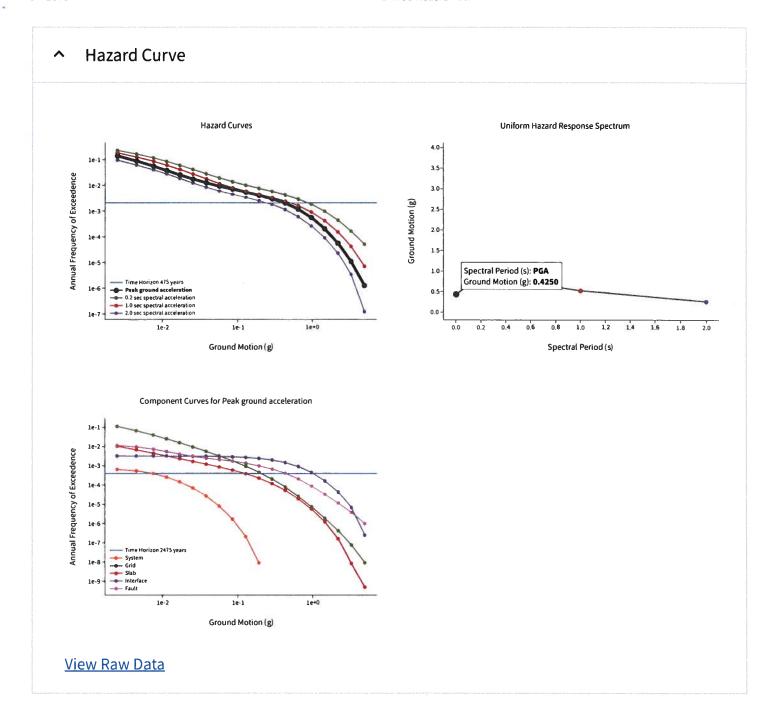


U.S. Geological Survey - Earthquake Hazards Program

Unified Hazard Tool

Please do not use this tool to obtain ground motion parameter values for the design code reference documents covered by the <u>U.S. Seismic Design Maps web tools</u> (e.g., the International Building Code and the ASCE 7 or 41 Standard). The values returned by the two applications are not identical.

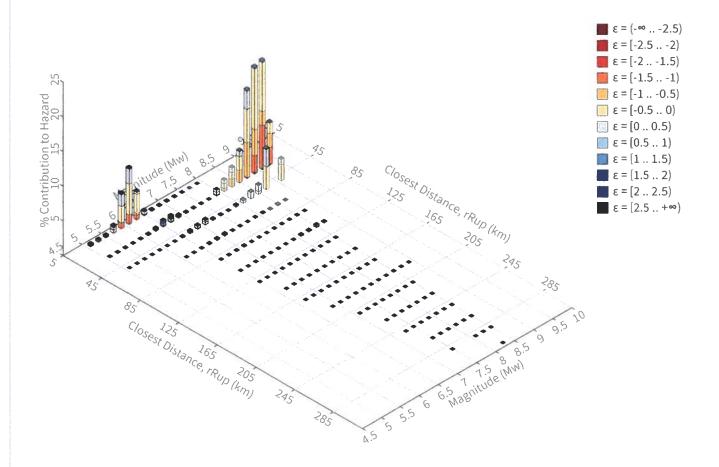
| ^ Input | |
|---|--------------------------|
| Edition | Spectral Period |
| Dynamic: Conterminous U.S. 2014 (v4.1 | Peak ground acceleration |
| Latitude | Time Horizon |
| Decimal degrees | Return period in years |
| 44.6486 | 475 |
| Longitude | |
| Decimal degrees, negative values for western longitudes | |
| -124.0596 | |
| Site Class | |
| 259 m/s (Site class D) | |



Deaggregation

Component

Total



Summary statistics for, Deaggregation: Total

Deaggregation targets

Recovered targets

Return period: 475 yrs

Exceedance rate: 0.0021052632 yr⁻¹

PGA ground motion: 0.42495042 g

Return period: 476.22843 yrs

Exceedance rate: 0.0020998327 yr⁻¹

Totals

Mean (for all sources)

Binned: 100 % Residual: 0% **Trace:** 0.66 %

r: 27.27 km m: 8.11 εο: -0.24 σ

Mode (largest r-m bin)

Mode (largest & bin)

r: 28.94 km m: 9.08

εο: -0.6 σ

Contribution: 15.69 %

r: 28.87 km m: 8.83 εο: -0.26 σ

Contribution: 8.75%

Discretization

Epsilon keys

r: min = 0.0, max = 1000.0, Δ = 20.0 km **m:** min = 4.4, max = 9.4, Δ = 0.2

ε: min = -3.0, max = 3.0, Δ = 0.5 σ

ε0: [-∞ .. -2.5)

ε1: [-2.5 .. -2.0)

ε2: [-2.0 .. -1.5) ε3: [-1.5 .. -1.0)

ε4: [-1.0 .. -0.5)

ε5: [-0.5 .. 0.0)

ε6: [0.0 .. 0.5)

ε7: [0.5 .. 1.0)

ε8: [1.0 .. 1.5) **ε9:** [1.5 .. 2.0)

ε10: [2.0 .. 2.5)

ε11: [2.5 .. +∞]

Deaggregation Contributors

| Source Set 😝 Source | Туре | r | m | ε ₀ | lon | lat | az | % |
|--|-----------|-------|--------|----------------|------------|----------|--------|----------------|
| sub0_ch_mid.in Cascadia Megathrust - whole CSZ Characteristic | Interface | 31.33 | 8.88 | -0.45 | 124.356°W | 44.742°N | 294.07 | 26.99 26.99 |
| | | | | | | | | |
| Geologic Model Small Mag Yaquina | Fault | 2.41 | 6.10 | -0.31 | 124.033°W | 44.632°N | 131.55 | 18.63 18.04 |
| raduna | | 2.72 | 0.10 | 0.51 | 124.033 ** | 44.032 N | 131.33 | 10.0 |
| sub0_ch_bot.in | Interface | 25.22 | 0.07 | 0.60 | 122 724914 | 44.75791 | 64.03 | 17.89 |
| Cascadia Megathrust - whole CSZ Characteristic | | 25.32 | 9.07 | -0.69 | 123.734°W | 44.757°N | 64.83 | 17.89 |
| sub0_ch_top.in | Interface | | | | | | | 8.62 |
| Cascadia Megathrust - whole CSZ Characteristic | | 43.66 | 8.79 | -0.06 | 124.567°W | 44.738°N | 284.12 | 8.62 |
| sub2_ch_mid.in | Interface | | | | | | | 3.04 |
| Cascadia Megathrust - Goldfinger Case C Characteristic | | 31.11 | 8.45 | -0.26 | 124.356°W | 44.742°N | 294.07 | 3.04 |
| Characteristic | | | | | | | | |
| coastalOR_deep.in | Slab | | | | | | | 2.22 |
| sub2_ch_bot.in | Interface | | | | | | | 2.10 |
| Cascadia Megathrust - Goldfinger Case C Characteristic | | 25.17 | 8.71 | -0.54 | 123.734°W | 44.757°N | 64.83 | 2.10 |
| sub1_GRb0_mid.in | Interface | | | | | | | 1.9 |
| Cascadia floater over southern zone - Goldfinger | | 34.67 | 8.43 | -0.16 | 124.356°W | 44.742°N | 294.07 | 1.9 |
| Case B | | | | | | | | |
| sub1_GRb1_mid.in | Interface | | | | | | | 1.6 |
| Cascadia floater over southern zone - Goldfinger Case B | | 35.37 | 8.30 | -0.09 | 124.356°W | 44.742°N | 294.07 | 1.6 |
| | | | | | | | | |
| sub1_ch_mid.in Cascadia Megathrust - Goldfinger Case B | Interface | | | | | | | 1.39 |
| Characteristic | | 31.08 | 8.59 | -0.32 | 124.356°W | 44.742°N | 294.07 | 1.3 |
| sub1_GRb0_bot.in | Interface | | | | | | | 1.3 |
| Cascadia floater over southern zone - Goldfinger | interiace | 29.00 | 8.42 | -0.34 | 123.734°W | 44.757°N | 64.83 | 1.3 |
| Case B | | 25.00 | Ų. II. | | 220.747.11 | | 01.00 | 1.0 |
| sub1_GRb1_bot.in | Interface | | | | | | | 1.1 |
| Cascadia floater over southern zone - Goldfinger | | 29.71 | 8.30 | -0.29 | 123.734°W | 44.757°N | 64.83 | 1.1 |
| Case B | | | | | | | | |

USGS Design Maps Summary Report

User-Specified Input

Report Title J.T. Roth Construction, Inc. - NW Spring St.

Fri May 4, 2018 21:36:12 UTC

Building Code Reference Document ASCE 7-10 Standard

(which utilizes USGS hazard data available in 2008)

Site Coordinates

44.6486°N, 124.0596°W

Site Soil Classification

Site Class D - "Stiff Soil"

Risk Category I/II/III



USGS-Provided Output

$$S_c = 1.739 \, q$$

$$S_{MS} = 1.739 g$$

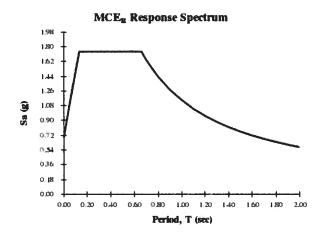
$$S_{DS} = 1.159 g$$

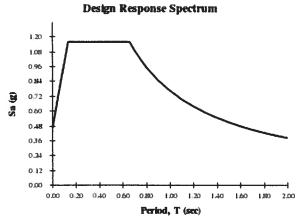
$$S_{*} = 0.765 \, \mathrm{g}$$

$$S_s = 1.739 g$$
 $S_{MS} = 1.739 g$ $S_{DS} = 1.159 g$
 $S_1 = 0.765 g$ $S_{M1} = 1.148 g$ $S_{D1} = 0.765 g$

$$S_{s.} = 0.765$$

For information on how the SS and S1 values above have been calculated from probabilistic (risk-targeted) and deterministic ground motions in the direction of maximum horizontal response, please return to the application and select the "2009 NEHRP" building code reference document.





For PGA_M, T_L , C_{RS} , and C_{R1} values, please view the detailed report.

Although this information is a product of the U.S. Geological Survey, we provide no warranty, expressed or implied, as to the accuracy of the data contained therein. This tool is not a substitute for technical subject-matter knowledge.

JOHN McDONALD ENGINEERING

SOILS - CIVIL - GEOTECHNICAL Ground-Penetrating RADAR 10116 S.E. STANLEY AVENUE PORTLAND, OREGON 97222

(503) 774-0077

July 9, 1989

Tim Roth
J.T. Roth Construction, Inc.
12300 SW 69th Avenue
Tigard, Oregon 97223

GEOTECHNICAL INVESTIGATION OF LOTS 1,2, & 3 OCEANVIEW ESTATES, NEWPORT

Lots 1,2, & 3 of Oceanview Estates are located in the northwest quadrant of the tee intersection of Spring Street and North 15th Avenue in Newport. The lots go from Spring Street down to the ocean. The purpose of the investigation was to decide whether the lots were stable and suitable for residential construction.

State of Oregon DOGAMI Bulletin 81, Environmental Geology of Lincoln County, Oregon, devotes several pages to the landslide problems on Spring Street in Newport. Its general conclusion is that failure occurs at the water-saturated contact of marineterrace deposits and the weathered bedrock unit.

The investigation consisted of boreholes, slope measurements and a traverse of the Jumpoff Joe landslide neighborhood, which is a short distance south of the subject lots. Lot vegetation and groundwater indications were also examined.

Boreholes with continuous sampling were made along an east-west line to allow a profile to be made. Soil samples were given hand classification tests to decide whether they were of silty or clayey nature. Their colors were referred to the standard Munsell soil color plates for clues to the soil moisture regime and to the pattern of soil development.

The lots were heavily vegetated and a path had to be cleared for access. A crude ground surface profile was made by laying a measuring tape on the ground and using an Abney level to find the slopes of various segments along the tape. The borehole locations are shown on the attached cross section sketch.

Borehole #1

- 0 to 1' Black organics
- 1 to 2' Dark yellowish brown medium sand
- 2 to 2.5' Yellowish brown medium sand
- 2.5 to 3' Dark yellowish brown medium sand
- 3 to 4' Brown medium sand, wet
- 4 to 4.8' Wet grayish brown sand, then 2" of dark
- yellowish brown sand, then wet dark gray silt 4.8 to 6' Dry dark gray silt, hard to auger.

Borehole #2 0 to 1' Black organics, wet to 1.5' Dark gray medium sand, wet 1.5 to Dry dark gray silt, hard to auger Borehole #3 0 to 0.5' Duff and organics 1' Dark brown medium sand 1 to 2.5' Dark yellowish brown medium sand 2.5 to 4' Brown medium sand, wet Dark yellowish brown medium sand, then dry dark to 5 1 gray silt, hard to auger.

The sand is clearly a dune sand and the dark gray silt matches the description of the Nye Mudstone geologic unit. After plotting its depth on the cross section a straight line can be drawn to represent the surface of the mudstone. Its measured slope of 13 degrees is close to the slope measurements shown on the DOGAMI Bulletin 81 maps. Projecting this mudstome surface eastward suggests that it would almost intersect the pavement of Spring Street. However, boreholes to prove this were not made, as its possible significance was not recognized during the field work.

The Nye Mudstone is a massive to indistinctly bedded clayey siltstone that is hundreds to thousands of feet thick. It is exposed in the beach cliff below the lot. When dry, the Nye Mudstone that is exposed in a cliff flakes off to form a pile of small chips. In front of the subjects lots, however, there is enough water seepage to keep the material wet, and it stands steeply.

The slope of the sand in the cross section is as steep as 76 percent or 37 degrees, which is much too steep for wind-deposited sand. My conclusion is that this sand is the remnant of a much larger dune that suffered an ancient landslide from a combination of water saturation on top of the sloping mudstone and possibly an earthquake. The word ancient is used because the vegetation of shore pine, Sitka spruce, wax myrtle, salal, and salmonberry has been there a long time. These plants require a relatively long period of soil stability before they can develop. The beach cliff is vegetated all the way down to the beach, which is more than can be said for much of the coastline to the north and south.

To the south of the lots the surface of the Nye Mudstone gets deeper or trends eastward and the Astoria Formation becomes the visible geologic unit. The Jumpoff Joe landslide occurred on top of the Astoria Formation, so the situation is considerably different from what is on the subject lots.

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In my opinion the lots are stable even with the heavy groundwater flow in the near surface sands. The sand thickness in the proposed house area is too thin and too heavily vegetated to be unstable, and the mudstone has to be accepted as stable, as long as its interior is dry and is without saturated cracks.

Any excavation done on the lots is going to encounter heavy groundwater flow that could cause quicksand and serious erosion. Any levelling in the proposed house area is going to cut into the mudstone and this will definitely cut through the full flow of groundwater. Therefore, plans will have to be made to provide groundwater cutoff trenches upslope of excavation zones. At least a portion of the groundwater collected in the trenches, as well as stormwater from the paved and roofed areas, should be planned to be redistributed into the ground on the west side of the house area, where the vegetation is to be left undisturbed. The property to the south has a half culvert that goes down to the beach and it may be possible to make an agreement to cooperatively put peak stormwater flows into this half culvert.

An access driveway down from Spring Street will cut through the sand and probably into the mudstone, so groundwater will be a problem. The excavation through the sand should be made cautiously, and when the sands start becoming wet it will be time to install a groundwater cutoff trench down to and into the mudstone.

A groundwater cutoff trench in sand requires special construction. The trench is started at its downslope end. Only a short section of trench can be opened at a time. Nonwoven filter fabric is draped into the trench in a "U" shape, and the excess length of filter fabric is wadded up and placed alongside the trench for immediate, progressive placement. A flexible, perforated pipe is fed in and physically held down into the bottom of the filter fabric in the trench. Excess pipe is coiled alongside the trench route. Then segments of PVC coated chain link fence are fed down inside the filter fabric to contact the perforated pipe. Sand from the downslope side of the trench is then pushed in to backfill that few feet of trench and to make a sandwich of filter fabric, chain link fencing, and filter fabric.

The idea is that groundwater flow starts eroding soil immediately as the trench is excavated. The sandwich of chain link fencing provide tiny flow paths so water can flow down and get into the perforated pipe. The chain link fencing is much easier and quicker to put in by hand than drain rock is.

The housing units will be founded on the mudstone, and the footing sizes are recommended to be in accordance with the building code. For larger loads or retaining wall design the recommended maximum bearing pressure on the mudstone is 2,000 pounds per square foot, and on the sand is 1,000. Sand slopes

4

that are protected by an upslope groundwater cutoff trench can be left at a one vertical to two horizontal slope. Slopes may be one to one in the mudstone.

Retaining walls that support sand with a level surface may be designed for an equivalent fluid density of 30 pounds per cubic foot. Retaining walls for sand with de-watered steep upslopes should be designed for an equivalent fluid density of 50 pounds per cubic foot.

Very truly yours,



| TAGENCH TO SO WITC | | 76% PROPOSED HOUSE AREA | RUC WAS TREMEN TO CCAM WAS BH WE! TO OCCAM WAS TREMEN TO SAND SAND | | SANDWICH OF SANDWICH OF FUTER FARRICE OVER CHANGEN FENCING FUTER FARRICE OVER CHANGEN FOR COTTAIN FOR CHANGEN FOR THE STATES FUTER FARRICE OVER CHANGEN FOR COTTAIN FOR CHANGEN FOR CHANGEN FOR COTTAIN FOR CHANGEN FOR CHANGEN FOR COTTAIN FOR CHANGE | 5.0 | |
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|--|--|-------------------------|--|--|--|-----|--|



NOV 1 0 1994

J.T. ROTH CONSTRUCTION, INC.

A Report for

J.T. Roth Construction

Site Reconnaissance for a Single Family Residence, Lots 1, 2, & 3, Block 49, Oceanview Addition at the intersection of N.W. 15th Avenue and N.W. Spring Street, Newport, Oregon

Project EAAX-94-0372 Report 09-104-4440 October 31, 1994

BRAUN INTERTEC NORTHWEST



Braun Intertec Northwest 5405 North Lagoon Avenue P.O. Box 17126 Portland, Oregon 97217 503-289-1778 Fax: 289-1918

Engineers and Scientists Serving the Built and Natural Environments

Project EAAX-94-0372 Report 09-104-4440

October 31, 1994

Mr. J.T. Roth, Jr. J.T. Roth Construction 12540 S.W. 68th Parkway #B Tigard, OR 97223

Dear Mr. Roth:

Re: Site Reconnaissance for a Single Family Residence Lots 1, 2 & 3, Block 49, Oceanview Addition at the intersection of N.W. 15th Avenue and N.W. Spring Street, Newport, Oregon

At your request, we have looked at the site proposed for the construction of a single-family dwelling at the referenced location in Newport, Oregon. This is a report of our findings, conclusions and recommendations.

Scope of Services

The writer, a Senior Engineer with our firm, visited the site on October 25, 1994. Visual observations of the slopes, vegetation, surface drainage and exposed soils and rock were made.

Our reconnaissance did not include soil borings or rock coring to explore the soil, rock and groundwater conditions at depth, nor did it consider the effect of a major earthquake. The conclusions and recommendations are based solely on our visual observations of the site, and our familiarity with soils, geology and construction practices in the area. Borings or test pits to better explore the subsurface conditions can be provided at additional cost.

We are also presenting an engineering geology report prepared for us by Mr. J. Douglas Gless, P.G., C.E.G. of H.G. Schlicker and Associates as part of this report.

Site Description

The property is described as Lots 1, 2 & 3 Block 49 of Oceanview Addition to Newport, Oregon. It is located near the intersection of 15th and N.W. Spring Street. The property measures 160 feet along N.W. Spring Street by approximately 112 feet in depth. It occupies a moderately to steeply sloping hillside beyond the depression adjacent to N.W. Spring Street from a level above N.W. Spring Street to the ocean beach approximately 80 to 100 feet below.

The surface of the property is densely covered with native trees, brush and vines. The property immediately to the south (which has the same general topographic configuration and relation to external features) has been developed with two light-weight duplex residential structures constructed on post and block foundations. The structure has been built on the lower terrace. The structure, a single family residence, on the adjacent lot to the north has been constructed on what appears to be spread mat footings on the upper terrace at the level of N.W. Spring Street.

Areal Stability

The most prominent topographic feature in the immediate vicinity of the property is a scarp immediately west of Spring Street which extends nearly from the Jump-Off Joe headland to a point some distance north of the property. The scarp, whose height varies from 10 to perhaps 20 feet, has formed at the top of the property throughout this entire area. Exposures in the scarp consist of pleistocene terrace deposits (weakly cemented beach sands). Below the scarp, the slope extends to the beach where additional exposures of subsurface materials are present. These consist of the Nye Formation of Miocene Age. As indicated by the seacliff on the north side of the jump-Off Joe headland, the regional dip of the Nye Formation is approximately 20 to 25 degrees to the west.

Episodes of large scale movement of this entire mass (from Jump-Off Joe headland to the north of the property) have occurred in 1922 and 1942-43. It may be inferred that much or perhaps all) of the scarp immediately below the level of Spring Street has developed in the two episodes of earth movement. However, it is also quite possible that previous episodes (not recorded) had contributed to a portion of the observable scarp.

Groundwater

Our reconnaissance of the slope in the subject property disclosed seeps along the beach face. A storm sewer and catch basin have been installed along N.W. Spring Street and should intercept most of the surface storm water in this area.

Geology and Geologic Hazards Report

We have had Mr. J. Douglas Gless, P.G. C.E.G. of H.G. Schlicker and Associates prepare a detailed report for this lot. A copy of this report is enclosed for review.

Regional Seismic Hazards

Abundant recently acquired evidence indicated that a series of geologically recent serious earthquakes related to the Cascadia subduction zone have occurred along the coastline of the Pacific Northwest. Evidence suggests as many as thirteen major earthquakes or more have occurred in about the last 7,700 years. These earthquakes were accompanied by widespread subsidence of a few inches to a few feet. Massive waves (tsunamis, also incorrectly termed "tidal waves") appear to have been associated with many of these earthquakes. In addition, settlement and liquefaction of some earth materials is believed to have been commonly associated with these seismic events. The earthquakes were also believed to have triggered numerous landslides. These earthquakes are believed to have an average recurrence interval of about 300 to 600 years.

Risks associated with these major earthquakes should be considered in light of the low probability of one occurring in any given year and the high consequences resulting from such an occurrence. Scientists are just beginning to gain a knowledge of these events and more useful information should be forthcoming.

The location of the site, being adjacent to the beach, could be affected by a tsunami. However, although the ancient landslide presently is considered stable, earthquake induced areas could become involved in landslides.

The site does not appear to be at any greater risk to seismic activity than other coastal property. It is assumed that the Oregon Coast will be subjected to additional major seismic activity in the future. Seismologists have not been able to predict seismic activity in magnitude or frequency at this time.

Proposed Construction

We understand the proposed construction will consist of a single-family dwelling with a garage constructed near the level of the street.

Conclusions and Recommendations

The site may be developed for residential purposes provided the following recommendations and precautions are incorporated into the construction.

The most recent documented episode of movement occurred 50 years ago. We understand that no appreciable movement has occurred since that time.

Large scale earth movement is believed to have occurred along the bedding plains of the Nye Formation, presumably as the result of hydrostatic pressures from upland surface water, possibly aided and abetted by undercutting of the toe of the seacliff by wave erosion. We must point out that in spite of the 50 year history of stability, all of the mechanisms whereby previous landslide activity has occurred remain potentially effective to this date.

Development of the property along the lines which have been proposed could be undertaken without adverse effect to the stability of the slope. In fact, careful development of the property could enhance stability (albeit very slightly). The probable removal of the upper ridge to bring the site to the grade of N.W. Spring Street will unload the site and improve its stability. On the other hand, should a period of extremely heavy precipitation and simultaneous wave attack occur, it is entirely possible that earth movement would be resumed, and that any improvements which would have been placed on the property would be affected. So far as we can tell from what has happened thus far, disturbance would be in the form of translation, i.e. lateral and vertical movement, but not rotation, of grade-supported features, through a distance of perhaps several feet in a single episode.

While well-constructed buildings might readily survive such a movement, the weaker brittle surface-supported features (e.g., flexible pavement, lightly reinforced or unreinforced concrete walls, or extremely long flexible frame structures) would show signs of disruption or distress. In particular, underground utility connections to the area east of the moving mass (e.g., water lines) would probably be ruptured and could aggravate the stability problem before being brought under control.

Certain precautions and reservations must be taken. Principal among these are (1) the realization that the property is part of a very large area which is beyond your control and which may shift during future winter rain and sea storms; (2) incorporation into the project of provision for releveling of structures in the event of such an occurrence; (3) incorporation into the project of the means to prevent damage to buried utilities, particularly water services.

Structures on the property must be designed to accommodate the effects of future movement of the landmass. We point out that a structure founded on the upper bench at the level of Spring Street would probably remain intact while an adjoining structure, founded immediately below on the slope would move with the lower mass.

Inasmuch as the known slide history of the site suggests comparatively infrequent episodes of movement, it may be preferable to simply replace or repair appurtenances affected by an episode of movement (e.g., stairways, walls, driveways, etc.). A certain amount of differential settlement of the buildings would undoubtedly accompany a given movement episode. Differential settlement can be accommodated for by (1) supporting the building on a limited number of very stiff elements (e.g., glu-lam beams or reinforced concrete grade beams) to allow releveling at the conclusions of the movement episode or by (2) supporting the building on easily accessible support points, as in the two structures immediately south of the subject property. We recommend against the construction of a long flexible frame structure extending from the top of the slope any distance down the slope on the grounds that the architectural damage in a movement episode might be very costly.

In our opinion, one of the most important steps taken in regard to the development of this property has been the placement of a storm sewer system along Spring Street to divert upland surface water, to provide surface drainage of the area. In the event of re-occurring earth movement, the possibility of installing horizontal drains or other means of piezometric control of subsurface water should be investigated. Moreover, we believe that undermining of the toe of the seacliff by wave action could be controlled at not unreasonable expense by appropriate efforts. We again point out that the subject property is a small part of a very large affected area and the owner alone is powerless to do anything to stabilize it without the complete cooperation and assistance of neighbors and the City of Newport.

The structures may be supported on native soils or engineered clean granular fill, crushed rock or lean concrete spread footings. Spread footings may be designed for maximum contact pressures of 2,000 psf, with a minimum footing width of 16 inches. The footings should be at least 12 inches below the exterior finished grade to provide frost protection.

An alternate foundation system would use driven H-pile driven to practical refusal in the underlying rock. Steel "H" piling would be the most adaptable form for this project; these would function as end bearing elements in the dense rock. They could be loaded to stress levels of 10,000 psf if securely driven into this unit throughout the site.

Lateral earth pressures on walls which are not restrained at the top, such as retaining walls, etc., may be calculated on the basis of an equivalent fluid pressure of 35 pounds per cubic foot (pcf) for level backfill and 60 pcf for steeply sloping backfill. Walls that are restrained from yielding at the top may be calculated on the basis of an equivalent fluid pressure of 55 pcf for level backfill and 90 pcf for steeply sloping backfill. Lateral loads may be resisted by passive pressures acting against footings and by frictional resistance between foundation elements and

supporting soils. An equivalent fluid density of 300 pounds per cubic foot (pcf) and a friction factor of 0.3 may be used for design for foundations bearing on and resisted by native soils. The recommended equivalent fluid density includes a factor of safety of 1.5 which is appropriate due to the amount of movement required to develop full passive resistance.

All backfill for retaining walls, foundation walls, etc., should be select granular material (sand and/or sandy gravel). We anticipate that on site material will be suitable for this purpose and that it will not be necessary to import material to the project for structure backfill.

Temporary earth slopes may be cut near-vertical to a height of 4 feet, above which flatter slopes will be required. We estimate that slopes of 1 horizontal to 1 vertical may be used for slope heights up to ten feet. Above 10 feet, slopes of 1.5 horizontal to 1 vertical should be used for temporary excavations in which no bracing is applied. Permanent earth slopes should be dressed to 2 horizontal to 1 vertical or flatter.

An adequate subsurface drain system should be installed behind subsurface walls such as retaining walls, foundation walls, etc. All structures having a crawl space should be provided with a low point crawl space drain. Surface run-off drains and the subsurface drains should be carried to approved discharge areas.

Foundation Preparation

Inasmuch as the soil units which will provide support for the main structure are extremely sensitive to disturbance in the presence of excess moisture, care should be taken to protect prepared bearing surfaces until footing concrete can be placed. Precautions to achieve this end would consist of (1) covering of prepared bearing surfaces with impervious membranes or granular blanket (4-inch maximum thickness) or (2) cessation of work during rainy weather.

All roof, yard, and other upland surface water must be directed to storm sewers or other approved discharge points. Under no circumstances should storm water be led into foundation drains.

Footing subgrades should be observed by a representative of the geotechnical engineer to see if the subgrade soils and footing elevations are similar to those anticipated based on our reconnaissance of the site. These observations should be conducted prior to placing forms or concrete for footings.

General

Services performed by the geotechnical engineer for this project have been conducted with that level of care and skill ordinarily exercised by members of the profession currently practicing in this area under similar budget and time restraints. No warranty, expressed or implied, is made.

We will be available for further consultation and observations during the remaining design and construction phases of this project.

Sincerely,

Charles R. Lane, P.E. Senior Engineer

Charle A. Jan

crl:pas

Attachment: Geologic Hazards Report, H.G. Schlicker & Associates, Inc.



Photograph

#1

Project: Subject: EAAX-94-0372 - Lots 1, 2, & 3 Oceanview Addition - Newport, OR

View of the subject property from beach looking east



Photograph

#2

Project:

EAAX-94-0372 - Lots 1, 2, & 3 Oceanview Addition - Newport, OR

Subject: Close up of rock formation near the beach



Photograph

#3

Project: Subject: EAAX-94-0372 - Lots 1, 2, & 3 Oceanview Addition - Newport, OR

view of subject property from N.W. Spring Street



Photograph

#4

Project: Subject: EAAX-94-0372 - Lots 1, 2, & 3 Oceanview Addition - Newport, OR

View of residence on the northside of property

GEOLOGIC HAZARDS REPORT LOTS 1, 2 AND 3, BLOCK 49 NORTHWEST SPRING STREET AND 15TH NEWPORT, OREGON

> For Mr. Charles Lane Braun Intertec P.O. Box 17126 Portland, Oregon 97217

> > 15



Project #941174

November 4, 1994

To:

Mr. Charles Lane, P.E.

Braun Intertec P.O. Box 17126

Portland, Oregon 97217

Subject:

Geologic Hazards Report

LotS 1, 2 and 3, Block 49 N.W. Spring Street and 15th

Newport, Oregon

Dear Mr. Lane

The accompanying report presents the results of our engineering geologic investigation of the above referenced site for the purpose of providing a geologic hazards report to conform with City of Newport Ordinance Section 2-4-7.

After you have reviewed our report, we would be pleased to discuss the report and to answer any questions you might have.

This opportunity to be of service is sincerely appreciated. If we can be of any further assistance regarding this or future projects, please contact us.

Respectfully submitted,

H.G. SCHLICKER AND ASSOCIATES, INC.

J. Douglas Gless, P.G., C.E.G.

Vice President/Principal Engineering Geologist

JDG:twb

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Project #941174

November 4, 1994

To:

Mr. Charles Lane, P.E.

Braun Intertec P.O. Box 17126

Portland, Oregon 97217

Subject:

Geologic Hazards Report

Lots 1, 2 and 3, Block 49 N.W. Spring Street and 15th

Newport, Oregon

Dear Mr. Lane

1.0 Introduction

At your request, we visited the above referenced site (Figures 1 and 2) on November 3, 1994 to perform an engineering geologic reconnaissance. The purpose of our study was to provide you with a geologic hazards report of the site to conform with City of Newport Ordinance Section 2-4-7, Geologic Hazard Areas. It is our understanding that you intend to develop the site with a one or two story, wood-framed residence.

The scope of our work included the site visit, development of geologic cross-sections using pace and hand transit methods, a limited review of geologic maps and literature pertinent to the site, interpretation of aerial photographs, and preparation of this report.

2.0 General Information

The site consists of three oceanfront lots located north of N.W. 15th Street and immediately west of Spring Street, in Newport, Oregon. The general topography of the area is an elevated, gently undulating marine terrace, approximately 80 to 100 feet above mean sea level (MSL) and bounded to the west by the Pacific Ocean (Figure 1). The site lies on the irregular ocean bluff at an elevation of approximately 80 feet MSL on the east side, adjacent to Spring Street. The center of the site slopes steeply to an intermediate terrace at an elevation of approximately 50 feet MSL. The ocean bluff lies on the west side of the intermediate terrace and on the west edge of the site. This steep slope and intermediate terrace near the center of the site are part of a landslide, and the upper block at the elevation of Spring Street is part a back-rotated landslide block (Figure 3). This landslide block is approximately 40 to 50 feet wide on the north end of the site and pinches out to the south.

Project #941174

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The geology of the general area was mapped by Schlicker and others (1973) as being composed of a westerly-dipping sequence of sedimentary rocks which include the Yaquina, Nye and Astoria Formations. A relatively flat-lying sequence of marine terrace deposits overlies the sedimentary rocks in a narrow band along the Pacific Ocean. The nearest mapped faults in the area are at Yaquina Head to the north and in Yaquina Bay south of the site. The geology of the site is described in Section 3.0.

Drainage in the area is primarily by seepage into the permeable marine terrace materials but streams do form farther inland and cut down through terrace materials in some places. Water features at the site are described in Section 3.4.

Within the subject area, exposures of marine terrace deposits and underlying materials commonly crop out along the bluff. Road cuts and excavations in the area provide additional, but limited, shallow exposures of the terrace deposits.

No subsurface information was available or utilized for this study except our interpretation of outcrops and geologic mapping done by others as noted.

The vegetation at the site consists of pine, blackberry and deciduous trees adjacent to Spring Street. Very dense salal, waxmyrtle and other shrubs grow on the intermediate terrace up to the top of the ocean bluff, and the westernmost portion of the bluff is densely vegetated with small shrubs and beach grass. Hydrophytic vegetation such as ginger, sedges and rush grow in wet areas and adjacent to springs on the site, with the largest marshy area occurring on the intermediate terrace at the south end of the site. Very dense vegetation prohibited our inspection of much of the site, particularly on the south half of the steep slope and much of the bluff and intermediate terrace.

3.0 Geology

Our interpretation of the geology of the site based on outcrops and existing geologic mapping is presented below.

3.1 Rock Types

The site is mapped as being underlain by sedimentary rocks of the early Miocene Nye Formation (Schlicker and others, 1973). The Nye Formation consists of very fine-grained sandstone and clayey siltstone. It commonly contains calcareous concretions. Outcrops adjacent to and at the site expose materials consistent with this mapping, and the Nye Formation is expected to underlie the site.

Typically overlying the Nye Formation are Quaternary age Marine Terrace Deposits as described in section 3.3. These deposits are exposed at and adjacent to the site.



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3.2 Structural Features

The Nye Formation is mapped with a westerly dip of 15 to 23 degrees in the area. The contact of the Nye and Astoria Formations outcrops at the Jump-off Joe slide south of the site. This contact is thought to be the cause of the well-known Jump-off Joe landslide approximately 1/4 mile south of the site and the Spring Street slide adjacent south of the site. The location of this contact at the site is not known. No faults or other structural features are known to occur at the site. Faults mapped north and south of the site are not known to be active in historic time, and we do not know the geologic age of their last movement.

3.3 Surficial Features

Because of the dense vegetation, the dominant surficial materials on most of the site are not known. Outcrops near the site indicate that surficial deposits at upper elevations in the area are dominated by marine terrace deposits. These deposits are commonly composed of iron-cemented sands, semi-consolidated sands, tuffaceous silts and gravels. South of the site marine terrace sands are exposed in the slope adjacent to Spring Street down to at least 10 to 15 feet below Spring Street. Marine terrace sands are also exposed extensively along the bluff south of the site at upper elevations in the scarp of the Spring Street landslide and at lower elevations in the displaced body and toe of the landslide. In an unnamed landslide at the north end of Spring Street, marine terrace sands are exposed in a similar pattern. These outcrops suggest that marine terrace sands occur in the area from the elevation of Spring Street down to at least 10 to 15 feet below Spring Street in undisturbed areas and occur at lower elevations where landsliding has displaced blocks to lower elevations.

Where exposed, highly fractured silty claystone underlies the terrace deposits in the area. This claystone is exposed at the toe of the ocean bluff at the site and to the north and south of the site. Where recent landsliding has occurred north and south of the site, the claystones are 10 to 20 feet high above beach level with terrace sands overlying them and are higher where landsliding is not apparent.

At the site, exposures of marine terrace sands occur in scarps and fractures near the top of the steep eastern slope (headscarp). A shallow, hand-augered boring we completed just above the intermediate terrace (Figure 3) found 1 foot of sandy organics and organic litter overlying 2 feet of loose, saturated sand. Silty claystone is exposed at the toe of the site with no obvious, overlying terrace sands. The bluff exposure is approximately 30 feet high above beach level. A second boring we completed on the intermediate terrace and below the first boring (Figure 3), found 1 foot of organic materials overlying hard, saturated claystone.

Based on these outcrops and borings, marine terrace sands are expected to occur on the east slope at the site down to an elevation of approximately 20 feet below Spring Street, approximately to the bottom of the headscarp. The intermediate terrace and the area west Project #941174

Page 4

of it appears to have claystone with some overlying soil development. Terrace sands appear to have been stripped off of the underlying claystone west of the headscarp. Springs and marshy areas on the site probably are perched on this impermeable material and further support this distribution of materials.

3.4 Site Drainage

Surface water from the upper, eastern part of the site is expected to seep into the permeable materials there, while the geologic materials on the lower, western part of the site are less permeable and tend to perch water. Rainfall and water which flows or seeps onto the lower part of the site is expected to flow across these impermeable materials.

In addition to the marshy areas noted above, two springs were noted on the site. The springs seeped from the toe of the scarp and flowed across the intermediate terrace. The marshy areas also occurred on this terrace. The source of this water is probably rainfall and groundwater which flows through the permeable materials east of the site and along the top of the Nye Formation. The Nye/Marine Terrace contact probably occurs at the base of the scarp and causes the occurrence of the springs. The claystones of the Nye formation also create the impermeable conditions which support the marshy areas as well.

The effects of water and the ocean on the site are addressed in Section 4.0.

4.0 Slope Stability and Bluff Erosion

The site lies in an area mapped as undergoing critical erosion of marine terraces and sediments (Schlicker, et. al, 1973). The site is about 1/4 mile north of the Jump-off Joe landslide which experienced several episodes of movement, the most recent large movement being in 1942 and 1943. Additionally the site lies north of the more recent and large Spring Street landslide. Significant movement of this slide occurred in the 1960's and unstable conditions continued at least into the 1970's (Schlicker and others, 1973). Presently, this slide is characterized by unweathered intermediate scarps and irregular topography. The subject site appears to be off of the northeast edge of the most recent movement of the Spring Street landslide.

Stereo aerial photographs show that the site also lies at the north edge of an ancient and very large landslide. The headscarp of this large, ancient feature begins near the site, trends southeast behind the Spring Street landslide and then southwest to Jump-off Joe. The features of the ancient slide are extremely weathered and subtle.

Approximately 150 feet north of the site a large unnamed landslide has occurred in similar materials to those at the site. This slide happened sometime before 1967. Presently, tilted trees, open fractures and intermediate scarps are common within the slide mass. Spring Street ends at this slide, and the site appears to be separate from this slide.

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At the site, we found evidence of substantial, relatively recent movement at the site, which appears to be of similar age to that of the landslides north and south of the site, based on weathering of morphologic features. A ditch (ground fracture) adjacent to Spring Street can be traced trending northwest from the south edge of the site to the landslide at the end of Spring Street. The eastern-sloping upper surface west of this ground fracture and the steep western slope on the west side of the high point, define a rotated landslide block approximately 250 feet long (Figure 3). Intermediate scarps and open fractures occur on the west slope of this block. This slope forms the headscarp of a previous landslide which failed in the past and was removed by erosion or sliding from above the present intermediate terrace. Springs, such as those at the site, are also commonly associated with slope moments. The presence of tilted trees on the eastern part of the site indicates movement during the time span of the trees.

There are also signs of related movement near the site in addition to movement of the known landslides. There are small pavement cracks in Spring Street and the driveway leading to some duplexes adjacent south of the site which roughly line up in an east/west direction and coincide with ground cracks in the eastern slope at that site. At the lot adjacent to the north of the site, there has been recent modification to the foundation which straddles the ditch (ground crack) noted earlier that also passes through most of the site. Some small cracks occur in the pavement adjacent to the site and also at the end of Spring Street which indicate that some movement is ongoing. These features indicate ongoing movement adjacent to the site.

We also reviewed mono and stereo aerial photographs of the site from 1967, 1973, 1978, and 1984 (Figures 4 and 5) to determine an erosion rate at the site. Our review yielded no measurable erosion from 1967 to 1984.

In previous reports we have written for nearby sites, we have estimated erosion to occur at variable rates of from approximately 1.5 feet per year to only negligible amounts since 1967. Reports written by others found erosion of the bluff at 15th and Spring Street to have removed 50 feet since 1868, or about 6" per year (Stembridge, 1973). South of the site, at Jump-off Joe, erosion has been reported to be much greater.

It is not always possible to determine erosion rates accurately from aerial photographs, and the measurements at this site were difficult due to shadows in the aerial photographs, the dense vegetation and the lack of structures on the site to measure from, however, based on nearby rates determined by ourselves and others, we would consider 6 inches per year to be a reasonable average rate of erosion at the site.

5.0 Seismic Hazards

Abundant recently acquired evidence indicates that a series of geologically recent, serious earthquakes related to the Cascadia Subduction Zone have occurred along the coastline of the Pacific Northwest. Evidence suggests as many as thirteen major earthquakes or more have occurred in about the last 7700 years.



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These earthquakes were accompanied by widespread subsidence of a few inches to a few feet. Massive waves (tsunamis, also incorrectly termed "tidal waves") appear to have been associated with many of these earthquakes. In addition, settlement, liquefaction and landsliding of some earth materials is believed to have been commonly associated with these seismic events.

These earthquakes would likely have a magnitude 8.0 to 9.0 and are believed to have an average recurrence interval of about 500 to 600 years. Evidence suggests the last major earthquake probably occurred as recently as 300 to 400 years ago.

Risks associated with these major earthquakes should be considered in light of the low probability of one occurring in any given year and the high consequences resulting from such an occurrence. Scientists are just beginning to gain a knowledge of these events and more useful information should be forthcoming.

Other earthquakes related to shallow crustal movements or earthquakes related to the Juan de Fuca plate have the potential to generate magnitude 6.0 to 7.5 earthquakes. The recurrence interval for these types of earthquakes is difficult to determine from present data, but, estimates of 150 years have been given in the literature.

6.0 Bearing of Geologic Factors on Use

31. >

Our expectation of the bearing of the geologic factors present at the site on its proposed use are presented below.

6.1 Compatibility

The subject site lies within a landslide with substantial signs of recent movement. A ground crack which passes through the site also passes beneath the foundation of an existing structure to the north. This structure has had modification to the foundation performed within the past few years, possibly from stress associated with displacement along this crack. Additionally, the site is located near large coastal landslides which have been active in historic times. We therefore conclude that movement is likely to occur within the lifespan of a residential structure (30 to 50 years) at the subject site. This site has a very high risk for development compared to most oceanfront lots. The current indications of movement, as described previously, suggest the existing earth materials are very near a limit state of equilibrium and a "factor of safety" of near 1.0 exists at the site under natural conditions. Even small changes to the existing sight conditions may impact the slope stability. Continued erosion at the site could induce future slope movement and impact any structure placed there.

The FEMA map shows flood elevations at 34 feet MSL and zone V-11 wave velocity. Our reconnaissance and topography from the 1967 aerial photograph indicate the site to be above this elevation.



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Project #941174

Adjacent properties do not appear to be causing negative impacts to the subject property at this time. Development at the duplexes to the south has included a steep cut for a driveway near the north edge of the subject site. Rock has been recently placed at the base of this cut and the cut appears to be oversteepened. If this cut was not properly designed, it could eventually become unstable and potentially affect the site in the future, but only if it initiates larger movements in the area. Development of the lot adjacent to the north also could impact the site, particularly if any cuts are made or drainage is changed. Presently, it does not appear that adjacent sites are impacting the subject site.

6.2 Proposed Cuts and Fills

We are not aware of cuts or fills proposed for the site. Any cuts or fills could be critical to the performance of this site and could affect nearby sites.

6.3 Further Testing and Exploration

Because of the marginal stability of this site and indications of recent movement, we do not recommend that the site be developed without additional exploration which should include subsurface information from direct methods such as borings.

6.4 Additional Recommendations

Based on the evidence at the site and the history of other landslides in the area, we conclude that the site has experienced recent movement and lies within an area that is part of an old slide. The site probably still experiences movement over a period of years to decades. It is difficult to predict future rates of movement, but increased movement could be initiated by improper development of this lot, of adjacent lots, or by a large earthquake as mentioned in Section 5.0. Also, normal erosion of the bluff will eventually initiate slope movements.

The site appears to present a very high risk for oceanfront development, although the south end of the site appears to have the fewest indications of recent movement. If the site is developed the following recommendations should be adhered to to minimize the impacts from natural hazards at the site to structures placed there:

- 1. We recommend that drilling be done at the site to better determine subsurface conditions and the geometry of the existing recent landslide.
- 2. A foundation system should be designed and utilized which can accommodate differential movements and small settlements and allow for releveling.
- 3. We should review design plans for the purpose of making additional



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recommendations for foundation design, placement, and construction.

- 4. We strongly recommend placement of rip rap at the toe of the bluff to mitigate erosion which could initiate slope movements.
- 5. The site should be monitored and we should be contacted if erosion of the bluff increases, or new features, such as additional fractures in the ground, foundation cracks, new springs, etc, appear.
- 6. The owner should anticipate occasional maintenance costs for movement-related problems such as releveling of the house, pavement cracks, etc. Additionally, accelerated erosion and/or movement may cause damage to structures which would not be economically feasible to repair.
- 7. All water from gutters or impermeable surfaces should be collected and tight-lined to an approved disposal point and not be allowed to run into or on the slope or terrace.
- 8. Existing vegetation should not be removed on slopes except as necessary for development and should be replanted as soon as possible.

7.0 Limitations

The Oregon Coast is a dynamic environment with inherent, unavoidable risks to development. Landsliding, erosion, tsunamis, storms, earthquakes and other natural events can cause severe impacts to structures built within this environment and can lead to economic losses and potential threats to the safety of those who choose to place themselves within this environment.

The client is warned that, although this report is intended to minimize these risks, human understanding of these processes is not complete, and the processes are often impossible to predict with methods and knowledge available at this time. We can interpret conditions and potential processes and make recommendations to minimize their effects, but we cannot control those processes or economically design for the most severe event possible. The client acknowledges the risks of development and/or residence at the Oregon Coast and accepts final responsibility for all financial and safety risks associated with that decision.

Our investigation was based on engineering geological reconnaissance and available published information. The data presented in this report are believed to be representative of the site. The conclusions herein are professional opinions derived in accordance with current standards of professional practice and no warranty is expressed or implied. The performance of this site during a seismic event has not been evaluated. If you would like us to do so, please contact us.



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This report is for the sole and exclusive use of the client. Any reuse or third party use of this information requires the written authorization of H.G. Schlicker and Associates, Inc.

8.0 References

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W.

Project #941174

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It has been our pleasure to serve you. If you have any questions concerning this report, or the site, please contact us.

Respectfully submitted,

H.G. SCHLICKER AND ASSOCIATES, INC.

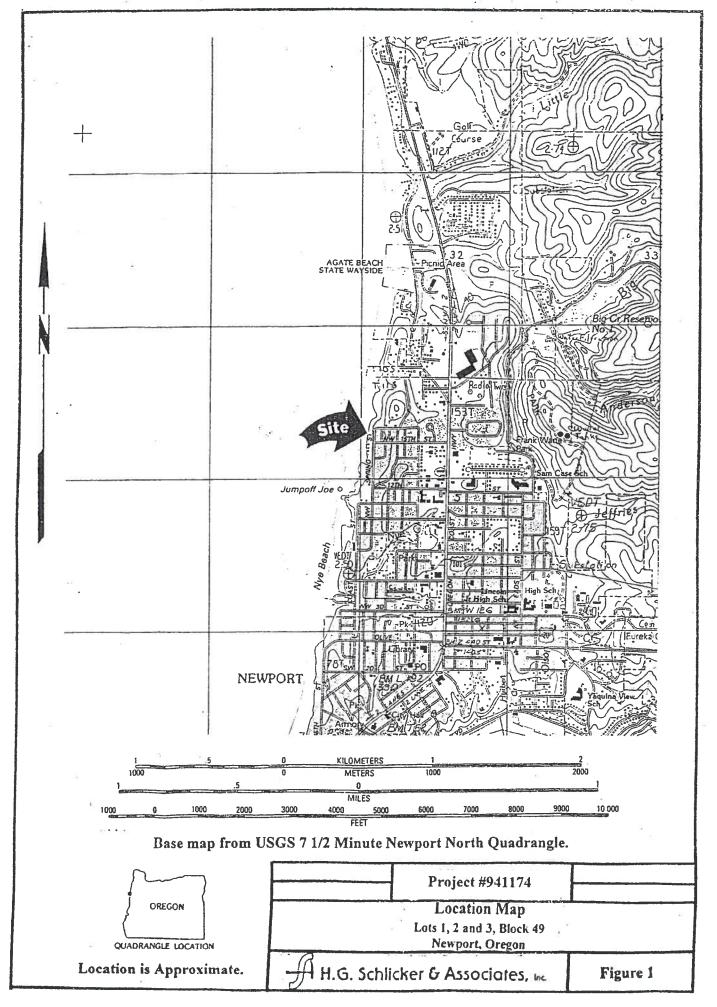


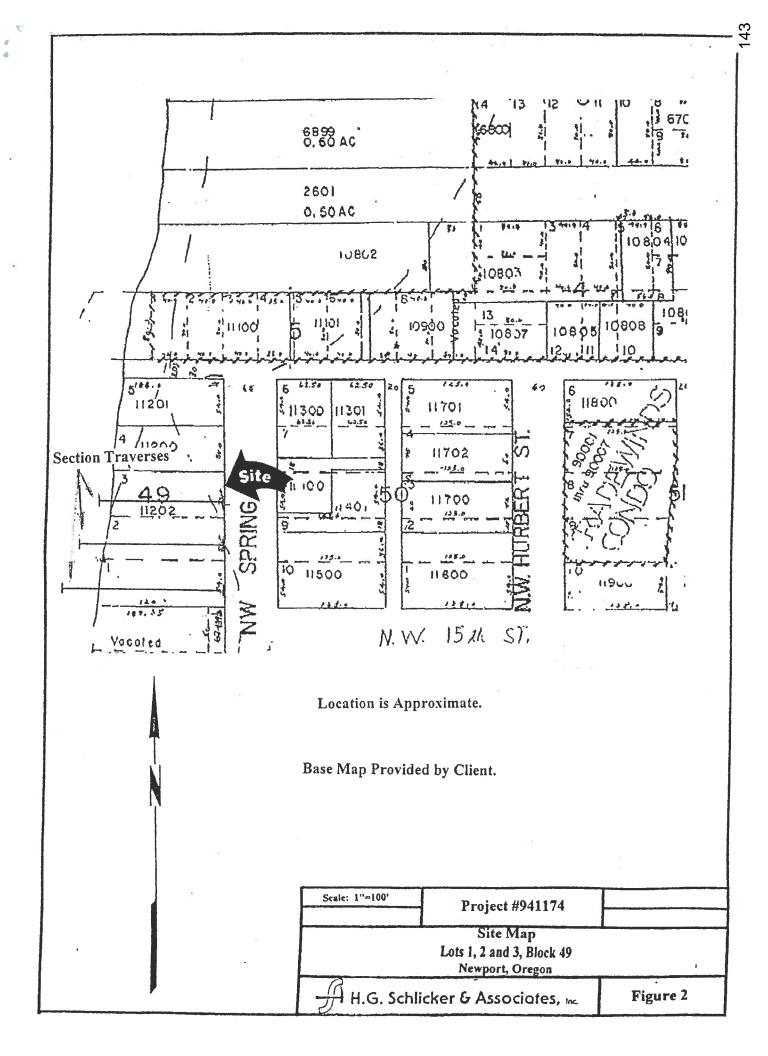
J. Douglas Gless, P.G., C.E.G. Vice President/Principal Engineering Geologist

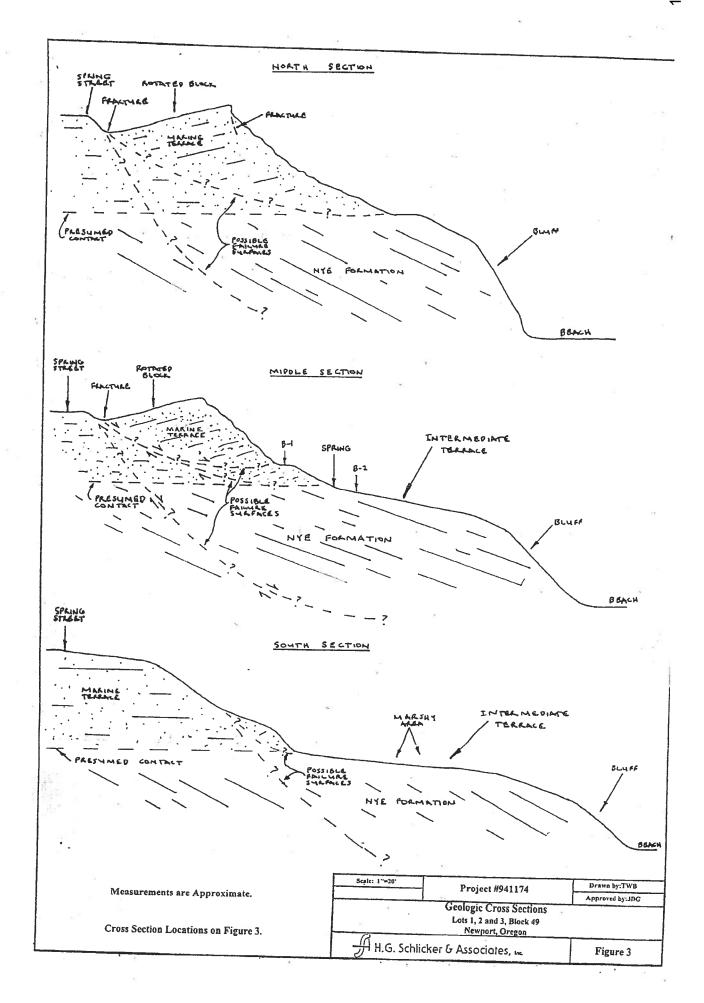
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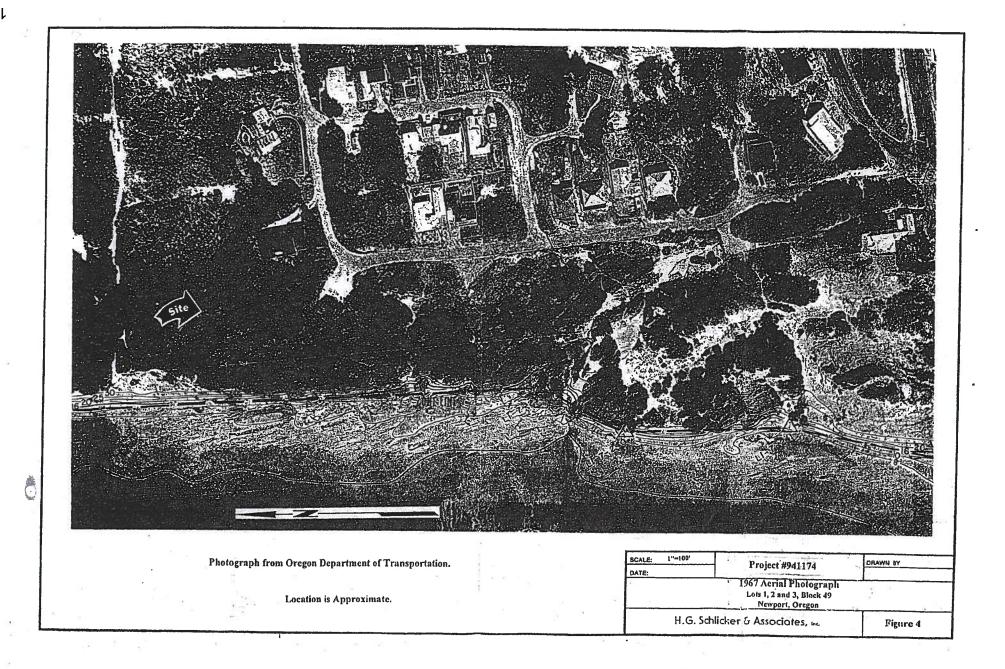
Tim Blackwood, G.I.T. Staff Geologist

JDG:twb

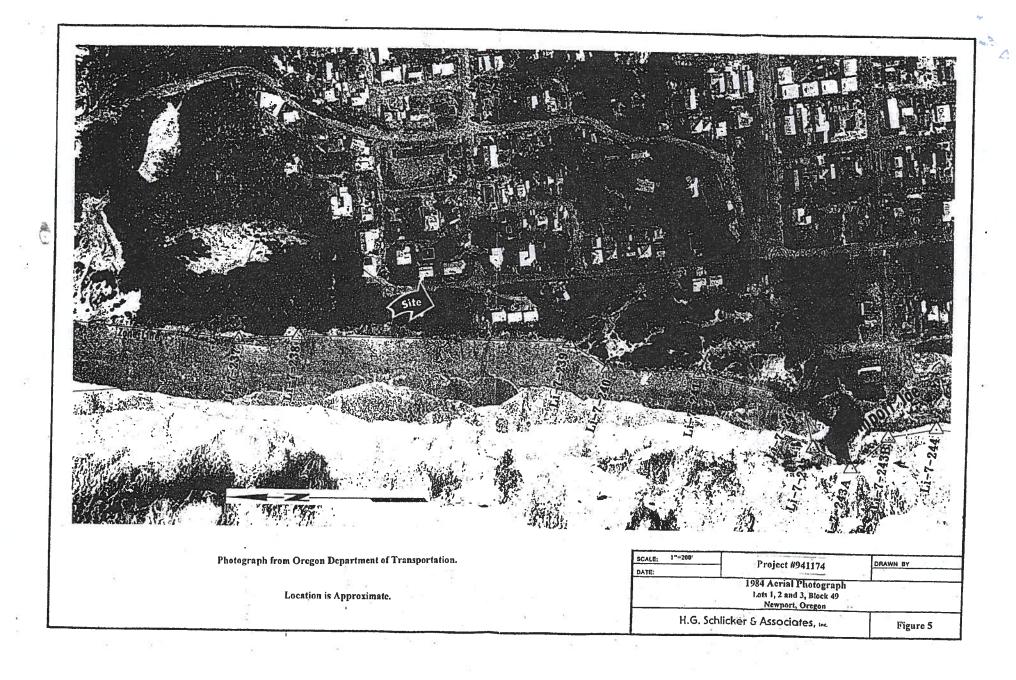








D.



Attachment "A-11" 2-MISC-20

91051 S. WILLAMETTE STREET

P. O. Box 8486, COBURG, OR 97408

(541) 684-9399 · KAENGINEERS.COM



Project: 18011

May 8, 2019

Tim Roth J.T. Roth Construction, Inc. 12600 SW 72nd Ave., Suite 200 Portland, OR 97223

K & A ENGINEERING, INC.

Subject: Erosion Control Measures Review and Recommendations

Site Development

Tax Lot 2300, Tax Map 11-11-05-BB **NW Spring Street, Newport, Oregon**

Dear Tim,

As requested, we have reviewed the Mass Grading and Erosion Control Plan (the Plan) submitted by the project Civil Engineer, Erick Daniel Evans, P.E. of Emerio Design. Our understanding is that this erosion control plan will be implemented at the onsite of site grading of the subject site in preparation for the construction of residential structures. A copy of the Plan is attached to this letter.

The purpose of our review is to:

- Determine if the erosion control plan is in compliance with the requirements of the Newport Municipal Code (NMC) section 14.21.090. and
- Made additional recommendations for compliance, if necessary.

PROJECT SUMMARY

The site includes three (3) buildable lots, all of which are located on a west-facing slope that descends from NW Spring Street. Prior to actual building construction, site work is required to provide construction access and to construct grading features on the west side of the project site which will be inaccessible once the buildings are in place. This site work includes:

- Removing trees in the proposed building area,
- Construction of a temporary access road,
- Installation of a storm water collection system, and
- Construction of low, gravity retaining walls to terrace the area between the new structures and the bedrock exposure at the west margin of the site.

EROSION CONTROL REVIEW

The City of Newport is requiring a "point-by-point response" explaining how the erosion control requirements in the code will be addressed. Our review is structured to address the code requirements.

Erosion Control Plan Review Tax Lot 2300, Tax Map 11-11-05-BB; NW Spring St., Newport, Oregon May 8, 2019 · K & A Engineering, Inc. · Project No.: 18011



Vegetation Stripping

The erosion control plan is comprehensive across the entire site and will minimize erosion. However, the plans reviewed do not specify timing. We recommend that placement of erosion control measures occur as follows:

- Wet Weather: During periods of prolonged rainfall and during the typical west season from October 1 to April 30, erosion control measures shall be placed immediately after stripping or ground disturbance.
- Dry Weather: During dry weather between May 1 and September 30, erosion control measures shall be placed no later than 1-week after stripping or ground disturbance.
- Construction Access Road and Landscape Retaining Walls: Aggregate surfacing should be
 placed immediately after stripping and earthwork is completed on the temporary access road.
 Seeding, jute mats, and other erosion control features shall be applied immediately after the
 retaining walls are completed.

Minimizing Cuts and Fills

Aside from earthwork required for foundation construction, earthwork for this project consists of:

- West Landscape Retaining Walls and Terrace: The submitted plan includes grading to create
 two terraces at the toe of the existing sandy slope (located just above the exposed mudstone
 that descends to the beach). This grading will:
 - Reduce slopes in this area,
 - Slow surface runoff, and
 - Provide storage for any sediment transported from the steeper slope to the east.
- Fill at South Side of NW Spring Street: The submitted plan shows filling of the existing swale that now exists along the south edge of the street pavement. This is not an existing drainage feature, and in fact, is a hazard due to the fact than any water that collects in this basin drains into the ground, potentially raising groundwater in the west-facing slope of the project site. The fill in this area should consist of compacted, clean (i.e. free of organics), granular material.

We believe the grading specified meets the intent to the code for minimizing off-site impacts.

Temporary Erosion Control

The plan calls for jute mats and straw to cover:

- The tree removal area where the buildings will be constructed,
- Slopes on the sides of the temporary access road, and
- The fill slope on the south edge of the terraced area.

The specifications for these erosion control devices meet the requirements for temporary erosion control. These areas will likely be re-shaped or permanently vegetated when the project is completed.

Erosion Control Plan Review
Tax Lot 2300, Tax Map 11-11-05-BB; NW Spring St., Newport, Oregon
May 8, 2019 · K & A Engineering, Inc. · Project No.: 18011



Permanent Erosion Control

The plan calls for jute matting, straw, and seeding in the intermediate terrace between the west landscaping retaining walls. We recommend permanent vegetation in the form of native salal or other root-dense species on the fill slope located at the south end of the terraced area as soon as practical.

The plan also calls for permanent seeding of fill placed in the existing swale located along the south edge of NW Spring Street. Some of this planting will be replaced with either gravel or pavement for driveway access in the future.

The plan meets the intent of the code.

Runoff

As we see it, the Plan addresses increased runoff - caused mostly by replacement of natural vegetated areas with roofs - with:

- A robust storm drain system, and
- Gently sloped terraced area at the lower margin of the developed area.

No net increase in surface runoff will occur if the Plan is implemented which includes connecting roof drains and foundation drains to the storm interceptor system.

Excavation Areas

The Plan adequately addresses temporary erosion control for the area involved with earthwork in the site development phase of the project, including seeding, mulching, straw, jute mats, erosion control fencing, and wattles. We recommend that the civil engineer make field inspections during excavation and specify the specific measures to be applied depending on the excavation height, slope, and exposure.

Storm Drains

We recommend that a qualified professional civil engineer coordinate with the City of Newport to develop a storm stain plan that meets the requirements of the City of Newport.

From a geotechnical perspective we believe that the Plan, if implemented, will minimize hazards associated with erosion or slope movement due to surface runoff.

Surface Runoff Diversion

No diversion structures are proposed for this project.

Erosion and Sediment Control Devices

The specified materials and construction methods in the Plan meet the requirements of this section of the Code.

Erosion Control Plan Review Tax Lot 2300, Tax Map 11-11-05-BB; NW Spring St., Newport, Oregon May 8, 2019 · K & A Engineering, Inc. · Project No.: 18011



Stockpiles

The specified stockpile area shown on the Plan is located in an area with minimal slope and is buffered with permanent (new) vegetated slopes and retaining walls. Any erosion from the stockpile is very unlikely to be transported any significant distance and is very unlikely to leave the project site.

Non-erosion Pollution

The initial phase of earthwork including the access road, retaining walls, and storm drain system installation, will not release the pollution described in the code. Foundation construction for the buildings, in the future phase of the project, will include concrete and cement grout and provisions for containment and removal should be specified in the construction plans and specifications.

Thank you for the opportunity to be of service. Please call me if you have any questions.

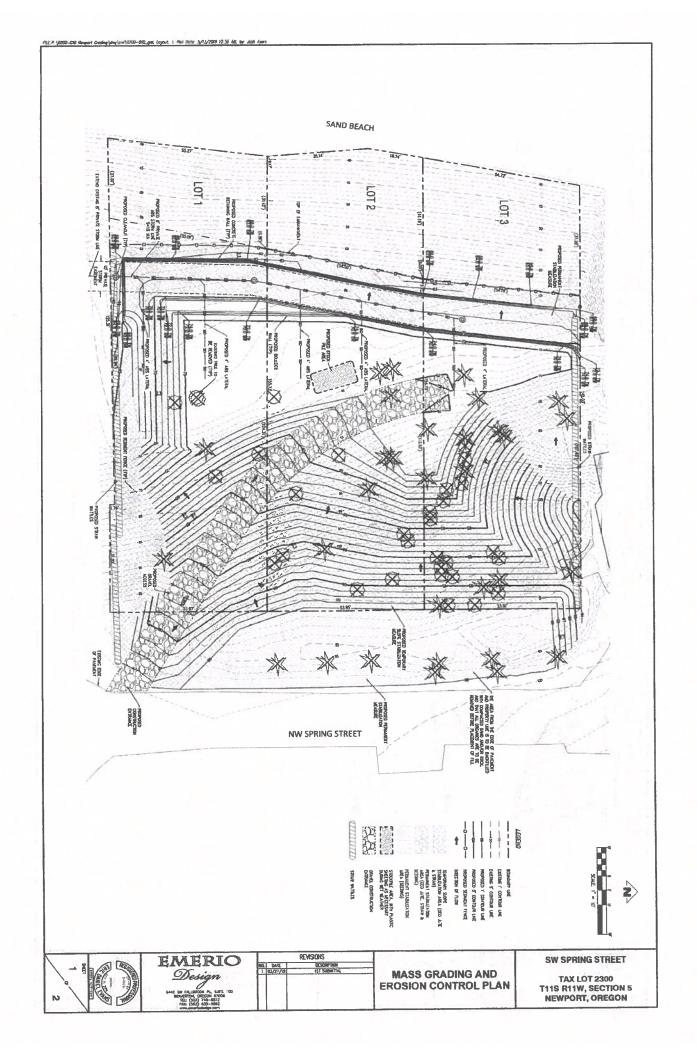
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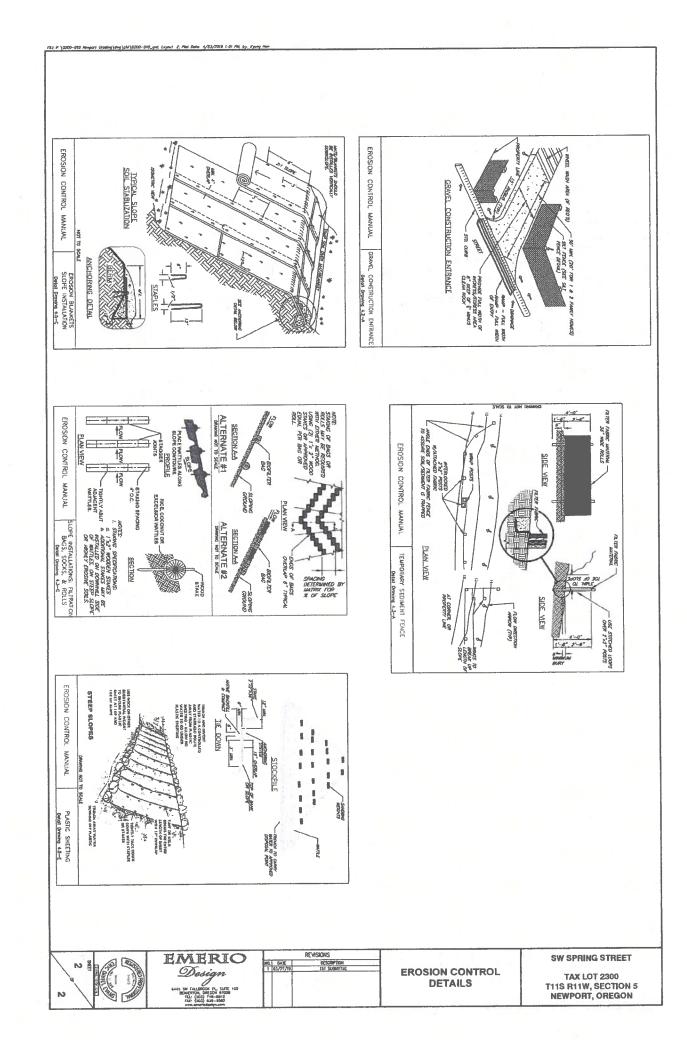
Michael Remboldt, P.E., G.E.

M Remboldo

K & A Engineering, Inc.

EXPIRES: DECEMBER 31, 2020





The City of Newport Public Works 169 S.W. Coast Highway Newport, OR 97365

Coast Guard City, U.S.A.



Attachment "A-12" 2-MISC-20

phone: 541.574.3366 fax: 541.265.3301 www.newportoregon.gov

Home Port of NOAA Pacific Fleet

May 21, 2019

Tim Roth
JT Roth Construction, Inc.
12600 SW 72nd Ave Suite 200
Portland, Oregon 97223

RE: NW 15th and NW Spring St. Development

Dear Mr. Roth,

The public improvement requirements for the current design concept are as follows:

- 1. Frontage improvements:
 - a. Paving and curb: City development standards require curb and gutter along all street frontages. Although Lee and I did discuss the possibility of a non-remonstrance agreement, it is not appropriate considering the geologic hazard associated with street runoff directed above ground. We will require curb and gutter along the property frontage and paving to meet the curb, a minimum of 24-feet street width.
 - b. Lighting: We will not require the installation of street lighting.
- 2. Storm drainage:
 - a. Storm drainage may be directed off-site to the west, but there may be other requirements from State Parks.
 - b. The existing City 12" line that you have proposed to tie into is not adequately sized for the additional drainage from your property, and is in poor condition. If you desire to connect to this pipe it will need to be replaced and upsized to 18". There are several conditions outlined in Keven's letter (Alternate two, Option two) that we can discuss.
 - c. Additional drainage from the street, along the curb line, will also need to be addressed. The manhole that is in the street to the south of your property has a short stub to the north that is a possible point of connection.
- 3. Water service: This area is currently served by a 2" line. There appears to be adequate capacity to serve domestic water to the additional five proposed units.
- 4. Sewer service: The sewer along Spring St. is 8", PVC pipe. Since the proposed properties are below the sewer, each unit will need to pump to the City system.

We acknowledge that there are substantial requirements for private developments, but these are to ensure that infrastructure can serve the City and the development now and into the future. Thank you.

Sincerely,

Clare C. Paul

Assistant City Engineer

Elane C Paul

Cc: Tim Gross, Director Public Works/City Engineer
Derrick Tokos, Director Community Development

Attachment "A-13"

2-MISC-20



South Coast Office 486 E Street Coos Bay, OR 97420 Willamette Valley Office 213 Water Ave. NW, Suite 100 Albany, OR 97321

Rogue Valley Office 10558 Hwy 62, Suite B-1 Eagle Point, OR 97524 North Coast Office 609 SW Hurbert Street Newport, OR 97365

May 30, 2019

Tim Gross, P.E.

Dereck Tokos

Public Works Director

Planning Department

City of Newport

City of Newport

Re: J.T. Roth, Jr., 15th & Spring Street Development – Stormwater Management Tax Lot 02300 Oceanview Blk 49 Lots 1-3

Dear Tim and Dereck:

This letter is in response to our meeting yesterday, and is in behalf of Tim Roth regarding his development of properties on NW Spring Street just north of NW 15th Street. This updates options presented in a letter dated May 11, 2019 from Keven Shreeve. It appears that Mr. Roth still has two options to meet the stormwater management requirements, but the required addition of street drainage alters those options:

Option one:

Grant the City an easement between lots 1 and 2 and install an 8-inch storm drain line from a future catch basin on the westerly edge of NW Spring Street and discharge to a location directly west on his property just short of the vegetation line. Approximately 230 feet of pipeline will be required. An energy dissipater near the upper edge of the beach would be required. Mr. Roth would also tie his roof and foundation drains into this system approximately 50 feet from the point of discharge. This pipeline would be dedicated to the City and would serve NW Spring Street between NW 15th and NW 16th streets. It would also serve Mr. Roth's development consisting of two duplex units and one single family unit, a total of five dwelling units.

Option two:

Mr. Roth would work with the City to replace and upsize the City's existing storm drain line from the manhole in NW Spring Street to the end of the existing corrugated metal pipe, approximately 25 feet from the discharge point near the edge of the beach. This would involve replacement of approximately 200 feet of 12-inch corrugated metal pipe with 18-inch plastic pipe, and would include a catch basin with a parking lot drain. The future catch basin on NW Spring Street would tie into the City's manhole on NW Spring Street. Mr. Roth would connect his site drainage to an existing 8-inch line that crosses the southern neighbor's property (Fahrendorf property, Ta Lot 1700) on the westerly side of Fahrendorf property, which connects to the existing 12-inch City storm drain and would connect to the new 18-inch line.

It is our understanding that the existing City storm drain line currently has insufficient capacity for the design 25-year storm. Also, recent video has shown this pipe to be on poor condition. This second option would justify some participation from the City in upsizing the pipe as well as providing some in-kind services.

Again, Mr. Roth would like to move forward with his development. We hope that one of these solutions will provide the necessary information to get his geological permit and grading permit approved as soon as possible.

Please let us know if we need to submit any additional information. We would be happy to meet with you to work out details of these ideas at your convenience.

Sincerely,

Civil West Engineering Services, Inc.

Lee R. Ritzman

CITY OF NEWPORT

169 SW COAST HWY

NEWPORT, OREGON 97365

COAST GUARD CITY, USA



Attachment "A-14" 2-MISC-20

phone: 541.574.0629

fax: 541.574.0644

http://newportoregon.gov

mombetsu, japan, sister city

NOTICE OF DECISION1

June 3, 2019

The Newport Community Development (Planning) Department received an application for a Geologic Permit as described herein, that the Community Development Director has determined was prepared in accordance with the criteria for the issuance of a Geologic Permit contained in Chapter 14.21 of the Newport Municipal Code (NMC).

FILE NO: #8-GP-18

APPLICANT & OWNER: J.T. Roth, Jr. & Theresa Roth, 12600 SW 72nd Ave #200, Portland, OR 97223

<u>LOCATION</u>: Northwest corner of the intersection of NW Spring Street and NW 15th Street, Lots 1-3, Block 49, Oceanview Subdivision (Tax Lot 2300 of Lincoln County Assessor's Tax Map 11-11-05-BB).

ACTION: Pursuant to NMC Section 14.21.030, all persons proposing development, construction, or site clearing within a known geologic hazard area shall obtain a Geologic Permit. The applicant applied for a Geologic Permit to establish a home site on each of the lots noted above. Development may be in the form of single family dwellings or two-family attached (duplex) units. The application included a Geotechnical Engineering Report and Geologic Hazards Assessment dated February 5, 2019, prepared by Michael Remboldt, P.E., G.E. and Gary C. Sandstrom, C.E.G. (hereinafter collectively referred to as "Geologic Report"). The application materials, including the Geologic Report, are available for inspection or copies may be purchased at the Newport Community Development (Planning) Department.

CONDITIONS:

- 1. It shall be the responsibility of the property owner to adhere to the recommendations listed in the Geologic Report. Geologic Reports are only valid for the development plan addressed in the report.
- 2. Certification of compliance is required prior to final approval. NMC 14.21.130 states that no development requiring a Geologic Report shall receive final approval (e.g. certificate of occupancy, final inspection, etc.) until the city receives a written statement by a certified engineering geologist indicating that all performance, mitigation, and monitoring measures contained in the report have been satisfied. Where mitigation measures involve engineering solutions prepared by a licensed professional engineer or geotechnical engineer (collectively "design engineer"), then the city must also receive an additional written statement of compliance by the design engineer.

The following are being notified of this action: (1) affected property owners within 200 feet of the subject property (according to Lincoln County Tax Records); (2) affected public/private utilities within Lincoln County; (3) affected city departments; (4) affected state agencies.

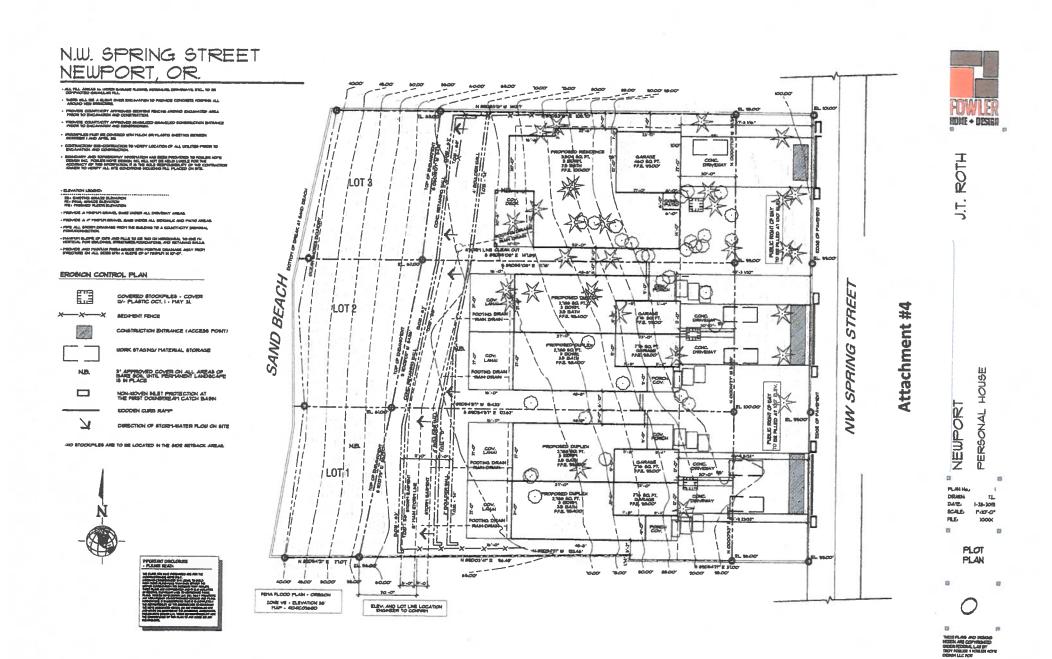
- 3. Erosion control measures are to be installed as outlined in the Geologic Report, and supplemented by the letter from Michael Remboldt, P.E., G.E. dated May 8, 2019 and "Mass Grading and Erosion Control Plan" prepared by Eric Evans, P.E., Emerio Design, dated March 27, 2019. Upon installation, a written statement shall be provided by a certified engineering geologist and geotechnical engineer confirming that the measures were placed to their satisfaction (NMC 14.21.090).
- 4. Owner shall install a structured storm drainage system to collect and manage run-off from development of the subject property and NW Spring Street, which the owner will improve to 24-feet in width with curb and gutter along the project frontage. Such system is to be consistent with one of the two options outlined in a letter from Lee Ritzman, Civil West Engineering Services, Inc., dated May 30, 2019. A written statement shall be provided by a certified engineering geologist confirming that the final alignment and extent of the storm drainage improvements conform to the recommendations of the Geologic Report. Right-of-way, plumbing and/or building permits shall be obtained from the City of Newport prior to construction (NMC 14.21.100).

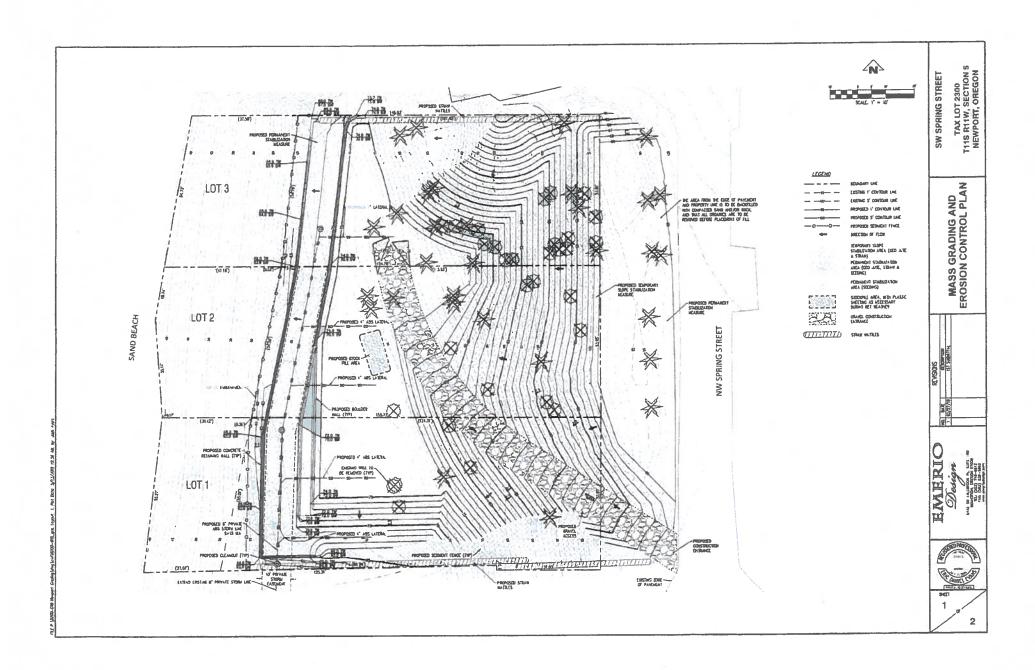
THIS DECISION MAY BE APPEALED TO THE NEWPORT PLANNING COMMISSION WITHIN 15 CALENDAR DAYS (by Tuesday, June 18, 2019) OF THE DATE THIS NOTICE WAS MAILED. Contact the Community Development Department, Newport City Hall, 169 SW Coast Hwy, Newport, Oregon 97365 (541-574-0629) for information on appeal procedures. Appellant's challenging substantive elements of a Geologic Report must submit their own analysis, prepared by a certified engineering geologist, within 30-days of the date the appeal is filed.

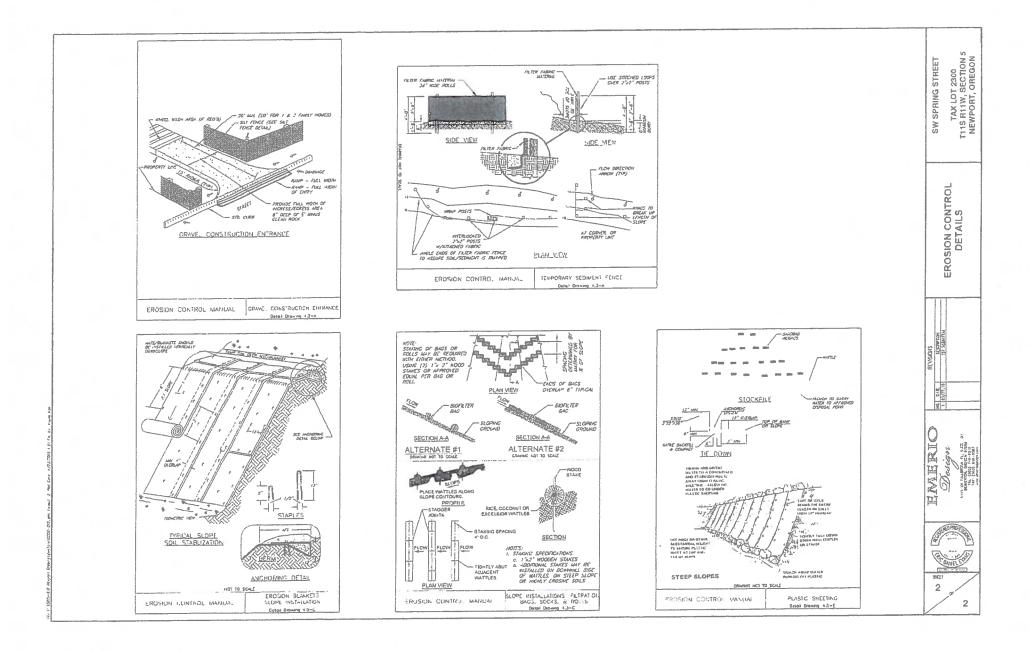
Sincerely,

Derrick I. Tokos, AICP

Community Development Director









Dec. 12, 2019

Derrick Tokos, AICP

Community Development Director City of Newport 169 SW Coast Highway Newport, Oregon 97365

RE: Land Use Application

*Front Setback Variance
02300 Oceanview Blk 49 lots 1-3

Subject Property

This application addresses three (3) building lots located north of NW 15th and west of NW Spring Street. Lots 1,2,3 Block 49, Oceanview

See Attachment 1

Proposed Development

The subject property consists of three (3) building lots zoned R-2, with permitted uses including Single-Family Dwellings and Two-Family Dwellings (attached duplex).

The intended use for this property is to incorporate both a Single-Family Dwelling as well as Two-Family Dwelling, however, the option would still exist to construct all Single-Family or all as Two-Family. The actual construction type would be determined at the time of building permit submittal.

A concept site plan is attached that suggests how these two building types would apply. See Attachment 2

Zoning

The subject property is zoned R-2 Residential-Medium Density Single Family with permitted uses including *Single-Family Dwellings (house), and *Two-Family Dwellings (duplex).

Front Setback Requirements:

Duplex on interior lot 15'

House

20'

See *Zoning Map (Attachment #3) *R-2 residential Permitted Uses (Attachment #3.a and Table A)

Geologic Permit Application

Geologic Permit has been approved, Geological Permit # 8-GP-18 See Attachment 4

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1. Request to deviate from required setbacks

This application is requesting a front yard setback reduction from 20' to 10' for the Single-Family Dwelling and from 15' to 10' for the Two-Family Dwelling.

See attached Exhibit 1

2. Request to deviate from building height limitations.

N/A

Additional Documents submitted with Application

- 3. -A current 18" x 24" Lincoln County Assessor's tax map(s) showing the subject property and the notification area. The notification area is all properties within 200 feet of the subject property. See attached Exhibit 2.a & 2.b
- 4. -A list of names and addresses of property owners, as shown in the records of the Lincoln County Assessor, within the notification area.

 See attached Exhibit 3 (5 pages)

5. Findings of Facts

5.a The property is located on the west side of NW Spring Street and is an ocean front property located within a steep slope terrain. Where the defined boundary depth of these lots extend (approx.) 150', the westerly (approx.) 50' of each lot exists as a 2:1 sloped embankment, sloping downward toward the bottom of the break at the sand beach. This is typical for the neighboring properties located on this west side of NW Spring St.

The home located on the lot immediate north of this subject property was held forward when constructed, the front yard setback for this property is approx. 10'.

Properties located on the east side of NW Spring St. do not share the same or similar characteristics, which makes the subject property unique to the vicinity and zoning.

The lots were platted with a width of approx. 54', meaning that a home(s) constructed on the lot(s) would have a narrow width and longer depth. The outcome of this characteristic of the lot(s) is that the further the house structure is pushed back on the lot the closer the structure is located to the steep (2:1) sloped embankment.

The public right-of-way (NW Spring Street) fronting the subject property has a dedicated street width (public ROW) of 50', where it is currently improved (paved) at a width of 22' with no curbs on either side of the street. The city has informed me that a condition of improving my property will include improving (paving) NW Spring Street to a street width of 24' with concrete curb/gutter along my property frontage. These additional public improvements will require civil engineering documents for city approval prior to the work being performed. See attached Exhibit 4

With the improved street width of 24', and approx. 2' of unimproved ROW along the east side of Spring Street, there is an area of approx. 24' of unimproved public ROW fronting this subject property, this area is located between the (proposed) curb/gutter and my front property line. This area is noted on "Attachment 1" and "Exhibit 1".

5.b The circumstances defined above (paragraph 5.a) were existing prior to my ownership, and there have been no changes or improvements made to the property during my ownership that would have exacerbated the conditions that currently exist.

There are no personal circumstances (financial or otherwise) that have contributed to the existing conditions of these lots.

- **5.c** The dimensional limitations described above (paragraph 5.a) creates a condition and circumstance that would be lessened by the practical application of moving the improvements (structure) forward and further away from the sloped embankment.
- **5.d** The physical characteristics of the property(s) located within the vicinity or zoning district will not be impacted by the authorization of the requested front yard setback variance.
 - *The adjacent property to the north and to the south are currently improved with residential structures, which will require improvements to my lot(s) to conform to their existing conditions. The improved property to the north was constructed with a front yard setback of approx.10'.
 - *Property(s) to the east (opposite side of Spring Street) will not be impacted by a reduction in my front yard setbacks.
 - *The frontage street (Spring Street) will be improved to a width of 24', leaving approx. 24' of unimproved ROW along my property frontage. This, along with the requested 10' front yard setback, will effectively provide for a 34' setback from the back of curb/gutter to front of the improved structure(s).
 - The effective setback of 34' exceeds the zoning code setback of 20' that would apply to a normal building lot. This additional setback will allow for off-street parking of no less than 2 cars per lot, in additional to the parking garage designed with the structures.
 - *Spring Street is not a through-street. This street was vacated by the city, allowing a residential structure to be constructed at the end of the street, approx. 140' to the north of the subject lots. This condition limits the traffic servicing the 5 existing homes on the street.
 - *The improvements to my lots will still be required to conform to the building height limitations. These height limitations would apply to the structure(s) regardless of the front yard setbacks being 20' (current zoning code) or 10' (requested variance).
- 5.e The proposed variance will not interfere with access to the existing utilities.
 - *Sewer and water are existing in Spring St.
 - *The improvements to my lots will require that I provide appropriate conduits for the extension of electricity, natural gas, telephone and cable currently located on the opposite side of Spring Street.

The Storm Drainage requirements by the city (see attached Exhibit 4) will require that I install a new catch-basin along the curb line.

I have been working with the city to resolve some needed improvements to their existing storm drainage system. All of this will not be impacted by the requested variance.

- 5.f Impacts resulting from the variance are mitigated to the extent practical.
 - *Arguably, the variance of allowing the structure(s) to be located 10' closer to the front property line will have no impact to the adjoining properties.
 - *The question of topography would be addressed as a benefit to the existing conditions, in that, moving the structure(s) forward helps create more separation from the existing embankment.

6. This request for a front yard variance would be applied to the Single-Family Dwelling as a 50% reduction from the existing 20' zoning code requirement and a 33% reduction to the Two-Family Dwelling zoning code requirement.

While the existing conditions will allow for a set back from the street curbs to the structure of (approx.) 34', after the variance is applied, pulling the structures forward 10' will allow the improvements constructed on these lots to gain additional separation from the steep sloping embankment providing additional insurance from natural weather events.

7. Fee of \$617.00 is enclosed

This concludes the description of the Application Submittal Requirements for the land-use application specific to the Front Yard Setback Variance Permit Application for the Roth property located at 15th and Spring St., Newport Oregon.

Submitted

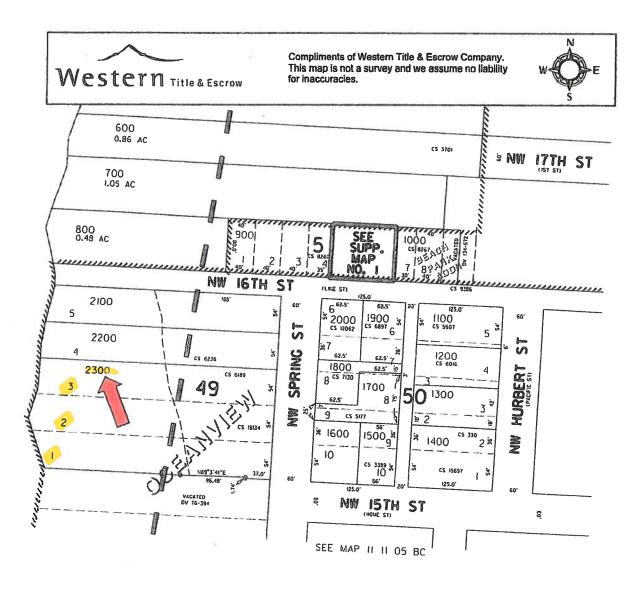
J.T. Roth, Jr.

J.T. Roth Construction, Inc. 12600 SW 72nd Ave., suite 200

Portland, Or, 97223 503 639 2639

timr@jtrothinc.com

Attachment #1



CITY OF NEWPORT

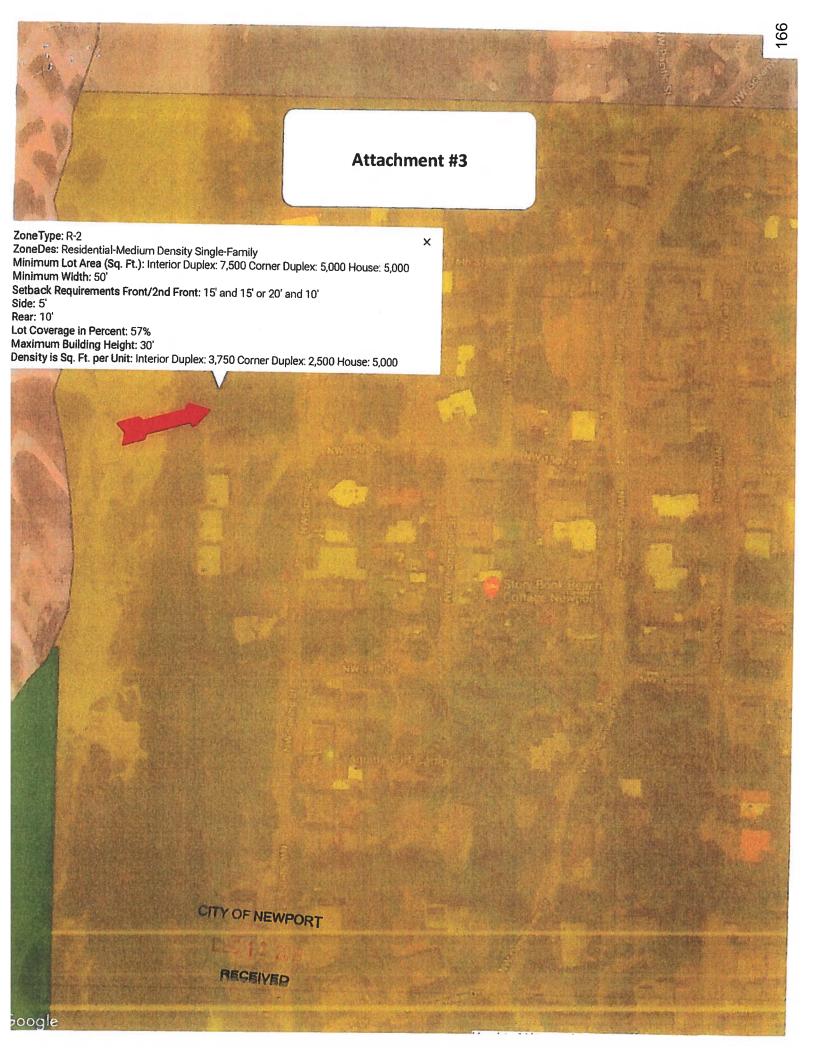
DEC 1 2 2019

BECHVED

Attachment #2 STAING STAFFET COVERED STOCKPILES - COVER 3' APPROVED COVER ON ALL AREAS OF BARE BOIL UNTIL PERTAMENT LANDSCAPE IS N PLACE NON-WOVEN INLET PROTECTION AT THE FIRST DOWNSTREAM CATCH BASIN SAND BEACH ELEV. AND LOT LINE LOCATION CITY OF NEWPORT **NW SPRING STREET** DEC 1 2 2019 RECEIVED

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Attachment #3.a

Rev. 2/98

CITY OF NEWPORT USES IN THE RESIDENTIAL DISTRICTS

R-1/"LOW DENSITY RESIDENTIAL":

Permitted Uses

Single-Family Dwellings Accessory Uses Home Occupations Parks Child Care Facilities Residential Care Homes

Conditional Uses

Publicly Owned Recreational Facilities
Libraries
Utility Substations
Public or Private Schools
Day Care Facilities
Churches
Colleges and Universities
Golf Courses
Necessary Public Utilities and Public
Services Uses or Structures

R-2/"MEDIUM DENSITY SINGLE-FAMILY RESIDENTIAL:

Permitted Uses

Single-Family Dwellings
Two-Family Dwellings
Mobile Home Parks
Accessory Uses
Home Occupations
Parks
Child Care Facilities
Residential Care Homes
Condominiums

Conditional Uses

Publicly Owned Recreational Facilities
Libraries
Utility Substations
Public or Private Schools
Day Care Facilities
Churches
Colleges and Universities
Golf Courses
Necessary Public Utilities and Public
Service Uses or Structures
Assisted Living Facilities

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14.13.020

| District | Minimum Lot Area (Sq. Ft.) | Minimum Width | Setback Require Front/2nd Front ¹ | Rear | Lot Coverage in Percent | Maximum Building Height | |
|---|----------------------------------|--|---|----------------|-------------------------------|-------------------------------|-------------------|
| R-1/"Low Density Single- Family Residential" | 7,500 | 65' | 15' and 15' or 20' and 10' | 5' & 8' | 15' | 54% | 30' |
| R-2/"Medium Density Single- Family Residential" Duplex on interior lot Duplex on corner lot House | 7,500 5,000 5,000 | 50 50' 50' | 15' and 15' or 20' and 10' | 5' 5' 5' | 10' 10' 10' | 57% 57% 57% | 30' 30' 30' |
| R-3/"Medium Density Multi- Family Residential" | 5,000 | 15' and 15' 50' or 5' 10 20' and 10' | | 10' | 60% | 35' | |
| R-4/"High Density Multi- Family Residential" ³ | 5,000 | 50' | 15' and 15' 60' or 5' 20' and 10' | | 10' | 64% | 35' |
| C-1/"Retail and Service Commercial" | 5,000 | 0' | 0' | 0' | 0' | 85-90%* | 50'* |
| C-2/"Tourist Commercial" | 5,000 | 0' | 0, | 0' | 0' | 85-90%* | 50'* |
| C-3/"Heavy Commercial" | 5,000 | 0, | 0' | 0, | 0' | 85-90%* | 50'* |
| I-1/"Light Industrial" | 5,000 | 0' | 50' from Hwy. 101 | 0' | 0, | 85-90%* | 50'* |
| I-2/"Medium Industrial" | 20,000 | 0' | 50' from Hwy. 101 | 0' | 0' | 85-90%* | 50'* |
| I-3/"Heavy Industrial" | 5 acres | 0, | 50' from Hwy. 101 | 0' | 0, | 85-90%* | 50'* |
| | * See Section 2-4-4 | | n/a - not app | licable | | | |

¹ Front and second front yards shall equal a combined total of 30 feet. All garages shall be set back at least 20 feet from t

NEWPORT ZONING ORDINANCE (NO. 1308, AS AMENDED)

CITY OF NEWPORT

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² Amended by Ordinance No. 1642 (8-3-92).

³ Density of hotels, motels, and nonresidential units shall be one unit per 750 square feet.

NEWPORT, OREGON 97365

169 SW COAST HWY

COAST GUARD GITY, USA



www.newportoregon.gov

MOMBETSU, JAPAN. SISTER CITY

OREGON

COMMUNITY DEVELOPMENT DEPARTMENT

Assessor's Tax Map 11-11-05-BB)).

(541) 574-0629 FAX: (541) 574-0644

Attachment #4

June 19, 2019

J.T. Roth, Jr. & Theresa Roth 12600 SW 72nd Ave #200 Portland, OR 97223

Geologic Permit #8-GP-18 (Northwest corner of the intersection of NW Spring Street and NW Re: 15th Street, Lots 1-3, Block 49, Oceanview Subdivision (Tax Lot 2300 of Lincoln County

Dear J.T. & Theresa:

Please be advised that at the end of the appeal period June 18, 2019, for the above-referenced land use action:

[X] No appeal was received, and the decision is final.

An appeal has been filed, and we will be notifying you of a hearing date before the Planning Commission.

If you have any questions, please contact our office at (541) 574-0629.

Sincerely,

Sherri Marineau **Executive Assistant**

cc: Derrick Tokos, Community Development Director (via email)

> Rachel Cotton, Associate Planner (via email) Joseph Lease, Building Official (via email)

EST.

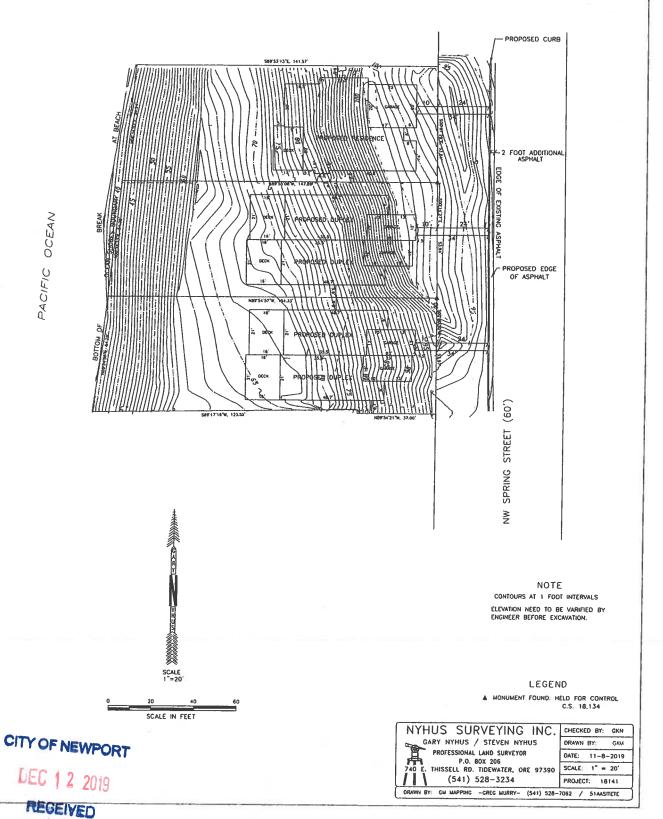
VARIANCE SURVEY PREPARED FOR TIM ROTH

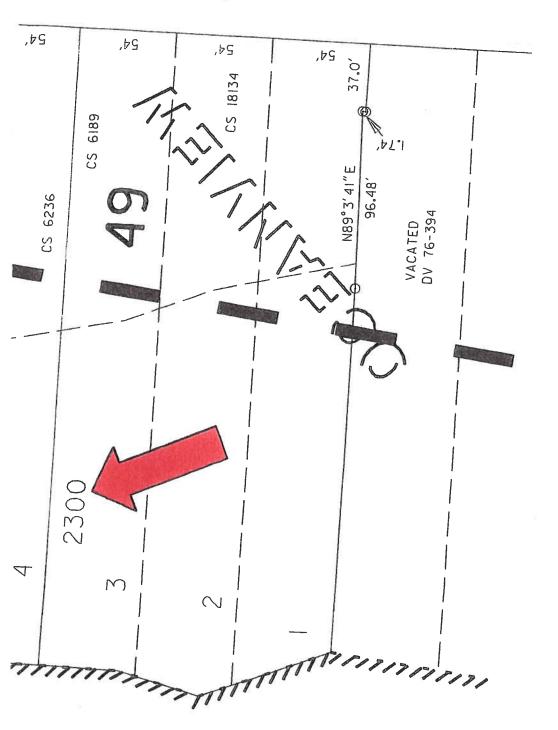
LOTS 1, 2 AND 3, BLOCK 49 "OCEAN VIEW ADDITION TO NEWPORT" LOCATED IN THE NW 1/4 OF SECTION 5, T11S, R11W, W.M.

CITY OF NEWPORT, LINCOLN COUNTY, OREGON

NOVEMBER 8, 2019

(11-11-05-88 TAX LOT 2300)

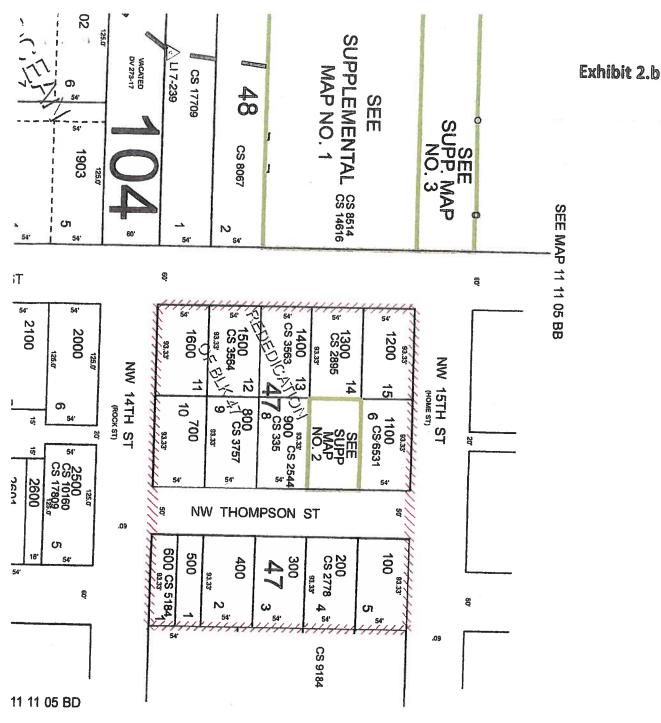




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S.W.1/4 N.W.1/4 SEC.5 T.11S. R.11W. W.M. LINCOLN COUNTY

11 11 05 BC NEWPORT



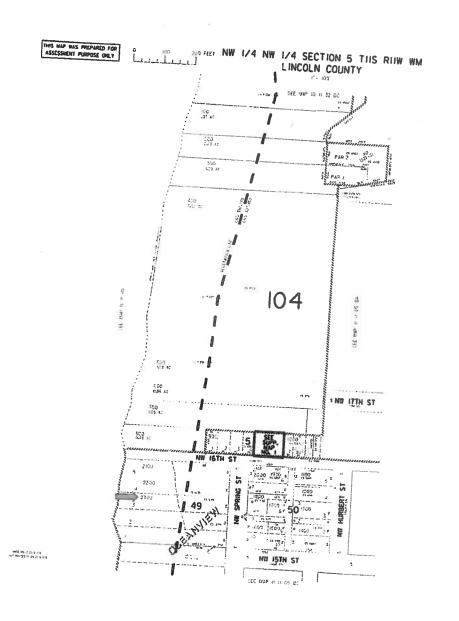




Revised: SEB 08/25/2016

NEWPORT 11 11 05 BC

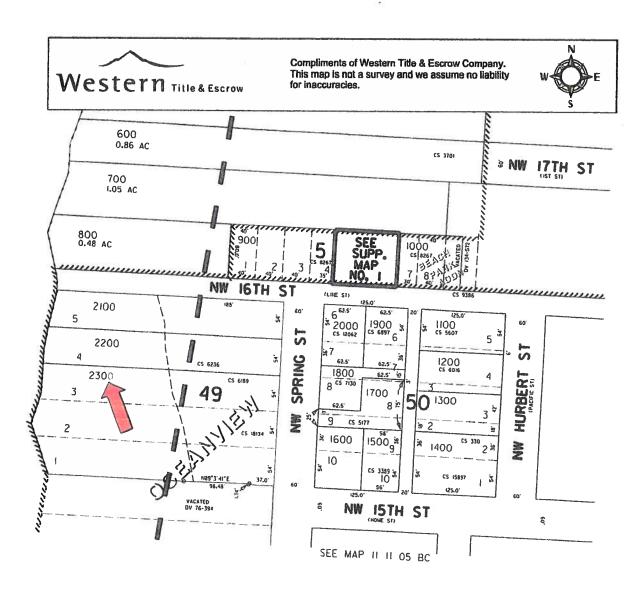
Exhibit 3 5 pages



II II OS BB NEWPORT

CANCELLED NO.

II II 05 BB NEWPORT



| Parcelld | OwnerNmFirst | OwnerNmLast | OwnerAddr | OwnerCityNm | OwnerState | OwnerZIP | SiteAddr | SiteCity |
|----------|--------------|----------------------------|----------------------|-------------|------------|----------|---------------------|----------|
| R101630 | Michael | Parsons | 1447 NW Thompson St | Newport | OR | 97365 | 1447 NW Thompson St | Newport |
| R104001 | Mindy | McDowell | 6553 S Madison Ct | Centennial | СО | 80121 | 1452 NW Spring St | Newport |
| R106487 | Pat Joan | Linstromberg | 931 Washington SW | Albany | OR | 97321 | 1442 NW Spring St | Newport |
| R108937 | Conrad | Willett | 1426 NW Spring St | Newport | OR | 97365 | 1426 NW Spring St | Newport |
| R115836 | | The Assn Of Unit Owners Of | 1505 NW Spring St | Newport | OR | 97365 | | Newport |
| R182334 | | Lookout Condominium The | 433 N Coast Hwy | Newport | OR | 97365 | | Newport |
| R418148 | Donald | Knight | 660 Driver Valley Rd | Oakland | OR | 97462 | 1610 NW Spring St | Newport |
| R423043 | Anne | Sigleo | 1541 NW Spring St | Newport | OR | 97365 | 1541 NW Spring St | Newport |
| R429980 | Richard | Hixson | PO Box 11536 | Bozeman | MT | 59718 | 1542 NW Spring St | Newport |
| R432529 | Mark G | Peterson | 4450 S Shasta Loop | Eugene | OR | 97405 | 535 NW 16th St | Newport |
| R434855 | Yuval | Yaron | 155 Greenwood Way | Mill Valley | CA | 94941 | 1534 NW Spring St | Newport |
| R437171 | Michael | Callahan | PO Box 12345 | Portland | OR | 97212 | 1522 NW Spring St | Newport |
| R439460 | Michele | Osterhoudt | 544 NW 15th St | Newport | OR | 97365 | 544 NW 15th St | Newport |
| R506799 | | Whales Spout Condominium | 370 SW Columbia | Bend | OR | 97702 | | Newport |
| R507071 | | Seasong Condominium | 544 NW 16th St | Newport | OR | 97365 | | Newport |
| R511025 | David Dustin | Nielsen | 31947 W Ocean Ave | Arch Cape | OR | 97102 | | Newport |
| R519109 | Ethel | Krause | | | | | | Newport |
| | | | | | | | | |

| SiteState | SiteZIP | TaxAcctNum | LegalDsc | DocRcrdgDt | SaleAmt | OwnerOccupiedInd |
|-----------|---------|-----------------|--|------------|--------------|------------------|
| OR | 97365 | 111105BC0110000 | OCEANVIEW - REDEDICATION OF BLK 47, LOT 6, DOC200713416 | 09/19/2007 | \$595,000.00 | • |
| OR | 97365 | 111105BC0120000 | OCEANVIEW - REDEDICATION OF BLK 47, LOT 15, DOC201506220 | 06/26/2015 | \$355,000.00 | |
| OR | 97365 | 111105BC0130000 | OCEANVIEW - REDEDICATION OF BLK 47, LOT 14, MF264-1917 | | | FALSE |
| OR | 97365 | 111105BC0140000 | OCEANVIEW - REDEDICATION OF BLK 47, LOT 13, MF180-2044 | | | TRUE |
| OR | 97365 | 111105BC7000000 | WIZARDS OF THE SEA CONDOMINIUMS, COMMON ELEMENTS, MF152-1391 | | | FALSE |
| OR | 97365 | 111105BC9000000 | LOOKOUT CONDO, ACRES 0.12, COMMON ELEMENTS, MF157-407 | | | FALSE |
| OR | 97365 | 111105BB0090000 | BEACH PARK ADDNNEWPORT, BLOCK 5, LOT 1-3 & PTN 4, DOC200802121 | 12/07/2009 | \$0.00 | FALSE |
| OR | 97365 | 111105BB0220000 | OCEANVIEW, BLOCK 49, LOT 4, MF259-2412 | | | TRUE |
| OR | 97365 | 111105BB0200000 | OCEANVIEW, BLOCK 50, LOT 6 & 7,PTNS OF, DOC201809829 | 10/02/2018 | \$367,500.00 | FALSE : |
| OR | 97365 | 111105BB0190000 | OCEANVIEW, BLOCK 50, LOT 6 & 7,PTNS OF, DOC201903797 | 04/29/2019 | \$0.00 | FALSE |
| OR | 97365 | 111105BB0180000 | OCEANVIEW, BLOCK 50, LOT 7 & 8,PTNS OF, DOC201904046 | 05/06/2019 | \$432,500.00 | FALSE |
| OR | 97365 | 111105BB0170000 | OCEANVIEW, BLOCK 50, LOT 7-9,PTNS OF, DOC201901815 | 02/28/2019 | \$500,000.00 | FALSE |
| OR | 97365 | 111105BB0160000 | OCEANVIEW, BLOCK 50, LOT 9 & 10,PTNS OF, DOC201103262 | 03/31/2011 | \$350,000.00 | TRUE |
| OR | 97365 | 111105BC8000000 | WHALES SPOUT CONDO, ACRES 1.01, COMMON ELEMENTS, MF142-0570 | | | FALSE |
| OR | 97365 | 111105BB9000000 | SEASONG CONDO, COMMON ELEMENTS, MF302-1465 | | | FALSE |
| OR | 97365 | 111105BB0150000 | OCEANVIEW, BLOCK 50, LOT 9 & 10,PTNS OF, DOC200812576 | 10/29/2008 | \$0.00 | FALSE |
| OR | 97365 | 111105BB0080000 | TWNSHP 11, RNG 11, ACRES 0.48, DV110-0550 | | | FALSE |

| Parcelld (| OwnerNmFirst | OwnerNmLast | OwnerAddr | OwnerCityNm | OwnerState | OwnerZIP | SiteAddr | SiteCity | SiteState | SiteZIP | TaxAcctNum |
|------------|--------------|----------------------------|----------------------|-------------|------------|----------|---------------------|----------|-----------|---------|--------------|
| R101630 M | Michael | Parsons | 1447 NW Thompson St | Newport | OR | 97365 | 1447 NW Thompson St | Newport | OR | 97365 | 111105BC011C |
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| R108937 (| Conrad | Willett | 1426 NW Spring St | Newport | OR | 97365 | 1426 NW Spring St | Newport | OR | 97365 | 111105BC014C |
| R115836 | | The Assn Of Unit Owners Of | 1505 NW Spring St | Newport | OR | 97365 | | Newport | OR | 97365 | 111105BC700C |
| R182334 | | Lookout Condominium The | 433 N Coast Hwy | Newport | OR | 97365 | | Newport | OR | 97365 | 111105BC900C |
| R418148 C | Donald | Knight | 660 Driver Valley Rd | Oakland | OR | 97462 | 1610 NW Spring St | Newport | OR | 97365 | 111105B8009C |
| R423043 A | Anne | Sigleo | 1541 NW Spring St | Newport | OR | 97365 | 1541 NW Spring St | Newport | OR | 97365 | 111105BB022C |
| R429980 R | | Hixson | PO Box 11536 | Bozeman | MT | 59718 | 1542 NW Spring St | Newport | OR | 97365 | 111105BB020C |
| R432529 N | Mark G | Peterson | 4450 S Shasta Loop | Eugene | OR | 97405 | 535 NW 16th St | Newport | OR | 97365 | 111105BB019C |
| R434855 Y | | Yaron | 155 Greenwood Way | Mill Valley | CA | 94941 | 1534 NW Spring St | Newport | OR | 97365 | 111105880180 |
| R437171 N | Michael | Callahan | PO Box 12345 | Portland | OR | 97212 | 1522 NW Spring St | Newport | OR | 97365 | 111105BB017C |
| R439460 N | Michele | Osterhoudt | 544 NW 15th St | Newport | OR | 97365 | 544 NW 15th St | Newport | OR | 97365 | 111105880160 |
| R506799 | | Whales Spout Condominium | 370 SW Columbia | Bend | OR | 97702 | | Newport | OR | 97365 | 111105BC8000 |
| R507071 | | Seasong Condominium | 544 NW 16th St | Newport | OR | 97365 | | Newport | OR | 97365 | 111105BB9000 |
| | | Nielsen | 31947 W Ocean Ave | Arch Cape | OR | 97102 | | Newport | OR | 97365 | 111105BB0150 |
| R519109 E | Ethel | Krause | | | | | | Newport | OR | 97365 | 111105BB0080 |

The City of Newport Public Works 169 S.W. Coast Highway Newport, OR 97365 NEWPORT

Exhibit #4

phone: 541.574.3366 fax: 541.265.3301 www.newportoregon.gov

Home Port of NOAA Pacific Fleet

Coast Guard City, U.S.A.

May 21, 2019

Tim Roth JT Roth Construction, Inc. 12600 SW 72nd Ave Suite 200 Portland, Oregon 97223

RE: NW 15th and NW Spring St. Development

Dear Mr. Roth,

The public improvement requirements for the current design concept are as follows:

1. Frontage improvements:

- a. Paving and curb: City development standards require curb and gutter along all street frontages. Although Lee and I did discuss the possibility of a non-remonstrance agreement, it is not appropriate considering the geologic hazard associated with street runoff directed above ground. We will require curb and gutter along the property frontage and paving to meet the curb, a minimum of 24-feet street width.
- b. Lighting: We will not require the installation of street lighting.

2. Storm drainage:

- a. Storm drainage may be directed off-site to the west, but there may be other requirements from State Parks.
- b. The existing City 12" line that you have proposed to tie into is not adequately sized for the additional drainage from your property, and is in poor condition. If you desire to connect to this pipe it will need to be replaced and upsized to 18". There are several conditions outlined in Keven's letter (Alternate two, Option two) that we can discuss.
- c. Additional drainage from the street, along the curb line, will also need to be addressed. The manhole that is in the street to the south of your property has a short stub to the north that is a possible point of connection.
- 3. Water service: This area is currently served by a 2" line. There appears to be adequate capacity to serve domestic water to the additional five proposed units.
- 4. Sewer service: The sewer along Spring St. is 8", PVC pipe. Since the proposed properties are below the sewer, each unit will need to pump to the City system.

We acknowledge that there are substantial requirements for private developments, but these are to ensure that infrastructure can serve the City and the development now and into the future. Thank you.

Sincerely,

Clare C. Paul

Assistant City Engineer

Elane C Faul

Cc: Tim Gross, Director Public Works/City Engineer
Derrick Tokos, Director Community Development



Attachment "A-16" 2-MISC-20

www.newportoregon.gov

MOMBETSU, JAPAN, SISTER CITY

169 SW COAST HWY NEWPORT, OREGON 97365

COAST GUARD CITY, USA

COMMUNITY DEVELOPMENT DEPARTMENT (541) 574-0629 FAX: (541) 574-0644

NOTICE OF DECISION

January 28, 2020

The Newport Planning Commission, by final order signed January 27, 2020, has approved a request for a Variance as described herein:

FILE NO: #1-VAR-19

APPLICANT & PROPERTY OWNERS: J. T. Roth, Jr.

PROPERTY LOCATION: Assessor's Map 11-11-05-BB, Tax Lot 2300 (1515, 1525, & 1535 NW Spring St).

REQUEST: Approval of a variance to Sections 14.11.010/"Required Yards" and 14.11.030/"Garage Setback" of the Newport Municipal Code to allow construction of new single-family dwellings or two-family dwellings with a 10-foot setback. This constitutes a 5-foot variance (33% deviation) from the 15-foot front yard setback, and a 10-foot variance (50% deviation) from the 20-foot garage setback. The variance will apply to all three building lots.

THIS DECISION MAY BE APPEALED TO THE NEWPORT CITY COUNCIL WITHIN 15 CALENDAR DAYS (February 11, 2020) OF THE DATE THE FINAL ORDER WAS SIGNED. Contact the Community Development Department, Newport City Hall, 169 SW Coast Hwy, Newport, Oregon 97365 (541/574-0629) for information on appeal procedures.

A person may appeal a decision of the Planning Commission to the City Council if the person appeared before the Planning Commission either orally or in writing.

Sincerely,

Sherri Marineau
Executive Assistant

Enclosure

cc: J. T. Roth, Jr. (owner)

David Gregory (proponent) Christine Benedetti (proponent) Joseph Fahrendorf (proponent) Mona Linstromberg (opponent)

Joseph Lease (Building Official) (letter only by email)

Derrick Tokos (Community Development Director) (letter only by email)

EST. 1882 DEFORE THE PLANNING COMMISSION OF THE CITY OF NEWPORT, COUNTY OF LINCOLN, STATE OF OREGON

| IN THE MATTER OF PLANNING COMMISSION |) | |
|---|---|-------|
| FILE NO. 1-VAR-19, APPLICATION FOR A |) | FINAL |
| VARIANCE, AS SUBMITTED BY J. T. ROTH, JR., ON |) | ORDER |
| BEHALF OF HIMSELF AND THERESA ROTH, OWNERS |) | |

ORDER APPROVING A VARIANCE pursuant to Chapter 14.33 of the Newport Municipal Code (NMC) to allow construction of new single-family dwellings or two-family dwellings with a 10 foot setback. This constitutes a 5 foot variance (33% deviation) from the 15 foot front yard setback, and a 10 foot variance (50% deviation) from the 20 foot garage setback. The variance will apply to all three building lots. The property is identified as 1515, 1525, & 1535 NW Spring Street; Lincoln County Assessor's Map 11-11-05-BB, Tax Lot 2300 (Lots 1, 2, and 3, Block 49, Oceanview Subdivision). It is approximately 1.22 acres in size per County assessment records, with 0.46 acres being assessed as developable oceanfront property upslope of the statutory vegetation line.

WHEREAS:

- 1.) The Planning Commission has duly accepted the application filed consistent with the Newport Zoning Ordinance (No. 1308, as amended); and
- 2.) The Planning Commission has duly held a public hearing on the request, with a public hearing a matter of record of the Planning Commission on January 13, 2020; and
- 3.) At the public hearing on said application, the Planning Commission received testimony and evidence, including testimony and evidence from the applicant, and from Community Development Department staff; and
- 4.) At the conclusion of said public hearing, after consideration and discussion, the Newport Planning Commission, upon a motion duly seconded, APPROVED the request for the variance.

THEREFORE, LET IT BE RESOLVED by the City of Newport Planning Commission that the attached findings of fact and conclusions (Exhibit "A") support the approval of the variance as requested by the applicant with the following condition(s):

- 1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to this report. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner to comply with these documents and the limitations of approval described herein.
- 2. The property owner shall survey and stake the property line adjacent to NW Spring Street and 10 foot setback line and stakes shall be in place until footing inspections have been performed.
- 3. Pursuant to NMC 14.52.140/"Expiration and Extension of Decision," this approval shall be void after 18 months unless all necessary building permits have been issued. An extension may be granted by the Community Development Director as provided in this section provided it is sought prior to expiration of the approval period.

BASED UPON THE ABOVE, the Planning Commission determines that the request for a variance is in conformance with the provisions of the Comprehensive Plan and the Zoning Ordinance of the City of Newport.

Accepted and approved this 27th day of January, 2020.

James Patrick, Chair

Newport Planning Commission

Attest:

Derrick I. Tokos, AICP

Community Development Director

EXHIBIT "A"

Case File No. 1-VAR-19

FINDINGS OF FACT

- 1. J.T. Roth, Jr., on behalf of himself and Theresa Roth, submitted a request on December 12, 2019, for approval of a variance to Sections 14.11.010/"Required Yards" and 14.11.030/"Garage Setback" of the Newport Municipal Code to allow construction of new single-family dwellings or two-family dwellings with a 10 foot setback. This constitutes a 5 foot variance (33% deviation) from the 15 foot front yard setback, and a 10 foot variance (50% deviation) from the 20 foot garage setback. The variance will apply to all three building lots.
- 2. The property subject to the variance application is identified as 1515, 1525, & 1535 NW Spring Street; Lincoln County Assessor's Map 11-11-05-BB, Tax Lot 2300 (Lots 1, 2, and 3, Block 49, Oceanview Subdivision). It is approximately 1.22 acres in size per County assessment records, with 0.46 acres being assessed as developable oceanfront property upslope of the statutory vegetation line.
- 3. Staff reports the following facts in connection with the application:
 - a. Plan Designation: Low Density Residential.
 - b. Zone Designation: R-2/"Medium Density Single-Family Residential."
 - c. <u>Surrounding Land Uses and Zoning</u>: Surrounding uses include a single-family homes to the north and east, condominiums to the south, and the Pacific Ocean to the west.
 - d. <u>Topography</u>: The developable portion of the lots is moderate to steeply sloped, dropping in elevation as the property extends west from NW Spring Street. The average slope is 30 percent from the street right-of-way line west to the edge of the bluff overlooking the Pacific Ocean. From the bluff, the property drops in elevation precipitously to the statutory vegetation line (60 percent slope). The developable portion of the lots, between the street right-of-way line and edge of bluff, varies from about 105 feet deep on the north line to a little more than 130 feet on the south line (Ref: Site Plan labeled as Attachment 2 to the applicant's narrative (Staff Report Attachment "C")).
 - e. Existing Structures: None.
 - f. Utilities: All are available to the property.
 - g. Past Land Use Actions: File No. 5-PLA-07. Minor property line adjustment to the south line of Lot 1, Block 49, Oceanview Subdivision to prevent a side-yard setback encroachment identified when the foundation was poured for the condominium development to the south. File No. 8-GP-18. Geologic permit to establish home sites on each of the three lots. Development may be in the form of single family dwellings or two-family attached (duplex) units.
- 4. Upon acceptance of the application, the Community Development (Planning) Department mailed notice of the proposed action on December 23, 2019, to property owners within 200 feet required to receive such notice by the Newport Zoning Ordinance, and to various City departments and other agencies. The notice referenced the criteria by which the application was to be assessed. The notice required that written comments on the application be submitted by 5:00 p.m., January 13, 2020.

Comments could also be submitted during the course of the public hearing. The notice was also published in the Newport News-Times on January 8, 2020. Two letters were received, one from Mona Linstromberg, dated January 8, 2020, in opposition to the variance and the other from the joint owners of the Wizards of the Sea Condos (David Gregory, Christine Benedetti, and Joseph Fahrendorf), dated January 10, 2020, in support of the variance request. Both letters were received after the staff report was prepared, and were distributed to the Commission members in advance of the hearing and are incorporated by reference into the findings.

5. A public hearing on the application was held on January 13, 2020. At the hearing, the Planning Commission received the staff report and oral testimony from the applicant and Ms. Linstromberg. The minutes of the January 13, 2020 hearing are hereby incorporated by reference into the findings. The Planning Staff Report and Attachments are hereby incorporated by reference into the findings. The Planning Staff Report Attachments included the following:

Attachment "A" - Land use application form

Attachment "B" - County property report and assessment map

Attachment "C" - Application narrative with attachments and exhibits

Attachment "D" - Aerial map with zoning designation

Attachment "E" - Records from File No. 91-VAR-79 approving a 10 foot front yard setback variance for the property at 1541 NW Spring Street (Lot 4, Block 49, Oceanview Subdivision)

Attachment "F" – Final Order for File No. 1-VAR-12 approving a variance to eliminate the front yard setback for property at 845 SW 12th Street to allow the construction of a two-story, two car garage.

Attachment "G" - Public hearing notice

- 6. The variance request is being made because of the topographic constraints inherent to oceanfront property in this particular portion of the City. The variance will allow the homes to be located further away from the bluff, where the property is most steeply sloped and subject to erosion over time. NW Spring Street is improved to 22 feet in width, and the applicant will widen the street to 24 feet, with concrete curb and gutter along the property frontage, concurrent with construction of the dwellings. The NW Spring Street right-of-way is 60 feet in width and the street is located on the east side of the right-of-way (Ref: Staff Report Attachment "D"). The edge of pavement is 20 to 25 feet from the right-of-way line, and it is unlikely that NW Spring Street will be widened beyond 24 feet at this location given the limited number of properties being served. This means that even with the variance being granted, the driveways serving the homes will be close to, if not more than 30 feet in length, which is more than sufficient for off-street parking, particularly considering the applicant proposes to construct garages with the dwellings.
- 7. Pursuant to Section 14.33.030(C), Approval Authority, of the Newport Municipal Code, applications seeking more than a 40% deviation from a numerical standard shall satisfy criteria for a variance as determined by the Planning Commission following a public hearing.
- 8. Section 14.33.060 lists approval criteria for approval of variance application. Those criteria are as follows:

- a. That there is a circumstance or condition that applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. The circumstance or condition may relate to: (a) The size, shape, natural features and topography of the property; or (b) The location or size of existing physical improvements on the site; or (c) The nature of the use compared to surrounding uses; or (d) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or zoning district; or (e) A circumstance or condition that was not anticipated at the time the Code requirement was adopted. The list of examples in (a) through (e) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.
- b. That the circumstance or conditions above are not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.
- c. That there is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.
- d. That authorization of the variance will not result in substantial adverse physical impacts to property in the vicinity or zoning district in which the property is located, or adversely affect the appropriate development of adjoining properties. Adverse physical impacts may include, but are not limited to, traffic beyond the carrying capacity of the street, unreasonable noise, dust, or loss of air quality. Geology is not a consideration because the Code contains a separate section addressing geologic limitations.
- e. That the variance will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access.
- f. That any impacts resulting from the variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.

CONCLUSIONS

The subject proposal constitutes a 50% deviation from the 20-foot garage setback required pursuant to Section 14.11.030; therefore, Planning Commission approval of the variance is required. In order to grant the variance, the Planning Commission must review the application to determine whether it meets the criteria. With regard to those criteria, the following analysis can be made:

- 1. Compliance with Section 14.33.060, Criteria for Approval of a Variance Application:
 - a. <u>Criterion #1</u>. That there is a circumstance or condition that applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. (The circumstance or condition may relate to: (a) The size, shape, natural features and

topography of the property; or (b) The location or size of existing physical improvements on the site; or (c) The nature of the use compared to surrounding uses; or (d) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or zoning district; or (e) A circumstance or condition that was not anticipated at the time the Code requirement was adopted. The list of examples in (a) through (e) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.)

- i. To grant a variance, the Commission must find that a circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district and that the circumstance or condition prevents the owner from using the property in a manner comparable to how similarly-situated and zoned properties are used in the area.
- ii. The applicant, J. T. Roth, Jr., provided narrative responses to this criterion and the other approval standards (Ref: Staff Report Attachment "C"). Mr. Roth notes that the property is located on the west side of NW Spring Street and is an oceanfront site with steep sloped terrain. He points out that the westerly (approx.) 50 feet of the developable portion of each lot consist of a 2:1 sloped embankment (i.e. bluff) that drops down to the beach. This is typical for the neighboring properties located on this west side of NW Spring Street.
- iii. An existing residence located on the lot immediate north of the applicant's property, at 1541 NW Spring Street, was held forward when constructed, and the front yard setback for that property is approximately 10 feet. This is the same setback that the applicant is requesting. The property to the north was approved for a 10 foot front yard setback with a variance granted in 1979. The City's justification in granting the variance related to the topography of the site (Staff Report Attachment "D").
- iv. The applicant explains, and the Commission accepts, that similarly zoned properties located on the east side of NW Spring Street do not share the same terrain constraints and exposure to embankment erosion, as properties situated on the west side of the street.
- v. Each of the three lots owned by the applicant were platted with a width of approximately 54 feet, meaning that a home(s) constructed on the lot(s) would have a narrow width and longer depth. The applicant points out that the outcome of this characteristic of the lot(s) is that the further the house structure is pushed back on the lot the closer the structure is located to the steep (2:1) sloped embankment.
- vi. Public right-of-way for NW Spring Street fronting the subject property has a dedicated street width of 60 feet, and is currently improved (paved) to a width of 22 feet with no curbs on either side of the street. The applicant notes that they have been informed by the City that they will have to widen NW Spring Street to a paved width of 24 feet with concrete curb/gutter along the property frontage concurrent with development of the property. They further acknowledge that they will need to prepare civil engineering documents, subject to City approval, before the work is performed (Ref: Exhibit 1 to Staff Report Attachment "C").

- vii. With the improved street width of 24 feet, and approximately 2 feet of unimproved ROW along the east side of NW Spring Street, the applicant points out that there is approximately 24 feet of unimproved public ROW fronting their property between the proposed curb/gutter and property line. This area, in conjunction with the requested 10 foot setback, provides sufficient space for residential driveways.
- viii. Considering the above, the Commission concludes that the narrow configuration of the lots, steep terrain, and embankment creates a circumstance or condition that applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district.
- b. <u>Criterion #2</u>. That the circumstance or condition in Criterion #1 is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.
 - i. Mr. Roth notes that the circumstances described existed before he and his wife secured a possessory interest in the property. He further points out that they have made no changes or improvements to the property that would have exacerbated the conditions that currently exist.
 - ii. The three lots subject to this request were created with the Oceanview Subdivision Plat, recorded in 1884, in Book 1 at Page 19 of the Lincoln County Plat Records. The property was designated by the City of Newport for low-density residential development with the adoption of the City's first Comprehensive Land Use Plan (Resolution No. 1788, effective March 3, 1975), and has been continuously under such residential land use designation since that time.
 - iii. Considering the above, the Planning Commission concludes that the unique configuration of the property, terrain, embankment, and zoning are not circumstances or conditions created by the applicant.
- c. <u>Criterion #3</u>. That there is a practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.
 - i. Mr. Roth notes that the dimensional limitations of the property, when considered in conjunction with the terrain and location/configuration of the street, create a condition that warrants moving the improvements (structures) forward and further away from the sloped embankment.
 - ii. The City has historically viewed the application of dimensional standards, such as setbacks, as creating a practical difficulty when they would force development to occur on more steeply sloped terrain or close to a bluff/embankment. Examples include the 10 foot front yard variance approved for the residence immediately to the north, under criteria in effect in 1979 (Ref: Staff Report Attachment "E"). The same can be said for development that has occurred in reliance upon the current variance criteria, as evidenced with the

- approval of a variance for a garage addition on property adjacent to SW 12th Street (Ref: Staff Report Attachment "F").
- iii. Conditions inherent to the applicant's property are effectively the same as those that exist on the lot to the north, which was granted the same 10 foot variance now being requested, and the fact that a home was constructed in reliance upon that variance is evidence that a 10 foot reduction is sufficient to alleviate a practical difficulty attributed to the application of the City's setback requirements.
- iv. In objecting to the variance, Ms. Linstromberg argued that the applicant could have altered the design of the dwellings such that a variance wouldn't have been necessary. Two Planning Commissioners shared this concern; however, a majority of the Commission felt that topographic constraints inherent to the property, coupled with the desire to see development setback further from the bluff/embankment, were the more compelling factors. The majority further pointed out that the City has granted setback variances due to topographic constraints on many occasions without requiring that applicants design dwellings smaller than what they would otherwise be permitted to develop pursuant to the underlying zoning, and to do so now would be inconsistent with past precedent.
- v. Given this information, the Planning Commission concludes that applying a 20 foot garage setback and 15 foot front yard setback creates a practical difficulty for the owner and that a 10 foot variance is sufficient to alleviate the practical difficulty.
- d. <u>Criterion #4.</u> That authorization of the variance will not result in substantial adverse physical impacts to property in the vicinity or zoning district in which the property is located, or adversely affect the appropriate development of adjoining properties. Adverse physical impacts may include, but are not limited to, traffic beyond the carrying capacity of the street, unreasonable noise, dust, or loss of air quality. Geology is not a consideration because the Code contains a separate section addressing geologic limitations.
 - i. Mr. Roth points out that adjacent properties to the north and to the south are currently improved with residential structures, and that their planned improvements are in line with such development. He further notes that property(s) to the east, on the opposite side of Spring Street, will not be impacted by a reduction to the front yard setbacks. The new development will be consistent with the existing building line established with the home to the north, and Mr. Roth points out that the 24 feet of unimproved right-of-way creates an additional buffer (i.e. a 34 foot setback from the back of curb/gutter to front of the improved structure(s)). He goes on to state that the effective setback of 34 feet exceeds the zoning code setback of 20 feet that would apply to a normal building lot. Additionally, Mr. Roth points out that the additional setback will allow for off-street parking of no less than 2 cars per lot, in additional to the parking garage designed with the structures.
 - ii. NW Spring Street is not a through-street. Mr. Roth points out that the north end of the street was vacated by the City, allowing a residential structure to be constructed at the end of the street, approximately 140 feet to the north of the subject lots. He notes that this

- condition limits the traffic servicing the 5 existing homes on the street. This is also a reason why a 24 foot wide paved street is sufficient to meet the needs of adjoining and nearby development.
- iii. Mr. Roth acknowledges that the dwellings he is planning to construct will be required to conform to the City's building height limitations, and points out that such height limitations would apply to the structure(s) regardless of the front yard setbacks being 20 feet (current zoning code) or 10 feet (requested variance).
- iv. While the property has been surveyed, and property corners adjacent to the NW Spring Street right-of-way have been identified, the location of that line may not be evident when construction is commenced. Therefore, it is necessary to require the right-of-way line be confirmed by survey and 10 foot setback line staked before construction of the dwellings is commenced. This can be addressed with a condition of approval.
- v. Considering the above, the Planning Commission concludes that this criterion has been satisfied.
- e. <u>Criterion #5</u>. That the variance will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access.
 - i. Mr. Roth indicates that the proposed variance will not interfere with access to the existing utilities. Sewer and water are existing in Spring Street. The new dwellings he is planning to construct will require he provide appropriate conduits for the extension of electricity, natural gas, telephone and cable currently located on the opposite side of Spring Street.
 - ii. The City's storm drainage requirements (Ref: Exhibit 4 to Staff Report Attachment "C") will require the applicant install a new catch-basin along the curb line. Mr. Roth further notes that he has been working with the City to resolve needed improvements to the public storm drainage system and that such work will not be impacted by the requested variance.
 - iii. Utilities are located within the right-of-way, so as long as the addition does not extend beyond the property line it should not interfere with the utilities in the area.
 - iv. Considering the above, the Planning Commission concludes that this criterion has been satisfied.
- f. <u>Criterion #6</u>. That any impacts resulting from the variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.
 - i. This criterion is limited to impacts that can be directly tied to the variance, as opposed to other impacts that might be associated with site development. Mr. Roth argues that the variance to allow the structure(s) to be located 10 feet closer to the front property line will

- have no impact to the adjoining properties. He further points out that moving the structure(s) forward helps create more separation from the existing embankment.
- ii. There does not appear to be any impacts attributed to the variance that require mitigation. If approved, the building line of the new dwellings would be consistent with what has already been established for the property to the north. Undeveloped right-of-way between the street and property line provides additional separation that has the effect of establishing a setback that is more than sufficient to address any lighting or privacy concerns.
- iii. Considering the above, the Planning Commission concludes that there are no adverse impacts requiring mitigation.

OVERALL CONCLUSION

Based on the staff report, the application material, and other evidence and testimony in the record, the Planning Commission concludes that the above findings of fact and conclusions demonstrate that the applicant has demonstrated compliance with the criteria for granting a variance, and, therefore, the request is **APPROVED** with the following conditions of approval:

- 1. Approval of this land use permit is based on the submitted written narrative and plans listed as Attachments to this report. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner to comply with these documents and the limitations of approval described herein.
- 2. The property owner shall survey and stake the property line adjacent to NW Spring Street and 10 foot setback line and stakes shall be in place until footing inspections have been performed.
- 3. Pursuant to NMC 14.52.140/"Expiration and Extension of Decision," this approval shall be void after 18 months unless all necessary building permits have been issued. An extension may be granted by the Community Development Director as provided in this section provided it is sought prior to expiration of the approval period.



Attachment "A-17" 2-MISC-20 City of Newport

169 SW Coast Hwy Newport, OR 97365 541-574-0629 Fax: 541-574-0644

Building Permit

Commercial Site Development

Permit Number: 625-19-000420-SD

IVR Number: 625055670724

Web Address: www.newportoregon.gov

Email Address: permits@newportoregon.gov

Permit Issued: February 24, 2020

TYPE OF WORK

Category of Construction: None Specified

Type of Work: New

Submitted Job Value: \$0.00

Description of Work: NW Spring St: Site clearing, tree removal, grading, retaining walls, erosion control,

storm drain piping

| · 其多。 | JOB SITE INFORMATION | v (**) | TO DESCRIPTION OF THE PARTY OF THE |
|-------------------|----------------------|----------|------------------------------------|
| Worksite Address | Parcel | Owner: | ROTH J T JR & |
| 1515 NW Spring ST | 11-11-05-BB-02300-00 | Address: | ROTH THERESA |
| Newport, OR 97365 | | | TUALATIN, OR 97062 |
| • _ • | | Owner: | ROTH J T JR & |
| 1525 NW SPRING ST | | Address: | ROTH THERESA |
| NEWPORT, OR 97365 | | | TUALATIN, OR 97062 |
| 1535 NW SPRING ST | | Owner: | ROTH J T JR & |
| NEWPORT, OR 97365 | | Address: | ROTH THERESA |
| | | | TUALATIN, OR 97062 |
| | | Owner: | ROTH J T JR & |
| | | Address: | ROTH THERESA |
| | | | TUALATIN, OR 97062 |

LICENSED PROFESSIONAL INFORMATION

Business Name
JONATHON LONGFELLOW
CONSTRUCTION INC - Primary

License CCB License Number

nber Phone

164614

503-341-8547

SCHEDULING INSPECTIONS

Various inspections are minimally required on each project and often dependent on the scope of work. Contact the issuing jurisdiction indicated on the permit to determine required inspections for this project.

Schedule or track inspections at www.buildingpermits.oregon.gov

Call or text the word "schedule" to 1-888-299-2821 use IVR number: 625055670724

Schedule using the Oregon ePermitting Inspection App, search "epermitting" in the app store

Permits expire if work is not started within 180 Days of issuance or if work is suspended for 180 Days or longer depending on the issuing agency's policy.

All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. Granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the Center at (503) 232-1987.

All persons or entities performing work under this permit are required to be licensed unless exempted by ORS 701.010 (Structural/Mechanical), ORS 479.540 (Electrical), and ORS 693.010-020 (Plumbing).

| | | 8 |
|---|-------------|-------------|
| Permit Number: 625-19-000420-SD | | Page 2 of 2 |
| PERMIT FEES | | |
| Fee Description | Quantity | Fee Amount |
| Grading site development plan review, enter permit amount | 290 | \$188.50 |
| Grading 101 - 1,000 cubic yards | 959 | \$290.00 |
| | Total Fees: | \$478.50 |

ABBREVIATION

TW TOP OF WALL

BW BOTTOM OF WALL (EXPOSED AT GRADE)

Reviewed Plans and specifications shall not be changed, andified or altered without authorization from the building official, and all work regulated by the code shad he done in accordance with the reviewed plans. The issuance or granting of permit or review of plans specifications and computations shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of the code or any other ordinance of the

port retime # 625-19-000 420-SD

Departmental Plan Review Approvals

| roj. Description | 5446 | WW9 4 | LE HTN | ing warus |
|------------------|----------------|------------------------|-----------------|------------|
| Department | Zone/ Class | Conditions Attached | Signature/Title | Oate |
| Planning | 2-2 | XX | n'estale | nr 2/24/30 |
| Building | | | S. T. | 25-21-20 |
| Fire | | 1 | May | FM 6-6-20 |
| Public Works | | * | Clare L Par | C 2.24.20 |
| Other | | | | |

* PUBLIC STORM UTILITY DASOMENT + OTHER IMPROVEY ON SOUTHERN BORDER ARE PENDING.

AX SUBJECT TO CONSITTOMS OF FILE 8-69-18 (ATTACHES)

THIS GRADE FOR EXCAVATION ONLY DWELLINGS WILL HAVE CODE COMP. DRIVEWAY GRADES

CITY OF NEWPORT

FEB 2 1 2020 **RECEIVED**

REVISIONS





SHEET

OF

Attachment "A-18" 2-MISC-20

K & A ENGINEERING, INC.
91051 S. WILLAMETTE STREET
P. O. BOX 8486, COBURG, OR 97408
(541) 684-9399 · KAENGINEERS.COM



April 27, 2020

Project: 18011

J.R. Roth Construction 12600 SW 72nd Ave., Suite 200 Portland, OR 97223

Subject: Geotechnical Quality Assurance Inspection Summary
General Clearing, Stripping, and Grading
Tax Lot 2300, Tax Map 11-11-05-BB
NW Spring St., Newport, Oregon

PURPOSE AND SCOPE

As requested, we provided on-site observations of:

- Preliminary site clearing and grading on April 15, 2020; and
- Foundation Excavation for the west MSE retaining wall system on April 23, 2020.

The purpose of our observations included:

- Verify subsurface conditions described in our Geotechnical Report for the project (dated February 5, 2019),
- Make recommendations for temporary cut embankments, and
- Approve of foundation subgrade and rock fill for the west mechanically stabilized earth (MSE) gravity grade-separation retaining wall.

INSPECTIONS AND FINDINGS

Inspection April 15, 2020

We inspected the site during clearing, stripping, and preliminary grading operations on April 15, 2010. The weather was dry and cool, with intermittent sun and coastal fog.

Clearing was conducted by a professional tree service and the earthwork contractor, using a combination of sawyers to cut larger trees and shrubs and the excavator to move removed wood and vegetation to a large woodchipper. See Photo 1.

Stripping and preliminary grading included:

 Stripping vegetation from the existing swale that parallels the west edge of NW Spring Street to prepare the subgrade to receive fill.



 Constructing a temporary access road to access the lower, west end of the site. This road would allow equipment and materials transport for construction of the two terraced MSE retaining walls planned for the west edge of the property. See Photo 2.



Photo 1 - Clearing Operations and Stripping of Swale on West Edge of Spring Street



Photo 2 - Looking East at Temporary Access Road and Cut Embankment

The temporary access road starts at the southeast corner of the property (from NW Spring Street) and heads northwest to the northwest corner of the property. Construction of this access required creating



a cut embankment into the existing hillside. Materials exposed in the cut embankment consisted of tan/orange, lightly cemented, terrace sands. The cemented sands were dense and cemented, with a high degree of apparent cohesion (due to cementation). These materials were what we found in the probes made for the investigation of the site (summarized in our February 5, 2019 Geotechnical Report).

Based on our observations, we recommended that the non-organic sands excavated from the terrace deposits exposed in the temporary road cut embankment would be very suitable for re-use as native structural fill for:

- Filling the east swale (the swale located on the west side of the street) and
- The MSE retaining wall reinforced zone.

We also observed significant groundwater seepage at the base of the cut embankment. Disturbed soils at the base of the excavation included gray clays which indicated that the toe of cut embankment was at or very close to siltstone bedrock. These our observations verify conditions summarized in the project Geotechnical Report that included groundwater at or near the contact of upper sandy Terrace and the lower SILTSTONE. The seepage did not, in our opinion, represent any hazard of reduced stability of the temporary embankment.

INSPECTION APRIL 23, 2020

MSE Retaining Wall Foundation Excavation

We inspected the foundation excavation for the lower/western MSE retaining wall designed for the site on April 23, 2020. The weather was warm, dry, and sunny.

The excavation contractor was excavating the lower (west) MSE retaining wall foundation. K & A Engineering, Inc. had previously evaluated global stability for gravity wall systems at this location. Our analysis indicated that the native sands did not offer adequate shear resistance for earthquake loads. We recommended that coarse angular quarry stone be placed on level benches cut into SILTSTONE extending to the base of the retaining wall.

Hard, massive, gray SILTSTONE bedrock was encountered at a depth of approximately 3 to 4-feet below the original ground surface at the location of the MSE wall. The bedrock was massive, hard, and in some locations revealed a very thin bedding sequence (less than ½-inch) which is similar to the hard SILSTONE exposure along the beach (west of the MSE wall location). Groundwater was seeping into the excavation at the surface of bedrock. See Photo 3.

We approved the bedrock in the excavation for the MSE wall foundation subgrade. As the excavation was not completed at the time of our inspection, we discussed the need to bench the subgrade in SILTSTONE.





Photo 3 - View of MSE Foundation Excavation. Bedrock Exposure at Right

Rock Fill

We also inspected the rock stockpiled at the site for use as the fill that would extend from the bedrock subgrade to the base of the retaining wall. The rock consisted of a relatively durable, 100-percent fractured faced, angular, open-graded basalt. The rock appears to pass the 4-inch sieve. See Photo 4. We approved of this rock for fill extending from bedrock to the MSE wall base.



Photo 4 – 3" Open-graded Quarry Stone Fill. Comb shown for Reference.



Native Structural Fill

The excavation contractor had started to move materials excavated from the terrace deposits in the temporary construction access cut embankment to fill the previously stripped swale along the west side of the street. Material was placed at the north end of the swale to a depth of approximately 2-feet, and compacted. Further fill operations were suspended until K & A Engineering, Inc. had had a chance to evaluate the materials. See Photo 5.

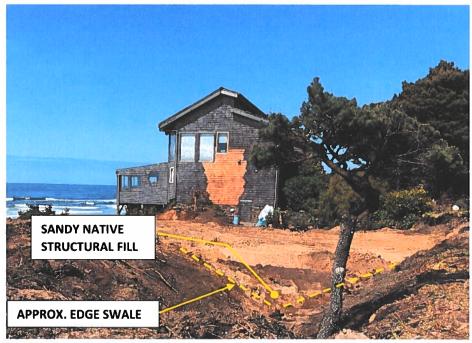


Photo 5 - Native Structural Fill at North End of Swale

We inspected the fill, as placed, and recommended that native terrace sands, as placed, were suitable for native structural fill, and that the excavation contractor could proceed with further fill operations.



SUMMARY AND RECOMMENDATIONS

In summary, we have inspected and approved of:

- Stripped subgrade in the swale along the west edge of the street as suitable for the placement of native structural fill,
- The nature of terrace sands and their suitability as both native structural fill and fill for the MSE retaining wall reinforced zone,
- The excavation and SILTSTONE subgrade for the lower MSE retaining wall,
- The proposed rock fill to be placed on bedrock to support the lower MSE retaining wall, and
- Placement of native structural fill (terrace sands) in the swale along the west edge of the street.

Thank you for the opportunity to be of service. Please call me if you have any questions.

Sincerely,



Michael Remboldt, P.E., G.E. K & A Engineering, Inc.



Attachment "A-19"

2-MISC-20

City of Newpo Newport, OR 97365

Fax: 541-574-0644

Building Permit

Residential 1 & 2 Fam Dwelling (New Only)

Permit Number: 625-20-000193-DWL

IVR Number: 625034818130

Web Address: www.newportoregon.gov

Email Address: permits@newportoregon.gov

Permit Issued: June 02, 2020

Project: J T Roth

TYPE OF WORK

Residential Specialty Code Edition: 2017

Category of Construction: Single Family Dwelling

Calculated Job Value: \$675,339.17

Type of Work: New

Description of Work: New construction, single family detached

JOB SITE INFORMATION

Worksite Address Parcel

1535 NW SPRING ST 11-11-05-BB-02300-00

NEWPORT, OR 97365

Owner: ROTH J T JR &

Address:

ROTH THERESA

TUALATIN, OR 97062

LICENSED PROFESSIONAL INFORMATION

Business NameLicenseLicense NumberPhoneJ T ROTH CONSTRUCTION INC -CCB31700503-639-2639

Primary

PENDING INSPECTIONS

| Inspection | Inspection Group | Inspection Status |
|----------------------------------|------------------|-------------------|
| 1999 Final Building | 1_2 Famdwell | Pending |
| 2999 Final Mechanical | 1_2 Famdwell | Pending |
| 3999 Final Plumbing | 1_2 Famdwell | Pending |
| 4999 Final Electrical | 1_2 Famdwell | Pending |
| 6010 Preliminary Erosion Control | 1_2 Famdwell | Pending |

SCHEDULING INSPECTIONS

Various inspections are minimally required on each project and often dependent on the scope of work. Contact the issuing jurisdiction indicated on the permit to determine required inspections for this project.

Schedule or track inspections at www.buildingpermits.oregon.gov

Call or text the word "schedule" to 1-888-299-2821 use IVR number: 625034818130

Schedule using the Oregon ePermitting Inspection App, search "epermitting" in the app store

Permits expire if work is not started within 180 Days of issuance or if work is suspended for 180 Days or longer depending on the issuing agency's policy.

All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not. Granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction.

ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the Center at (503) 232-1987.

All persons or entities performing work under this permit are required to be licensed unless exempted by ORS 701.010 (Structural/Mechanical), ORS 479.540 (Electrical), and ORS 693.010-020 (Plumbing).

| Permit Number: 625-20 | -000193-DWL | | | | Page 3 o |
|--------------------------|------------------------------|-------------|------------------|-----------|--------------|
| Construction Type | Occupancy Type | Unit Amount | Unit | Unit Cost | Job Value ` |
| VB | R-3 1 & 2 family | 5,149.00 | Sq Ft | \$122.46 | \$630,546.54 |
| VB | U Utility, misc. | 506.00 | Sq Ft | \$48.73 | \$24,657.38 |
| VB | U Utility, misc half rate | 560.00 | Sq Ft | \$24.37 | \$13,647.20 |
| All use groups | Unfinished basements | 289.00 | Sq Ft | \$22.45 | \$6,488.05 |
| | | | Total Job Value: | | \$675,339.17 |

REVIEWED FOR CODE COMPLIANCE

Reviewed plans and specifications shall not be changed, modified or altered without authorization from the building official, and all work regulated by the code shall be done in accordance with the reviewed plans. The issuance or granting of permit or review of plans, specifications and computations shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of the code or any other ordinance of the Date 5-18-2020

City of Newbort Permit # 625-20-000193-DWL jurisdiction.

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* SUBTELT TO CONSMONS OF
PERMIT FILE NO. 1-VAR-19 9
8. 67.18 (ATTACHES)

A CO DEPENDENT ON COMPLETION OF STORM IMPROVEMENTS.

PLAN No .:

DRAUN:

202

DATE:

1-22-2020

SCALE:

1'=10'-0"

FILE:

XXXX

PLAN



THESE PLANS AND DESIGNS HEREIN ARE COPYRIGHTED UNDER FEDERAL LAW BY TROY FOWLER & FOWLER HOME DESIGN LLC 2012

CITY OF NEWPORT

MAY 05 2020

RECEIVED

Derrick Tokos

From:

Spencer Nebel

Sent:

Friday, June 05, 2020 2:37 PM 'chris@hathawaylarson.com'

To: Cc:

David Allen; Derrick Tokos; Tim Gross

Subject:

Response regarding Public Improvements for developing Tax Lot 2300 Lot 1 Ocean

View Subdivision by Tim Roth

Hi Chris: Please disregard the term draft in the earlier email!

Spencer R. Nebel

City Manager City of Newport, Oregon 97365 541-574-0601 s.nebel@newportoregon.gov

From: Spencer Nebel

Sent: Friday, June 05, 2020 2:32 PM

To: 'chris@hathawaylarson.com' <chris@hathawaylarson.com>

Cc: David Allen <d.allen@newportoregon.gov>; Derrick Tokos <D.Tokos@NewportOregon.gov>; Tim Gross

<T.Gross@NewportOregon.gov>

Subject: FW: DRAFT Response regarding Public Improvements for developing Tax Lot 2300 Lot 1 Ocean View Subdivision

by Tim Roth

Dear Chris Koback:

City Attorney David Allen has asked that I provide information to you as to the public improvements that are being required for the Development of Lot 3 Ocean View Subdivision (Portion of Tax Lot 2300).

Minimum Requirements

The minimum level of public improvements required before the City will issue a certificate of occupancy for the dwelling Mr. Roth intends to construct consists of the following:

- Widen the paved section of NW Spring Street to 24 feet and install curb and gutter along the frontage of the lot
 3.
- Install a new catch basin in the vicinity of the southeast corner of lot 1. Widen the paved section of NW Spring Street along the frontage of lots 1 & 2 Oceanview Subdivision and install a rolled asphalt curb to direct run-off from the curb and gutter along the lot 3 frontage south.
- Place a new 8-inch storm drain line extending from the catch basin west, parallel to the south property line, a distance sufficient to discharge the water at the base of the slope. This includes the installation of an energy dissipator at the outfall and, because this will be a public line, your client will be required to dedicate a 10-foot wide utility easement so the City can maintain the line moving forward. It is our understanding that the 8-inch line your client recently installed, running north to south between the two retaining walls, will direct run-off from the new residence and future development on the other two lots, into the new 18-inch public storm drain line.

Since Mr. Roth plans to improve the remaining two lots to the south, he may want to extend the curb and gutter across all lots at the time that these improvements are made. This would likely be a more economical way to meet the development needs for the remaining lots.

Participation by the City in Upsizing the Storm Sewer

As we have discussed with Mr. Roth, while an 8" storm sewer is required for the property being developed, the City will require an 18-inch public storm drain line installed. The City is prepared to cover the upsizing costs, including related engineering, trenching, etc. as outlined below. Mr. Roth has provided the cost estimates for installing an 18-inch storm drain line in an easement on his property. Should this 18" line be constructed, then the City, at its expense, would redirect run-off from the existing, aging 12-inch public storm drain line further to the south, to this new line at some point in the future. We will be happy to work with your client on an improvement agreement that spells out the specific responsibilities of both parties.

In order to clarify the proposed cost share, the Engineering Department has provided the following information. The City will pay for the cost to upsize the storm sewer from what is required as part of the public improvement requirements to the size necessary to redirect storm drainage from Basin "R" as outlined in the Storm Water Master Plan and a proportional amount of engineering associated with the upsizing. The remainder of the design and construction costs are the responsibility of the development. Any connection to the existing storm sewer in the area will be conducted by the City at a later time.

Upsizing costs are calculated as follows:

- Estimate of total project costs to install 8" storm drain = A
- Estimate of total project costs to install 18" storm drain = B
- Estimate of total engineering and survey costs = C

Construction costs: B - A = total upsizing cost share

For example, if the cost to install the required public improvements (8" storm pipe) equals \$10,000, and the cost to install an 18" storm pipe equals \$15,000, then the City will contribute \$5,000. (\$15,000-\$10,000 = \$5,000)

Engineering costs: C *(1-A/B) = total engineering cost share

For example, if the engineering costs equal \$7,000, the cost to install the required public improvements (8" storm pipe) equals \$10,000, and the cost to install an 18" storm pipe equals \$15,000, then the City will contribute \$2,333.33 towards the engineering costs related to the upsizing. (In other words, upsizing increased the cost of construction by 1/3, therefore the City will contribute to 1/3 of the engineering.) (\$7,000*(1-\$10,000/\$15,000)) = \$2,333.33

If Mr. Roth agrees with this methodology, then the City will need estimates from his civil engineer on the cost difference between an 8" and 18" storm sewer. The City would enter into an Improvement Agreement for paying the City's share of this work.

Appeal Rights

If Mr. Roth believes these minimum requirements are not directly related or roughly proportional to the impact of his development then he may file for an administrative decision of the Community Development Director contesting one or more of the requirements. Attached is an application form and there is a filing fee of \$504. Upon receipt of the application, the Director will provide required public notice, followed by a written decision containing rough proportionality findings. Such Type II land use decisions may be appealed to the Newport Planning Commission.

Feel free to contact Community Development Director Derrick Tokos, Public Works Director/City Engineer Tim Gross or myself if any additional information or clarification is needed.

Spencer R. Nebel

City Manager
City of Newport, Oregon 97365
541-574-0601
s.nebel@newportoregon.gov

CHAPTER 14.44 TRANSPORTATION STANDARDS

14.44.010 Purpose

The purpose of this Chapter 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. Streets are the most common public spaces, touching virtually every parcel of land. Therefore, one of the primary purposes of this Chapter is to provide standards for attractive and safe streets that can accommodate vehicle traffic from planned growth and provide a range of transportation options, including options for driving, walking, bus, and bicycling. This Chapter implements the city's Transportation System Plan.

14.44.020 When Standards Apply

The standards of this section apply to new development or redevelopment for which a building permit is required that places demands on public or private transportation facilities or city utilities. Unless otherwise provided, all construction, reconstruction, or repair of transportation facilities, utilities, and other public improvements within the city shall comply with the standards of this Chapter.

14.44.030 Engineering Design Criteria, Standard Specifications and Details

The design criteria, standard construction specifications and details maintained by the City Engineer, or any other road authority within Newport, shall supplement the general design standards of this Chapter. The city's specifications, standards, and details are hereby incorporated into this code by reference.

14.44.040 Conditions of Development Approval

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. Findings in the development approval shall indicate how the required improvements are directly related and roughly proportional to the impact.

<u>Index</u>

amended the Oregon Highway Plan to put in place the alternate mobility standard for US 101.)

14.44.050 Transportation Standards

- A. Development Standards. The following standards shall be met for all new uses and developments:
 - All new lots created, consolidated, or modified through a land division, partition, lot line adjustment, lot consolidation, or street vacation must have frontage or approved access to a public street.
 - Streets within or adjacent to a development subject to <u>Chapter 13.05</u>, Subdivision and Partition, shall be improved in accordance with the Transportation System Plan, the provisions of this Chapter, and the street standards in <u>Section 13.05.015</u>.
 - Development of new streets, and additional street width or improvements planned as a portion of an existing street, shall be improved in accordance <u>Chapter 13.05</u>, and public streets shall be dedicated to the applicable road authority;
 - Substandard streets adjacent to existing lots and parcels shall be brought into conformance with the standards of <u>Chapter 13.05</u>.
- B. Guarantee. 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 of the following conditions exist:
 - 1. A partial improvement may create a potential safety hazard to motorists or pedestrians;
 - Due to the developed condition of adjacent properties it is unlikely that street improvements would be extended in the foreseeable future and the improvement associated with the project under review does not, by itself, provide increased street safety or capacity, or improved pedestrian circulation;
 - The improvement would be in conflict with an adopted capital improvement plan; or

<u>Index</u>

- 4. The improvement is associated with an approved land partition or minor replat and the proposed land partition does not create any new streets.
- C. Creation of Rights-of-Way for Streets and Related Purposes. Streets may be created through the approval and recording of a final subdivision or partition plat pursuant to Chapter 13.05; by acceptance of a deed, provided that the street is deemed in the public interest by the City Council for the purpose of implementing the Transportation System Plan and the deeded right-of-way conforms to the standards of this Code; or other means as provided by state law.
- D. Creation of Access Easements. The city may approve an access easement when the easement is necessary to provide viable access to a developable lot or parcel and there is not sufficient room for public right-of-way due to topography, lot configuration, or placement of existing buildings. Access easements shall be created and maintained in accordance with the Uniform Fire Code.
- E. Street Location, Width, and Grade. The location, width and grade of all streets shall conform to the Transportation System Plan, subdivision plat, or street plan, as applicable and are to be constructed in a manner consistent with adopted City of Newport Engineering Design Criteria, Standard Specifications and Details. Street location, width, and grade shall be determined in relation to existing and planned streets, topographic conditions, public convenience and safety, and in appropriate relation to the proposed use of the land to be served by such streets, pursuant to the requirements in Chapter 13.05.

(Chapter 14.44 as adopted by Ordinance No. 2045 on November 5, 2012; effective December 30, 2012. This ordinance renumbered Municipal Code Chapters 14.43, "Procedural Requirements," through 14.51, "Fees," and enacted new Chapters 14.43, "South Beach Overlay Zone," 14.44, "Transportation Standards," and 14.45, "Traffic Impact Analysis.")

CITY OF NEWPORT PUBLIC NOTICE¹

NOTICE IS HEREBY GIVEN that an application has been filed with the Community Development (Planning) Department to review the following matter.

File No. 2-MISC-20:

Applicant & Property Owner: J. T. Roth. Jr. and Theresa Roth.

Request: Application for a formal determination that requirements the City is imposing for street and stormwater public improvements are roughly proportional to the impact of constructing a single family dwelling on the property. Further, applicant asserts requirements presented by the City constitutes an unlawful exaction under the 5th Amendment to the United States Constitution.

<u>Location</u>: 1515, 1525 & 1535 NW Spring St (Lincoln County Assessor's Map 11-11-05-BB; Tax Lot 2300).

Applicable Criteria: NZO Section 14.44.040: 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. Findings in the development approval shall indicate how the required improvements are directly related and roughly proportional to the impact.

<u>Testimony</u>: Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances which the person believes to apply to the decision; failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to the issue precludes an appeal based on that issue. You may submit testimony in written form by 5:00 p.m. August 3, 2020, to the Newport Community Development (Planning) Department, City Hall, 169 SW Coast Hwy, Newport, Oregon, 97365.

Those making written comment will be notified of the Community Development (Planning) Director's decision.

<u>Contact</u>: Derrick Tokos, Director, Community Development Department, (541) 574-0626; d.tokos@newportoregon.gov (mailing address above under "Testimony").

MAILED: July 20, 2020.

Notice of this action is being sent to the following: (1) Affected property owners within 200 feet of the subject property (according to Lincoln County tax records): (2) affected public/private utilities/agencies within Lincoln County: and (3) affected city departments.

Sherri Marineau

From: Sherri Marineau

Sent: Monday, July 20, 2020 12:59 PM

To: 'odotr2planmgr@odot.state.or.us'; 'lisa.phipps@state.or.us'

Subject: Miscellaneous Permit 2-MISC-20

Attachments: File 2-MISC-20 Notice.pdf

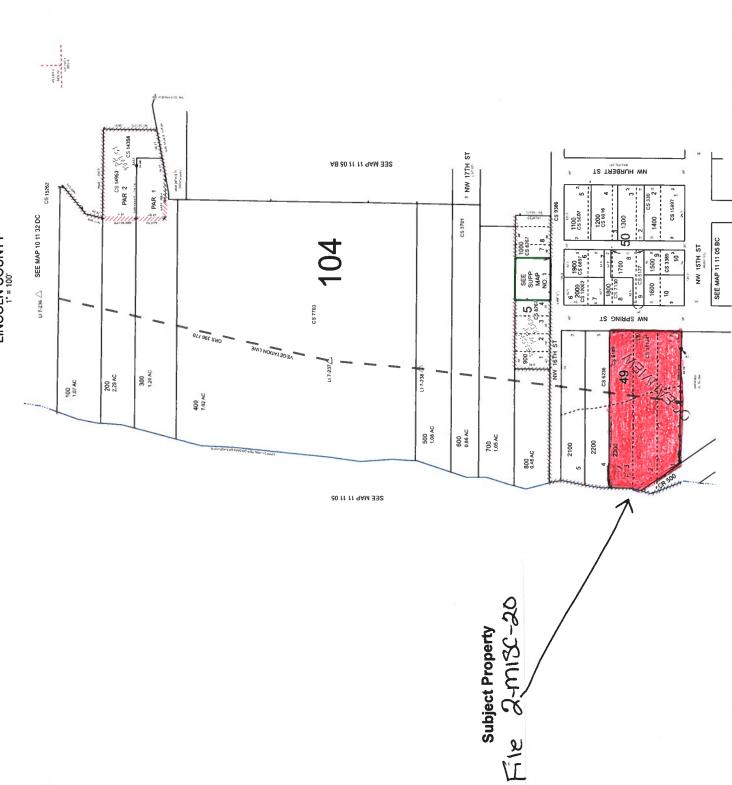
This is to provide notice regarding a request received by the Community Development (Planning) Department for a property at 1515, 1525 & 1535 NW Spring St, Newport, OR 97365. The attachments contain the applicant's explanation of the request and a map.

Please review the request and return any comments you may have to our department by 5:00 p.m. Monday, August 3, 2020, to be considered in the Community Development (Planning) Director's decision. If you need any further explanation, all materials are available for review at our department. Should no response be received, a "no comment" will be assumed.

Sherri Marineau City of Newport Community Development Department 169 SW Coast Highway Newport, OR 97365 ph: 541.574.0629 fax: 541.574.0644

ph: 541.574.0629 fax: 541.574.0644 s.marineau@newportoregon.gov





NEWPORT 11 11 212³ Revised: SEB 05/06/2019

1431 NW SPRING STREET LLC 1143 MANOR DR SONOMA: CA 95476 1505 NW SPRING STREET LLC 1143 MANOR DR SONOMA; CA 95476 BUUS LESLIE TRUSTEE &
DARLING BUUS DAWN TRUSTEE
3361 EL DORADO AVE N
LAKE HAVASU CITY: AZ 86406

CALLAHAN MICHAEL & CASSELL SANTHA A PO BOX 12345 PORTLAND; OR 97212

CITY OF NEWPORT CITY MANAGER 169 SW COAST HWY NEWPORT; OR 97365 EGGLESTON MARK S TSTEE & COOPER SUSAN L TSTEE 29513 N 140TH ST SCOTTSDALE; AZ 85262

GREGORY DAVID & BENEDETTI CHRISTINE 424 SW 297TH ST FEDERAL WAY; WA 98023 HIXSON RICHARD S & STOODY JOCELYN L PO BOX 11536 BOZEMAN; MT 59718

HOFER VANDEHEY ROBERTA 20481 WINLOCK LN FOSSIL; OR 97830

KNIGHT DONALD C TRUSTEE & KNIGHT PATSY M TRUSTEE 660 DRIVER VALLEY RD OAKLAND; OR 97462 KRAUSE ETHEL ADDRESS; UNKNOWN

LINSTROMBERG PAT JOAN TTEE ATTN LESLIE HOGAN 931 WASHINGTON SW ALBANY; OR 97321

LOOKOUT CONDOMINIUM THE ASSOCIATION OF UNIT OWNERS 433 N COAST HWY NEWPORT; OR 97365 MCDOWELL MINDY & MCDOWELL SCOTT 6553 S MADISON CT CENTENNIAL: CO 80121

MONTGOMERY BARBARA 1431 NW SPRING ST UNIT A NEWPORT; OR 97365

NIELSEN DAVID DUSTIN TRUSTEE & NIELSEN TOBY LYNN TRUSTEE 31947 W OCEAN AVE ARCH CAPE; OR 97102

OSTERHOUDT MICHELE R 544 NW 15TH ST NEWPORT; OR 97365 PARSONS MICHAEL G & PARSONS SANDRA A 1447 NW THOMPSON ST NEWPORT; OR 97365

PESTANA RICKY D &
PESTANA JANICE M
750 1ST
UNIT 12
LAKE OSWEGO; OR 97034

PETERSON MARK G &
YOUNG PETERSON STEPHANIE A
4450 S SHASTA LOOP
EUGENE; OR 97405

ROTH J T JR & ROTH THERESA 12600 SW 72ND AVE #200 PORTLAND; OR 97223

SEASONG CONDOMINIUM ASSOCIATION OF UNIT OWNERS 544 NW 16TH ST NEWPORT; OR 97365 SIGLEO ANNE C 1541 NW SPRING ST NEWPORT; OR 97365 STARK NEAL E TRUSTEE 5034 SW VERMONT ST PORTLAND; OR 97219

THE ASSN OF UNIT OWNERS OF WIZARDS OF THE SEA CONDO 1505 NW SPRING ST NEWPORT; OR 97365 WHALES SPOUT CONDOMINIUM HOMEOWNERS ASSOCIATION 370 SW COLUMBIA BEND; OR 97702 WILLETT CONRAD J & GAIL E 1426 NW SPRING ST NEWPORT; OR 97365

YARON YUVAL 1534 NW SPRING ST NEWPORT; OR 97365 Adjacent Property Owners Within 200 Ft
File No. 2-MISC-20

NW Natural ATTN: Dave Sanders 1405 SW Hwy 101 Lincoln City, OR 97367

CENTRAL LINCOLN PUD ATTN: RANDY GROVE PO BOX 1126 NEWPORT OR 97365 **EMAIL**
Email: Lisa Phillips
DLCD Coastal Services Center
lisa.phillips@state.or.us

CenturyLink
ATTN: Corky Fallin
740 State St
Salem OR 97301

Charter Communications ATTN: Keith Kaminski 355 NE 1st St Newport OR 97365

Derrick Tokos
Community Development Director

Joseph Lease Building Official

Clare Paul Public Works Beth Young Associate Planner

Michael Cavanaugh Parks & Rec Rob Murphy Fire Marshal

Laura Kimberley Library Jason Malloy Police Chief

Spencer Nebel CM

Tim Gross Public Works

Derrick Tokos CDD Mike Murzynsky Finance Director

EXHIBIT 'A'
(Affected Agencies)

(2-MISC-20)

Attachment "A-23" 2-MISC-20

To: City of Newport Community Development Department
Derrick Tokos Director, Community Development Department

Re: File No. 2-Misc-20 for formal determination regarding storm water land use issue

Location: 1515, 1525,1535 NW Spring St. (Assessors Map 11-11-05-BB, Tax Lot 2300)

This is submitted on behalf of the two adjoining properties to the south regarding the captioned matter above i.e. The **Whales Spout Condos** consisting of six (6) units and the **Wizards of Sea Condos** consisting of two (2) units.

The Roth's and City have an issue regarding the <u>existing</u> storm drain system and the <u>proposed</u> storm drain for the Roth property improvement. The issue is whether the Roth project will develop a new run off system to include the existing system or just the new Roth construction, which would obligate the City to ultimately repair the existing system.

The existing storm drain system out flows through an easement on the Wizards Property. The issue is whether the parties can work out a joint agreement on moving the new system on an easement over Roth property and combine the systems or have two separate systems. If two systems, the City must repair and upgrade the existing system in any event using SDC funds.

This issue has a direct impact on both of the two adjoining condo associations. Specifically, the existing storm drain system from catch basin R is:

- 1. Undersized from its initial construction at a 12" diameter rather than an 18"
- 2. The lower catch basin (between top basin R and ocean) located on the Wizards and Whales Spout drive has blown out the catch basin grate several times due to excess water pressure
- 3. Winter rains have regularly flooded the Whales Spout lower units multiple times with over flow from the lower catch basin
- 4. Existing buried drain line down the easement on Wizards is faulted and leaking in the drive way area and is likely doing some invisible erosion due to the leakage
- 5. Related, the grade of Spring Street surrounding Basin R is wrong, causing much of the winter rains to miss the basin R and flow north along Spring Street finding a swale that allows storm water to flow down onto the north side of Wizards property
- 6. The over built infrastructure where the existing 12" line currently runs is significant and will be both difficult and expensive for the city to deal with compared to an agreement with Roth

We bring this up and have attached reference pictures of the flooding of the lower drive from the City catch basin that is flowing under Whales Spout Units causing damage and the indication of a faulted line leaking water through the summer months. There is no real idea of where the water may be migrating behind the retaining wall.

In closing, I need to state that this failed system has been ongoing for an extended period of time and the city should not be placing the burden to make the necessary repairs on the land use approvals of a single property owner. The storm system of Basin R benefits all property owners within the Basin R zone and the cost to improve and/or upgrade should be shared equally with all those who contribute to the system. It is obvious that this is a prime example of a project that should be improved with the dollars that the city has been collecting through the years from their monthly SDC improvement assessments.

We request that the above issues be taken into consideration as the City works with Roth's on this issue as the Associations are <u>suffering damage</u> to their <u>properties</u> due to the <u>undersized system</u> and the faulted line leaking water and improper street grade. This issue must be corrected in any case.

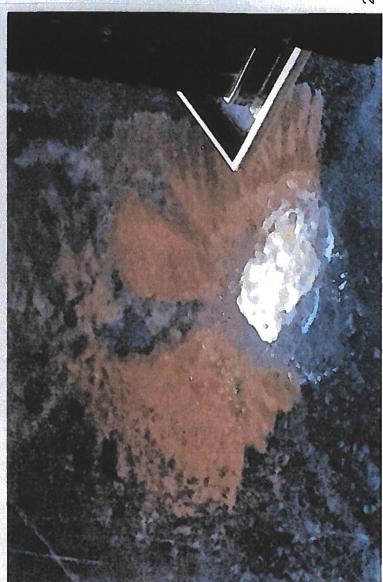
Joseph B. Fahrendorf, President

Whales Spout Condo Association Wizards of Sea Condo Association

Attachment (Photos)

AUG 0 3 2020 RECEIVED





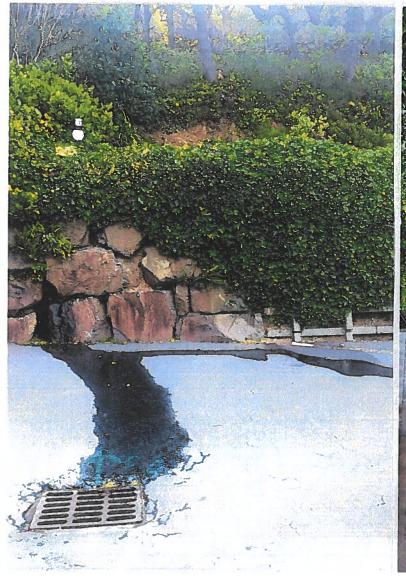
LOWER CATCH BASIN FLOODING UNDER WHALES SPOUT CONDOS



LOWER CATCH BASIN AFTER FLOOD WATER RETREATS



LEAKING WATER FROM DRAIN LINE FAULT ON TO LOWER DRIVE





Attachment "A-24" 2-MISC-20

Sherri Marineau

From:

Mona Linstromberg < lindym@peak.org>

Sent:

Friday, July 31, 2020 6:52 PM

To:

Derrick Tokos

Cc:

Sherri Marineau; David Allen

Subject:

File No. 2-Misc-20, comment

Attachments:

Roth comment stormwater drainage w attchs.pdf

Please find attached and enter in the record my comment on File No. 2-Misc-20.

Mona Linstromberg

Sent via my totally safe HARD WIRED internet connection

July 30, 2020

File 2-Misc-20, applicants and property owners J.T. Roth Jr. and Theresa Roth 1515, 1525, 1535 NW Spring St.:

Application for a formal determination that requirements the City is imposing for street and stormwater public improvements are roughly proportional to the impact of constructing a single family dwelling on the property. Further, applicant asserts requirements presented by the City constitutes an unlawful exaction under the 5th Amendment to the United States Constitution.

Comment:

In this current application by J.T. Roth and Theresa Roth, their attorney focuses on certain off-site public street improvements and certain storm water improvements. A most important aspect is one the Roths' attorney never even mentions, the proposed development is in the Hazard Overlay Zone (an active slide area) requiring an approved geologic report. The Director's approval of this permit WITH CONDITIONS under NMC chapter 14.21 Geologic Hazards Overlay Zone is the key to and the context for any discussion on any claims being made by the Applicants.¹

Per Applicant/Attorney description and narrative: 1) "Applicants seek a determination that the City cannot impose conditions associated with their building permit for a single-family dwelling requiring Applicants to construct off-site public street and stormwater improvements because the requirements presented by the City constitute an unlawful exaction under the 5th Amendment to the US Constitution."

2) "...the controlling precedent requires an applicant to exhaust all local proceeding made available before seeking relief in a different forum, to avoid any claim that they did not exhaust local appeals. Applicants are proceeding with City's required process."

Applicants actually missed the June 18, 2019 deadline to appeal the planning director's approval (Attachment 1) of Geologic Permit WITH CONDITIONS, No. 8-GP-18, but they

¹ NMC CHAPTER 14.21 GEOLOGIC HAZARDS OVERLAY14.21.010 The purpose of this section is to promote the public health, safety, and general welfare by minimizing public and private losses due to earth movement hazards and limiting erosion and related environmental damage, consistent with Statewide Planning Goals 7 and 18, and the Natural Features Section of the Newport Comprehensive Plan.

are now contesting Condition No. 4 of that approved document. Oddly enough, Condition No. 4 directly references the May 30, 2019 correspondence (Attachment 2) from the Roths' consulting engineer to Tim Gross (Public Works) and Derrick Tokos (Planning Director). The Applicants did not take advantage of this appeal process and this in itself undercuts their attorney's argument (no. 2) in this regard. The stormwater drainage quandary should have been resolved before these lots were cleared of vegetation, before retaining wall permits were granted, and before the building permit for the dwelling on lot 3 was issued (Attachments 3 and 4). The City has placed itself in an untenable position. Now the City is faced with this current action by the Roths who were, again, issued a building permit for lot 3 but are not assured of a certificate of occupancy until stipulated conditions are met.

The City is factoring in the Roths' own geologic report (Hazard Overlay Zone, active slide area) in the City's consideration of stormwater drainage options. The Roths are ignoring the approved geologic report pertaining to condition 4. Correspondence between the Applicants and the City supports the tie between the geologic report and the stipulated conditions in the final approval. The May 22, 2019 email from Derrick Tokos to involved parties states:

"With respect to the private line, your consultant makes reference to stopping short of the vegetation line, presumably to avoid permitting with the Oregon Parks and Recreation Department. It is unclear to me that this would be acceptable to your engineering geologist, who refers to the drain line being extended to the "head of the beach." It is also not clear to me that you would be able to avoid permitting with state parks, since they would be receiving concentrated run-off from your property."²

The above also indicates that discussion of stormwater drainage is not just about runoff from frontage street improvement as Roths' attorney states in his narrative (no. 1).

In addition, to better understand the applicable criteria NZO 14.55.040, I needed to go beyond the record (provided to me) attached to this action. Although reference in the record was made to the implementation of this code provision, it was made clearer during my review of File 6-Misc-18. Of course, the particulars were different, but in the referenced case, the Findings of Fact established the clear and objective standards utilized in making a determination that is at the heart of this application by the

² For reference to "at the head of the beach" see Appendix C of the Geologic Report, Drainage and Ground Water, Conclusion.

Roths...just what is the cost for which the Roths are responsible and have their 5th Amendment Rights been violated?

During the geologic permitting process No. 8-GP-18, I submitted comment for the record in opposition to the approval of the geologic report. I could not challenge the Director's decision without first hiring a geologic engineer and submitting a peer review report. This was beyond my means. However, something caught my eye when reviewing the applicants' geologic report at that time, and it caught my eye again. In Appendix D, there is a report issued by Braun Intertec, October 31, 1994. On page 5 of that report it states: "We again point out that the subject property is a small part of a very large affected area and the owner alone is powerless to do anything to stabilize it without the complete cooperation and assistance of neighbors and the City of Newport." Previously, I referred to File 6-Misc-18 and the Findings of Fact in that decision. In the Conclusion, item No. 6 details the myriad of reasons why development in the same vicinity may have been subject to different standards. The City of Newport has evolved over time in its approach to land use and the acknowledgement that development in a Geologic Hazard Zone should be held to high standards because, if nothing else, Newport must avoid the mistakes it has made in the past (note especially the Jump-off Joe debacle not too distant from the subject property).

Viewing the Applicants' claims in the context of where their property is situated, Hazard Overlay Zone in an active slide area, it would be malfeasance for the City to do other than what it is doing though maybe not as aggressive as it should. Stormwater drainage improvements are roughly proportional to the impact of constructing a single family dwelling on the property. The Roths' 5th Amendment Rights have not been violated. They and the City must honor the findings and guidance issued in the approved geologic report if they are to protect this "small part of a very large affected area." To do otherwise puts this whole fragile area at risk. Stormwater drainage is not just a minor nuisance in an active slide area. City standards must be met and the applicant must abide by those standards.

Please enter in the record.

Regards,

Mona Linstromberg

Family home: 1442 NW Spring St.

Newport, OR 97365

CITY OF NEWPORT

169 SW COAST HWY

NEWPORT, OREGON 97365

COAST GUARD CITY, USA



phone: 541,574,0629 fax: 541,574,0644

http://newportoregon.gov

mornhetsu, Japan, sister city

NOTICE OF DECISION1

June 3, 2019

The Newport Community Development (Planning) Department received an application for a Geologic Permit as described herein, that the Community Development Director has determined was prepared in accordance with the criteria for the issuance of a Geologic Permit contained in Chapter 14.21 of the Newport Municipal Code (NMC).

FILE NO: #8-GP-18

APPLICANT & OWNER: J.T. Roth, Jr. & Theresa Roth, 12600 SW 72nd Ave #200, Portland, OR 97223

LOCATION: Northwest corner of the intersection of NW Spring Street and NW 15th Street, Lots 1-3. Block 49, Oceanview Subdivision (Tax Lot 2300 of Lincoln County Assessor's Tax Map 11-11-05-BB).

ACTION: Pursuant to NMC Section 14.21.030, all persons proposing development, construction, or site clearing within a known geologic hazard area shall obtain a Geologic Permit. The applicant applied for a Geologic Permit to establish a home site on each of the lots noted above. Development may be in the form of single family dwellings or two-family attached (duplex) units. The application included a Geotechnical Engineering Report and Geologic Hazards Assessment dated February 5, 2019, prepared by Michael Remboldt, P.E., G.E. and Gary C. Sandstrom, C.E.G. (hereinafter collectively referred to as "Geologic Report"). The application materials, including the Geologic Report, are available for inspection or copies may be purchased at the Newport Community Development (Planning) Department.

CONDITIONS:

- 1. It shall be the responsibility of the property owner to adhere to the recommendations listed in the Geologic Report. Geologic Reports are only valid for the development plan addressed in the report.
- 2. Certification of compliance is required prior to final approval. NMC 14.21.130 states that no development requiring a Geologic Report shall receive final approval (e.g. certificate of occupancy, final inspection, etc.) until the city receives a written statement by a certified engineering geologist indicating that all performance, mitigation, and monitoring measures contained in the report have been satisfied. Where mitigation measures involve engineering solutions prepared by a licensed professional engineer or geotechnical engineer (collectively "design engineer"), then the city must also receive an additional written statement of compliance by the design engineer.

Attachment 1 pg 1 of 2

¹The following are being notified of this action: (1) affected property owners within 200 feet of the subject property (according to Lincoln County Tax Records): (2) affected public private utilities within Lincoln County; (3) affected city departments; (4) affected state agencies

- 3. Erosion control measures are to be installed as outlined in the Geologic Report, and supplemented by the letter from Michael Remboldt, P.E., G.E. dated May 8, 2019 and "Mass Grading and Erosion Control Plan" prepared by Eric Evans, P.E., Emerio Design, dated March 27, 2019. Upon installation, a written statement shall be provided by a certified engineering geologist and geotechnical engineer confirming that the measures were placed to their satisfaction (NMC 14.21.090).
- 4. Owner shall install a structured storm drainage system to collect and manage run-off from development of the subject property and NW Spring Street, which the owner will improve to 24-feet in width with curb and gutter along the project frontage. Such system is to be consistent with one of the two options outlined in a letter from Lee Ritzman, Civil West Engineering Services, Inc., dated May 30, 2019. A written statement shall be provided by a certified engineering geologist confirming that the final alignment and extent of the storm drainage improvements conform to the recommendations of the Geologic Report. Right-of-way, plumbing and/or building permits shall be obtained from the City of Newport prior to construction (NMC 14.21.100).

THIS DECISION MAY BE APPEALED TO THE NEWPORT PLANNING COMMISSION WITHIN 15 CALENDAR DAYS (by Tuesday, June 18, 2019) OF THE DATE THIS NOTICE WAS MAILED. Contact the Community Development Department, Newport City Hall, 169 SW Coast Hwy, Newport, Oregon 97365 (541-574-0629) for information on appeal procedures. Appellant's challenging substantive elements of a Geologic Report must submit their own analysis, prepared by a certified engineering geologist, within 30-days of the date the appeal is filed.

Sincerely.

Derrick I. Tokos, AICP

Community Development Director



South Coast Office 486 E Street Coos Bay, OR 97420 Willamette Valley Office 213 Water Ave. NW, Suite 100 Albany, OR 97321

Rogue Valley Office 10558 Hwy 62, Suite 8-1 Eagle Point, OR 97524 North Coast Office 609 SW Hurbert Street Newport, OR 97365

May 30, 2019

Tim Gross, P.E.

Dereck Tokos

Public Works Director

Planning Department

City of Newport

City of Newport

Rc: J.T. Roth, Jr., 15th & Spring Street Development – Stormwater Management Tax Lot 02300 Oceanview Blk 49 Lots 1-3

Dear Tim and Dereck:

This letter is in response to our meeting yesterday, and is in behalf of Tim Roth regarding his development of properties on NW Spring Street just north of NW 15th Street. This updates options presented in a letter dated May 11, 2019 from Keven Shreeve. It appears that Mr. Roth still has two options to meet the stormwater management requirements, but the required addition of street drainage alters those options:

Option one:

Grant the City an easement between lots 1 and 2 and install an 8-inch storm drain line from a future catch basin on the westerly edge of NW Spring Street and discharge to a location directly west on his property just short of the vegetation line. Approximately 230 feet of pipeline will be required. An energy dissipater near the upper edge of the beach would be required. Mr. Roth would also tie his roof and foundation drains into this system approximately 50 feet from the point of discharge. This pipeline would be dedicated to the City and would serve NW Spring Street between NW 15th and NW 16th streets. It would also serve Mr. Roth's development consisting of two duplex units and one single family unit, a total of five dwelling units.

Option two:

Mr. Roth would work with the City to replace and upsize the City's existing storm drain line from the manhole in NW Spring Street to the end of the existing corrugated metal pipe, approximately 25 feet from the discharge point near the edge of the beach. This would involve replacement of approximately 200 feet of 12-inch corrugated metal pipe with 18-inch plastic pipe, and would include a catch basin with a parking lot drain. The future catch basin on NW Spring Street would tie into the City's manhole on NW Spring Street, Mr. Roth would connect his site drainage to an existing 8-inch line that crosses the southern neighbor's property (Fahrendorf property, Ta Lot 1700) on the westerly side of Fahrendorf property, which connects to the existing 12-inch City storm drain and would connect to the new 18-inch line.

It is our understanding that the existing City storm drain line currently has insufficient capacity for the design 25-year storm. Also, recent video has shown this pipe to be on poor condition. This second option would justify some participation from the City in upsizing the pipe as well as providing some in-kind services.

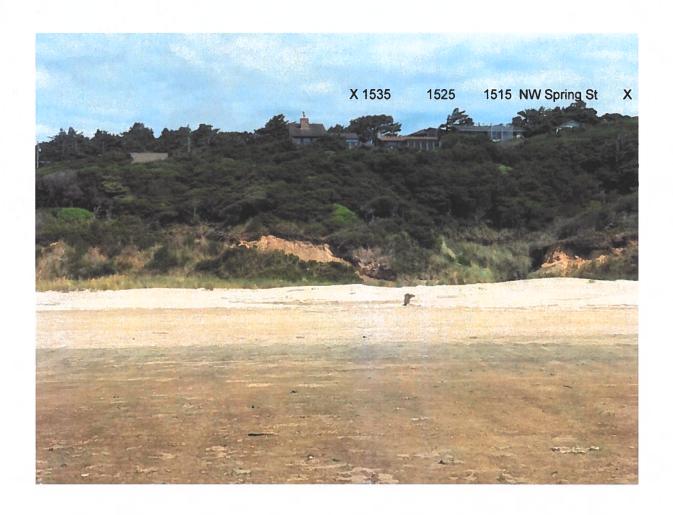
Again, Mr. Roth would like to move forward with his development. We hope that one of these solutions will provide the necessary information to get his geological permit and grading permit approved as soon as possible.

Please let us know if we need to submit any additional information. We would be happy to meet with you to work out details of these ideas at your convenience.

Sincerely.

Civil West Engineering Services, Inc.

Lee R. Razman





Derrick Tokos

From: Sent:

Anne Sigleo <asigleo@yahoo.com> Monday, August 03, 2020 4:12 PM Derrick Tokos; Anne Sigleo

Subject:

To:

Spring Street land use application File 2-MISC-20



To the Attention of Newport Planning Commission

We disagree with the applicants petition for the following reasons:

- 1. The applicants fail to acknowledge that the swale along the frontage of lots 1, 2 and 3 of the subject property provided significant short term water storage after heavy rainfall as seen in the attached photo from February 5, 2020. Runoff from the rainfall encompasses Spring street between NW 16 Street and NW 15 Street. The previous swale has been eliminated and the property scalped to eliminate all vegetation to be replaced with impermeable surfaces. Stormwater storage and control need to be considered in the proposed construction.
- 2. Examples in petition are not comparable to proposed construction. Workable Storm water control needs to be a part of the proposed construction.

Anne Sigleo

1541 NW Spring Newport

Sent from my iPhone

Attachment "A-26" 2-MISC-20

Derrick Tokos

From:

Susan Cooper <susancooper58@icloud.com>

Sent:

Monday, August 03, 2020 4:41 PM

To:

Derrick Tokos

Subject:

Spring St. home construction

Newport Planning,

After reading Mr. Roth's lengthy application in regard to storm drain ,piping and enlargement of frontage on road issues. We agree that he needs to follow the outline brought forward by the city to accommodate all mentioned . The whole area is concerned about the disturbance of land area where he building his project . There was a natural holding area and vegetation to combat water run off . That has all been destroyed .

We feel he should enlarge the area up to his home build as well as suggested by the city .

You have our support.

Regards

Mark and Susan Cooper

Sent from my iPhone

MINUTES

City of Newport Planning Commission Regular Session Newport City Hall Council Chambers January 13, 2020

<u>Planning Commissioners Present</u>: Gary East, Lee Hardy, Bob Berman, Jim Hanselman, Bill Branigan, and Jim Patrick.

Planning Commissioners Absent: Mike Franklin (excused).

<u>City Staff Present</u>: Community Development Director (CDD), Derrick Tokos; and Executive Assistant, Sherri Marineau.

1. <u>Call to Order & Roll Call</u>. Chair Patrick called the meeting to order in the City Hall Council Chambers at 7:00 p.m. On roll call, Commissioners East, Hardy, Berman, Hanselman, Branigan, and Patrick were present.

2. Approval of Minutes.

A. Approval of the Planning Commission Regular Session Meeting Minutes of December 9, 2019.

Commissioner Berman submitted minor corrections to the minutes.

MOTION was made by Commissioner Berman, seconded by Commissioner Hanselman to approve the Planning Commission Regular Session Meeting Minutes of December 9, 2019 with minor corrections. The motion carried unanimously in a voice vote.

- 3. Citizen/Public Comment. None were heard.
- 4. Action Items.
- A. Appointment of Planning Commission Officers.

MOTION was made by Commissioner Branigan, seconded by Commissioner Berman to appoint Jim Patrick as Planning Commission Chair. The motion carried unanimously in a voice vote.

MOTION was made by Commissioner Berman, seconded by Commissioner Hanselman to appoint Bill Branigan as Planning Commission Vice-Chair. The motion carried unanimously in a voice vote.

5. Public Hearings. At 7:03 p.m. Chair Patrick opened the public hearing portion of the meeting.

Chair Patrick read the statement of rights and relevance. He asked the Commissioners for declarations of conflicts of interest, ex parte contacts, bias, or site visits. Commissioner Berman reported a site visit and an ex parte contact with Mona Linstromberg concerning the variance public hearing at the evening's meeting. Commissioners Hanselman, Branigan, and Patrick reported 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.

B. <u>File 1-VAR-19.</u>

Tokos reviewed his staff report. He noted the additional public testimony he received that included a letter submitted by Fahrendorf, Gregory and Benedetti which was handed out to the Commission at the meeting,

and an email from Yaron Yuval who lived across the street to say he was opposed to development to the lot in general.

Tokos explained that the City had allowed variances in the past on other properties when there was steep terrain and noted the different variances that had been approved on Spring Street. He reported that there was general recognition that steep terrain was a justification for setback variances. Tokos pointed out that the stub of Spring Street terminated near the location and Mr. Roth would be required to widen the street to 24 feet, along with doing curb and drainage improvements. This meant that if the variance was granted the driveway would be well in excess of 20 feet making it closer to 30 feet.

Berman asked why the previously approved geological report for the property was not included in report. Tokos explained it wasn't included because it wasn't relevant to the criteria of approval for a variance. Hardy asked if there was a recommendation in the geologic report for placement of the buildings. Tokos didn't recall at that time if the language was in the geological report. Hanselman asked what hazard zone was affiliated with this property. Tokos said it was in active and high hazard zones depending on where you were on the property. Hanselman asked if adding fill in the ROW was permissible. Tokos explained that this was done on many occasions for driveways. Hanselman asked if this meant the owners would need to implement larger drainage lines. Tokos confirmed they would. Hanselman had concerns that the trees that were being taken down on the lots would destabilized the bluff. Tokos explained that this was addressed in the geological report but the report wasn't a part of the criteria consideration for this hearing.

Patrick asked if the geological report was based on the current footprint or if it was site specific. Tokos said the report had construction recommendations and the foundations they were proposing could be placed in a number of locations on the property. The report also required specific work on the lots as part of the site prep, including work near Spring Street. Tokos believed this was why they were removing a number of the trees as part of the remedial work they would be doing.

Proponents: Tim Roth addressed the Commission. He thought staff did a thorough job of describing the property, evaluating the application, and showing that all criteria had been met. He explained how Spring Street ended near his property and his development would be required to do improvements to the right-of-way (ROW). Roth noted that the building heights would meet the code. He felt the variance was a logical approach to keep the home away from the shoreline.

Berman asked if Roth had given any consideration for design the dwellings 10 feet shorter to be able to stick to the setback requirements. Roth said the lots were narrow and created some constraints. They couldn't build the homes to certain widths which forced them to be built further back. Roth noted he talked to the City to see if they could vacate any further portions of the ROW but the City confirmed they couldn't. The City thought the more logical thing to do was to ask for a variance. Roth's thoughts were to build the dwellings further away from the embankment to the west.

Hanselman was concerned about Roth's position on building away from the bluff when it meant he would be building on a cliff. He thought there were a lot of options instead of asking for a variance. Roth noted that the geologic permit noted they would be staying away from certain areas of the steep embankment. A discussion ensue regarding the terrain of the lots and how the buildings would be built to allow changes to the current grades. Roth didn't believe the steepest grade on the lots were where they were going to build. Hanselman thought the maps were misleading on this.

Opponents: Mona Linstromberg addressed the Commission. She asked for clarification that the site visits weren't done at the Lund property nearby. The Commissioners confirmed they hadn't. Linstromberg noted that public members had the option to make an appeal of the geological permit that was approved for the property. There were two people who had written letters about the geologic permit but couldn't afford to appeal this site's geological report. Linstromberg didn't think there was enough information in the record to make a decision on the variance. She didn't think the question was answered on designing homes for the property, and thought more consideration could be given to developing the property without a variance.

Hearing closed at 7:42 pm.

Branigan thought the staff report showed that the six criteria had been met. He reminded the Commission that they needed to base their decision on the information presented and it appeared all criteria had been met. Branigan thought reducing the setback to 10 feet was prudent and he didn't have a problem approving.

Hanselman explained that he was having trouble giving approval. He didn't think the applicant meet the unnecessary hardship because they could redesign to meet the setbacks and would then not have to ask for a variance. Hanselman thought the property was better suited for smaller homes.

Berman explained that he had some of the same concerns as Hanselman and noted that before the homes were designed, the applicant knew the rules. Berman thought a smaller house could meet the setback requirements. He thought a variance was a rare occurrence and didn't think the applicant demonstrated that the constraints were sufficient to justify a variance.

Hardy thought the applicant satisfied the criteria. She thought the owners were allowed to design what they wanted and reminded that variances were granted all the time. Hardy had no problem approving the decision.

East thought the staff recommendation had shown that all the criteria had been met and didn't have problem granting approval.

Patrick thought the variance criteria had been met. He noted other variances that had been granted were done for setbacks, and geologic or topography conditions. Patrick objected to developments not having room for cars to park and thought the new street width accommodated this. He didn't have a problem granting approval.

MOTION was made by Commissioner Branigan, seconded by Commissioner East to approve File 1-VAR-19 with the conditions of approval presented. The motion carried in a voice vote. Hanselman and Berman were a nay.

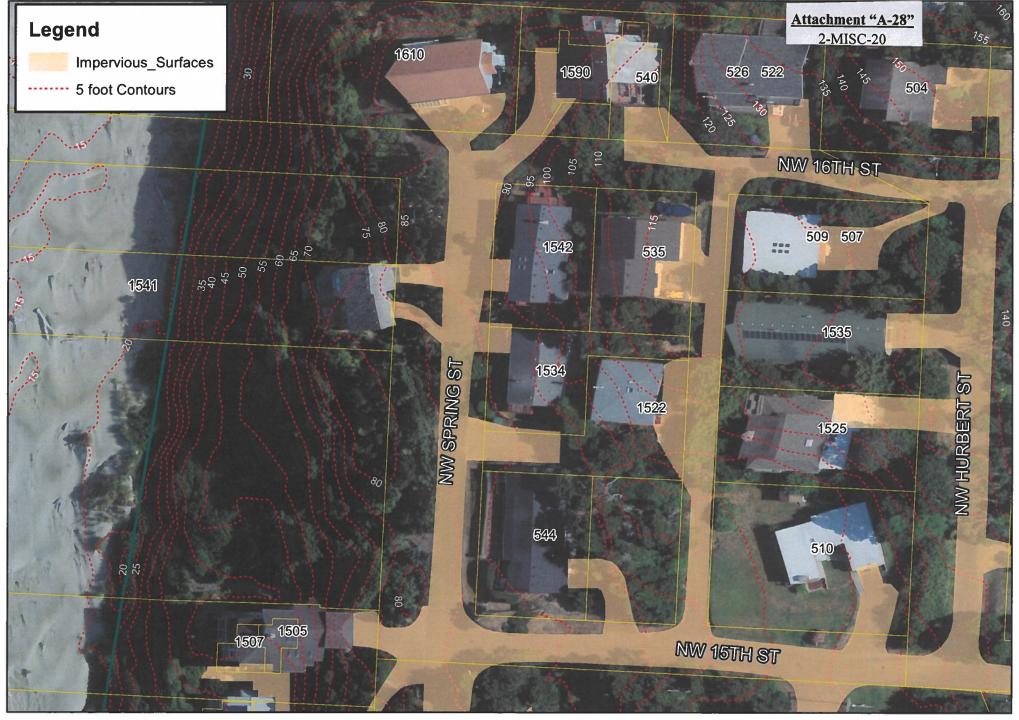
Tokos noted the final order would be brought to the Commission in two weeks.

- 6. New Business. None were heard.
- 7. <u>Unfinished Business</u>. None were heard.
- **8. Director Comments.** None were heard.
- 9. Adjournment. Having no further business, the meeting adjourned at 7:49 p.m.

Respectfully submitted,

Sherri Marineau

Executive Assistant

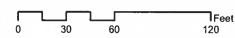




City of Newport
Community Development Department
169 SW Coast Highway Phone: 1.541.574.0629
Newport, OR 97365 Fax: 1.541.574.0644

Street, Driveway, and Parking Impervious Surfaces Lots 1-3, Block 49, Ocean View Subdivision

> image Taken July 2018 4-inch, 4-band Digital Orthophotos Quantum Spatial. Inc. Corvallis, OR



Attachment "A-29" 2-MISC-20

Sherri Marineau

From:

Sherri Marineau

Sent:

Tuesday, July 14, 2020 3:33 PM

To:

'timr@jtrothinc.com'

Subject:

Balance due for Misc. Land Use Application

Attachments:

Invoice.pdf

Tim,

Thank you for dropping off the paperwork and check for your Misc. land use application. When I went to process the payment, I notice that the total fee due for the land use action is \$526, not \$504. Our land use fees just increased on July 1, 2020 and the amount you paid was last year's fee amount. This means that there is a balance due of \$22. I have attached the invoice that shows the balance due for your reference.

To make payment, you can either bring us another check for \$22 or pay the fees online with a credit card. If you would like to pay online, here are the instructions to do so:

- 1. Click on this link to go to the OR ePermitting website: https://aca.oregon.accela.com/oregon/
- 2. Do a search under Planning Permits and search for record number 625-20-000043-PLNG.
- 3. Once you find the permit, click on the **Payments** drop down menu and choose **Fees**.
- 4. Click on Pay Fees and the system will walk you through the payment process from there.

Once I see that the additional amount is paid, we will start the process for your application review.

All the best,

Sherri Marineau City of Newport Community Development Department 169 SW Coast Highway Newport, OR 97365 ph: 541.574.0629 fax: 541.574.0644

s.marineau@newportoregon.gov





Transaction Receipt Record ID: 625-20-000043-PLNG

IVR Number: 625074772717

169 SW Coast Hwy Newport, OR 97365 541-574-0629

Fax: 541-574-0644 permits@newportoregon.gov

Receipt Number: 4245

Receipt Date: 7/20/20

www.newportoregon.gov

Worksite address: 1515 NW Spring ST, Newport, OR 97365

Parcel: 11-11-05-BB-02300-00

| | | | F | ees Paid | | |
|--|----------------|--|------------------------------|-----------------|------------|-------------|
| Transaction date | Units | Descrip | tion | Account code | Fee amount | Paid amount |
| 7/20/20 | 1.00 Ea | Ea Other staff-level permits requiring public notice | | 101-1900-46003 | \$526.00 | \$22.00 |
| Payment Method: Check number: 11428 Payer: J. T. Roth Construction, Inc. | | Payer: J. T. Roth Construction, Inc. | | Payment Amount: | \$22.00 | |
| Tra | ansaction Comm | ent: Remaini | ng Misc Land Use Application | Fee Payment. | | |

Printed: 9/11/20 9:38 am

Attachment "A-30" 2-MISC-20

Derrick Tokos

From:

Clare Paul

Sent:

Friday, September 11, 2020 3:20 PM

To:

Derrick Tokos

Subject:

Road width

Our emergency vehicles are almost 12-feet wide, with mirrors and attachments, and when deployed, take up a larger footprint. A 24-foot road width allows vehicles to pass safely.

Clare C. Paul, PE
Assistant City Engineer, City of Newport
169 SW Coast Hwy, Newport, OR 97365
P 541-574-3370 C 541-270-9349
c.paul@newportoregon.gov



City of Newport Land Use Application



| Land Ose Application | | | | | | |
|--|---|--|--|--|--|--|
| Applicant Name(s): | Property Owner Name(s) if other than applicant | | | | | |
| J.T. Roth, Jr. and Theresa F | Roth | | | | | |
| Applicant Mailing Address: | Property Owner Mailing Address: | | | | | |
| 12600 SW 72nd Ave #200, | Portland | | | | | |
| Applicant Phone No. | Property Owner Phone No. | | | | | |
| (503) 806-0943 | | | | | | |
| Applicant Email | Property Owner Email | | | | | |
| timr@itrothinc.com | thorized to submit and act on this application on applicant's behalf | | | | | |
| Christopher P. Koback | notized to subtlik dild det on this application on applicant's bellay | | | | | |
| Authorized Representative Mailing Addre | 229 | | | | | |
| | Lovejoy St,, Suite 950, Portland, OR 97209 | | | | | |
| Authorized Representative Telephone No | | | | | | |
| 503-303-3101 | | | | | | |
| Authorized Representative Email. Chris | @ hathwaylarson.com | | | | | |
| Project Information | | | | | | |
| Property Location: Street name if address | s # not assigned | | | | | |
| | g Street, Newport. Or. 97365 | | | | | |
| Tax Assessor's Map No.: 11-11-05-E | BB Tax Lot(s): 2300 | | | | | |
| Zone Designation: R2 | Legal Description: Add additional sheets if necessary | | | | | |
| Comp.Plan Designation: Residentia | Lots 1,2,3 Block 49, Oceanview Subdivis | | | | | |
| Examples: 1. Move north property line 5 feet south Appeal of Final Order File No. 2-MISC-20 2. Variance of 2 feet from the required 15-foot front yard setback | | | | | | |
| Existing Structures: if any | | | | | | |
| None | | | | | | |
| Topography and Vegetation: | | | | | | |
| | | | | | | |
| | plication Type (please check all that apply) | | | | | |
| Annexation Appeal | Interpretation UGB Amendment Minor Replat Vacation | | | | | |
| Comp Plan/Map Amendment | Partition Variance/Adjustment | | | | | |
| Conditional Use Permit | Planned Development PC | | | | | |
| ☐ PC ☐ Staff | ☐ Property Line Adjustment ☐ Staff ☐ Shoreland Impact ☐ Zone Ord/Map | | | | | |
| Design Review | Subdivision Amendment | | | | | |
| Geologic Permit | Temporary Use Permit Other | | | | | |
| | FOR OFFICE USE ONLY | | | | | |
| File No. Assigned: 2 - MISC-20-A | | | | | | |
| Date Received: Sym | Fee Amount: 250 — Date Accepted as Complete: | | | | | |
| Received By: 9/24/20 | Receipt No. 4390 Accepted By: | | | | | |
| | City Hall | | | | | |
| 169, SW Coast Hwy | | | | | | |
| Newport, OR 97365 541.574.0629 | | | | | | |
| 1000 | | | | | | |
| 625-20-000054-PU | <i>S</i> | | | | | |



City of Newport Land Use Application

I undestand that I am responsible for addressing the legal criteria relevant to my application and that the burden of proof justifying an approval of my application is with me. I aslo understand that this responsibility is independent of any opinions expressed in the Community Development and Planning Department Staff Report concerning the applicable criteria.

I certify that, to the best of my knowledge, all information provided in this application is accurate.

| Applicant Signature(s) | 9-24-20 Pate 9-34-30 | |
|--|----------------------|--|
| Property Owner Signature(s) (if other than applicant) | Date | |
| Chutoph P. Ka | 9/24/20 | |
| Authorized representative Signature(s) (if other than applicant) | Date | |

Please note application will not be accepted without all applicable signatures.

Please ask staff for a list of application submittal requirements for your specific type of request.

Maria de la compansión de la compansión de la compansión de la compansión de la compansión de la compansión de

Land Use Application Appeal Narrative

Applicants J.T. Roth, Jr. and Theresa Roth seek review of the September 11, 2020 decision in File 2-MISC-20.

Standing to Appeal.

The Appellants are the applicants in the application submitted in File 2-MISC-20 that is the subject matter of the decision that is being appealed and the owners of the property involved. The decision significantly impacts Appellants' legal interests and thus, Appellants have standing to appeal the City's decision in File 2-MISC-20.

Grounds For Appeal.

The City's Finding that the exactions of public improvements it is demanding is roughly proportionate to the impacts the proposed development will have on public facilities is not supported by evidence in the record.

The City's Finding that the swale that formerly existed along the west side of SW Spring Street was a public storm water facility is incorrect as a matter of law and is not supported by evidence in the record.

The City's Finding that the exactions of public improvements it is demanding is roughly proportionate to the impacts the proposed development will have on public facilities is legally incorrect in that the City identified only impacts on private property as its basis for finding that the exactions it seeks are roughly proportionate.

The City erred in not properly weighing the cost of the public improvements it is exacting against the negligible impact of the proposed development on the public facilities.

The City failed to demonstrate any essential nexus between the exaction of curbs on SW Spring Street and public impacts from the proposed development that imped any identified legitimate governmental interest.

To the extent the City decided that Appellants waived their right to challenge the proportionality of the exactions the City ultimately demanded under Condition 4 of the Geologic Permit, the City erred. Condition 4 was predicated on prior and continuing discussions between Appellants and the City on two options to address an existing deficiency in the City's stormwater system and anticipated that the condition would be implemented in an agreement to share the cost of public improvements that was proportionate to the public impacts generated by Appellants' proposed development. When an agreement was not reached the City expressly advised Appellants that they could, and should, raise any issue over whether the ultimate exaction the City demanded under Condition 4 was roughly proportionate to the public impacts generated by the proposed development in the new land use application that is the subject matter of the Decision being appealed.

Nature of Hearing Requested.

The Appellant requests that the Appeal be heard in a de novo public hearing.

Required Fees

Appellants are paying the required appeal fee with their Appeal.



CHAPTER 14.44 TRANSPORTATION STANDARDS

14.44.010 Purpose

The purpose of this Chapter 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. Streets are the most common public spaces, touching virtually every parcel of land. Therefore, one of the primary purposes of this Chapter is to provide standards for attractive and safe streets that can accommodate vehicle traffic from planned growth and provide a range of transportation options, including options for driving, walking, bus, and bicycling. This Chapter implements the city's Transportation System Plan.

14.44.020 When Standards Apply

The standards of this section apply to new development or redevelopment for which a building permit is required that places demands on public or private transportation facilities or city utilities. Unless otherwise provided, all construction, reconstruction, or repair of transportation facilities, utilities, and other public improvements within the city shall comply with the standards of this Chapter.

14.44.030 Engineering Design Criteria, Standard Specifications and Details

The design criteria, standard construction specifications and details maintained by the City Engineer, or any other road authority within Newport, shall supplement the general design standards of this Chapter. The city's specifications, standards, and details are hereby incorporated into this code by reference.

14.44.040 Conditions of Development Approval

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. Findings in the development approval shall indicate how

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the required improvements are directly related and roughly proportional to the impact.

14.44.050 Transportation Standards

- A. Development Standards. The following standards shall be met for all new uses and developments:
 - All new lots created, consolidated, or modified through a land division, partition, lot line adjustment, lot consolidation, or street vacation must have frontage or approved access to a public street.
 - Streets within or adjacent to a development subject to <u>Chapter 13.05</u>, Subdivision and Partition, shall be improved in accordance with the Transportation System Plan, the provisions of this Chapter, and the street standards in <u>Section</u> 13.05.015.
 - Development of new streets, and additional street width or improvements planned as a portion of an existing street, shall be improved in accordance <u>Chapter 13.05</u>, and public streets shall be dedicated to the applicable road authority;
 - 4. Substandard streets adjacent to existing lots and parcels shall be brought into conformance with the standards of Chapter 13.05.
- B. Guarantee. 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 of the following conditions exist:
 - 1. A partial improvement may create a potential safety hazard to motorists or pedestrians;
 - 2. Due to the developed condition of adjacent unlikely that properties it is street improvements would be extended in the foreseeable future and the improvement associated with the project under review does not, by itself, provide increased street safety or capacity, or improved pedestrian circulation;

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- 3. The improvement would be in conflict with an adopted capital improvement plan; or
- 4. The improvement is associated with an approved land partition or minor replat and the proposed land partition does not create any new streets.
- C. Creation of Rights-of-Way for Streets and Related Purposes. Streets may be created through the approval and recording of a final subdivision or partition plat pursuant to Chapter 13.05; by acceptance of a deed, provided that the street is deemed in the public interest by the City Council for the purpose of implementing the Transportation System Plan and the deeded right-of-way conforms to the standards of this Code; or other means as provided by state law.
- D. Creation of Access Easements. The city may approve an access easement when the easement is necessary to provide viable access to a developable lot or parcel and there is not sufficient room for public right-of-way due to topography, lot configuration, or placement of existing buildings. Access easements shall be created and maintained in accordance with the Uniform Fire Code.
- E. Street Location, Width, and Grade. The location, width and grade of all streets shall conform to the Transportation System Plan, subdivision plat, or street plan, as applicable and are to be constructed in a manner consistent with adopted City of Newport Engineering Design Criteria, Standard Specifications and Details. Street location, width, and grade shall be determined in relation to existing and planned streets, topographic conditions, public convenience and safety, and in appropriate relation to the proposed use of the land to be served by such streets, pursuant to the requirements in Chapter 13.05.

(Chapter 14.44 as adopted by Ordinance No. 2045 on November 5, 2012; effective December 30, 2012. This ordinance renumbered Municipal Code Chapters 14.43, "Procedural Requirements," through 14.51, "Fees," and enacted new Chapters 14.43, "South Beach Overlay Zone," 14.44, "Transportation Standards," and 14.45, "Traffic Impact Analysis.")



CHAPTER 13.05 SUBDIVISION AND PARTITION

13.05.001 Purpose

This chapter provides uniform standards for the division of land and the installation of related improvements within the corporate limits of the city for the purposes of protecting property values, and furthering the health, safety and general welfare of the citizens of Newport. The provisions of this chapter implement Statewide Planning Goals as addressed in the Newport Comprehensive Plan along with the applicable portions of Chapters 92 and 227 of the Oregon Revised Statutes.

13.05.005 Definitions

The following definitions apply in this chapter:

- A. Land Division. A subdivision or partition.
- B. Lot. A unit of land that is created by a subdivision of land.
 - Corner Lot. A lot with at least two adjacent sides that abut streets other than alleys, provided the intersection angle does not exceed 135 degrees.
 - Through Lot. A lot having frontage on two parallel, or approximately parallel, streets other than alleys.
- C. <u>Parcel</u>. A unit of land that is created by a partitioning of land.
- D. <u>Partition</u>. To divide land into not more than three parcels of land within a calendar year, but does not include:
 - A division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property, or the creation of cemetery lots;
 - An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable ordinance; or

- 3. A sale or grant by a person to a public agency or public body for state highway, county road, city street, or other right-of-way purposes, provided that such road or right-of-way complies with the applicable comprehensive plan and state law. However, any property divided by the sale or grant of property for state highway, county road, city street, or other right-of-way purposes shall continue to be considered a single unit of land until such time as the property is further subdivided or partitioned.
- E. **Person**. Any individual or entity.
- F. <u>Plat</u>. The final map or other writing containing all the descriptions, locations, specifications, dedications, provisions, and information concerning a subdivision or partition.
- G. Replat. The act of platting the lots, parcels, and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in the subdivision. A replat shall not serve to vacate any public street or road.
- H. <u>Replat. Minor</u>. A replat that involves five or fewer lots or any number of lots or parcels totally contained within a city block in the original configuration and that does not involve any public street rights-of-way. A minor replat shall not serve to vacate any public street or road.
- I. <u>Roadway</u>. The portion of a street right-of-way developed for vehicular traffic.
- J. <u>Street</u>. A public or private way other than a driveway that is created to provide ingress or egress for persons to one or more lots, parcels, areas, or tracts of land. For the purposes of this section, a "driveway" is a private way that begins at a public right-of-way that is proposed to serve not more than four individual lots/parcels cumulative as the primary vehicular access to those individual lots/parcels.

- Alley. A narrow street through a block primarily for vehicular service access to the back or side of properties otherwise abutting on another street.
- 2. <u>Arterial</u>. A street of considerable continuity which is primarily a traffic artery among large areas.
- 3. <u>Half-street</u>. A portion of the width of a right of way, usually along the edge of a subdivision or partition, where the remaining portion of the street could be provided in another subdivision or partition, and consisting of at least a sidewalk and curb on one side and at least two travel lanes.
- Marginal Access Street. A minor street parallel and adjacent to a major arterial street providing access to abutting properties, but protected from through traffic.
- 5. <u>Minor Street</u>. A street intended primarily for access to abutting properties.
- K. <u>Subdivide Land</u>. To divide an area or tract of land into four or more lots within a calendar year.
- L. <u>Subdivision</u>. Either an act of subdividing land or an area or tract of land subdivided as defined in this section.

13.05.010 Standards

Land divisions shall comply with the requirements of this chapter as applicable to the land division.

13.05.015 Streets

A. Criteria for Consideration of Modifications to Street Design. As identified throughout the street standard requirements, modifications may be allowed to the standards by the approving authority. In allowing for modifications, the approving authority shall consider modifications of location, width, and grade of streets in relation to existing and planned streets, to topographical or other geological/environmental conditions, to public convenience and safety, and to the proposed use of land to be served by the streets. The street system as modified shall assure an

adequate traffic circulation system with intersection angles, grades, tangents, and curves appropriate for the traffic to be carried considering the terrain. Where location is not shown in the Transportation System Plan, the arrangement of streets shall either:

- 1. Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or
- 2. Conform to a plan for the neighborhood approved or adopted by the Planning Commission to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical.
- B. Minimum Right-of-Way and Roadway Width. Unless otherwise indicated in the Transportation System Plan, the street right-of-way and roadway widths shall not be less than the minimum width in feet shown in the following table:

| Type of Street | Minimum Right-of-Way Width | Minimum Roadway Width | |
|---|-------------------------------|-----------------------|--|
| Arterial, Commercial, and Industrial | 80 feet | 44 feet | |
| Collector | 60 feet | 44 feet | |
| Minor Street | 50 feet | 36 feet | |
| Radius for turn- around at end of cul- de-sac | 50 feet | 45 feet | |
| Alleys | 25 feet | 20 feet | |

Modifications to this requirement 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. If necessary, slope easements may be required.

C. <u>Reserve Strips</u>. Reserve strips giving a private property owner control of access to streets are not allowed.

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- D. Alignment. Streets other than minor streets shall be in alignment with existing streets by continuations of their center lines. Staggered street alignment resulting in "T" intersections shall leave a minimum distance of 200 feet between the center lines of streets having approximately the same direction and, in no case, shall be less than 100 feet. If not practical to do so because of topography or other conditions, this requirement may be modified by the approving authority.
- E. Future Extensions of Streets. Proposed streets within a land division shall be extended to the boundary of the land division. A turnaround if required by the Uniform Fire Code will be required to be provided. If the approval authority determines that it is not necessary to extend the streets to allow the future division of adjoining land in accordance with this chapter, then this requirement may be modified such that a proposed street does not have to be extended to the boundary of the land division.

F. Intersection Angles.

- 1. Streets shall be laid out to intersect at right angles.
- 2. An arterial intersecting with another street shall have at least 100 feet of tangent adjacent to the intersection.
- 3. Other streets, except alleys, shall have at least 50 feet of tangent adjacent to the intersection.
- 4. Intersections which contain an acute angle of less than 80 degrees or which include an arterial street shall have a minimum corner radius sufficient to allow for a roadway radius of 20 feet and maintain a uniform width between the roadway and the right-of-way line.
- 5. No more than two streets may intersect at any one point.
- 6. If it is impractical due to topography or other conditions that require a lesser angle, the requirements of this section may be modified by the approval authority. In no case shall the acute angle in Subsection F.(1.) be less than 80 degrees unless there is a special intersection design.

- G. Half Street. Half streets are not allowed. Modifications to this requirement may be made by the approving authority to allow half streets only where essential to the reasonable development of the land division, when in conformity with the other requirements of these regulations and when the city finds it will be practical to require the dedication of the other half when the adjoining property is divided. Whenever a half street is adjacent to a tract property to be divided, the other half of the street shall be provided.
- H. <u>Sidewalks</u>. Sidewalks in conformance with the city's adopted sidewalk design standards are required on both sides of all streets within the proposed land division and are required along any street that abuts the land division that does not have sidewalk abutting the property within the land division. The city may exempt or modify the requirement for sidewalks only upon the issuance of a variance as defined in the Zoning Ordinance.
- I. <u>Cul-de-sac</u>. A cul-de-sac shall have a maximum length of 400 feet and serve building sites for not more than 18 dwelling units. A cul-de-sac shall terminate with a circular turn-around meeting minimum Uniform Fire Code requirements. Modifications to this requirement may be made by the approving authority. A pedestrian or bicycle way may be required by easement or dedication by the approving authority to connect from a cul-de-sac to a nearby or abutting street, park, school, or trail system to allow for efficient pedestrian and bicycle connectivity between areas if a modification is approved and the requested easement or dedication has a rational nexus to the proposed development and is roughly proportional to the impacts created by the proposed land division.
- J. <u>Street Names</u>. Except for extensions of existing streets, no street name shall be used which will duplicate or be confused with the name of an existing street. Street names and numbers shall conform to the established pattern in the city, as evident in the physical landscape and described in City of Newport Ordinance No. 665, as amended.
- K. <u>Marginal Access Streets</u>. Where a land division abuts or contains an existing or proposed arterial street, the Planning Commission may require marginal access streets, reverse frontage lots with suitable depth, screen

planting contained in a non-access reservation along the rear or side property line, or other treatment necessary for adequate protection of residential properties and to afford separation of through and local traffic.

- L. <u>Alleys</u>. Alleys shall be provided in commercial and industrial districts. If other permanent provisions for access to off-street parking and loading facilities are provided, the approving authority is authorized to modify this provision if a determination is made that the other permanent provisions for access to off-street parking and loading facilities are adequate to assure such access. The corners of alley intersections shall have a radius of not less than 12 feet.
- M. <u>Street Trees</u>. Trees and other plantings may be installed within proposed or existing rights-of-ways provided they conform to the City's approved Tree Manual.

(Section 13.05.015 (M) was enacted by Ordinance No. 2154, adopted on September 3, 2019; effective October 3, 2019.)

13.05.020 Blocks

- A. <u>General</u>. The length, width, and shape of blocks for nonresidential subdivisions shall take into account the need for adequate building site size and street width, and shall recognize the limitations of the topography.
- B. <u>Size</u>. No block shall be more than 1,000 feet in length between street corners. Modifications to this requirement may be made by the approving authority if the street is adjacent to an arterial street or the topography or the location of adjoining streets justifies the modification. A pedestrian or bicycle way may be required by easement or dedication by the approving authority to allow connectivity to a nearby or abutting street, park, school, or trail system to allow for efficient pedestrian and bicycle connectivity between areas if a block of greater than 1,000 feet if a modification is approved and the requested easement or dedication has a rational nexus to the proposed development and is roughly proportional to the impacts created by the proposed land division.

13.05.025 Easements

- A. <u>Utility Lines</u>. Easements for sewers and water mains shall be dedicated to the city wherever a utility is proposed outside of a public right-of-way. Such easements must be in a form acceptable to the city. Easements for electrical lines, or other public utilities outside of the public right-of-way shall be dedicated when requested by the utility provider. The easements shall be at least 12 feet wide and centered on lot or parcel lines, except for utility pole tieback easements, which may be reduced to six (6) feet in width.
- B. <u>Utility Infrastructure</u>. Utilities may not be placed within one foot of a survey monument location noted on a subdivision or partition plat.
- C. Water Course. If a tract is traversed by a water course such as a drainage way, channel, or stream, there shall be provided a storm water easement or drainage rightof-way conforming substantially to the lines of the water course, and such further width as will be adequate for the purpose. Streets or parkways parallel to the major water courses may be required.

13.05.030 Lots and Parcels

A. <u>Size</u>. The size (including minimum area and width) of lots and parcels shall be consistent with the applicable lot size provisions of the Zoning Ordinance, with the following exception:

Where property is zoned and planned for business or industrial use, other widths and areas may be permitted at the discretion of the Planning Commission. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.

- B. <u>Street Frontage</u>. Each lot and parcel shall possess at least 25 feet of frontage along a street other than an alley.
- C. <u>Through Lots and Parcels</u>. Through lots and parcels are not allowed. Modifications may be made by the approving authority where they are essential to provide separation of residential development from major traffic arteries or adjacent nonresidential activities or to

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overcome specific disadvantages of topography and orientation. The approving authority may require a planting screen easement at least 10 feet wide and across which there shall be no right of access. Such easement may be required along the line of building sites abutting a traffic artery or other incompatible use.

- D. Lot and Parcel Side Lines. The side lines of lots and parcels shall run at right angles to the street upon which they face, except that on curved streets they shall be radial to the curve. Modifications to this requirement may be made by the approving authority where it is impractical to do so due to topography or other conditions or when the efficient layout of the land division has the lines running as close to right angles (or radial) as practical.
- E. <u>Special Setback Lines</u>. All special building setback lines, such as those proposed by the applicant or that are required by a geological report, which are to be established in a land division, shall be shown on the plat, or if temporary in nature, shall be included in the deed restrictions.
- F. Maximum lot and parcel size. Proposed lots and parcels shall not contain square footage of more than 175% of the required minimum lot size for the applicable zone. Modifications to this requirement may be made by the approving authority to allow greater square footage where topography or other conditions restrict further development potential or where the layout of the land division is designed and includes restrictions to provide for extension and opening of streets at intervals which will permit a subsequent division into lots or parcels of appropriate size for the applicable zone designation.
- G. <u>Development Constraints</u>. No lot or parcel shall be created with more than 50 % of its land area containing wetlands or lands where the city restricts development to protect significant Statewide Land Use Planning Goal 5 or Goal 17 resources, except that areas designated as open space within a land division may contain up to 100% of a protected resource. Modifications to this requirement may be made by the approval authority if the approval authority determines that the proposed lot or parcel contains sufficient land area to allow for construction on the lot or parcel without impacting the

resource or that a variance or other permit has been obtained to allow for impacts on the identified resource.

H. Lots and Parcels within Geologic Hazard Areas. Each new undeveloped lot or parcel shall include a minimum 1000 square foot building footprint within which a structure could be constructed and which is located outside of active and high hazard zones and active landslide areas (See Section 2-4-7 of the Zoning Ordinance for an explanation of hazard zones). New public infrastructure serving a lot or parcel shall similarly be located outside of active and high hazard zones and active landslide areas.

(13.05.030(H) added by Ordinance No. 2017 on July 18, 2011; effective August 17, 2011)

13.05.035 Public Improvements

<u>Public Improvement Procedures</u>. In addition to other requirements, public improvements installed by a developer that is dividing land, whether required or voluntarily provided, shall comply with this chapter, and with any public improvement standards or specifications adopted by the city. The following procedure shall be followed:

- A. Improvement work, including excavation in the excess of 100 cubic yards, shall not be commenced until plans have been checked for adequacy and approved by the city. To the extent necessary for evaluation of the proposal, the plans shall be required before approval of the tentative plan of a subdivision or partition.
- B. Improvement work shall not commence until after the city is notified, and, if work is discontinued for any reason, it shall not be resumed until after the city is notified.
- C. Public improvements shall be constructed under the inspection and to the satisfaction of the city engineer. The city may require change in typical sections and details in the public interest if unusual conditions arise during construction to warrant the change.
- D. Underground utilities, sanitary sewers, and storm drains installed in streets shall be constructed prior to the surfacing of the streets. Stubs for service connection for underground utilities and sanitary sewers shall be placed

- to allow future connections without disturbing the street improvements.
- E. A map showing public improvements as built shall be filed with the city upon completion of the improvements.
- F. Public improvements shall not be commenced until any appeals of the subdivision approval are resolved.

13.05.040 Public Improvement Requirements

- A. The following public improvements are required for all land divisions, except where a subdivision plat is reconfiguring or establishing rights-of-way for future public streets:
 - 1. Streets. All streets, including alleys, within the land division, streets adjacent but only partially within the land divisions, and the extension of land division streets to the intersecting paving line of existing streets with which the land division streets intersect. shall be graded for the full right-of-way width. The roadway shall be improved to a width of 36 feet or other width as approved by the approval authority by excavating to the street grade, construction of concrete curbs and drainage structures, placing a minimum of six inches of compacted gravel base, placement of asphaltic pavement 36 feet in width or other width as approved by the approval authority and approximately two inches in depth, and doing such other improvements as may be necessary to make an appropriate and completed improvement. Street width standards may be adjusted as part of the tentative plan approval to protect natural features and to take into account topographic constraints and geologic risks.
 - 2. Surface Drainage and Storm Sewer System. Drainage facilities shall be provided within the land division and to connect the land division drainage to drainage ways or storm sewers outside the land division. Design of drainage within the land division shall take into account the capacity and grade necessary to maintain unrestricted flow from areas draining through the land division and to allow extension of the system to serve such areas.

- 3. <u>Sanitary Sewers</u>. Sanitary sewers shall be installed to serve each lot or parcel in accordance with standards adopted by the city, and sewer mains shall be installed in streets as necessary to connect each lot or parcel to the city's sewer system.
- 4. Water. Water mains shall be installed to allow service to each lot or parcel and to allow for connection to the city system, and service lines or stubs to each lot shall be provided. Fire hydrants shall be installed as required by the Uniform Fire Code. The city may require that mains be extended to the boundary of the land division to provide for future extension or looping.
- Sidewalks. Required sidewalks shall be constructed in conjunction with the street improvements except as specified below:
 - a. Delayed Sidewalk Construction. If sidewalks are designed contiguous with the curb, the subdivider may delay the placement of concrete for the sidewalks by depositing with the city a cash bond equal to 115 percent of the estimated cost of the sidewalk. In such areas, sections of sidewalk shall be constructed by the owner of each lot as building permits are issued. Upon installation and acceptance by the city engineer, the land owner shall be reimbursed for the construction of the sidewalk from the bond. The amount of the reimbursement shall be in proportion to the footage of sidewalks installed compared with the cash bond deposited and any interest earned on the deposit.
 - b. Commencing three (3) years after filing of the final plat, or a date otherwise specified by the city, the city engineer shall cause all remaining sections of sidewalk to be constructed, using the remaining funds from the aforementioned cash bond. Any surplus funds shall be deposited in the city's general fund to cover administrative costs. Any shortfall will be paid from the general fund.
 - c. Notwithstanding the above, a developer may guarantee installation of required sidewalks in an

Improvement Agreement as provided in <u>Section</u> 13.05.090(C).

(13.05.040(A)(5) was amended by Ordinance No. 2045, adopted on November 5, 2012; effective December 5, 2012.)

- B. All public improvements shall be designed and built to standards adopted by the city. Until such time as a formal set of public works standards is adopted, public works shall be built to standards in any existing published set of standards designated by the city engineer for the type of improvement. The city engineer may approve designs that differ from the applicable standard if the city engineer determines that the design is adequate.
- C. Public improvements are subject to inspection and acceptance by the city. The city may condition building or occupancy within the land division on completion and acceptance of required public improvements.

13.05.045 Adequacy of Public Facilities and Utilities (Electric and Phone)

- A. Tentative plans for land divisions shall be approved only if public facilities and utilities (electric and phone) can be provided to adequately service the land division as demonstrated by a written letter from the public facility provider or utility provider stating the requirements for the provision of public facilities or utilities (electric and phone) to the proposed land division:
- B. For public facilities of sewer, water, storm water, and streets, the letter must identify the:
 - 1. Water main sizes and locations, and pumps needed, if any, to serve the land division.
 - 2. Sewer mains sizes and locations, and pumping facilities needed, if any, to serve the land division.
 - 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 need for additional conveyance capacity, without increasing erosion or flooding.
 - 4. Street improvements outside of the proposed development that may be needed to adequately

handle traffic generated from the proposed development.

13.05.050 Underground Utilities and Service Facilities

- A. <u>Undergrounding</u>. All utility lines within the boundary of the proposed land divisions, including, but not limited to, those required for electric, telephone, lighting, and cable television services and related facilities shall be placed underground, except surface-mounted transformers, surface-mounted connection boxes and meter cabinets which may be placed above ground, temporary utility service facilities during construction, high capacity electric and communication feeder lines, and utility transmission lines operating at 50,000 volts or above. The subdivider shall make all necessary arrangements with the serving utility to provide the underground service.
- B. Non-City-Owned Utilities. As part of the application for tentative land division approval, the applicant shall submit a copy of the preliminary plat to all non-city-owned utilities that will serve the proposed subdivision. The subdivider shall secure from the non-city-owned utilities, including but not limited to electrical, telephone, cable television, and natural gas utilities, a written statement that will set forth their extension policy to serve the proposed land division with underground facilities. The written statements from each utility shall be submitted to the city prior to the final approval of the plat for recording.

13.05.055 Street Lights

Street lights are required in all land divisions where a street is proposed. The city may adopt street light standards. In the absence of adopted standards, street lights shall be place in new land divisions to assure adequate lighting of streets and sidewalks within and adjacent to the land division.

13.05.060 Street Signs

Street name signs, traffic control signs and parking control signs shall be furnished and installed by the city.

13.05.065 Monuments

Upon completion of street improvements, monuments shall be reestablished and protected in monument boxes at every street intersection and all points of curvature and points of tangency of street center lines.

13.05.070 Land Division Application

- A. A person seeking approval of a land division shall submit the following to the Community Development Department:
 - A completed city application form signed by the owner of the property or an authorized agent. If the application form is signed by an authorized agent, it must be accompanied by a document signed by the property owner authorizing the agent to act for the owner in the land division process.
 - 2. An original tentative plan and 14 copies (3 copies if a minor replat or a partition).
 - A narrative listing each applicable approval criterion or standard and an explanation as to how the criterion or standard is met.
 - 4. A vicinity map showing existing subdivisions and unsubdivided land ownerships adjacent to the proposed subdivision and showing how proposed streets and utilities will be extended to connect to existing streets and utilities and may be connected to future streets and utilities.
 - 5. Proposed deed restrictions, if any, in outline form.
 - Approximate center line profiles with extensions for a reasonable distance beyond the limits of the proposed subdivision showing the finished grade of streets and the nature and extent of street construction.
 - 7. A plan for domestic water supply lines and related water service facilities.
 - 8. Proposals for sewage disposal, storm water drainage, and flood control, including profiles of proposed drainage ways.

- If lot areas are to be graded, a plan showing the nature of cuts and fills and information on the character of the soil.
- 10. Where geologic hazards are known to exist on part or all of the property in question based on adopted maps of the City of Newport, a geologic hazard report is required and shall be provided in accordance with the requirements of Section 2-4-7 of the Zoning Ordinance. The report must clearly state what measures will be taken to safeguard against existing hazards.

(13.05.070(A)(10) was adopted by Ordinance No. 2017 on July 18, 2011; effective August 17, 2011)

- 11. Written letters from public facilities (water, sewer, storm water, and streets) and utilities (electric and phone) identifying requirements for providing service to the land division.
- 12. An application fee in an amount set by City Council resolution.
- 13.A Trip Assessment Letter, if required by <u>Chapter</u> 14.43.
- 14.A Traffic Impact Analysis, if required by <u>Chapter 14.45</u>.
- 15. Other materials that the applicant believes relevant or that may be required by the city.

(Section 13.05.070(A)(13 - 15) were added or amended by Ordinance No. 2045, adopted on November 5, 2012; effective December 5, 2012.)

- B. The tentative plan of a land division shall be drawn on a sheet 18 by 24 inches in size or a multiple thereof at a scale of one inch equals 100 feet or, for areas over 100 acres, one inch equals 200 feet.
- C. The following general information shall be shown on the tentative plan of the land division:
 - If a subdivision, the proposed name of the subdivision. This name shall not duplicate or resemble the name of another subdivision in the

county and shall be approved by the Planning Commission.

- 2. Date, northpoint, and scale of the drawing.
- 3. Appropriate identification of the drawing as a tentative plan.
- 4. Location of the property being divided sufficient to define its location and boundaries, and a legal description of the entire property being divided.
- 5. Names and addresses of the owner, the applicant if different from the owner, and the engineer and/or surveyor.
- 6. The following existing conditions shall be shown on the tentative plan:
 - a. The location, widths, and names of existing streets and undeveloped rights of way within or adjacent to the tract, any existing easements, and other important features such as section lines, section corners, city boundary lines, and monuments.
 - b. Contour lines related to some established bench mark or other datum approved by the city and having minimum intervals as follows:
 - i. For slopes of less than 5 percent: show the direction of slope by means of arrows or other suitable symbols, together with not less than four (4) spot elevations per acre, evenly distributed.
 - ii. For slopes of 5 percent to 15 percent: five (5) feet.
 - iii. For slopes of 15 percent to 20 percent: 10 feet.
 - iv. For slopes of over 20 percent: 20 feet.
 - c. The location and direction of water courses and the location of areas subject to flooding.

- d. Natural features such as wetlands, tidelands, marshes, or any natural resource identified as a protected Statewide Land Use Planning Goal 5 or Goal 17 resource on maps adopted by the city shall be identified. Other features, such as rock outcroppings, wooded areas, and isolated trees that serve as the basis of any requested modifications to the land division standards shall also be identified.
- e. Existing uses of the property and location of existing structures to remain on the property after platting.
- f. The location within the land division and in the adjoining streets and property of existing sewers, water mains, culverts, drain pipes, and utility lines.
- 7. The following information shall be included on the tentative plan of a subdivision.
 - a. The location, width, names, approximate grades, and radii of curves of proposed streets and the relationship of proposed streets to streets shown in the Transportation System Plan. Streets in existing adjacent developments and approved subdivisions and partitions shall also be shown, as well as potential street connections to adjoining undeveloped property.
 - b. The location, width, and purpose of proposed easements.
 - c. The location and approximate dimensions of proposed lots and the proposed lot and block numbers.
 - d. Proposed sites, if any, allocated for purposes other than single-family dwellings.
- D. If the land division proposal pertains to only part of the property owned or controlled by the owner or applicant, the city may require a sketch of a tentative layout for streets in the undivided portion.
- 13.05.075 Preliminary Review and Notice of Hearing

- A. On receipt of a complete land division application, the community development director shall provide notice to other agencies known to be affected or to have an interest.
- B. Notice of a hearing before the Planning Commission shall be given in accordance with Section 2-6-1 of the zoning ordinance, except that the distance the city shall use for identifying properties entitled to notice shall be 150 feet rather than 300 feet.

13.05.080 Hearing and Approval for Land Divisions Other Than a Minor Replat or Partition.

- A. The Planning Commission shall hold a public hearing on a land division application other than a minor replat or partition and shall be the initial decision maker, subject to appeal to the City Council. The Planning Commission may approve, approve with conditions or deny the application, based on the standards and criteria of this chapter. The Planning Commission may tentatively approve the application, subject to submission of additional information. Any tentative approval must be followed by a final decision. The decision shall be in writing and supported by findings.
- B. The city shall take final action within 120 days from the time the application is complete. The time period may be extended at the request or with the consent of the applicant.
- C. The action of the Planning Commission shall be by final order. A copy of the final order shall be sent to the applicant.
- D. Notice of the decision shall be provided to all persons entitled to notice, including all persons who have asked to be notified of the decision.

13.05.085 Approval Criteria and Conditions for Land Divisions Other than Minor Replats or Partitions.

A. The proposed land division will comply with the requirements of this chapter or can be made to comply by the attachment of reasonable conditions of approval. For the purposes of this section, a land division complies with this chapter if it meets the standard provided herein

- or if a modification or variance is approved by the approving agency to the standard.
- B. Any required submitted geological hazard report must conclude that the property can be developed in the manner proposed by the land division. The land division must comply with any recommendations contained in the report. Approval of the land division by the Planning Commission pursuant to a submitted geological hazard report includes approval of the geological report recommendations. Based on the geological hazard report, the Planning Commission shall establish when compliance with the geological report recommendations must be demonstrated. The geological hazard report shall be in the form of a written certification prepared by an engineering geologist or other equivalent certified professional, establishing that the report requirements have been satisfied, and should be noted as a condition of approval.

13.05.090 Final Plat Requirements for Land Divisions Other than Minor Replats or Partitions

- A. <u>Submission of Final Plat</u>. Within two years after tentative plan approval, such other time established at the time of tentative plan approval, or extensions granted under this chapter, the owner and/or applicant (collectively referred to as the "developer") shall cause the land division to be surveyed and a final plat prepared. If the developer elects to develop the land division in phases, final plats for each phase shall be completed within the time required (e.g. Phase I completed within two years, Phase II completed within the next two years, etc.). The final plat shall be in conformance with the approved tentative plan, this chapter, ORS Chapter 92, and standards of the Lincoln County Surveyor.
- B. Provision of Improvements. It shall be the responsibility of the developer to install all required improvements and to repair any existing improvements damaged in the development of the property. The installation of improvements and repair of damage shall be completed prior to final plat approval. Except as provided in Subsection C., or where payment in lieu of constructing a required improvement is allowed by the city and has been paid by the developer per Chapter 14.45, the final plat will not be approved until improvements are installed

to the specifications of the city and "as constructed" drawings are given to the city and approved by the city engineer. The developer shall warrant the materials and workmanship of all required public improvements for a period of one year from the date the city accepts the public improvements.

(Section 13.05.090(B) was amended by Ordinance No. 2045, adopted on November 5, 2012; effective December 5, 2012.)

- C. <u>Improvement Agreements</u>. If all the required improvements have not been satisfactorily completed before the final plat is submitted for approval, the city may, at its discretion, allow final approval of the plat if the developer enters into a written agreement with the city to provide the required improvements secured by a bond or letter of credit. The agreement must provide for completion within one year of the approval of the final plat. The agreement shall be acceptable to the city attorney and include provisions that:
 - Authorize the city to complete the required improvements and recover their full cost and expense from the developer if the developer fails to complete the improvements as required.
 - 2. Authorize the inspection of all improvements by the city engineer and provide for reimbursement to the city of all costs of inspection.
 - Indemnify of the city, its officials, employees and agents, from and against all claims of any nature arising or resulting from the failure of the developer to comply with any requirement of such agreement.
 - Ensure compliance with conditions required by the city in approving the final plat prior to completion of all required improvements.
- D. <u>Financial Assurances</u>. A developer that enters into an improvement agreement shall provide financial assurances in the form of one or both of the following:
 - A surety bond executed by a surety company authorized to transact business in the State of Oregon and in a form satisfactory to the city attorney, or

- 2. An irrevocable letter of credit in a form satisfactory to the city attorney.
- E. Amount of Security. The financial assurances shall be in an amount equal to 150% of the amount determined by the city engineer as sufficient to cover the cost of the improvements, engineering, inspection, and incidental expenses. The financial assurances may provide for reduction of the amount in increments as improvements are completed and approved by the city engineer. However, the number of reductions or disbursements and the amount of retainage required shall be at the discretion of the city engineer.
- F. Post Completion Financial Assurances. On acceptance of all improvements by the city, the amount of the security shall be reduced to 20% of the original sum and shall remain in effect until the expiration of the one year warranty period. All deficiencies in construction and maintenance discovered and brought to the attention of the developer and surety within one year of acceptance must be corrected to the satisfaction of the city engineer. The developer may substitute a new warranty bond rather than amending the original performance bond or letter of credit.
- G. Acceptance of Improvements by City, Guarantee. The city will accept public improvements only if they have received final inspection approval by the city engineer and "as constructed" engineering plans have been received and accepted by the city engineer. The developer shall warrant all public improvements and repairs for a period of one year after acceptance by the city.
- H. <u>Time Limit Between Tentative Plan and Final Plat</u> (Extensions). Requests for extension of the one year time limit for submission of final plat shall be in writing. On receipt of the written request, the community development director may grant an extension of up to one year. The Planning Commission may grant an additional one year extension after public hearing. Notice shall be the same as the original tentative plan. The criteria for an extension are:
 - 1. An unforeseen change in the economic condition has affected the real estate market for the project; or

- 2. The weather has prevented the physical work; or
- Other unanticipated hardship, such as change or turnover in engineering firms, contractors, or significant delays in obtaining required state or federal permits requires additional time to complete the project.

An extension may only be granted if the comprehensive plan, zoning ordinance, and subdivision ordinance have not changed in a way that would substantially affect the original tentative plan.

- I. <u>Phased Developments</u>. For a phased development, final plats may be submitted consistent with any phasing plan approved at the time of tentative plan approval. Extensions may be granted by the Planning Commission under the standards of Subsection E.
- J. Procedure and Standard for Approval of a Final Plat. On receipt of the final plat application, the community development director shall have up to 30 days to review and determine if the application is complete. If the application is not complete, it shall be returned to the applicant with a written explanation of why the application is being returned. If complete, the application shall be accepted.

The community development director shall forward the final plat to the city engineer for comment. The city engineer shall have 20 days to comment on the final plat. Comments shall be in writing. After the 20-day comment period, the community development director shall decide whether the final plat complies with the following criteria:

- 1. The final plat is in substantial compliance with the tentative plan.
- 2. The required improvements have been completed.
- 3. The final plat complies with all conditions attached to the tentative plan.
- 4. Planned public facilities that were relied on to comply with Section 13.05.045 at the time of tentative plan

approval have been completed and are available for use.

If the final plat is approved, the plat shall be forwarded to the Planning Commission chair for signature. If the final plat is denied, the applicant shall be notified in writing why the final plat was denied and what items need to be corrected before the final plat can be approved.

K. Recording of Final Plat. After final approval, the final plat shall be forwarded to Lincoln County for review and recording as required by law. Within 90 days of approval, the developer shall submit to the city a mylar copy and two paper copies of the recorded final plat.

13.05.095 Minor Replats and Partitions

- A. Procedure for Review. After an application for minor replat or partition is deemed complete, the community development director shall send notice to persons within 100 feet of the subject property and, if there are existing public easements, affected utilities, that the tentative plan has been filed. Notified parties shall be given 14 days to provide written comments. After the 14 day period, the community development director shall decide whether the application complies with the criteria and provide a written decision. The criteria for approval are:
 - 1. The tentative plan complies with the definition of a replat or partition, as appropriate.
 - 2. All lots or parcels within the tentative plan meet the requirements of <u>Section 13.05.030</u>. Alternatively, if the original lots or parcels were nonconforming, the resultant lots or parcels may be allowed without a variance if they are less nonconforming.
 - 3. Approval of the tentative plan does not interfere with the provision of key public facilities.
 - 4. The applicant has agreed to sign a consent to participate in sewer, water, or street local improvement districts that the subject lots or parcels would be part of once those districts are formed. The consent shall be a separate document recorded upon the lots or parcels subject to the partition. The

- document shall be recorded prior to final plat approval.
- 5. Public facilities serving the minor replat or partition are adequate under <u>Section 13.05.045</u>. Proposed streets within the minor replat or partition comply with the standards under <u>Section 13.05.015</u>, including any allowed modification, or a variance has been obtained.
- 6. All required public improvements will be provided.
- 7. Any required submitted geological hazard report concludes that the property can be developed in the manner proposed, in accordance with any recommendations contained in the report.
- B. Compliance with Criteria. If the tentative plan complies with the criteria, the plan shall be approved. Conditions of approval, including requirements to provide public improvements necessary to allow development, may be imposed. If the tentative plan does not comply with the criteria or cannot be made to comply through reasonable conditions of approval, the plan shall be denied and the applicant shall be notified in writing why the tentative plan was denied and what items need to be corrected before the tentative plan can be approved.
- C. Geological Hazards Reports. Approval of the minor replat or partition pursuant to a submitted geological hazard report includes approval of the geological report recommendations. Based on the report, the community development director shall establish when compliance with the geological report recommendations must be demonstrated. This shall be in the form of a written certification prepared by an engineering geologist or other equivalent certified professional, establishing that the report requirements have been satisfied, and should be noted as a condition of approval.
- D. <u>Appeal</u>. Persons who make written comment during the comment period shall be notified of the final decision. Any person with standing may file an appeal of the planning director's approval or denial of a tentative plan. Notice and the hearing procedure shall be the same as for a subdivision tentative plat approval.

- E. Final Plat Approval. Within two years of the tentative plan approval, the applicant shall submit to the city a final plat for the replat or partition that is consistent with the tentative plan and state law. A signature block for the Community Development Director, the Lincoln County Surveyor, the Lincoln County Tax Collector, and the Lincoln County Tax Assessor shall be on the final plat. The community development director shall approve the final plat if it is consistent with the tentative plan and all conditions have been satisfied, including the provision and acceptance of any required public improvements. The city shall forward approved plats to Lincoln County for review and recordation. The applicant shall submit one paper copy of the recorded final plat within 90 days to the community development department.
- F. Procedure for Approval of Replat Other than a Minor Replat. The procedure and criteria for tentative and final approval of replats other than minor replats shall be the same as for subdivisions or partitions, depending on whether the replat is of a subdivision or partition.

13.05.100 Cemeteries

A. <u>Minimum Requirements for the Platting and Subdivision of Land for Cemetery Purposes</u>. The following are the minimum requirements for lot sizes, walkways, streets, and street improvement widths applicable to cemeteries:

1. Lot Sizes:

- a. Width not less than four feet.
- b. Length not less than 10 feet.

2. Walkways:

- a. Width not less than six (6) feet.
- b. Location each individual grave to be served.

3. Street Right-of-Way Widths:

- a. Within the plat not less than 32 feet.
- b. Entrance roads to conform to present city subdivision regulations.

4. Street Improvement Widths:

- a. Within the plat not less than 24 feet.
- b. Entrance roads to conform to present city subdivision regulations.

5. Deadend Roads (Within the Plat):

- a. Right-of-way not less than 42 feet.
- b. Improvement width not less than 36 feet.
- c. Cul-de-sac not less than a 45 foot radius.
- B. <u>Buffer Strips</u>. Buffer strips shall be established that are at least 100 feet in width when a cemetery development is adjacent to a residentially zoned property; 75 feet when a cemetery development is adjacent to tourist-commercial zoned property; and 50 feet in width when a cemetery development is adjacent to all other commercially zoned property. No lots shall be allowed within the buffer strips.
- C. <u>Buffer Strip Planting and Maintenance</u>. All required buffer strips shall be planted at the time the adjacent land planted for cemetery lots is being offered for sale. The buffer strip shall have evergreen trees planted to such a density that they are an effective screen to adjoining property. The evergreen trees shall have an initial minimum planting height of four (4) feet and shall be of such species that they will reach a height of at least 20 feet at maturity. All remaining ground areas in the buffer strip shall be maintained as lawn area, shrubs, or flower beds, as are maintained by the management of the cemetery in all other areas of the cemetery plat that are presently being used.
- D. <u>Location of Cemeteries</u>. No cemeteries shall be allowed to be placed within one mile of the high-water line of the Pacific Ocean and within one-half mile of the high-water line of the Yaquina Bay.

13.05.105 Miscellaneous

- A. <u>Exceptions for Planned Developments</u>. The standards and requirements of this chapter may be modified without a variance for planned developments.
- B. <u>Variances</u>. Variances to this chapter not otherwise allowed by modification within this chapter are subject to the standards and procedures for variances in the zoning ordinance. Notice of the variance request may be included in the legal notice for the hearing on the tentative plan for a subdivision or may be provided separately.
- C. <u>Violations</u>. Violations of this chapter are civil infractions with a maximum civil penalty of \$500. A separate violation exists for each day the violation continues. Violations of separate provisions of this chapter are separate civil infractions. If a developer or owner repeatedly violates this chapter, the city may elect to place and enforce a lien on any land division in violation of this chapter.

(Chapter 13.05 adopted by Ordinance No. 1990, on October 19, 2009, effective November 18, 2009.)

CHAPTER 13.50 STANDARDS AFTER SUBDIVISION APPROVAL

13.50.010 Purpose

The purpose of this chapter is to ensure that current land use and other building standards are complied with to ensure, while allowing developers a reasonable time after obtaining a subdivision approval to develop structures within the subdivision according to the standards in effect at the time of subdivision approval.

13.50.020 Standards in Effect after Subdivision Approval

The land use standards in effect at the time of a subdivision approval apply to all applications for land use approval within the subdivision filed within 180 days of the subdivision approval. After that time, the land use standards in effect at the time the land use application is deemed complete shall apply to the land use application.

Chapter 13.50 was adopted by Ordinance No. 1938, on October 15, 2007; effective November 14, 2007)

CITY OF NEWPORT NOTICE OF A PUBLIC HEARING¹



This meeting will be conducted by video-conference. Please contact the Community Development Department at the phone number or email listed below for options on how you can participate in the hearing.

NOTICE IS HEREBY GIVEN that the Planning Commission of the City of Newport, Oregon, will hold a public hearing to consider an appeal of an administrative decision denying a Miscellaneous Permit Application (#2-MISC-20).

File No: # 2-MISC-20-A

Appellant & Property Owner: J. T. Roth. Jr. and Theresa Roth (Christopher P Koback, Hathaway Larson, agent)

<u>Request</u>: Appeal challenging the Community Development Director's decision that street and stormwater public improvement requirements the City is imposing are directly related, and roughly proportional, to the impact of construction that has occurred on the applicants three (3) lots, including the single family dwelling now being built.

Location: 1515, 1525 & 1535 NW Spring St (Lincoln County Assessor's Map 11-11-05-BB; Tax Lot 2300).

Applicable Criteria: NZO Section 14.44.040: 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. Findings in the development approval shall indicate how the required improvements are directly related and roughly proportional to the impact. Applicant asserts that the requirements constitute an unlawful exaction under the 5th Amendment of the U.S. Constitution.

<u>Testimony</u>: Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances which the person believes to apply to the decision; failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to the issue precludes an appeal based on that issue; submit testimony in written or oral form; send letters to Planning Department (address under "Reports") by 12:00 p.m. the day of the hearing; oral testimony will be taken during the course of the public hearing.

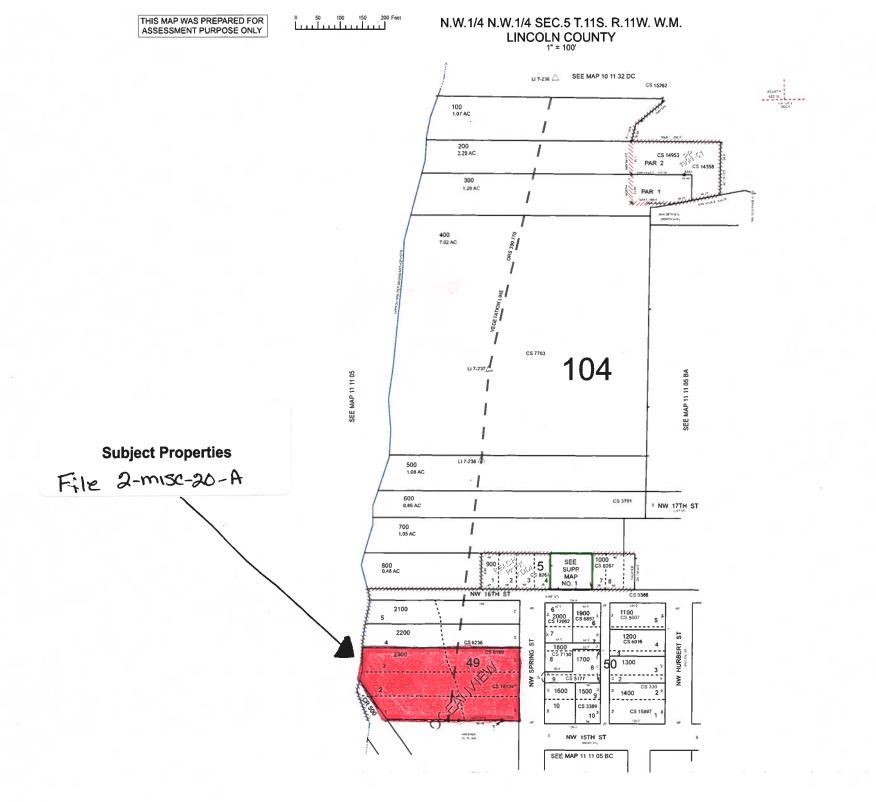
Reports: The staff report may be reviewed or a copy purchased at the Newport Community Development Department, City Hall, 169 SW Coast Hwy, Newport, Oregon, 97365 seven days prior to the hearing. The application materials and the applicable criteria are available for inspection at no cost or copies may be purchased at this address.

<u>Contact</u>: Derrick Tokos, Planning Director, Community Development Department, (541-574-0629) (address above).

Time/Place of Hearing: Thursday, October 15, 2020; 6:00 p.m.; City Hall Council Chambers (address above).

MAILED: September 25, 2020.

PUBLISH: October 2, 2020/News-Times.



Revised; SEB 05/06/2019

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ROTH J T JR & ROTH THERESA 12600 SW 72ND AVE #200 PORTLAND; OR 97223 CHRISTOPHER P KOBACK
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PORTLAND, OR 97209

MONA LINSTROMBERG 831 E. BUCK CREEK RD. TIDEWATER, OR 97390

JOSEPH B. FAHRENDORF, PRESIDENT THE ASSN OF UNIT OWNERS OF WIZARDS OF THE SEA CONDO 1505 NW SPRING ST NEWPORT; OR 97365 JOSEPH B. FAHRENDORF, PRESIDENT WHALES SPOUT CONDOMINIUM HOMEOWNERS ASSOCIATION 370 SW COLUMBIA BEND; OR 97702 SIGLEO ANNE C 1541 NW SPRING ST NEWPORT; OR 97365

EGGLESTON MARK S TSTEE & COOPER SUSAN L TSTEE 29513 N 140TH ST SCOTTSDALE; AZ 85262

CITY OF NEWPORT NOTICE OF A PUBLIC HEARING

This meeting will be conducted by video-conference. Please contact the Community Development Department at the phone number or email listed below for options on how you can participate in the hearing.

The Planning Commission of the City of Newport, Oregon, will hold a public hearing in the City Hall Council Chambers at 6:00 p.m. on Thursday, October 15, 2020, to consider File No. 2-MISC-20-A, which is a request submitted by J. T. Roth. Jr. and Theresa Roth (Christopher P Koback, Hathaway Larson, agent). An appeal has been filed challenging the Community Development Director's decision that street and stormwater public improvement requirements the City is imposing are directly related, and roughly proportional, to the impact of construction that has occurred on the applicants three (3) lots, including the single family dwelling now being built. The subject property is located at 1515, 1525 & 1535 NW Spring St (Lincoln County Assessor's Map 11-11-05-BB; Tax Lot 2300). Per NZO Section 14.44.040: 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. Findings in the development approval shall indicate how the required improvements are directly related and roughly proportional to the impact. Applicant asserts that the requirements constitute an unlawful exaction under the 5th Amendment of the U.S. Constitution. Testimony and evidence must be directed toward the criteria described above or other criteria in the Comprehensive Plan and its implementing ordinances which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral and written testimony will be taken during the course of the public hearing. Letters to the Community Development/Planning Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 12:00 p.m. the day of the hearing or be personally entered into the record during the hearing. The hearing will include a report by staff, testimony (both oral and written) from those in favor or opposed to the application, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional evidence, arguments, or testimony regarding the application. The staff report may be reviewed or a copy purchased at the Newport Community Development Department (address above) seven days prior to the hearing. The application materials and the applicable criteria are available for inspection at no cost or copies may be purchased at this address. Contact Derrick Tokos, Community Development Director, (541) 574-0626 (address above).

permit is in effect. According to the permit, "At this meeting the company will describe what has been done in the preceding year regarding odor or other emission controls at the mill and any plans for future construction projects or odor or other emission controls and receive feedback from citizens. The permittee will provide DEQ and the public at least two weeks advance notice of the meeting by way of a published announcement in the local newspaper."

decomposition of the company of the

Due to COVID-19 restrictions on public gatherings, DEQ earlier this year approved the Toledo mill's request to postpone this community meeting. DEQ has now instructed the mill to conduct this meeting virtually. Therefore, the meeting will be held on Wednesday, October 28, 2020 at 9 a.m. PT.

To participate in the October 28 meeting, go to https://zoom.us/join and when prompted, enter the meeting ID: 927 1911 2080. If you are asked for a passcode, it is 545671.

You can also participate in the October 28 meeting by phone. Dial (253) 215-8782 and when prompted, enter the meeting ID: 927 1911 2080. If you are asked for a passcode, it is 545671.

10/02/2020

The meeting host will arrive five minutes before the start time of 9 a.m. PT.

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Wanted

OMAR KALIEFF

Date of birth:....11/ Race:..... Native An Sex: Height: Weight:.... Eye Color:

Hair Color:....

Supervision/v status: Mr. Fair supervision for a a Public Officer.

To report the k of this call Lincoln Community Corr (541)your or enforcement ager

Public Notices

LEGAL DEADLINES: WEDNESDAY EDITION:

5:00pm Thursday FRIDAY EDITION: 5:00pm Tuesday

NOTICE TO NOTICE TO
INTERESTED PERSONS
IN THE CIRCUIT COURT
OF THE STATE OF OREGON FOR THE COUNTY
OF LINCOLN; Case No.
20PB05349. In the Matter of the Estate of LINNEA G. PORTLOCK,
Deceased. NOTICE IS
HEREBY GIVEN that
Mary C. Mamer has been HEREBY GIVEN that Mary C. Marner has been appointed personal representative of the Estate of Linnea G. Portlock. All of Linnea G. Portlock. All persons having claims against the estate are required to present them, with vouchers attached, to the personal representative through the personal representatives attorney at PO Box 1987, Newport, OR 97365, within four months after within four months after the date of first publicatrie date of Irist publica-tion of this notice, or the claims may be barred. All persons whose rights may be affected by the proceedings may obtain additional information from the records of the from the records of the Court, the personal representative, or the attorney for the personal representative, Traci P. McDowall. Date and first published on September 25th, 2020. YAQUINA LAW, LLC /s/

Traci P. McDowall, Traci P. McDowall, OSB #184063 Attorney for Personal Representative. PER-McDowall, OSB #184063
Attorney for Personal
Representative. PERSONAL REPRESENTATIVE: Mary Mamer PO
Box 500 Waldport, OR
97394, LAWYER FOR
PERSONAL REPRESENTATIVE: Tarei B. McDow TATIVE: Traci P. McDow-all, OSB #184063 PO Box all, OSB #164063 PO Box 1987 Newport, OR 97365 Telephone: (541)272-5500 Fax: (541)265-7633 Email: traci@yaquinalaw.com S25 O2 O9 (16-09)

NOTICE OF A PUBLIC HEARING; CITY OF NEWPORT

NEWPORT
This meeting will be conducted by video-conference. Please contact the Community Development Department at the phone number or email listed below for options on how you can participate in the hearing. The Planning Commission of the City of Newport, Oregon, will hold a public hearing in the City Hall Council Chambers at 6:00 p.m. on Thursday, October 15, 2020, to consider File No. 2-MISC-20-A, which is a request submitted by J. T. Roth. Jr. and Theresa Roth (Christopher P Koback, Hathaway Larson, agent). An appeal has been filed challering the Communication of the communication of the communication of the control of the c Hathaway Larson, agent). An appeal has been filed challenging the Community Development Director's decision that street and stormwater public improvement requirements the City is imposing are directly related, and roughly proportional,

to the impact of constructo the impact of construc-tion that has occurred on the applicants three (3) lots, including the single family dwelling now being built. The subject prop-erty is located at 1515, 1525 & 1535 NW Spring \$t.f. incolor County Asser-St (Lincoln County Assessor's Map 11-11-05-BB; Tax Lot 2300). Per NZO Section 14.44.040: No development may occur unless required public facilities are in place or guaranteed, in confor-mance with the provisions of this Code. Improve-ments required as a conof this Code. Improve-ments required as a con-dition of development approval, when not vol-untarily accepted by the applicant, shall be roughly proportional to the impact of the development on public facilities. Findpublic facilities. Find-ings in the development approval shall indicate how the required improvements are directly related and roughly proportional to the impact. Applicant asserts that the requirements constitute an unlawful exaction under the 5th Amendment of the U.S. Constitution. Testimony and evidence must be directed toward the crieria described above or ments are directly related be directed toward the cri-teria described above or other criteria in the Com-prehensive Plan and its implementing ordinances which the person believes to apply to the decision. Failure to raise an issue with sufficient specificity to afford the city and the parties an opportunity to respond to that issue precludes an appeal, including to the Land Use Board of Appeals, based on that issue. Testimony may be submitted in written or oral form. Oral and written testimony will be taken during the course of the public beging Letters to the ing the course of the public hearing. Letters to the Community Development/ Planning Department, City Hall, 169 SW Coast Hwy, Newport, OR 97365, must be received by 12:00 p.m. the day of the hearing or be personally entered into the record during into the record during the hearing. The hearing will include a report by staff, testimony (both oral and written) from those in and written) from those in favor or opposed to the application, rebuttal by the applicant, and questions and deliberation by the Planning Commission. Pursuant to ORS 197.763 (6), any person prior to the conclusion of the initial public hearing may request a continuance of the public hearing or that the record be left open for at least seven days to present additional days to present additional evidence, arguments, or testimony regarding the application. The staff report may be reviewed or a copy purchased at the Newport Community Development Department (address above) seven days prior to the hearing. The application materials and the applicable criteria are available for inspection at no cost or coples may be purchased at this address. Contact Der-

rick Tokos, Community Development Director, (541) 574-0626 (address above). O2 (19-02)

NOTICE TO
INTERESTED PERSONS
IN THE CIRCUIT COURT
OF THE STATE OF OREGON FOR THE COUNTY
OF LINCOLN; Case No.
20PB06082, In the matter
of the estate of: Gerald D. Seth, Deceased, NOTICE IS HEREBY GIVEN that the undersigned has been appointed Personal Representative. All persons having claims against the Estate are required to present them required to present them with vouchers attached, to the undersigned Personal Representative, at PO Box 309, Toledo, OR 97391, within 4 months after the date of first publication of this notice, or the claims may be herred the claims may be barred.
All persons whose rights may be affected by the proceedings may obtain additional information additional information from the records of the Court, the Personal Rep-resentative or the attor-ney for the Personal ney for the Personal Representative. DATED AND FIRST PUBLISHED October 2nd, 2020. /s/Patricia Timme, Patricia Timme Personal Representative. PERSONAL REPRESENTATIVE Patricia Timme 1000 Sunest cia Timme 1999 Sunset Dr. Toledo, Oregon 97391 541-336-3959 LAWYER FOR PERSONAL REPRE-SENTATIVE David James Robinson, Of Counsel, Robinson,

OSB#094887 P.O. 309 Toledo, OR 97391 541-336-2257 david@ davidjamesrobinson.com 02 09 016 (20-16)

SUMMONS BY

PUBLICATION
IN THE CIRCUIT COURT
FOR THE STATE OF OREGON IN AND FOR THE
COUNTY OF LINCOLN,
Case No. 19CV13097;
U.S. BANK NATIONAL
ASSOCIATION, NOT IN
ITS INDIVIDUAL CAPACITY BUT SOLELY AS
TRUSTEE FOR THE
RMAC TRUST, SERIES
2016-CTT, an Oregon
non-profit corporation,
Plaintiff, V. LINDA SARSON; ASSOCIATION
OF UNIT OWNERS OF
SURFTIDES PLAZA, INC.,
OCCUPANTS OF THE
PROPERTY, Defendants.
TO THE DEFENDANTS:
OCCUPANTS OF THE
PROPERTY In the name
of the State of Oregon,
you are hereby required
to appear and answer the
complaint filed against
you in the above-entitled
Court and cause on or
before the expiration of
thirty (30) days from the
date of the first publication of this summons.
The date of first publication of this summons.
The date of first publication of this summons.
The date of first publication of this summons.
The date of first publication of this matter is
October 2, 2020. If you
fall timely to appear and
answer, Defendant and
Cross Claim Defendant
Association of Unit Owners of Surftides Plaza, Inc.
("Surftides") will apply to
the above-entitled court

its ansi to Pla This is sure c lien reques be allo your in lowing proper No. 35 that ce Unit O ides F ides F page ! Record ty, Ore instrum 30, 19 page 1 ment 17, 19 page 7 a tract the Ci as des rated h and m as if fu togethe ed per commo forth in apperta The pro known Place, Oregor TO DE THESE FULLY

Sherri Marineau

From: Chris Koback <chris@hathawaylarson.com>
Sent: Monday, October 12, 2020 12:35 PM

To: Derrick Tokos

Cc: Sherri Marineau; timr@jtrothinc.com; Paige Huntoon

Subject: File No. 2-Misc.-20

Attachments: scanned Exhibit B-1.pdf; scanned attachments to ExbB-1.pdf; Planning Commission ltr.pdf

Derrick:

I an attaching the following documents for inclusion in the record in our appeal and for distribution to the members of the Planning Commission:

- 1. Exhibit B-1, which is Mr. Roth's response to the Findings in your Exhibit A-1 to the Decision;
- 2. Attachments B-1 through B-12 that go with Mr. Roth's document; and
- 3. My letter dated today with three photographs and one email from June 22, 2020.

Please have the attached material placed in the record for the October 15, 2020 hearing. Also, we appreciate you immediately distributing the material to the members of the Planning Commission. Thank you.

Christopher P. Koback | Partner

Hathaway Larson LLP | 1331 NW Lovejoy St., Ste. 950, Portland, OR 97209 Direct: +1.503.303.3107 | Main: +1.503.303.3101 chris@hathawaylarson.com | www.hathawaylarson.com



EXHIBIT "B-1" Case File No. 2-Misc.-20

Please add this Exhibit B-1 to the records for the above Case File.

It is important to note the following before reviewing the Amended Findings of Fact being offered herein.

• The Findings of Fact (titled Exhibit A) delivered with the Notice of Decision for the above case file states that it was our (Applicant) intent to request that the city grant a modification to our Geological Permit by removing a certain "Condition #4", whereas the Applicant was required to perform certain off-site street and storm water improvements.

This statement does not accurately reflect the intention of the Applicant.

There were several discussions between Applicant and city prior to the approval of the Geologic Permit, which generated a written letter dated May 30, 2019 prepared by Lee Ritzman with Civil West Engineering (attachment A-13), that clearly contemplated a fair cost-sharing arrangement. The Geologic Permit dated June 3, 2019 (attachment A-14), which included this Condition #4, was predicated on these discussions and the Engineers letter, spelling out two options to address the storm water improvements. My understanding and belief that the city would be participating in a fair cost-sharing arrangement gave no justifiable reason for me (Applicant) to appeal the Condition at the time the Geologic Permit was issued.

After exhausting my efforts to negotiate a fair cost-sharing agreement for the storm water improvements with Tim Gross and Clare Paul, Public Works (P.W.), that I argued to be disproportionate with the impact of my development, it was the City Manager and Planning Director who advised me that under the circumstances that led to Condition #4 being included with the Geologic Permit, the city had a recognized process in which I needed to address the lack of proportionality in the city's ultimate cost sharing position.

This is further exampled in the amended Facts and Finding below.

• After several attempts to negotiate with P.W. I reached out to Spencer Nebel, City Manager (C.M.) in hopes that he might find a more reasonable approach to resolving this unresolved issue. C.M. simply deferred to P.W. and offered no attempt to compromise the disputed issues.

As a result of this recent Land Use Application, the Facts and Findings and Conclusions of the Notice of Decision has in fact modified the P.W. demands and the Condition #4 as it was stated in the Geologic Permit in an attempt to defend the proportionality argument. As noted, based upon substantive discussions preceding the issuance of the Geologic Permit, Condition #4 anticipated a fair cost sharing of the work described in two (2) distinct options. In the recent Decision, the Director has eliminated one of the options, thus modifying the Geologic Permit decision. To this extent, we were successful in our efforts through our land-use application to achieve a slight improvement in the terms being demanded by the city.

Where there are noted modifications to the demands imposed by P.W., through the Conclusions offered with the Decision, there is not a clear framework defining what the new conditions are, and I hope to lay that framework within this proposed Amendment and Closing Conclusions.

Further, the dispute was originally created by P.W. and later defended by C.M. and where this Decision, with modifications to the demands being imposed, is being offered by Derrick Tokos, Community Development – Planning (CDP) it is not clear that CDP in fact has the authority to override both P.W. and C.M. I would think that the Notice of Decision that was generated as a result of our land-use application cannot dictate modifications to the Conditions of a previous approval? And I simply raise this question for accuracy and clarification.

Amended FINDINGS OF FACT / CONCLUSION

Through the review of the Findings and Conclusions it became very obvious that key documents were not included, where these documents provide important information to support Applicants amended arguments it would be only prudent to include them.

Please consider the following to be submitted as Amendments to the Facts and Finding and Conclusion (Case File No. 2-Misc.-20).

Finding of Facts

#7 and #10

Amendment / Clarification

-Note letter from K&A Engineering dated May 8, 2019 (attachment A-11).

*under the section titled "Minimizing Cuts and Fills". It is quoted that "The submitted plans show filling of the existing swale" and "This is not an existing drainage feature and in fact, is a hazard due to the fact that any water that collects in this basin drains into the ground, potentially raising groundwater in the west facing slope"

Amendment / Clarification

-In reference to the "roadside ditch" being filled. (attachment A-18) The report from K&A observed and approved the filling of the "swale". Same report was submitted to and accepted by the city and at that time the city expressed no concerns or disagreements.

#15, #16, #17, #18

Amendment / Clarification

Applicant does not disagree or dispute the "intent" that Applicant would be responsible for offsite improvements, including street widening and storm water. For both the Geologic Permit and Variance the assumption was that there were two options being considered for the improvement of the storm water system, defined in Condition #4 of Geologic Permit, both of which were predicated on the city paying its' proportionate share of the cost of improvements.

Amendment / Clarification

After the issuance of the Geologic Permit and prior to the approval of the Variance, we (Civil West Engineer and myself) met with the city (Tim Gross, Clare Paul, Derrick Tokos) to discuss the off-site public improvement work and the "cost sharing" of this work. As a result of that meeting Civil West prepared an agreement (dated Sept. 6, 2019) that spelled out the understanding of "cost sharing" portion of the storm water improvements. (attachment B-1).

To be noted, the scope of work per this agreement was limited to the Civil Engineering portion of the work, however the percentage of responsibilities would (or should) carry forward to physically performing the work.

Based on the response received from Derrick Tokos in an email (dated 9-17-20), I made the assumption that both parties agreed to the scope of work and the proportional cost sharing structure proposed in the Civil West agreement. My efforts moving forward were based on the understanding that the city would be participating proportionally with the storm water improvements.

Hi Tim,

Thanks for continuing to move the conversation along. While we are in general agreement with how you have framed the project, it is not possible for us to move forward with an agreement in the form of an "engineers scope of services." We have a specific format for development agreements, and will be looking to set it up such that the City reimburses you for its proportionate share of the soft and hard costs once the improvements have been constructed and accepted.

Our Public Works Department will prepare a cost estimate and once I have that estimate I'll put together a draft agreement for your review. It is likely that the agreement will need to be presented to our City Council, and the timing of a reimbursement payment to you would need to be on or after 7/1/20 since we do not have funds currently budgeted for the work.

Derrick I. Tokos, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365
ph: 541.574.0626 fax: 541.574.0644
d.tokos@newportoregon.gov

Consistently, throughout the process and discussions any statement that I intended to complete the conditioned public improvements was based on my understanding of the prior cost sharing discussions and my belief that the city was "in general agreement" with the cost sharing proposal that was submitted (attachment B-1)

A subsequent meeting was held with the city where we discussed the option of installing the storm piping in an easement on my property (Lot 1). I still retained the belief that the city would be participating in a fair "cost-sharing" of the storm water improvements similar to what they had "generally" agreed to in the previous meeting. The city requested that I prepare a Draft Proposal for the work, of which I spent a considerable amount of time to prepare, again, assuming the city was sincere with their earlier position to participate in a fair cost sharing.

This proposal was submitted (emailed) to the city on Jan. 20, 2020 (attachment B-2)

After sending four email requests to the city for a response I finally received a reply from Tim Gross dated Feb. 28th, (attachment B-3).

The general summary of this letter was that the city was willing to contribute a small stipend to cover the cost of upsizing the 8" pipe to an 18" pipe. This was hardly consistent with the general tone and understanding from previous correspondence and meetings, of which I had built my trust and understanding as I proceeded through the permitting process.

Further, his statement that; "to the size necessary to redirect storm drainage from Basin "R" was a clear statement that his underlying intentions were to require me to pay a gross disproportionate share of the cost to replace the city's existing undersized and failing system.

On March 9, 2020 I replied to the city with an email rejecting and rescinding my offer to contribute my land for an easement that would disproportionately benefit the city at my expense. (attachment B-4)

My recommendation was to refer to the earlier option (an option allowed Condition #4 of the Geotech Permit), that was defined in the Civil West agreement, to approve the existing system where the cost sharing was realistically proportioned.

Following my March 9 email (attachment B-4) the Civil Engineer, Keven Shreeve, had an informal discussion with Tim Gross where Tim (per Keven) stated that the city "could require you to upsize the pipeline, whether you want to or not, as a part of the condition of approval". (attachment B-11).

It was only from this blatant attempt by Tim Gross to extract a disproportionate amount of work, that I was forced to challenge the city's decision. It became obviously clear that his intent was to force me to perform the majority of the storm water improvements at a gross benefit to the city that would allow the city to replace their failed storm water system at my expense.

• #19

Amendment / Clarification

I was unable to find any condition listed on the building permit (attachment A19) that spelled out the CofO would be subject to the "completion" of the storm improvements.

Note: The printed page of the plans (included as a part of attachment A19) shows a stamp from "Department Plan Review Approvals" with sign-off from the various departments and includes handwritten notes below. One note states "Co Dependent on Completion of Storm Improvements". The Department Plan Review Approvals stamp, signatures from departments, and handwritten notes were not included on the permitted plans that were issued to me with the building permits and it can only be concluded that these were added to the city's plan set, however not included on the set issued to me. (attachment B-10)

• #20

Amendment / Clarification

The statement made that Mr. Nebel's June 5th email "appear to be a typographical error" is not in fact accurate. Mr. Nebel's statement referenced in this section is in fact consistent with the statement made by Mr. Nebel in his June 27th email and attached drawing to same email. (attachment B-5)

In addition, the statement is supported by the comment made by Tim Gross to Keven Shreeve, per the March 12th email (attachment B-11)

It can be argued that by offering this "correction of oversight" is a convenient way to better align the city to argue the proportionality claim that was made in our land use application/narrative. We recognize this effort and are okay with this moving forward, however, this will not reduce the "option" of the storm water improvements to be made in an easement on my property, eliminating the option to improve the city's existing system. The discussion of proportionality needs to apply to both options, including the option to correct the existing storm piping within the city easement where the managed storm water collected in a new catch basin on Spring Street is drained to the existing public system.

• #27

Amendment / Clarification

This paragraph speaks to the gross area of run-off generated from impervious surface of the existing developed properties. As it applies to the impervious surface areas of the neighboring property driveways, along with NW Spring Street pavement, we would argue the gross area of impervious surface of existing development to be more in line with the conservative estimate of 6,000 s.f., that was stated in our earlier "Land Use Application Narrative" (attachment A-5). The simple math to establish this 6,000 s.f. number was a calculation of existing Spring Street being 20' x 300' long. It is this impervious surface area that is the subject of generating water run-off that the city has conditioned my project to manage by the addition of curb gutters and catch basin. The purpose of calling this out was to example the disproportionality of the existing impervious surface (6,000 s.f.) with the amount of impervious surface created as a result of our new development (165 s.f.), less than 3% of the total surface area that we are being required to manage with new public improvements.

Included in the email from Spencer Nebel dated May 27, 2020 (attachment B-5), he asked for "an estimate for the cost to build the new storm sewer line from the catch basin to the outlet" On May 28th I replied to Spencer with an email providing an estimated cost breakdown to perform the improvements of adding the catch basin and the outfall drain piping. (attachment B-12). Note; this estimate does not include the cost of curb gutters, nor does it consider a value for the personal property the city would be requiring me to dedicated as a storm water easement.

The total amount of this estimate is \$80,300.00 and of this total amount of public improvements the city has offered to contribute a disproportionate amount. An estimate of what the city would be contributing is taken from the email from Keven Shreeve (attachment B-11). Based on Keven's simple cost estimate, the city's contribution in the cost of the pipe would be \$3,000.00 (\$20/ft. to increase pipe size x 150 ln ft. of pipe), and a 22.2% contribution for engineering expense or \$2,619.60 (project engineering estimate of \$11,800.00 x 22.2%). The total estimated amount the city would agree to contribute to these improvements is \$5,619.60, or less than 7% of the total cost of the required improvements.

Where the existing storm water will contribute approx. 97% of the total water being managed by the city's requirements of adding these new public improvements, their contribution is less than 7%. This is the bases for my argument of disproportionality.

It becomes even more blatantly disproportionate if you were to consider the total amount of storm water the city intended to direct from their existing "Basin-R" to connect to these new improvements being conditioned on my project (see attachment B-5 email from Spencer Nebel and attachment B-3 letter from Tim Gross)

• #32

Amendment / Clarification

The statements made by Joseph Fahrendorf in this section and the comment made in Facts and Findings-paragraph #8, stating that a 2016 Newport Storm Water Master Plan identified the outfall storm drainage line being undersized would support the argument that the city has known about this problem for no less than four years and has opted to ignore it. Further, in paragraph #12 it explains that a "sizable hole" was discovered in this same outfall storm drainage line, not knowing

how long it has existed? The *catch basin on the Fahrendorf property (within the public storm water easement) that over flows, the *leaking at the base of the Fahrendorf retaining wall (within the easement), the *undersized storm pipe (within the easement), and the newly discovered *hole in the outfall storm pipe (within the easement) all contribute to the probability of erosion of private property at the Whales Spout Condo and Wizards of the Sea Condo property. To be noted, the storm water easement and piping and these private properties exist within the same "active landslide hazard and active erosion hazard overlay zone" that was referenced in Facts and Findings paragraph #4.

This would certainly suggest that the city is exposed to the past and future damages created by the failures of their own "publicly owned and maintained storm system" and based on the material provided within this Exhibit B-1 it would imply that it was the underlying intent of Public Works to place the full burden of the repairs and/or replacement on the Conditions imposed in my Geologic Permit, Variance and Building Permit.

CONCLUSION

Based on the Amended Facts and Findings that I have presented in this Exhibit B-1, I would make the following Conclusions that would allow the misunderstandings and misinterpretations between the two parties to come to be resolved.

- #1

Amendment / Clarification

The Applicant has been consistent in following the guidelines of the permits that have been issued, allowing them to perform certain improvements to their property. Their on-going attempts to reach a fair "cost-sharing" arrangement with the city have been rejected by P.W. with every effort.

- -Engineers Scope of Service proposal presented by applicant (attachment B-1)
 - rejected by Public Works
- -Proposal presented by applicant (attachment B-2)
 - -rejected by Public Works

-On April 8, 2020 I submitted an application for a "Right-of-Way" permit to allow me to perform the off-site work on Spring Street. (attachment B-6) This application was submitted concurrently with the Building Permit application.

The work proposed with this application included widening the street along the frontage of my Lot 3 and installing a drainage swale located on my Lot 2 to the south. This swale was intended to manage the storm water run-off from Spring Street, primarily generated by the existing run-off and a very small amount being added by the 3' of street widening improvements I was proposing. At this time I was still operating under the belief that the city would be participating in the cost-sharing of the storm water improvements to manage the existing water run-off from Spring Street.

The intent was to perform these frontage improvements in phases, consistent with the issuance of the building permits per each lot. The issue of addressing the storm water management along Spring Street would be completed with a catch basin installed along the frontage of Lot 1, if determined by engineering to be necessary, and when the building permit was granted for same lot and the street improvement performed.

Exhibit "B-1" - "Amended" Findings and Conclusion

See email chain (attachment B-7)

- -April 22, 2020 email from me to clarify what revisions were required from P.W.
- -April 23, 2020 email from P.W. asking for plans showing full street improvements
- -April 24, 2020 email (me) explaining improvements limited to building permits for Lot 3
- -May 5, 2020 email from P.W. stating all lots need to be improved
- -May 6, 2020 email (me) spelling out the phasing of the work

On May 20, 2020 I submitted an email to Public Works with an attached letter of recommendation from the project's Geotech Engineer. The letter from the engineer approved the temporary drainage swale that was questioned by Clare Paul (Public Works). (attachment B-8)

May 22, 2020 I received an email from Clare Paul rejecting my application (attachment B-9)
-at this point Public Works had rejected my Right-of-Way Permit application to allow me
to perform the off-site improvements, a permit for this work was never issued.

The above demonstrates the extent of the efforts I have made to come to terms with P.W. and the city, in conformance with the spirit and intent of Condition #4 and to reach a cost-sharing arrangement that would benefit the city based on a fair proportionality, contrary to what is described in this Conclusion- paragraph 1.

The Land Use Application was submitted as a last resort, per the recommendation of the Spencer Nebel (see attachment B-5)

Amendment / Clarification

Regarding the comments made in this section stating that "Ms. Linstromberg accurately points out that applicant did not contest the required off-site during appeal period for permit #8-GP-18.....and the land use decision....are now final".

The conclusion given is in fact not accurate, I have more accurately described the efforts and events in the testimony given within this Exhibit B-1. And that it was the city that directed me through this land use process as a form to appeal the earlier decision.

#2

This paragraph states that the "applicants have eliminated the roadside ditch within the NW Spring Street right-of-way adjacent to all three of their lots and installed a private storm drainage infrastructure......to discharge into a public storm drain line".

This statement is not accurate. The private storm drainage infrastructure that was installed per Building Permit 625-19-000429 was connected to a private outfall pipe that was retained on private property and does not discharge into a public storm line.

The Conclusion is not accurate, I have submitted support documents throughout this Exhibit B-1 to argue the contrary.

• #5

This Conclusion claims that the "City indicated that it was willing to limit the street widening requirements to the Lot 3 frontage".

I submitted plans for the off-site work that limited the street widening to the frontage of Lot 3 and that permit application was rejected by Public Works. (see attachment B-6, dated 4-8-20). The email from Spencer Nebel dated 5-5-20 was after Public Works had rejected my application.

This Conclusion is not accurate with the facts

• #7

There is a reference to the "roadside ditch", being "publicly owned and maintained".

I would not challenge the fact that this ditch was located within the public right of way and consequently owned by the city, however, over the thirty year period that I have owned this property there has been no indication that the "ditch" has been maintained?

This ditch was described by the project Geotech Engineer as "not an existing drainage feature" and "is a hazard" (attachment A-11)

The filling of the ditch was inspected and approved by same Geotech Engineer and the attachment A-11 was submitted to and accepted by the city and at that time the city expressed no concerns or disagreements with the Geotech Engineer's conclusion that the ditch was not an existing drainage feature.

#9 and #10

This Exhibit B-1 has provided accurate documents to support the efforts that have been made to comply with and to conform to the spirit and intent to reach a cost sharing arrangement that benefits both parties as required per Condition #4, which have been rejected at all levels.

The description of Conclusion #10 has restricted the two options of managing the storm water improvements to Option #1 (attachment A-13). This is inaccurate for the city to modify the terms of their own agreement without reaching a mutual acceptance of both parties, which is what I have been attempting to do for the last 18 months.

A more accurate conclusion to be drawn would be......

- a. Applicant has removed a hazardous ditch within the roadside right-of-way under the review and inspection of the project Geotech Engineer and has demonstrated through support and guidance of the Geotech Engineer that the storm water run-off can be temporarily managed with a swale on the lot adjacent to the permitted Lot #3
- b. Since the city has acknowledged the street improvements should be phased with the permitting of each of the three building lots, the management of the mutually approved storm water improvements should equally be a phased process.

 The project Geotech Engineer has determined that the "Stormwater would be routed into the new swale" and "stormwater collected in the new swale will infiltrate into the sand" and "surface runoff will be intercepted immediately, thus avoiding surface erosion" (attachment B-8)

- c. The City of Newport's storm water master plan, along with the testimony given by Mr. Fahrendorf is compelling evidence that the City's "publicly owned and maintained" storm water system within the city's easement has failed at many levels and that the city has an immediate responsibility to make the necessary improvements to protect the rights of the adjoining private property owners. Further, the city recognizes that this storm system and easement exists within an "active landslide hazard and active erosion hazard overlay zone" and needs to apply the same urgency to update these repairs to be compliant, as they would require the same of private property owner's owning property within this hazardous zone.
- d. The permitted Condition #4 allows for the storm water management to be improved by one of two options and should not be the final requirement of the city to dictate to the Applicant which options to select. In working with the city, the management of the storm water can be temporarily controlled by the recommendations of the project Geotech Engineer. During this period of temporary storm water management the city will work diligently to correct the liability they currently retain within their existing system by updating the undersized and failed piping and to comply with the same storm water design standards that the city applies to all private improvements projects. Upon the completion of these public storm water repairs the Applicant would be allowed to connect the new street catch basin, that would be installed in the phasing of the street improvements, to the newly improved (existing) public system installed by the city at their sole cost, thus eliminating the need to create yet a second easement on Applicants private property.
- e. By the Applicant performing these off-site public improvements they are providing a gross benefit to the city by managing the storm water run-off from Spring Street, adding benefit to the city currently un-managed and un-maintained system.
- f. The city acknowledges that the Applicant has provided an on-site storm water management system to control all storm water from building structure's footing drains and roof drains within their private property. And by managing this storm water on-site they are not burdening the existing public system.

As stated in the opening comments, "there is not a clear framework defining what the new conditions are, and I hope to lay that framework within this proposed amendment and closing conclusions".

With these Closing Conclusions I would propose the following framework to be used by the city to develop an agreement to allow both parties to move forward in a positive direction to satisfy the storm water improvements governed by Condition #4, which provides for two options.

Agreement

Both parties agree to make a mutual effort to work together to construct an agreement to proportionately benefit each other through one of the two options provided below. Upon the conclusion and mutual signing of this agreement the city (Planning and Public Works) will remove any implied restrictions on the completion of the building being constructed on applicants' Lot 3 but not before the building official has performed all required inspections.

Option 1

a. Applicant will agree to complete street frontage improvements to each of their three building lots. These improvements shall be phased and constructed with the issuance of the building permits for each of the Applicants three lots.

*Construct the widening of Spring Street to maximum width of 24'. The current width is approx. 21' so the additional 3' shall be constructed to City of Newport street standards. No upgrades or improvements to be made to the existing street surface.

*Driveway and driveway approach servicing the residential building(s) shall be 2" thick asphalt concrete from edge of street pavement to the building lots' front (easterly) property line. This area is a part of the public right-of- way, however the city will allow the Applicant and subsequent property owners to plant and maintain this area. The city will retain their right of ownership and usage.

b. Applicant agrees to complete certain storm water management improvements to each of their three building lots. These improvements shall be constructed with the issuance of the building permits for each lot.

*Construct a storm water catch basin at the frontage of Applicants' Lot 1 to manage the storm water run-off, constructed with the permitted construction of Lot 1.

*The outfall pipe for this newly added catch basin is to connect to a new 18" storm drainage pipe located within a newly formed easement.

See following paragraph describing needed improvements

c. The city will participate with Applicant to install an 18" storm sewer line through Applicants property, in a 10' easement running parallel with the Applicants' Lot 1 southerly property line. The total cost associated with performing these repairs will be proportionately shared between the city and Applicant where each will assume a proportionate share equal to the amount of storm water they would contribute to the new piping system. The Applicants' share of the storm water runoff shall be limited to the runoff generated by new impervious surfaces constructed as a part of the development of Applicants' Lots 1,2,3 and shall not include existing runoff from NW Spring Street generated by other private development in the area. The easement and improvements would become a public right of way for the benefit of the city to own and maintain the improvements. The city and the applicants will work together to appropriately determine the value of the easement the city would be receiving and that value will be one of the elements that is included in determining each parties proportionate cost.

Option 2

a. Applicant will agree to complete street frontage improvements to each of their three building lots. These improvements shall be phased and constructed with the issuance of the building permits for each of the Applicants three lots.

*Construct the widening of Spring Street to maximum width of 24'. The current width is approx. 21' so the additional 3' shall be constructed to City of Newport street standards. No upgrades or improvements to be made to the existing street surface.

*Driveway and driveway approach servicing the residential building(s) shall be 2" thick asphalt concrete from edge of street pavement to the building lots' front (easterly) property line. This area is a part of the public right-of- way, however the city will allow the Applicant and subsequent property owners to plant and maintain this area. The city will retain their right of ownership and usage.

- b. Applicant agrees to complete certain storm water management improvements to each of their three building lots. These improvements shall be constructed with the issuance of the building permits for each lot.
 - *Construct a storm water catch basin at the frontage of Applicants' Lot 1 to manage the storm water run-off, constructed with the permitted construction of Lot 1.
 - *The outfall pipe for this newly added catch basin is to connect to the existing public storm catch basin located at the intersection of NW 15th and Spring Street. This connection can only be made after the city has first improved their storm piping system within their controlled easement that outfalls to the ocean. See following paragraph describing needed improvements.
- c. The city recognizes their responsibility to improve their existing public storm water system that is undersized and failing and will move forward with making the needed improvements to be compliant with the current city standards, and will bear all costs associated with same. This piping system exists within a public storm water easement that runs parallel with the Fahrendorf southerly property line, where no additional easements will be required.

Applicant will not participate with the management or oversight of these improvements.

This concludes the Applicants proposed amendment to the Finding of Fact and Conclusion for the Notice of Decision, file no. 2-Misc-20.

This Exhibit B-1, along with the attachments reference throughout, is submitted for review and approval to amend the Notice of Decision and to allow the Applicant to move forward with off-site improvements where cost of same improvements are determined to be proportionate to the true impact their improvements have on the city streets and infrastructure.



486 'E' STREET COOS BAY, OR 97420 541-266-8601

609 SW HURBERT STREET NEWPORT, DR 97366 541-264-7040

ENGINEERING SCOPE OF SERVICES #2

Date: September 6, 2019 Work Order Number: 2204-054

To:

Tim Roth, J.T. Roth Construction, Inc., 12600 SW 72nd Ave., suite 200, Portland, Or. 97223

Keven Shreeve, PE, Civil West Engineering Services, Inc.

RE:

Spring Street & 15th Street Development, Newport, Oregon - Stormwater Management Work Scope #2

The project consists of the site development and construction of three ocean front buildings located along Spring Street (west side) and just north of 15th Street. There are three lots that will be developed. This scope entails certain site design work required of the project, namely, stormwater management and street widening and utilities. Stormwater design and improvements will entail both private work and joint work with the City of Newport (City).

Civil West Engineering (CW) is entering into a contract directly with Tim Roth (Roth). Roth will be responsible to pay CW directly for all work proposed herein. After CW has been paid, it is Roth's responsibility to submit for and collect any reimbursement (cost share) of engineering fees from the City. Roth keeps the City's reimbursement.

Part A: Project Understanding - Roth and City Cost Share Understanding

Task A: Upgrade Existing City Storm System located in utility easement on Fahrendorf property, tax lot 1700 (cost share with the City).

Due to the undersized and poor condition of the existing 12-inch storm pipe from 15th Street to discharge on the beach, the pipeline will be replaced with a new 18-inch pipe as part of a joint project by Roth and the City. Civil West has been retained to design the entire pipe section. Roth and the City will be financially responsible for certain portions of the improvement as follows:

City of Newport responsibilities:

- Remove and replace existing 12" galvanize storm pipe with new 18" PVC 3034 pipe, starting at an existing catch-basin located in NW Spring Street to a point where an existing 8" storm pipe, installed across the west yard of Fahrendorf property, makes a connection to same existing 12" pipe. The approximate length of this pipe being upgraded is 190'.
- Energy dissipation may be required at the beach discharge end.
- Remove and replace existing catch-basin located within the Fahrendorf easement
- Remove and replace existing catch-basin in NE Spring Street, if required.

Roth responsibilities:

- Remove and replace existing 12" storm pipe that extends west beyond the 8" storm line connection, installed across the rear yard of Fahrendorf property, with new 18" PVC 3034 pipe to the existing beach daylight point. Approximate length of pipe being upgraded is 30'.
- Based on a recent field survey, it appears a new storm manhole, as suggested previously by the City, will
 not be needed. The stormwater runoff from Spring Street along the new development will be caught in a
 new curb catch basin and piped to the existing storm catch basin where it will then be discharged to the
 beach per the above improvements. The existing catch basin already has an 8-inch pipe stub to the north
 that will be connected into.

Engineering cost for the above work should be shared proportionally between City and Roth per the scope of work, this would be estimated at 85% City and 15% Roth. Roth will hire the contractor and the City will reimburse him for their portion. This will not be a publicly bid project. Construction management and inspection is the responsibility of Roth.

<u>Task B: Street Widening and Utilities – Spring Street Improvements along property frontage, including new curb Catch Basin (Roth responsibility).</u>

The City is requiring a 24-foot wide Spring Street with the width increase being on the westerly side.

City of Newport responsibility:

Water stubs will be made by City crew and coordinated with other utility work.

Roth responsibility:

- Widen NW Spring Street approx. 2.5' along the west edge of existing Spring Street limited to the Roth property frontage plus the addition of a 1.5-foot curb and gutter.
- Install new curb catch basin at south end of the new street improvements.
- Connect curb catch basin to existing catch basin in Spring Street, approx. 70' to the south
- Patch Spring Street where asphalt is cut to trench for new pipe
- Sewer and water stub connections will be included on the design plans. Electrical conduits will be included under the street at locations indicated by others. All asphalt work will be coordinated by Roth.

Engineering cost for the above work would be 100% responsibility of Roth. Construction management and inspection is the responsibility of Roth.

Part B: Scope of Work

Generally, CW will provide local consulting services centered around design of certain project components and obtaining approvals from the City of Newport for construction. The project has been split into two parts for purposes of being able to present a cost share portion of the work to the City of Newport for reimbursement. At the time of writing this Scope of Services, the primary work tasks are:

TASK A: Replace Existing City Storm Drain (cost share with the City):

 Project Management and City of Newport Coordination. CW will work with the City to learn of required design details such as pipe material, manhole/catch basin design requirements, catch basin design requirements, pipe design requirements, etc. Coordination and communication with the City will be

Tim Roth Newport Development - Scope #2

performed to receive project approval and authorization to commence construction. Approximate manhour time for this work is 18-hours.

- Field Survey. A field survey of existing site features, existing pipeline profile in particularly the easterly 20 feet of the existing 12-inch pipe, and inverts and rim elevation of existing manhole will be performed.
 Approximate manhour time, including travel of surveyor, for this work is 12-hours.
- 3. Design Plans. Prepare pipeline plan and profile design sheets based on field surveyed topo and prepare other necessary project design sheets, details, and specifications. City specifications will be used and incorporated onto the design plans. Prepare bid schedule for use by contractors. The City will be given one (1) draft design plans for review. The project bid schedule specific to this portion of the project will allow for visible cost sharing per the agreement between Roth and the City. Approximate manhour time for this work is 34-hours.
- 4. Private Bidding, Contractor Selection, and Cost Share. CW will assist Roth with the solicitation and selection of a Contractor. The project will not be publicly bid. CW will be available for questions during the private bidding process. CW will also prepare a project cost summary to include the contractor's bid and all associated project costs (including engineering) for transmittal to the City for cost-sharing. Roth will pay for the contractor directly and the City will reimburse him for their portion. Approximate manhour time for this work is 14-hours.

TASK B: Street Widening and Utilities (Roth responsibility):

- Project Management and City of Newport Coordination. CW will work with the City to learn of required
 design details such as curb and gutter, sewer stubs, paving/road base requirements, standard drive
 approach requirements, etc. This work will also entail the preparation and approval follow-through of a
 required Right-of-Way Permit. Coordination and communication with the City will be performed to
 receive project approval and authorization to commence construction. Approximate manhour time for
 this work is 12-hours.
- 2. **Field Survey.** A field survey of existing site features and street edge and existing utility locations will be performed. A call for engineering utility locates will be made to include in the survey. Approximate manhour time for this work is 6-hours (once surveyor is onsite).
- 3. **Design Plans.** Prepare plan and profile based on field surveyed topo, prepare other design sheets, details, and specifications. Meet with CLPUD to determine electrical crossing needs. Prepare design, specification, and bid schedule for use by contractors. Approximate manhour time for this work is 22-hours.
- 4. **Private Bidding and Contractor Selection.** CW will assist Roth with the solicitation and selection of a Contractor. CW will be available for questions during the bidding process. Approximate manhour time for this work is 7-hours.

Part C: Exclusions

- Property boundary survey
- Any and all fees association with applications, plan reviews, etc.

Tim Roth Newport Development - Scope #2

- Assistance with the Grading and Building Permit, or any City permit application process unless otherwise noted above.
- Roth shall be responsible for all Contractor contracting, payments, etc.
- Public bidding documents and public bidding process.
- Construction management and inspection. If such services are requested, written authorization as an
 extension to this Scope of Work based on the attached hourly rates will be required.
- Roth is responsible for collecting all reimbursement (cost share) money from the City.

Part D: Project Fee Proposal

The scope of work described will be billed on a time and materials basis according to the accompanying Fee Schedule. This is a not-to-exceed amount. Any adjustments to the proposed fee will be discussed and approval obtained before work is initiated. The existing retainer of \$5,000 will remain in place. Civil West will bill monthly and always retain approximately a \$5,000 balance. At the end of the project, Civil West will reimburse the Client any remaining funds after subtracting the final invoice.

Found below is our cost estimate summary. The task breakout is for convenience only and will not be used in our billing. We will apply time to the project as a whole. A Senior Project Engineer will be assigned as the lead on your project.

| Task | Summary of Proposed Engineering Cost: | | Bud | get |
|------|--|-----------|-------------|-------------|
| A | Part A - Replace Existing City Storm Drain | nage | \$12,601.00 | |
| | Reimbursables | - | \$300.00 | |
| | | Subtotal | | \$12,901.00 |
| В | Part B - Street Widening and Utilities | | \$6,889.00 | |
| | Reimbursables | | \$100.00 | |
| | U 7 SEE R Y | Subtotal | | \$6,989.00 |
| | Total Proposed Budget | Para as a | NOTE: HE | \$19,890.00 |

Reimbursables will also be submitted. Lodging, mileage, meals, etc. will be added as applicable to the appropriate monthly invoice.

It is anticipated the City's portion of the Task A construction cost will be 85%. As such, the City share would be 85% of the Task A engineering. The following summarizes the total engineering cost share breakdown:

| | City Share (85%) | Roth Share | Project Estimate |
|--------|---------------------|------------|---------------------|
| Task A | \$10,965.85 | \$1,935.15 | \$12,901.00 |
| Task B | | \$6,989.00 | \$6,989.00 |
| Total | \$10,965.85 | \$8,924.15 | \$19,890.00 |

Part E: Project Schedule

We will work diligently to coordinate and prepare the necessary construction drawings and specifications and obtain City approvals and permits in order to commence on the project.

Tim Roth Newport Development - Scope #2

We are grateful for this opportunity to provide these services. Please let me or Lee Ritzman know if you have any questions or if you wish to see any alterations to our proposed approach. If this proposed approach is acceptable, please sign below and return a copy to our office for our records.

Sincerely,

Civil West Engineering Services, Inc.

Keven Shreeve, PE

North Coast Regional Manager

Authorized Representative Signature Accepting Scope of Services

Date



| STAFF/ITEM | Bill Rate |
|---------------------------------------|---------------|
| ENGINEERING | |
| Principal Engineer | \$180 |
| Project Manager | \$165 |
| Senior Project Engineer | \$152 |
| Project Engineer | \$140 |
| Engineering Technician | \$120 |
| Staff Engineer | \$90 |
| inspector | \$100 |
| Clerical | \$65 |
| Surveying | |
| Senior Surveyor (PLS) | \$160 |
| Senior Survey Technician | \$135 |
| Survey Technician | \$110 |
| 1-person Survey Crew | \$175 |
| 2-person Survey Crew | \$205 |
| 3-person Survey Crew | \$250 |
| REIMBURSABLES | |
| Mileage - or current IRS Rate | \$0.575 |
| Lodging, meals as required for travel | Cost |
| Reproduction, Printing, Etc. | Cost plus 10% |
| Subconsultants | Cost plus 10% |



January 20, 2020

Tim Gross
Public Works Director/City Engineer
City of Newport

Re:

Tax Lot 2300 Lot 1 Ocean View Subdivision

Storm Line Easement

I am following up a conversation that you had recently with Lee Ritzman (Civil West Engineering) regarding a proposal for a cooperative agreement to install a new public storm drain pipe in an easement along the south 15' of my property, Lot 1 of Block 49 Plat of Ocean View Addition in Newport.

Background

I own three (3) building lots Newport that I wish to improve (Lots 1, 2, and 3, Ocean View Addition). The building lots are served by N.W. Spring Street, which has a paved width of approx. 22', currently no street curb or catch-basin exists along this property frontage. As a condition to improve my property the City will require that I widen the portion of NW Spring Street that is fronting my lots to a width of 24', in addition I will be required to install a street curb and a single catch-basin to capture the water run-off from Spring Street. Although there is no drainage from my property that flows onto the street it will still be necessary for me to provide a point of discharge for the portion of NW Spring St. that I will be widening plus any drainage that comes from existing streets and properties that drain onto these streets.

There is an existing public storm manhole at the intersection of NW 15th and Spring St., less than 100' from my property that the new street C.B. would drain to. The 12" storm pipe from this existing public manhole, discharging at the edge of the Pacific Ocean, has been deemed to be undersized for the drainage basin it serves. In addition, this 12-inch galvanized storm pipe has been determined to be in very poor condition. Thus, the city will not allow the new street CB to connect to the existing public system that has been failing over time, without first making major improvements to replace and upsize the existing public storm pipe. Such improvements to the public storm system would be extremely difficult and extremely costly due to topography, heavy vegetation, structural retaining wall systems, service utilities and paved driveways that will need to be dealt with to replace the failing system, not to mention the inconveniences that will be suffered by the surrounding property owners during the time these repairs would be made.

In order to deal with the storm drainage generated from Spring St. and surrounding properties I will need to install an 8-inch diameter storm drain pipe located along the southerly boundary of my Lot 1, discharging to the Pacific Ocean. This would require that a minimum 10-foot wide easement be created for the City to have access to maintain this future public line.

Proposal

I propose that we work cooperatively on the installation of a new storm line that would be located in an easement on my property in order to satisfy our mutual needs and requirements. Rather than install an 8-inch line, that solely serves the water run-off of NW Spring Street and surrounding properties; we could install a much larger line, probably 18 inches diameter, that could serve the drainage basin (identified as Basin "R" in the City's Master Storm Drainage Plan), that is currently captured by a failing public storm system.

I propose that we would share equally in the cost to design and install this new drainage system to satisfy the requirements of both of our needs.

Work defined as:

*A new public storm line (size to be determined) starting from the new catch-basin to be installed on NW Spring St. and discharging to the west, at the edge of the Pacific Ocean, into an energy dissipater, approx. length of storm pipe is 190'.

Cost sharing to include:

- *All Civil Engineering cost associated with developing and designing the new storm system

 -The engineering will verify that the pipe size and type will adequately service the intended capacity.

 Engineering will also confirm that there is adequate slope to connect from the Public storm drain manhole at NW 15th & Spring Street to the new catch-basin that I will be required to install along my property frontage.
- *All material and labor necessary to install the new system.
 - -This assumes all work associated with the installation of the storm pipe, including final grading within the easement area.
- *All cost associated with Permits, Fees, Inspections.
 - -To be determined by the City of Newport
- *All cost associated with creating the utility easement
 - -Assumes having a licensed surveyor draft the easement documents, write the legal description, and record the easement with the county.

Additional Conditions:

- *Roth agrees to allow a 15' Public Utility Easement, for the purpose of installing and maintaining a public storm line, to be located along the southern boundary of his Lot 1.
 - -Standard easement provisions to the benefit of both parties.
 - -Provisions to restrict the construction of any buildings or structures within the easement.
 - -Provisions to allow landscaping within the easement area.
 - -Provisions to allow Roth to use the area for access for construction of future structures on his Lots 1&2.
 - -Easement cannot be used or identified as a Public Beach Access.
 - -Notice of Intent to enter the easement by City for purposes of repair or maintenance to be served to Property Owner(s) of Lot 1 and Fahrendorf Condominiums (south of easement).
 - -Easement will allow the encroachment of up to 2' for roof overhang/eaves and roof gutters/down spouts along the north boundary of same easement.

- *All cost associated with designing, installing, and connecting a private storm system servicing the new homes to be constructed on lots 1,2,3 to be by "Roth".
 - -The cost associated with this work would include "Roth" installing a "clean-out" at the point the private system connects to the public system.
 - -This assumes the "City" agrees to allow this private system to connect to the new public system being installed within the easement.
- *All cost associated with the design and Install of new storm pipe extension from existing Public manhole at NW 15th & Spring St., connecting to new CB installed by "Roth" in Spring St., to be by "City of Newport".
 - -includes cutting and patching of street as needed.
 - -includes repairs or replacement to any existing manhole, catch-basin, and/or storm piping that City may determine to be in need of repair or upgrade.
 - -Should it be determined that the new street CB, being installed by "Roth" with their required street improvements along the frontage of their property, needs to be up sized beyond what would be a typical CB for its' intended use in order to handle the gross volume of storm water being added from the Drainage Basin then all cost for the "upsizing" of street CB will be by "City".
- *All cost associated with decommissioning any portion of the existing Public storm system being replaced by this new system is to be by "City of Newport".
 - -The extent of this "decommissioning" work is to be determined by "City".
- *The City would agree to waive any requirements of performance and/or maintenance bonding for the installation of this Public improvement work.
- *The City may option the reimbursement of their portion of the shared cost to be in payment other than cash, such as credit toward SDC fees and/or other charges.

There would be benefits to both parties, where the City's benefit might include:

- 1. It is much less expensive to the city than replacing/upsizing the failing 12-inch galvanized pipe that is currently installed within the Fahrendorf Utility Easement.
- 2. The work will be coordinated by "Roth". The only time commitment from City staff would be any level of observation/inspection that might be required.
- 3. Future maintenance would be limited to one pipeline instead of two.
- 4. The proposed 15' easement is wider than typically required by City.
- 5. Less than 1% of the water in the new pipe system would come from the roof/foundation drains from the residential structures to be constructed on the lots, approx. 5% would come from NW Spring Street by way of the new catch-basin I am installing. The remaining 94% would come from the drainage basin serviced by the existing failing system. The City is getting nearly all of the value for only 50% of the cost.

I believe the existing conditions along with the real benefits that are defined in this Proposal are unique enough to argue that the City is not setting precedence that would obligate the City in future projects. I would welcome any comments or discussions of the provisions in this Proposal to work out details of an Agreement.

Submitted

T. Roth Construction, Inc.



CITY OF NEWPORT PUBLIC WORKS 169 SW COAST HWY NEWPORT, OREGON 97365 http://www.newportoregon.gov/ (541) 574-3366

February 26. 2020

Tim Roth JT Roth Construction 12600 SW 72nd Ave Suite 200 Portland, Oregon 97223

RE:

Tax Lot 2300 Lot 1 Ocean View Subdivision

Storm Sewer

Dear Mr. Roth,

The City is in receipt of you letter dated January 20, 2020.

The City is willing to pay for the cost to upsize the storm sewer from what is required as part of the public improvement requirements to the size necessary to redirect storm drainage from Basin "R" and a proportional amount of engineering associated with the upsizing. The remainder of the design and construction costs are the responsibility of the development. Any connection to the existing storm sewer in the area will be conducted by the City at a later time.

I have attached a copy of the City's standard utility easement for your review and comment. Please let me know your comments on this document. The legal description that accompanies the easement is part of the public improvement requirements and will need to be drafted by your surveyor or engineer.

When it comes time for construction of public improvements a ROW permit will be required that will include the approved plans as an attachment. Standard bonding requirements of 110% of the public improvement constructions costs will be required. Thank you.

Sincerely,

Timothy Gross, PE

Public Works Director/City Engineer

Cc:

Lee Ritzman, Civil West Engineering

Clare Paul, Assistant City Engineer, City of Newport

Attachment B-4

Tim Roth

From: Sent: To:

Cc

Tim Roth <timr@jtrothinc.com> Monday, March 9, 2020 5:16 PM 'Tim Gross'; 'Derrick Tokos'; 'Clare Paul' 'Lee Ritzman'; 'kshreeve@civilwest.net'

Subject:

RE: NW Spring St storm line improvements - Proposal

Attachments:

Agreement Tim Roth Newport Development - Work Scope 2 v3.pdf

Tim

This conversation regarding the storm-water management for our project has been ongoing for almost a year now and it has taken on several design options. It is with this email that I would hope we might continue in good faith to find a mutually acceptable arrangement that is fair and beneficial to both parties.

Prior to the most recent discussion of routing the storm line through an easement on my property there were several conversations where we (city staff and I) were pursuing upgrading the existing city storm system located in an easement along the Fahrendorf property. This was in an effort where the city recognized their existing system was undersized and failing, and through a joint effort to upgrade and to proportion the cost based on the impact that each of us would have to the system, we agreed in concept and were reviewing an agreement that would allow us to move forward.

As our conversations evolved, I gestured an option where I expressed a consideration to dedicate a portion of my property (lot 1) to create an easement that would allow a new line to be installed that would eliminate the need to remove and upgrade the existing city storm system, of which the city would have a considerable financial ownership. The underlying intent of my offer was that the city acknowledged the contribution of my land, along with the enormous savings of not having to remove and replace a major section of their system, and with this opportunity being provided they would share equally in the cost of the design and installation of this new system.

The response given by you in a recent email was that you would allow me to contribute my land and that I would be fully responsible for the cost to design and install a new storm system line, all at no cost to the city, however, the city would agree to piggy-back these efforts and would pay for the up-sizing of the line that would allow their failed system to be re-routed. Somehow I do see this as being reasonable or the fairness of benefit to both parties?

If you truly cannot recognize this option has an opportunity with the benefits it would generate for the city then I must formally rescind my offer. There is little value for me to sacrifice a portion of my building lot to provide a gross benefit to the city where an alternative option is available.

I would ask that we continue our conversation to improve the current public system existing through the Fahrendorf easement. I have attached a copy of the Scope of Work agreement that was prepared by Civil West Engineering that spells out the work responsibilities of each party. Unless you are willing to reconsider the merits of my offer and increase the city's financial "cost sharing" in line with the "Proposal" that I submitted I am given no other option but to remove the offer of sacrificing my building lot.

Submitted

J.T. Roth JT Roth Construction, Inc. 503 639 2639 timr@jtrothinc.com

Tim Roth

From: Spencer Nebel <S.Nebel@NewportOregon.gov>

Sent: Wednesday, May 27, 2020 12:41 PM

To: 'Tim Roth'

Cc: Tim Gross; Derrick Tokos; David Allen

Subject: RE: # 625-20-000193-DWL at 1535 NW SPRING ST, NEWPORT, OR 97365

Attachments: Scanned from a Xerox Multifunction Printer.pdf

Hi Tim:

I met with the Public Works Director, the Community Development Director and the City Attorney to discuss the issues related to the infrastructure improvements necessary for the development of the home sites off of Spring Street.

I have attached a drawing provided by Tim Gross outlining the public improvements necessary for this development. This drawing shows two options to address these improvements. Both options require a widening and paving of the street to 24 feet, installation of curb and gutter and a catch basin being installed.

Option one would require the replacement/upsizing of the existing storm sewer that runs due west of 15th Street. This is illustrated in red on the attached drawing. This would require a connection to the existing sewer of a new catch basin with a lateral line from the catch basin and another lateral line from the home site to address storm water needs.

Option two would install a catch basin and a new 18" storm drain along the south boundary line of your property contained in a new easement that would be provided by you as the property owner. The existing line to the south would continue to provide storm drainage for the neighborhood. At some point in the future the City, at its expense, would connect into the new catch basin to abandoned the existing 8" line, utilizing the new 18" line.

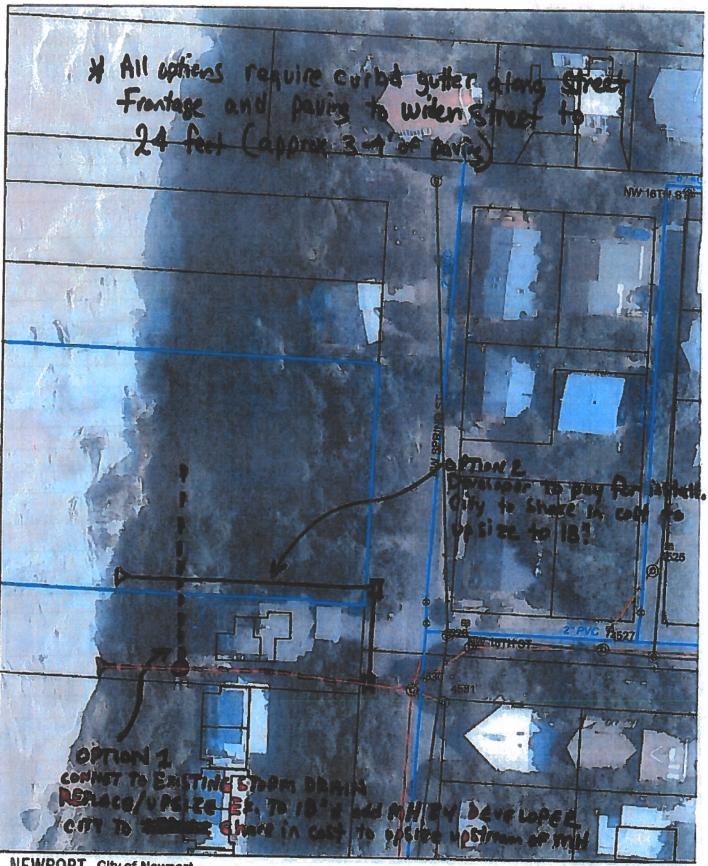
From an operational standpoint, staff prefers the Option 2, but either option can work. Do you have an estimate for the cost to build the new storm sewer line from the catch basin to the outlet? As you are aware, Public Works has agreed to participate in upsizing the line in either option. Once we have an estimate for option 2, we can discuss the terms of upsizing.

I wanted to make sure that we are both understanding the options to address the storm sewer line. Please give me a call later today so that we can discuss this situation. My direct line is 541-574-5876. If I don't answer, please leave a message and I will get back with you later today.

Please note that if we are not able to come to terms on this matter, there is an appeal process through land use regulations if you feel the improvements being required are not proportional to the development proposed for this site.

Spencer R. Nebel

Gity Manager
City of Newport, Oregon 97365
541-574-0601
s.nebel@newportoregon.gov





City of Newport Engineering Department

169 SW Coast Highway Newport, OR 97365

Phone: 541-574-3366

Tim Roth Property

60 120 Feet





City of Newport Right-of-Way Permit Application

Newport Public Works Dept. 169 SW Coast Hwy Newport, OR 97365 541-574-3366

Call Before You Dig: dial 811, or go to digsafelyoregon.com for online locate requests Inspection Requests (24 hrs notice): 541-574-3366 or rightofwaypermits@newportoregon.gov

| Describe work (attach sketch/plans): Street under unde | Address/location of work: 1535 NW Spring S | st. Newport, OR. |
|--|--|--|
| Purpose of work: Tree trimming/removal | Describe work (attach sketch/plans): | ing Street e urbs, Sewer I whater Laterals |
| Expected start date: July - August 1820 Expected project duration: 3 weeks Contractor Information Business name: R.K. Confete Constructor Address: P. O. Bon 289 City: Otts State: OR. Zip: 97348 24-hr Emergency Phone: Stig94 7249 E-mail: Young Keangete net Main Phone (if different): 541 992 2749 CCB License #: 52475 City of Newport Business License #: Property Owner Information Property owner name: J. Portland State: Or. Zip: 97223 Phone: 503 2030 E-mail: Tung 2 J Fortland. State: Or. Zip: 97223 Phone: 503 2030 E-mail: Tung 2 J Fortland. Com Applicant's Declarations 1. The drawings, plans, and specifications submitted with the application comply with all applicable technical codes, rules, and regulation 2. I have reviewed, understand, and agree to comply with the attached permit requirements. Contractor / Applicant (print name): Date: Property owner signature required: Date: Property owner signature required: Date: Property owner signature required: Date: Property owner print name): Date: Property owner signature required: Date: Property owner print fee paid: Date: Permit fees to be added in future. Date: Permit #: Permit #: Permit #: Inal amount paid/refunded: Date: Date: Permit fees to be added in future. Date: Permit fees to be added in future. Date: | Purpose of work: | idewalk/driveway Gas &Comm. &Electric |
| Expected start date: Jah - August 2020 Expected project duration: 3 wicks Contractor Information Business name: R.K. Conflict Construction Address: P. O. Box 284 City: Otts State: OR. Zip: 97368 24-hr Emergency Phone: \$41994 7241 E-mail: Young Kongets Net Main Phone (if different): 941 992 2749 CCB License #: Froperty Owner Information Property owner name: J.T. Port August 2749 Address: 2240 \$2475 City of Newport Business License #: Property Owner Information Property owner name: J.T. Port August 2749 Applicant's Declarations 1. The drawings, plans, and specifications submitted with the application comply with all applicable technical codes, rules, and regulation 2. I have reviewed, understand, and agree to comply with the attached permit requirements. Contractor / Applicant Signature: Date: Property owner signature required: Order One Property owner signature required: Order One Property owner Signature required: Order One Property owner Signature required: Order One Property owner Signature required: Order One Property owner Signature: Order One Property owner Signature required: Order One Property owner Signature required: Order One Property owner Signature required: Order One Property owner Signature: Order One Property owner Signature: Order One Property owner Signature required: Order One Property owner Signature: Order One Property owner Signature required: Order One Property owner Signature: Order One Property owner Signature: Order One Property owner Signature: Order One Property owner Signature: Order One Property owner Signature: Order One Property owner Signature: Order One Property owner Signature: Order One Property owner Signature: Order One Property owner Signature required: Order One Property owner Signature required: Order One Property owner Signature: Order One Property owner Signature: Order One Property owner Signature: Order One Property owner Signature: Order One Property Owner Signature: Order One Property Owner Signature: Order One Property Ow | Work includes: ☐ Boring ☐ Street Cut (area: | ft²) □ Traffic Control (attach plan) |
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| 24-hr Emergency Phone: \$4194 726 E-mail: **Canadistriction** Main Phone (if different): \$4194 726 City of Newport Business License #: Property Owner Information Property owner name: \$17. Port and Thorasa Park Address: \$12400 \$5012 Agr 26 City: Part and \$17. Port and Thorasa Park Address: \$12400 \$5012 Agr 26 City: Part and \$17. Port and Thorasa Park Applicant's Declarations 1. The drawings, plans, and specifications submitted with the application comply with all applicable technical codes, rules, and regulation of the permit requirements. Contractor / Applicant (print name): Date: Property owner signature required: \$\text{ Yes} \text{ NO} \text{ NO} \text{ Bond provided: \$\text{ Yes} \text{ NA} \text{ Bond provided: \$\text{ Yes} \text{ NA} \text{ Bond #: }\text{ Permit fees to be added in future.} \text{ Permit #: }\text{ Permit #: }\text{ Permit #: }\text{ Permit #: }\text{ Permit #: }\text{ Permit fees to be added in future.} \text{ Contractor Permit #: }\text{ Permit #: }\text{ Permit fees to be added in future.} \text{ Date: }\text{ Permit #: }\text{ Permit #: }\text{ Permit fees to be added in future.} \text{ Date: }\text{ Permit #: }\text{ Permit fees to be added in future.} \text{ Date: }\text{ Permit #: }\text{ Permit fees to be added in future.} \text{ Date: }\text{ Permit #: }\text{ Permit fees to be added in future.} \text{ Date: }\text{ Permit #: }\text{ Permit fees to be added in future.} \text{ Date: }\text{ Permit fees to be added in future.} \text{ Date: }\text{ Permit fees to be added in future.} \text{ Date: }\text{ Permit fees to be added in future.} \text{ Date: }\text{ Permit fees to be added in future.} \text{ Date: }\text{ Permit fees to be added in future.} \text{ Date: }\text{ Permit fees to be added in future.} \text{ Date: }\text{ Permit fees to be added in future.} \text{ Date: }\text{ Permit fees to be added in future.} \text{ Date: }\text{ Permit fees to be added in future.} \text{ Date: }\text{ Permit fees to be added in future.} Permit fees to be added in future. | Business name: R.K. Concrete Construction | |
| 24-hr Emergency Phone: \$\\\ 194\\ 12 | Address: P. 0. 130x 239 City: 013 | State: OR. Zip: 97368 |
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| | Comments: | |

Note: Permit requirements are attached.

Form revised: 9-2-16

J.T. ROTH CONSTRUCTION INC

NEWPORT, OREGON

LOT 3 DEVELOPMENT

PROJECT NO. 2204-054 **APRIL 2020**



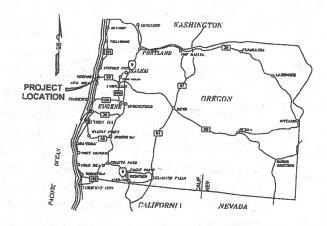






J.T. ROTH CONSTRUCTION INC NEWPORT, OREGON LOT 3 DEVELOPMENT

G1



LOCATION MAP



VICINITY MAP

GENERAL NOTES

ATTENTION OREGOL IAW REQUIRES YOU TO FOLLOW RULES ADOPTED BY THE OREGON UTILITY NOTIFICATION CESSIFER. YES RULES ARE BET FORTH IN OAR 552-001-0010 THROUGH 552-001-0050, YOU MAY OBTAIN A COPY OF THE RULES BY CALLING THE CENTER.

NOTE: THE TELEPHONE NUMBER POR THE OREGON UTILITY NOTIFICATION CENTER IS (503) 232-1987. STAT. AUTH.; OHS 757-542 THROUGH ORS 757-562 AND ORS 757-962.

- 2. THE CONTRACTOR SHALL CONTACT ONE CALL' FOR UTILITY LOCATES PRIOR TO EXCAVATION. (1-800-332-2344)
- THE EXISTING UTILITY CROSSINGS OF THE PIPELINES ARE SHOWN ACCORDING TO AVAILABLE INFORMATION. THE CONTRACTOR SHALL VERIFY THE LOCATION AND ELEVATION OF ALL THE UTILITY CROSSINGS ALONG THE LENGTH OF THE PIPELINES AS SPECIFIED, NO GUARANTEE IS MADE THAT ALL OF THE PERITS UTILITIES ARE SHOWN. THE CONTRACTOR SHALL EXERCISE CAUTION WHEN EXCAVATING AND PROTECT ALL EXISTING UTILITIES FROM DAMAGE DURING HIS OPERATIONS.
- EXISTING WATER METER BOXES AND VALVES MAY NOT BE SPECIFICALLY INDICATED ON THE CRAVANCE SIT DO EXIST ALONG THE PIPELINE ROUTES, CONTRACTOR SHALL LOCATE PRIOR TO THE START OF CONSTRUCTION.
- THE LOCATION AND DEPTH SHOWN ON THESE DRAWINGS FOR THE EXISTING UTLITIES ARE APPROXIMATE ONLY AND BASED ON AS BUILT DRAWINGS, VALVE LOCATIONS AND OTHER INFORMATION.
- WHEN NO RECORD WAS AVAILABLE TO INDICATE THE ELEVATION OF AN EXISTING UTILITY A MINIMUM COVER OF JOHNCHES WAS ASSUMED. THE CONTRACTOR SHALL EXERCISE CAUTION WHILE EXCAVATING HEAR THESE ESTIMATED UTILITY LOCATIONS WHICH ARE INDICATED ON THE PROFILE GRAMMOS.
- ALL MATERIALS AND WORKMANSHE SHALL CONFORM TO THE PROJECT DESIGN SPECIFICATIONS AND DRAWINGS.
 THESE DRAWINGS SHALL BE COORDINATED AND USED IN CONJUDICION WITH THE TECHNICAL SPECIFICATIONS AND
 APPROVED SUBMITTAL SOORSTRUCTION PREMIT AS RECOGNED FROM CITY OF MEMORY IP FUELD WICHOS
 DEPARTMENT TO WORK WITHIN THE RIGHT-OF-MAY SHALL BE OSTABLED BY THE DWARD FROM TO THE START OF
 CONSTRUCTION.
- a. PROPERTY AND MICHT OF WAY LINES SHOWS IN THIS PLAN SET ARE APPROXIMATE AND BASED ON SEST AVAILABLE BROGNANTON, CONTRACTOR SHALL DETAIN TEMPORARY CONSTRUCTION ACCESS OR PERMISSION FROM PRIVATE LAND CHARGES PRICAT OR HOTERING PRIVATE PROPERTY.
- 0. PERMITS ASSOCIATED WITH THE TRENCH DE-MATERING SYSTEM SHALL BE THE RESPONSIBILITY OF THE
- 10. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO POTHOLE EXISTING UTILITIES TO DETERMINE THEIR EXACT LOCATION AND DEPTH, POTHOLE EXPLICATION SHALL OCCUR A MINIMUM OF SEVEN (7) DAYS PRIOR TO THE COMMISSIONERY OF WORKS IN ANY AREA.
- 11. PVC SEWER PIPE SHALL BE CLASS SOR-35 UNLESS OTHERWISE NOTED.

SHEET INDEX

GENERAL

G1 - COVER G2 - GENERAL NOTES, ABBREVIATIONS, AND SHEET INDEX G3 - LEGEND

CIVIL

X1 - EXISTING CONDITIONS

AT - EXISTING CONDITIONS
C1 - DEMOLITION PLAN
C2 - PROPOSED SITE PLAN
C3 - NW SPRING STREET PLAN AND PROFILE - STA 1+00 TO 2+72

STANDARD DETAILS

D1 - STANDARD STREET AND TYPICAL STORM TRENCH DETAILS D2 - STANDARD STREET CUT AND SEWER CORNECTION DETAILS D3 - STANDARD CURS DETAILS

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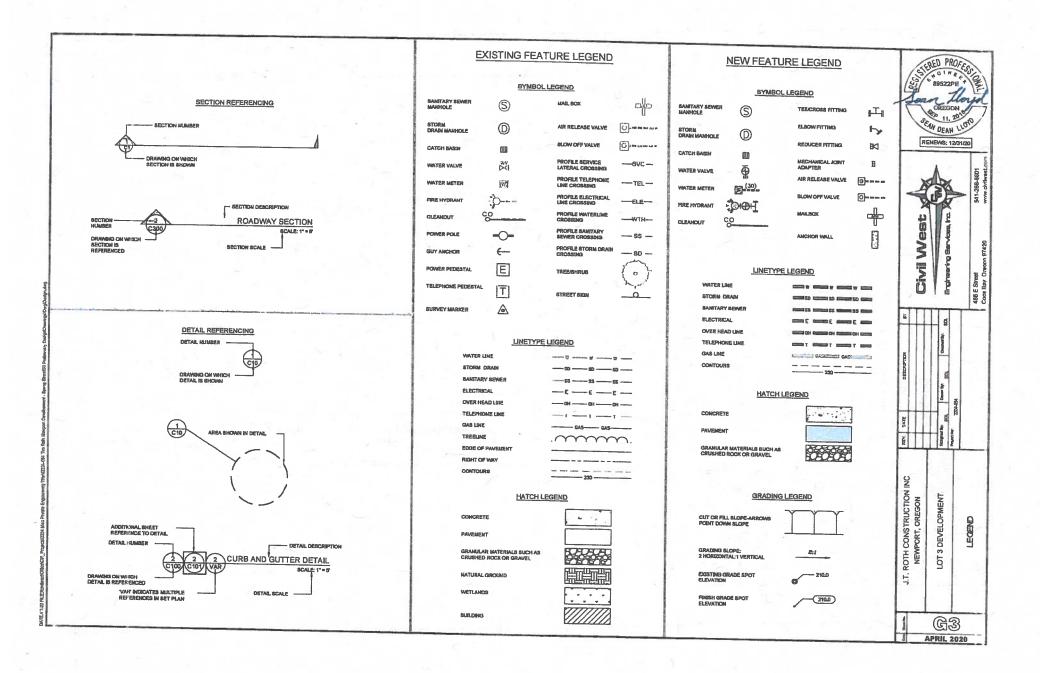
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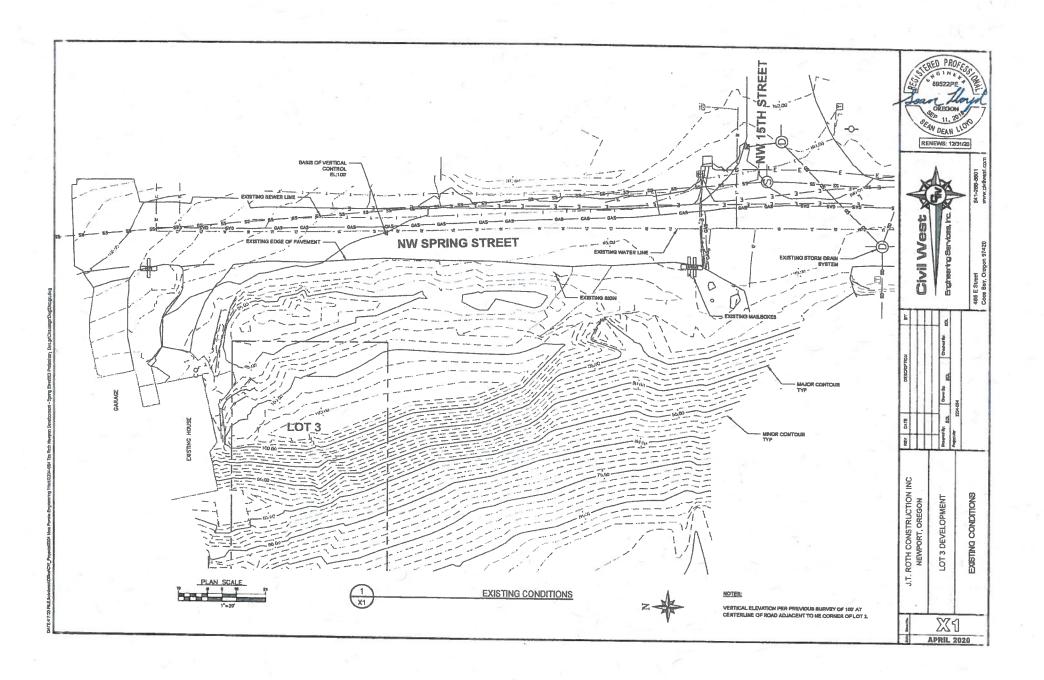
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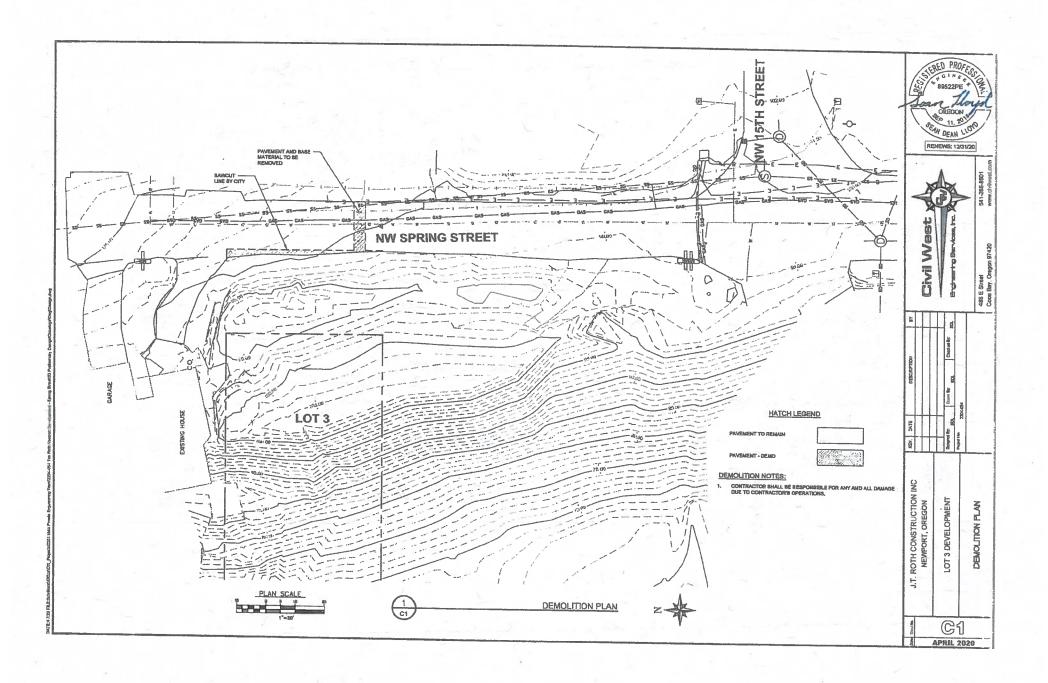
GENERAL ABBREVIATIONS

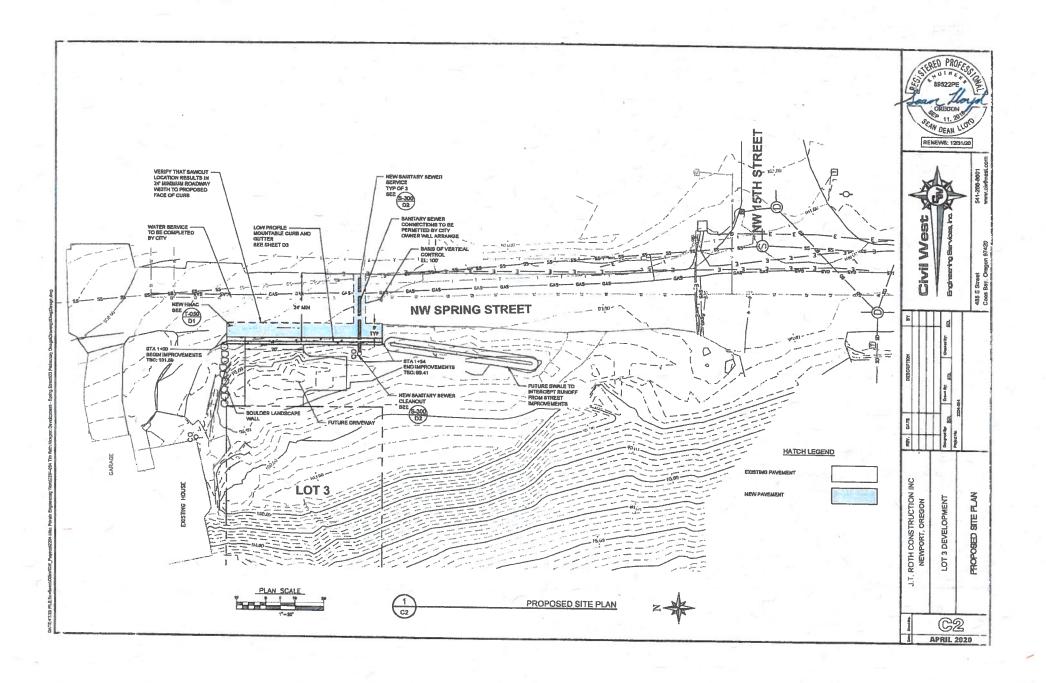
GATE VALVE

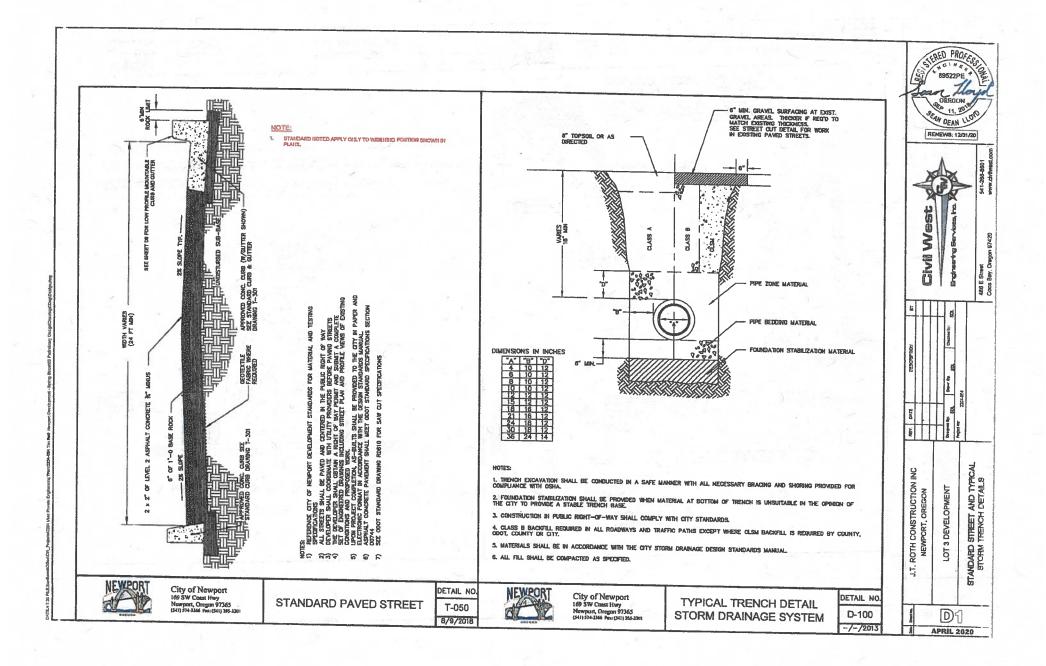
| AC | PAVEMENT | HDD | HORIZONTAL DIRECTIONAL DRILLING | 80 | | |
|-------|-------------------------|-------|---------------------------------|--------|-----------------------|-----|
| | | HDPE | HIGH DENSITY POLYETHYLENE PIPE | | STORM DRAIN | |
| SC | BEGIN CURVE | HPC | HYPOCHLORITE | 88 | SPOT ELEVATION | |
| SFV | SUTTERFLY VALVE | HS | | 8PW | SPILLWAY | |
| BLDG | BLIII CIINCA | | HARVESTED SLUDGE | 88 | SANITARY SEWER | |
| BM | BENCH MARK | HSG | HIGH PRESSURE BLUDGE GAS | 8TA | STATION | |
| BOW | BACK OF WALK | | | SW | SIDEWALK | |
| DOM | BACK OF WALK | IE | INVERT ELEVATION | | CIDEARCH | |
| | | IP I | IRON PIPE | Tac | TOP BACK OF CURB | |
| CB | CATCH BASIK | | | TD | TANK DRAIN | |
| CPLG | COUPLING | LIP | LIP OF GUTTER | TG | | |
| CTR | CENTER | LT | LEFT | | TOP OF GRATE | |
| CW | CITY WATER (POTABLE) | - | | TOE | TOP OF BLOPE | |
| CIANI | CITY WATER (MONPOTABLE) | MH | MANHOLE | TOP | TOP OF BANK | |
| | | 86.1 | MECHANICAL JOINT | TOC | TOP OF CURB | |
| D | DRAIN | 100 | MECHANICAL JOINT | TRANS, | TRANSITION | |
| Dt | DUCTILE IRON | 11 | | TYP | TYPICAL | |
| LH | DOCT REPUTA | HG | NATURAL GAS | TW | TOP OF WALL | |
| EC | F115 5115 51 | | | | | |
| | END CURVE | OF | OVERFLOW | UNO | UNLESS NOTED OTHERW | - |
| EL, | ELEVATION | | | 0100 | OWETTOO HELLED OWEKIN | PL3 |
| EOC | EDGE OF CONCRETE | PED | PEDESTAL | v | | |
| 600 | EDGE OF GRAVEL | PRC | POINT OF REVERBE CURVATURE | | VENT | |
| EOP | EDGE OF PAVEMENT | PVC | POLY VINYL CHLORIDE PIPE | VAC | VACUUM | |
| EX | EXISTING | PVI | POLY VINTE CHUCKING PIPE | VC | VENT (CHEMICAL) | |
| | | PVI | POINT OF VERTICAL INTERSECTION | | | |
| FH | FIRE HYDRANT | ment. | | WM | WATER METER | |
| FL | FLOMEINE | ROW | RIGHT OF WAY | W | WATER VALVE | |
| | | R8 | RAW SEWAGE | | TOTAL STATE | |
| FLO | FLANGE | RT | RIGHT | | | |
| FM | FORCE MAIN | RW | RAWWATER | | | |
| | | ZHAD | OFOL Alberto is tremen | | | |

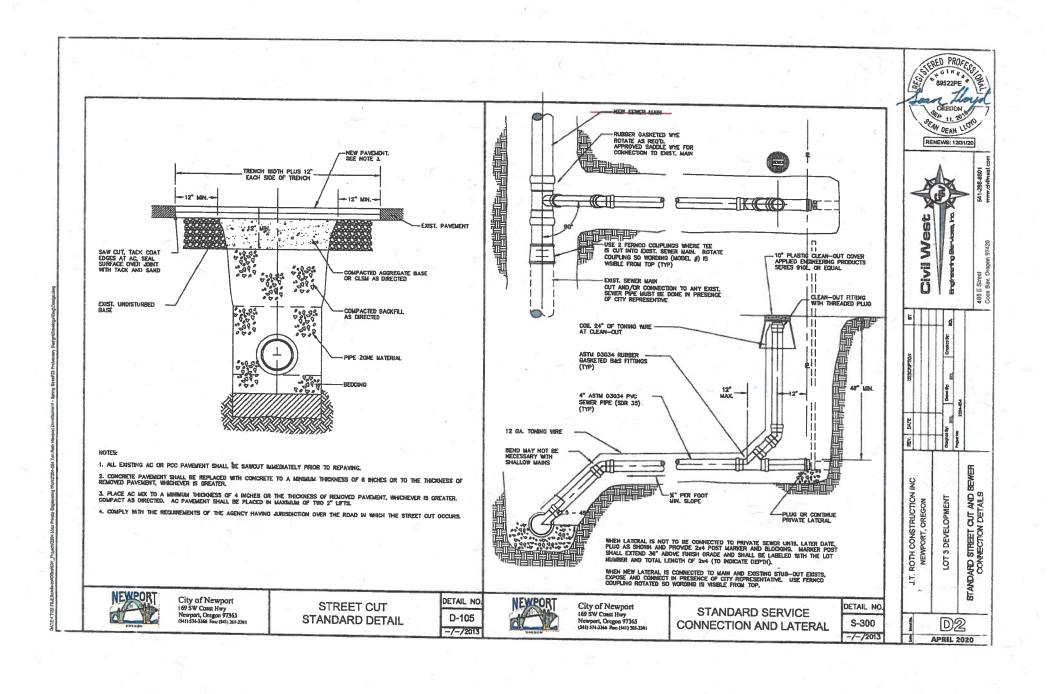


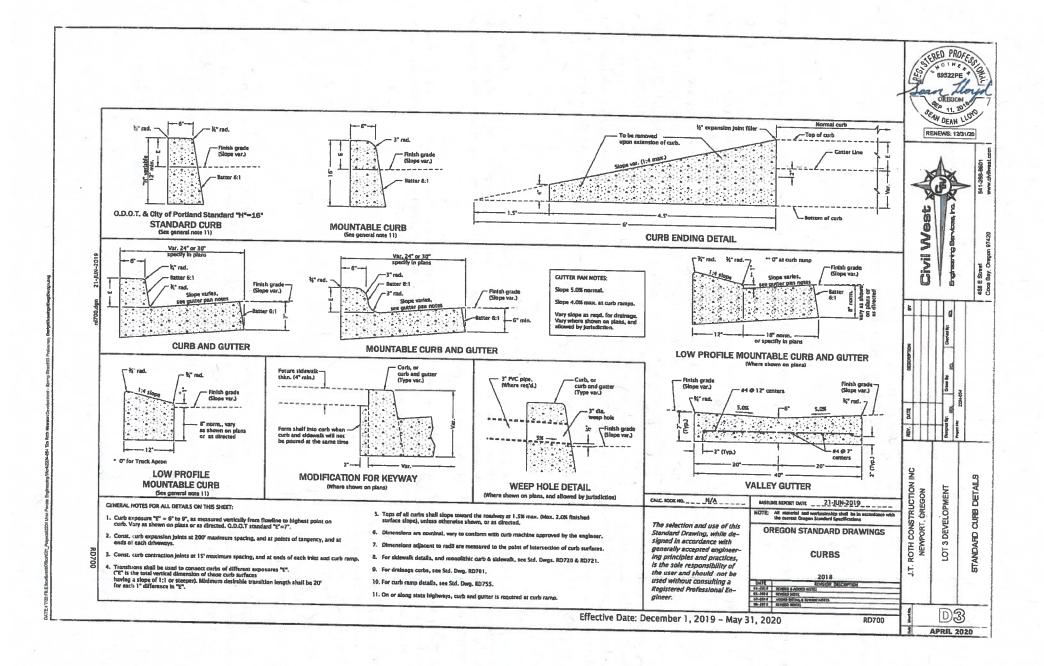












Tim Roth

From: Sent: Tim Roth <timr@jtrothinc.com> Wednesday, May 6, 2020 4:34 PM

To:

'Clare Paul'

Cc:

'Lee Ritzman'; 'Derrick Tokos'; 'Tim Gross'

Subject: Attachments: RE: #625-20-000193-DWL at 1535 NW SPRING ST, NEWPORT, OR 97365 Agreement Tim Roth Newport Development - Work Scope 2 v3.pdf

Clare

We seem to be at another impasse and I would really like to move this beyond "fractionally forward" to "fast-forward".

I would like to come to terms with something that could work for both of us. In a previous email you asked about the timing or phasing of the frontage improvements of the three lots so I would propose that we look at phasing the work. The first phase would be to improve the frontage of lot 3 while we are constructing the home on that lot and we phase in the improvements of the frontage of lots 2&1, including the installation of a catchbasin on lot 1 that connects to the existing man-hole in Spring Street, after we work through a "development agreement" (see below) that defines cost sharing of the work. The work would be to improve the existing system in the existing easement per the engineers Scope of Services (see attached) where both parties reached a "general agreement" last year. The one change to the Scope would be that I would not be contributing to the cost of replacing the 30' of 12" storm pipe since I will not be connecting my private storm water to the public system from the 8" line crossing the Fahrendorf property.

Hi Tim,

Thanks for continuing to move the conversation along. While we are in general agreement with how you have framed the project, it is not possible for us to move forward with an agreement in the form of an "engineers scope of services." We have a specific format for development agreements, and will be looking to set it up such that the City reimburses you for its proportionate share of the soft and hard costs once the improvements have been constructed and accepted.

Our Public Works Department will prepare a cost estimate and once I have that estimate I'll put together a draft agreement for your review. It is likely that the agreement will need to be presented to our City Council, and the timing of a reimbursement payment to you would need to be on or after 7/1/20 since we do not have funds currently budgeted for the work.

Derrick I. Tokoz, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365
ph: 541.574.0644
dtokos@newportoregon.gov

I can submit a "site plan that shows what will be in place at full build-out" of the frontage improvements with the agreement that phase 1 is lot 3 frontage and phase 2 is lots 2&1 frontage and phase 3 is the improvements to the existing public storm system. Since phase 2 & 3 would not occur until sometime later this year or early next, this would give us the time needed to complete the development agreement and secure City Council approval for the reimbursement payment.

Please accept these terms so we can both move forward with this project and stop the back and forth emails.

I look forward to getting this wrapped up.

J.T. Roth
JT Roth Construction, Inc.
503 639 2639
timr@jtrothinc.com
www.jtrothinc.com

LECONSTRUCTION

From: Clare Paul [mailto:C.Paul@NewportOregon.gov]

Sent: Tuesday, May 5, 2020 7:36 AM

To: 'Tim Roth'

Cc: Lee Ritzman; Derrick Tokos; Tim Gross

Subject: RE: # 625-20-000193-DWL at 1535 NW SPRING ST, NEWPORT, OR 97365

Good morning, Tim - Wednesday is full up here, unfortunately. Any time on Friday afternoon (but not 3-4)?

To move this fractionally forward, storm drainage must still be addressed for all the properties, even though you may only be currently building on one lot. And, the swale that is shown in the right-of-way is not per the geologic report recommendations.

If we need to look into next week, that's fine. Just let me know. Thanks - Clare

Clare C. Paul, PE
Assistant City Engineer, City of Newport
169 SW Coast Hwy, Newport, OR 97365
P 541-574-3370 C 541-270-9349
c.paul@newportoregon.gov

From: Tim Roth <timr@jtrothinc.com> Sent: Monday, May 04, 2020 2:02 PM

To: Clare Paul < C.Paul@NewportOregon.gov > Cc: Lee Ritzman < lritzman@civilwest.net >

Subject: RE: # 625-20-000193-DWL at 1535 NW SPRING ST, NEWPORT, OR 97365

I could be available on Wednesday at either 10:30 or 1:00.

Please confirm a time.

J.T. Roth
JT Roth Construction, Inc.
503 639 2639
timr@jtrotbinc.com
www.jtrothinc.com



From: Clare Paul [mailto:C.Paul@NewportOregon.gov]

Sent: Monday, May 4, 2020 10:21 AM

To: 'Tim Roth'

Subject: RE: # 625-20-000193-DWL at 1535 NW SPRING ST, NEWPORT, OR 97365

Thanks, Tim. Please let me know your availability over the next week or so.

Clare C. Paul, PE
Assistant City Engineer, City of Newport
169 SW Coast Hwy, Newport, OR 97365
P 541-574-3370 C 541-270-9349
c.paul@newportoregon.gov

From: Tim Roth < timr@jtrothinc.com > Sent: Monday, May 04, 2020 8:29 AM

To: Clare Paul < C.Paul@NewportOregon.gov>

Subject: RE: # 625-20-000193-DWL at 1535 NW SPRING ST, NEWPORT, OR 97365

I will not be in the office on Tuesday.

Thank you

J. T. Roth
JT Roth Construction, Inc.
503 639 2639
timr@jtrothinc.com
www.jtrothinc.com

JT Roth

From: Clare Paul [mailto:C.Paul@NewportOregon.gov]

Sent: Friday, May 1, 2020 2:48 PM

To: 'Tim Roth'

Cc: Tim Gross; Lee Ritzman; kshreeve@civilwest.net; Derrick Tokos

Subject: # 625-20-000193-DWL at 1535 NW SPRING ST, NEWPORT, OR 97365

Hello, Tim – Rather than have a lot of email back and forth, I'd like to set up a call to discuss your current plan, particularly the storm drainage. Would you be available next Tuesday, May 5 at 3 PM? Please let me know and I'll send out the conference phone info. Thank you - Clare

Clare C. Paul, PE
Assistant City Engineer, City of Newport
169 SW Coast Hwy, Newport, OR 97365
P 541-574-3370 C 541-270-9349
C.paul@newportoregon.gov

From: Tim Roth < timr@itrothinc.com > Sent: Friday, April 24, 2020 1:56 PM

To: Clare Paul < C.Paul@NewportOregon.gov>

Cc: Joseph Lease < J.Lease@NewportOregon.gov >; Doug Moss < D.Moss@NewportOregon.gov >; Tim Gross

<<u>T.Gross@NewportOregon.gov</u>>; Lee Ritzman <<u>Iritzman@civilwest.net</u>>; <u>kshreeve@civilwest.net</u>

Subject: RE: Plan Revisions are needed for record # 625-20-000193-DWL at 1535 NW SPRING ST, NEWPORT, OR 97365

Thank you Clare for your reply.

Through this submittal process I was unaware that Community Development/Planning was required to review? I will assume you will direct the application through these departments?

Where you ask for a "site plan" I assume you are referring to a street improvement plan, however, I do not understand what is meant by a "full build-out". Our submitted permits for building improvements are limited to our lot #3 and the "full build-out" of the street improvements would be that portion of the frontage of this lot #3, which is what was submitted with my Right-of-Way improvement application. Even though we currently own the two lots adjacent and to the south of this lot 3 we have no immediate plan to improve those lots and with the current condition of the economy there can be no known "phasing" or start date. We feel we need to keep our options open to the possibility of out-right selling the lots w/o improving them so we have made no plans beyond improving out lot 3 and the required off-site frontage of our lot 3, and I believe this is compliant with your city municipal codes.

Respectfully

J.T. Roth
JT Roth Construction, Inc.
503 639 2639
timr@jtrothinc.com
www.jtrothinc.com

JT Roth

From: Clare Paul [mailto:C.Paul@NewportOregon.gov]

Sent: Thursday, April 23, 2020 2:25 PM

To: 'Tim Roth'

Cc: Joseph Lease; Doug Moss; Tim Gross

Subject: RE: Plan Revisions are needed for record # 625-20-000193-DWL at 1535 NW SPRING ST, NEWPORT, OR 97365

Hi, Tim – Doug Moss received a right-of-way permit application with some plans attached. However, the plans need to go through Community Development/Planning first. Please include a site plan that shows what will be in place at full build-out and then indicate the phasing that you intend. Thank you - Clare

Clare C. Paul, PE
Assistant City Engineer, City of Newport
169 SW Coast Hwy, Newport, OR 97365
P 541-574-3370 C 541-270-9349
C.paul@newportoregon.gov

From: Joseph Lease < J.Lease@NewportOregon.gov>

Sent: Thursday, April 23, 2020 6:48 AM

To: Clare Paul < C.Paul@NewportOregon.gov>

Subject: FW: Plan Revisions are needed for record # 625-20-000193-DWL at 1535 NW SPRING ST, NEWPORT, OR 97365

Hi Clare,

Can you clarify for Mr. Roth what you need for this project? Please see his comments below.

Thanks, Joseph

From: Tim Roth < timr@jtrothinc.com > Sent: Wednesday, April 22, 2020 3:02 PM

To: Joseph Lease < J. Lease@NewportOregon.gov>

Subject: RE: Plan Revisions are needed for record # 625-20-000193-DWL at 1535 NW SPRING ST, NEWPORT, OR 97365

I will send the revisions over by email for your review before printing and submitting the hard copies.

I was not aware of revisions or comments from Public Works? The plan review checklist made a comment under "Infrastructure Review" "Please submit plans for public improvements" I submitted for permits on 4-8-20 and with submittal I included a complete set of plans showing the proposed improvements. Please advise.

J.T. Roth
JT Roth Construction, Inc.
503 639 2639
timr@itrothinc.com
www.jtrothinc.com

From: Joseph Lease [mailto:J.Lease@NewportOregon.gov]

Sent: Wednesday, April 22, 2020 2:48 PM

To: 'Tim Roth'
Cc: Sherri Marineau

Subject: RE: Plan Revisions are needed for record # 625-20-000193-DWL at 1535 NW SPRING ST, NEWPORT, OR 97365

Hello Tim,

Two hardcopies are preferable, but if you want me to review the revisions digitally before you submit paper we can do that. Do the revisions address the Public Works comments also?

Thanks,

Community Development Department 169 SW Coast Highway Newport, Oregon 97365 i.lease@newportoregon.gov (541) 574-0627

From: Tim Roth < timr@itrothinc.com > Sent: Wednesday, April 22, 2020 11:45 AM

Tim Roth

From: Sent: Tim Roth <timr@jtrothinc.com> Wednesday, May 20, 2020 9:50 AM

To:

'Clare Paul'

Cc:

'Lee Ritzman'; 'Derrick Tokos'; 'Tim Gross'

Subject:

RE: # 625-20-000193-DWL at 1535 NW SPRING ST, NEWPORT, OR 97365

Attachments:

Lot 3 Stormwater Design Review 05 19 20.pdf

Clare

To address your concerns regarding the storm drain swale shown on our plan submittal, I have asked the Geotech to comment on the impact it would have on our project. See attached letter.

Removing this small obstruction should allow the permit application to move forward. I am prepared to permit and complete the ROW improvements in phases, as the lots get developed, as I suggested in my 5-6-20 email.

In a previous email you asked about the timing or phasing of the frontage improvements of the three lots so I would propose that we look at phasing the work. The first phase would be to improve the frontage of lot 3 while we are constructing the home on that lot and we phase in the improvements of the frontage of lots 2&1, including the installation of a catch-basin on lot I that connects to the existing man-hole in Spring Street, after we work through a "development agreement" (see below) that defines cost sharing of the work. The work would be to improve the existing system in the existing easement per the engineers Scope of Services (see attached) where both parties reached a "general agreement" last year. The one change to the Scope would be that I would not be contributing to the cost of replacing the 30' of 12" storm pipe since I will not be connecting my private storm water to the public system from the 8" line crossing the Fahrendorf property.

I trust the attached letter from the Geotech will allow the permit application for the off-site improvements to move forward.

J.T. Roth
JT Roth Construction, Inc.
503 639 2639
timr@jtrothinc.com
www.jtrothinc.com

From: Clare Paul [mailto:C.Paul@NewportOregon.gov]

Sent: Tuesday, May 5, 2020 7:36 AM

To: 'Tim Roth'

Cc: Lee Ritzman; Derrick Tokos; Tim Gross

Subject: RE: # 625-20-000193-DWL at 1535 NW SPRING ST, NEWPORT, OR 97365

Good morning, Tim - Wednesday is full up here, unfortunately. Any time on Friday afternoon (but not 3-4)?

To move this fractionally forward, storm drainage must still be addressed for all the properties, even though you may only be currently building on one lot. And, the swale that is shown in the right-of-way is not per the geologic report recommendations.

K & A Engineering, Inc. 91051 S. WILLAMETTE STREET P. O. BOX 8486, COBURG, OR 97408 (541) 684-9399 · KAENGINEERS.COM



May 19, 2020

Project: 18011

J.T. Roth Construction, Inc. Attn: Mr. Tim Roth 12600 SW 72nd Ave., Suite 200 Portland, OR 97223

Subject: Review of Proposed Street Improvements and Temporary Stormwater Swale

Lot 3 Development

Tax Lot 2300, Lot 3, Tax Map 11-11-05-BB, Lincoln County

NW Spring Street Newport, Oregon

Dear Mr. Roth,

At your request, we have reviewed Civil Engineering plans for the subject project developed by Civil West Engineering Services, Inc., project No. 2201-054, dated April 2020. These plans detail street improvements to the west side of NW Spring Street which include pavement widening, extending a sanitary sewer service to Lot 3, and construction of curbs and a temporary stormwater swale. The purpose of our review is to evaluate impacts of the proposed improvements on surface erosion and overall slope stability of the site.

Currently, stormwater is routed to a deep swale along the west side of the roadway. Similarly, for the subject proposed improvements, stormwater would be routed into the new swale located in essentially the same area as the old swale.

Stormwater collected in the new swale will infiltrate into the sand, seep downhill at or near the surface of underlying mudstone, and be collected by the subsurface drainage system recently constructed with new terraced landscape retaining walls at the west edge of lots 1, 2, and 3. In this manner, surface runoff will be intercepted immediately, thus avoiding surface erosion and sediment transport.

Therefore, we recommend that the proposed drainage plan, including the swale, will have no net negative impact on the project site from the standpoint of surface erosion or slope stability.

Thank you for the opportunity to be of service. Please call me if you have any questions.

Sincerely,

Michael Remboldt, P.E., G.E.

M Remboldo

K & A Engineering, Inc.

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Tim Roth

From: Clare Paul <C.Paul@NewportOregon.gov>

Sent: Friday, May 22, 2020 8:37 AM

To: 'Tim Roth'

Cc: 'Lee Ritzman'; Derrick Tokos; Tim Gross

Subject: RE: # 625-20-000193-DWL at 1535 NW SPRING ST, NEWPORT, OR 97365

Hello, Tim – thank you for the letter from the geological engineer. However, even if the building construction proceeds, public works will not issue a certificate of occupancy with only the swale in place. The storm improvements have to provide positive conveyance of the street drainage to a system that is capable of accepting it. And, even if the current 12-inch line were in impeccable condition, it could not carry additional drainage. It must be upsized. Constructing a new line within a new easement on your southernmost property would probably be less expensive than building it within the current easement. In any case, the plans need to be provided by a professional civil engineer. As before, we are willing to contribute the difference between a 12 and an 18-inch line. The curb and gutter for the southern two lots can be deferred until the buildings are completed, and we would accept an asphalt berm as a temporary curb and gutter. Thank you - Clare

Clare C. Paul, PE
Assistant City Engineer, City of Newport
169 SW Coast Hwy, Newport, OR 97365
P 541-574-3370 C 541-270-9349
c.paul@newportoregon.gov

From: Tim Roth <timr@jtrothinc.com>
Sent: Wednesday, May 20, 2020 9:50 AM
To: Clare Paul <C.Paul@NewportOregon.gov>

Cc: 'Lee Ritzman' </ritzman@civilwest.net>; Derrick Tokos < D.Tokos@NewportOregon.gov>; Tim Gross

<T.Gross@NewportOregon.gov>

Subject: RE: # 625-20-000193-DWL at 1535 NW SPRING ST, NEWPORT, OR 97365

Clare

To address your concerns regarding the storm drain swale shown on our plan submittal, I have asked the Geotech to comment on the impact it would have on our project. See attached letter.

Removing this small obstruction should allow the permit application to move forward. I am prepared to permit and complete the ROW improvements in phases, as the lots get developed, as I suggested in my 5-6-20 email.

In a previous email you asked about the timing or phasing of the frontage improvements of the three lots so I would propose that we look at phasing the work. The first phase would be to improve the frontage of lot 3 while we are constructing the home on that lot and we phase in the improvements of the frontage of lots 2&I, including the installation of a catch-basin on lot I that connects to the existing man-hole in Spring Street, after we work through a "development agreement" (see below) that defines cost sharing of the work. The work would be to improve the existing system in the existing easement per the engineers Scope of Services (see attached) where both parties reached a "general agreement" last year. The one change to the Scope would be that I would not be contributing to the cost of replacing the 30' of 12" storm pipe since I will not be connecting my private storm water to the public system from the 8" line crossing the Fahrendorf property.

I trust the attached letter from the Geotech will allow the permit application for the off-site improvements to move forward.

J. T. Roth
JT Roth Construction, Inc.

Attachment B-10

REVIEWED FOR CODE COMPLIANCE Reviewed plans and specifications shall not be changed, modified or altered without authorization from the building official, and all work regulated by the code shall be done in accordance with the reviewed plans. The issuance or granting of permit or review of plans, specifications and computations shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of the code or any other ordinance of the Date 5-18-2020

jurisdiction.

City of Newport Permit # 626-20-200

PLAN No:

DRAWN:

TL.

DATE:

1-22-2020

SCALE:

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FILE: .

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CITY OF NEWPORT

MAY 0 5 2020

RECEIVED



REVIEWED FOR CODE COMPLIANCE

Reviewed plans and specifications shall not be changed, modified or altered without authorization from the building official, and all work regulated by the code shall be done in accordance with the reviewed plans. The issuance or granting of permit or review of plans, specifications and computations shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of the code or any other ordinance of the Date 5-18-2020

City of Newbort Permit # 625-20 - 600193-DWL jurisdiction

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CITY OF NEWPORT

MAY 0 5 2020

RECEIVED

Tim Roth

From: Sent:

Keven Shreeve < Kshreeve@civilwest.net> Thursday, March 12, 2020 3:59 PM

To: Cc:

Tim Roth Lee Ritzman

Subject:

RE: NW Spring St storm line improvements - Proposal

Tim,

I took it upon myself to visit with Tim Gross about your project. He explained to me the City's position, probably the same as he apparently has tried to explain it before. Talking with Tim I understood there are three directions you can take:

- 1 Just do the stormwater pipeline project on your own, sized only for your development, as you've indicated you are prepared to do. Leave the City out of it. The cost of such would be 100% your responsibility.
- 2 Repair/Replace the existing City's pipeline. I believe you and Lee may have ruled this option out given the City's lack of participation and interest.
- 3 Invite the City to participate in an upsizing, as you've done, with the realization the City isn't going to participate as we had thought. Tim explained to me that the City may be interested in cost sharing only the upsized portion and a percentage of the engineering. For example (numbers and costs do not mean anything), say a 12-inch pipe installed costs \$90/foot and say an upsized 18-inch pipe costs \$110, the City would only pay the \$20/foot increase. In addition, the City is willing to pay a pro rata share of the engineering (which Tim indicated is not customary). For example, the City would pay 22.2% (20/90) of the engineering expense.

Tim mentioned the City apparently could require you to upsize the pipeline, whether you want to or not, as part of the condition of approval, but the City would still pay as explained above. He did not say that is what he would do, but just threw it out. FYI...

I know this information is probably not new and certainly doesn't provide you any financial relief. Tim is confident he is treating you the same as he has others in the past, and how he wants to treat other developers in the future.

Please let us know how you want to proceed.

Keven Shreeve, PE, Principal North Coast Regional Manager Civil West Engineering Services, Inc. p 541.982.4270 | c 208.866.4098 609 SW Hurbert St., Newport, OR 97365 www.civilwest.com

From: Tim Roth <timr@jtrothinc.com> Sent: Monday, March 9, 2020 5:16 PM

To: 'Tim Gross' <T.Gross@NewportOregon.gov>; 'Derrick Tokos' <D.Tokos@NewportOregon.gov>; 'Clare Paul' <C.Paul@NewportOregon.gov>

Cc: Lee Ritzman < Lritzman@civilwest.net>; Keven Shreeve < Kshreeve@civilwest.net>

Subject: RE: NW Spring St storm line improvements - Proposal

Tim

Attachment B-12

Tim Roth

From: Sent: Tim Roth <timr@jtrothinc.com>
Thursday, May 28, 2020 4:07 PM

'Spencer Nebel'

To: Subject:

RE: # 625-20-000193-DWL at 1535 NW SPRING ST, NEWPORT, OR 97365

Spencer

To follow up our conversation from yesterday I have reached out to the Civil Engineer and the Excavation Contractor to get some preliminary pricing to install the storm line in an easement on my property. I will breakdown those estimated cost below.

The other outstanding issue that I would like to resolve is the question of the release of building permits. The unsolved issue with the storm piping has been ongoing for several months and without a definitive date when a solution may be found. This has frozen the release the building permits on my Lot 3 so if these cannot get released in the next week or so I will start to lose the short weather window we have for summer construction. I am asking you to please authorize the release of these permits to allow me to get started with the construction, with the understanding that the final occupancy will not be issued until the storm sewer issues get fully resolved. There is no good reason why the city could not allow me to get started with construction while we are working through this storm piping issue.

I have submitted plans for off-site improvements to the frontage of this lot 3 and would plan to do those improvements during the construction of the building structure on this same lot.

I have been working on this with Public Works for over a year now and have done everything they have asked, with the exception of agreeing to re-build their storm water system.

As I have stated above, my building permits have been approved and ready for pick up. I simply have run out of time and options so if we cannot reach some level of agreement where permits can be released I will be forced to hand these matters over to my attorney and allow him to resolve with the City attorney.

I look forward to your reply by Monday of next week, after which all correspondence will be directed through my attorney.

Thank you for your full attention and consideration

J.T. Roth
JT Roth Construction, Inc.
503 639 2639
timr@jtrothinc.com
www.jtrothinc.com



Relating to the cost of improving the storm system.

I have contacted the Civil Engineer (Civil West) and the Excavation Contractor (RK Concrete) and discussed the general scope of work. The preliminary costs that I am listing below are based on several assumptions and cannot be confirmed or finalized until the plans have been approved and signed off by the City of Newport. I do however believe the estimated cost is close enough to establish a reasonable value for the work, something that will allow our discussion of cost-sharing to continue.

| Civil | Engineering | |
|-------|--|--------------|
| 1. | Project Management and Coordination | \$3,500.00 |
| 2. | Design Plans and Specifications | \$7,800.00 |
| | *assumes 18" PVC storm pipe with (2) concrete deadheads *assumes pre-cast manhole(s) *assumes grading plan and possible retaining wall | *,, |
| 3 | Reimbursable | \$ 500.00 |
| 3. | Reinfoursable | \$ 500.00 |
| Surve | ying | |
| 1. | As-built Drawings | \$1,500.00 |
| 2. | Easement Documents | \$3,800.00 |
| | *legal description | i - Allering |
| | *recordable easement doc | |
| | *recording fees | |
| | *field survey | |
| Excav | vation / Pipe Install | |
| 1. | (1) 8' manhole at the street | \$ 8,000.00 |
| | 30' of 8" PVC connecting catch basin with manhole at street | \$ 3,000.00 |
| | 150' 18" PVC | \$18,000.00 |
| | *(2) concrete deadheads | \$ 2,500.00 |
| 4. | (1) 5' manhole at bottom | \$ 5,000.00 |
| 5. | 20' 18" outfall | \$ 2,500.00 |
| | *w/diffuser | \$ 2,000.00 |
| | *w/rip-rap rock | \$ 3,000.00 |
| 6. | Base rock around pipe | \$ 4,200.00 |
| | *12" under, 12" over, 12" each side | |
| 7. | Testing | \$ 1,500.00 |
| 8. | Erosion Control | \$ 3,000.00 |
| 9. | Signage | \$ 500.00 |
| | | |

Bonding

1. Not included in estimate, if city requires a bonding you will need to add the estimated amount of \$6,000.00 to total

Contingency \$10,000.00

Estimated Total \$80,300.00

Note: this price does not include any management, contractor, or overhead fees.

From: Spencer Nebel [mailto:S.Nebel@NewportOregon.gov]

Sent: Wednesday, May 27, 2020 12:41 PM

To: 'Tim Roth'

Cc: Tim Gross; Derrick Tokos; David Allen

Subject: RE: # 625-20-000193-DWL at 1535 NW SPRING ST, NEWPORT, OR 97365



October 12, 2020

VIA EMAIL AND FIRST-CLASS MAIL

Jim Patrick, Chair
Bob Berman, Commissioner
Bill Branigan, Commissioner
Gary East, Commissioner
Michael Franklin, Commissioner
James Hanselman, Commissioner
Lee Hardy, Commissioner
City of Newport Planning Commission
169 SW Coast Hwy
Newport, OR 97365

Re: File 2-MISC-20-A

Dear Commissioners:

We represent the Applicants JT Roth and Theresa Roth who appealed the decision in the above reference matter to you. From herein after we will refer to them as the "Applicants." This letter is to provide you with written testimony and argument in support of the Applicants' appeal of the Community Development Director (the "Director") Decision in 2-MISC-20 (the "Decision").

Response to Director's Findings of Fact

Applicants included a detailed factual background in the Narrative to their land use application which has been provided to you as part of the record. In addition, in response to the Decision, Tim Roth prepared and submitted a detailed response to the Director's Findings identified as Exhibit B-1, Amended Findings and Conclusions ("Exhibit B-1"). With those two documents, it is not necessary that we reiterate all of the relevant background. We will discuss the facts to the extent necessary to provide context for Applicants' substantive argument, referring where appropriate to Exhibit B-1, and the exhibits to that document.

Christopher P. Koback
1331 NW Lovejoy Street, Suite 950
Portland, OR 97209
chris@hathawaylarson.com
(503) 303-3107 direct
(503) 303-3101 main

Page 2 October 12, 2020

Applicants own three lots on a segment of NW Spring Street north of NW 15th Street referred to as Lots 1, 2 and 3. NW Spring Street dead ends about 110 feet north of Applicants' property. Lot 3 is the northern most lot and Lot 1 is the southernmost lot. Applicants' building permit is for a single-family home on Lot 3. They have no immediate plans to improve Lots 1 & 2.

The City and Applicants agree that the storm water runoff from NW Spring Street and several private residentially developed lots along NW Spring Street flows generally in a southwesterly direction towards Lot 1. Applicants conservatively calculated the runoff from NW Spring Street to be from approximately 6,000 square feet of impervious surface. The City calculated the impervious surface of the streets and driveways to be from 5,440 square feet of impervious surface and added to the runoff from an additional 3,300 square feet from the residences along NW Spring Street.

The Director's finding that the NW Spring Street runoff flows into a ditch that is a publicly owned and maintained stormwater facility is not accurate and not supported by the record. As Mr. Roth illustrates in Exhibit B-1, that ditch is a hazardous condition that permits public runoff to seep into the west slope of the ditch on Applicants' private property creating a potentially dangerous situation. Exhibit B-1, p. 2. The City accepted the May 8, 2019 professional report to which Mr. Roth refers and thus, accepts that fact. Moreover, the ditch is nowhere identified in the City's stormwater master plan. The Applicants have never observed the City perform maintenance of the ditch and the City offered no records of such. Exhibit B-1. The ditch was merely an existing potentially damaging condition the City allowed.

The Findings mention that historically, public runoff flowed southwest off NW Spring Street into the ditch and onto Lot 1 continuing to flow in a southwest direction. The City allowed development on the property south of Lot 1 impeding that historic flow which caused runoff to accumulate in the ditch. The ditch, whatever its origin, was not intended to serve as a stormwater detention facility. By allowing development that caused runoff to backup into the ditch, the City created a situation that negatively impacted private property. As we noted, a geological engineer opined that the public runoff then infiltrated into Applicants' private property contributing to underground seeps. Absent the ditch the runoff would have flowed evenly over Lot 1 infiltrating more evenly.

Mr. Roth explained in Exhibit B-1 that the Director Findings misrepresent the dialogue between Applicants and the City related to storm water and mischaracterize the nature of Applicants' current request. Exhibit B-1, pp. 2-3. Condition 4 to the Geologic Permit was the product of mutual discussion on how Applicants would agree to participate in addressing a larger City problem with its deficient stormwater facilities under a fair cost sharing arrangement. Applicants are not asking to modify that condition; they simply expect the City to proceed under such a cost sharing agreement acknowledging its proportionate share.

We want to expand slightly on Mr. Roth's submission. It is clear from the history that the street improvements the City was expecting from Applicants were directly related to the City's desire to address its existing problem. Early in the communications, in a May 21, 2019 letter, Public Works explained that its base improvements for any proposed development on NW Spring

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Street required the applicant to widen NW Spring Street to 24 feet along all three lots and install curb and gutter. Exhibit 4 to Decision. In other instances, Public Works would have considered accepting a waiver of the right to remonstrate in recognition that there are no other such improvements in the area. However, in this instance Public Works took a different direction stating that due to "geologic hazard associated with street run off directed above ground we will require curb and gutter along the frontage." Public works went on in that same email to advise Applicants that the storm drainage from their project could be directed to the City's existing 12-inch line but because it lacked capacity, Applicants would have to replace/upsize the pipe to 18 inches.

The City's letter raises more questions than it answered. First, it failed to explain the nature of the "geologic hazards" that currently existed. It appears that Public Works was trying to capitalize on the project Geologic Engineer's statement in its May 8, 2019 letter that the existing conditions under which the City allowed runoff from NW Spring Street to flow into the ditch created a potential hazard to Applicants. That existing potential hazard was not an impact from Applicants' plan to construct a new home on Lot 3. It was a potentially hazardous condition that created potential liability for the City.

More important, the City did not articulate how not requiring street improvements at that time would have exacerbated the existing situation. Intuitively, if the City did not require the street to be widened, it would remain in the same state it has been for many years adequately functioning like most of the narrow residential streets in Newport. Without the street widening, there would have been absolutely no increase in the amount of run off from NW Spring Street that previously existed. The same runoff would have continued to flow southwest over Lot 1 where it infiltrated in a more even pattern. If anything, the situation would have been improved and would have allowed the City time to correct its problem with its 12-inch line.

Public Work's May 21, 2019 letter suggests that Public Works was pushing for street improvements to create some connection between the Applicants' proposed development and any increase in runoff so it would require the Applicants to pay to fix the City's larger problem with its failing 12-inch stormwater line. Even though the Applicants could have completed the construction on Lot 3 without adding any stormwater, thus eliminating any of the City's stated capacity concerns, Public Works was pushing to add some runoff so it could impose a requirement that Applicants upsize its existing pipe.

In any event, Public Works' May 21, 2019 letter led to the broader discussion of how the parties could work together to address an existing condition that impacted Applicants' property and addressing its failed 12-inch line. As Mr. Roth explains in more detail in Exhibit B-1, Applicant's engineer and Public Works discussed the two options later referred to as Options 1 and 2 in the Geologic Permit Decision. Mr. Roth provided the details on the two options in Exhibit B-1.

As Mr. Roth explains in Exhibit B-1, he was willing to pursue both options with the understanding that the cost of the option ultimately selected would be shared on a proportionate basis. As he further explains, the June 3, 2019 Geologic Permit Decision was issued in the context of the cost sharing discussions. Condition 4 of that decision summarized the two options the parties were discussing under a cost sharing agreement. In Applicants' view Condition 4

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incorporated the City's acknowledgement that it was responsible to pay for its share of the improvements under either option and the parties would work in good faith to arrive at a proportionate cost sharing agreement for which ever option they decided to pursue.

In reliance on the general understanding with the City, Mr. Roth worked with his engineers to develop a proposed scope of work for each option and a cost sharing proposal for each option. In September 2019, Mr. Roth submitted a proposal to the City that included both options proposing how the cost of the engineering would be shared with the plan that the cost of the physical improvements would be shared the same way. As Mr. Roth documented in Exhibit B-1 that initially the City, through the Director, expressed that the City was in general agreement with that alternative proposal. Exhibit B-1, p. 3. (September 17, 2020 email from D. Tokos). In reliance on that email, in January 2020, Mr. Roth had the detailed cost scope of work and cost sharing proposal prepared and submitted it to the City. Exhibit B-1, p 3.

After several follow up communications in the ensuing months (February and March 2020) the City, through Public Works, communicated a position that was contrary to the Director's position that the City was in general agreement on the proposed cost sharing plan to address the City's storm water problems. Public Works advised that the City expected Applicants to pay for almost the entire cost under either option agreeing only to pay for a minimal cost difference between the 12-ich line and the 18-inch line. Ultimately, that exchange led to Applicants withdrawing their proposal that included granting an easement to the City for a new storm water line. Exhibit B-1, p. 4.

By April 2020, the City acknowledged that Applicants only applied for permits on Lot 3 and that it had no basis to even seek public improvements connected to Lots 1 and 2; any street improvements associated with Lots 1 and 2 would be phased in over time if and when those lots developed. Exhibit B-1, p. 5-6. Nevertheless, demonstrating that the purpose behind requiring public street improvements was to address the existing public storm water runoff from NW Spring Street and not the impacts of the proposed development, the City continued to impose a requirement that Appellants construct new storm water facilities to convey that existing runoff.

In April 2020, Applicants presented a plan that would have directed the runoff from development on Lot 3 to a swale constructed on the lot south of Lot 3. The runoff would have infiltrated into the ground where it would be intercepted by a private line that Applicants were required to construct to convey ground water associated with their proposed private development. That interim measure would have given the City time to address its failed 12-inch stormwater line without creating any potential geologic hazard. Exhibit B-1, p. 6. Mr. Roth explains that the interim measure would have allowed development of Lot 3 without altering the historic flow from NW Spring Street. The parties would have continued to pursue a cost sharing agreement and the future improvements for NW Spring Street would have phased in as Lots 1 and 2 developed. The City initially questioned the proposal because it had not been reviewed by a Geotech engineer. In May 2020, Mr. Roth submitted a letter from a Geotech Engineer approving his proposal indicating that it did not create a geotechnical risk. Exhibit B-1, p. 7. Of course, it would not create an unacceptable risk; it was an improved measure from the ditch the City had allowed for years in the same area.

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Evidencing its plan to compel Applicants to upgrade its failing system, Public Works rejected that proposal, even though the proposed new swale functioned similarly to the existing ditch the City allowed in the same zone for years and in fact, was safer because the runoff from the street improvements that infiltrated in the new swale would be intercepted by the private drainage system that flows to an accepted outfall. The City expressed that its "minimum requirements" were that Applicants widen NW Spring Street to 24 feet, install curb and gutter along Lot 3, install a rolled curb along Lots 1 and 2 to direct runoff to a new catch basin connected to a new 8-inch pipe running out to the beach.

The City did not stop there though, even though it stated the minimum requirements above, the City clearly stated that "while an 8-inch storm sewer line is required for the property being developed, the City will require an 18-inch public storm drain line installed. The City went on to explain that its plan was to ultimately direct all of the public storm water runoff that was going into the current failed 18-inch line to this new line. In the Decision, the Director attempts to attribute the reference to a new 18-inch line as a typographical error. That statement cannot be supported. The City Manager discussed the requirement of a new 18-inch line in detail throughout that paragraph in his June 5, 2020 email. Moreover, he reiterated that requirement in his June 27, 2020 email. The Director is simply trying to back away from those statements because they are clear evidence that the City was attempting to exact property from Applicants to address its long-standing storm sewer facility deficiency that created significant liability from private property owners. Further, the City Manager position reinforced a direct statement from Tim Gross in March 2020, that the City could require Mr. Roth to upsize the 12-inch pipe whether he wanted to or not. Exhibit B-1, p. 5; Exhibit B-5.

The City's persistent demands that Applicants pay for a vastly disproportionate share of the cost of addressing the existing City problems led Applicants to explore what they could do to challenge the City's "minimum requirements" and those discussions with the City led to the current application.

Arguments in Response to Findings

A. Procedural Issue.

In the Decision, the Director suggests that because Applicants did not directly challenge Condition 4 by appealing the Geologic Permit decision, they may have lost their right to now challenge the requirements the City seeks to impose. Decision Conclusion 1, Page 9. That is not a supportable position and likely gives rise to a claim that the City is violating Applicants' procedural due process rights under the 14th Amendment. As discussed above, in the context of the ongoing discussions in May and June 2019, there was no reason for Applicants to believe the City would walk away from the proportionate cost sharing agreement that was the foundation for Condition 4. As they had throughout the project to that point, Applicants were working cooperatively with the City on proposals to develop their property and also assist the City in addressing its larger stormwater issues.

Significantly, the City agreed in writing that the failure to appeal the June 3, 2019 decision was not a bar to a seek a determination on whether the requirements in Condition 4 were sufficiently

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related to the proposed development and roughly proportionate in nature and extent to the project impacts. In his June 5, 2020 email to Applicants' attorneys the City Manager, who has the authority to speak for the City, reciting the minimum requirements we addressed above, and clearly stated:

If Mr. Roth believes these minimum requirements are not directly related or roughly proportionate to the impacts of his development then he may file for an administrative decision of the Community Development Director contesting one or more of the requirements. Attached is an application form and there is a filing fee of \$504. Upon receipt of the application, the Director will provide required public notice, followed by a written decision containing rough proportionality findings.

Applicants filed the required application and paid the indicated filing fee. The City accepted the application and fee. The City cannot now claim that Applicants lost their right to raise the issues they are raising related to the minimum requirements by not appealing the June 3, 2019 decision. To do so would be taking away the process the City offered. That is the equivalent of not offering any process and would give rise to a claim under the procedural due process clause. See, Holman v. City of Warrenton, 242 F. Supp. 2d 791 (2002).

B. Substantive Arguments in response to Decision.

Most of the Findings the Director wrote to support the Decision, have little importance to the issues the Commission must decide and as noted in Exhibit B-1, mischaracterize the communications between the Applicants and the City. The Director selectively cites to engineer reports and other applications to suggest that Applicants may have accepted responsibility to complete all of the minimum requirements. For example, the Findings imply that Mr. Roth accepted the requirements in the process of seeking a variance. In the variance application process, the Applicants never stated that they agreed they were required to complete the minimum requirements at all. They recited the fact that they understood the City was going to demand those improvements. As Mr. Roth details in Exhibit B-1 and as I summarized above, all discussions related to the completion of the minimum requirements prior to June 2020, were within the context of the parties working toward a proportionate cost sharing agreement.

In the end, the Director had to acknowledge that under Section 14.44.040 of the code, Applicants did not accept any of the minimum requirements. That is precisely why the City Manager stated in his June 5, 2020 email to our firm that Applicants had the right under that code section to pursue relief by filing for a Director determination. As the City Manager acknowledged, the issue presented are whether the minimum requirements are sufficiently related to the impacts of the proposal and whether they are roughly proportionate to those impacts. Decision P. 8, Finding 30.

1. The required public improvements are not directly related to any project impacts and thus, the required essential nexus under the 5th Amendment is lacking.

When the City Manager stated in his June 5, 2020 email that Mr. Roth could challenge whether the minimum requirements were directly related to impacts of his development, he had to be

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referring to the essential nexus prong of the analysis the 5th Amendment requires when local government wants to exact property/money for public improvements. In the Applicants' narrative supporting its land use application we discussed in detail the essential nexus requirement and will not restate all of that text here. Applicants' Narrative, pp. 4-6. In summary, to satisfy the essential nexus test, a local government must first demonstrate that it has a legitimate governmental interest. Then, to exact private property, it must show the impacts from the proposed development will substantially impede that interest and thus, exaction advances that legitimate interest. Brown v. City of Medford, 251 Or App 42, 283 P3d 367 (2012); Dan Hill v. City of Portland, 293 Or App 283, 428 P3d 986 (2018).

The Director concluded that it has a legitimate interest in having local streets meet a minimum width. Assuming that is true, the Director only identified one impact it perceives that would impede its stated interest. The City claims that it needs the street widened, albeit in only one small section, because that is the minimum for the modern fire engines. Decision, Exhibit A, pp 10-11, Conclusion 9. The Director's Conclusion is suspect in that (1) it fails to explain how not improvement one small segment of NW Spring Street will substantially impede emergency vehicles on the street when the rest of the street will remain 20 feet wide; and (2) it fails to explain how widening one small section of NW Spring advances its interest in making it easier for emergency vehicles to access the area when the remainder of the street will remain 20 feet wide indefinitely. Widening one small section will not advance the stated governmental interest. Also, NW Spring Street is the same width as most local streets in the area and apparently fire engines are able to maneuver safely.

Nevertheless, giving the Director's findings deference for argument sake, the City does not even attempt to show how project impacts require cub and gutter along the frontage much less a rolled curb all the way to the south end of Lot 1. The curb and gutter cannot be related to the need to have room for fire engines because it has no relationship to how such vehicles can maneuver.

Without question, the City seeks to require curb and gutter to create a connection between the proposed development and the larger stormwater facility requirements. As we noted, without the curb and gutter (including the rolled curb) along Lots 1, 2 and 3, the City's pre-existing runoff will not be directed to the intersection with NW 15th Street, the location it wants the new catch basin. It will flow over Lot 1 evenly infiltrating safely into the ground. The only role of the curb and gutter is to direct the runoff that formerly infiltrated into Applicants' lots to flow into a new public storm water system it wants Applicants to pay for. However, it is undisputed that the existing public runoff is not caused or created by Applicants' project. It cannot be found to be a project impact.

The Director attempts to create a nexus between the project and its pre-existing public runoff claiming that the Applicants, by filling the ditch in front of their lots, is an impact to the street storm drainage system. There are problems though with that claim. First, the Director, without any evidentiary basis, asserts that the ditch is a publicly owned and maintained stormwater facility. There is no evidence in the record to support that claim. In fact, the evidence in the record is that the ditch is not a drainage facility but is a potential hazard to Applicants' private property that the City either allowed or created. Decision Exhibit A 11. That statement is from a professional engineer in a report to the City that the City accepted. The ditch is not

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reflected in the City's Storm Water Master Plan as a City stormwater facility. The Director offered no evidence that it maintains the ditch and Applicants have never observed any maintenance activity. Applicants never proposed to fill a City owned and maintained storm water facility. They proposed to do what the City is obligated to do; stop the City's public runoff from creating a potential risk to private property.

Second, the City cannot identify the legitimate <u>public interest</u> that would be substantially impeded if the ditch is filled and the Applicants are not required to construct new costly stormwater facilities. If the ditch is filled and there are no curbs installed, the pre-existing storm water will flow onto Lot 1, which Applicants own, where it will infiltrate evenly into the ground. Even if Applicants do nothing additional to capture that runoff on the surface, the flow of runoff onto Lot 1 will not generate any public impacts. Any impacts will be to the Applicants' property. The City cannot show that even without any additional improvements, allowing the runoff to flow over Lot 1 will generate any public safety or other unacceptable impacts. Of course, the City cannot make any such claim because it allowed its public runoff to infiltrate into Lots 1 through the ditch for years without taking any steps to remedy that situation. If there were no unacceptable impacts before, how can the City show there will be impacts if the ditch is filled and the same water infiltrates into the same property?

However, Applicants did not propose to do nothing. They presented a proposal to construct in interim stormwater facility in the right-of-way that would receive the storm water runoff from the public improvements the City wants adjacent to Lot 3, including a cub and gutter along just that frontage. They submitted a report form a professional engineer demonstrating that the proposal would not result in any risk geological hazard. Some of the City's runoff would continue to flow as it historically did over Lot 1, but as Mr. Roth explained, that would not create any increase geologic risk. The Applicants' proposal would permit its development to proceed retaining what the City must agree is an acceptable solution since it is substantially the same as what the City has allowed for years. As Mr. Roth explains, the interim proposal would give the City time to address its deficient stormwater facilities that in light of the testimony, it must do to avoid significant liability to private property owners, before development on Lots 1 and 2 along with any street improvements were phased in.

The City has not demonstrated how Applicants proposal, that includes filling an existing roadside hazard under supervision of a geotechnical engineer will substantially impede any legitimate local government interest. The activity remedies an existing hazard to Applicants' property that the City has allowed and does not produce any new public impact. It is obvious that the only reason the City rejected the interim measure is because it would not allow the City to hold a certificate of occupancy for Lot 3 over Applicants' head to exact public improvements that are not even close to proportionate with the project impacts. The City would have to face the problem of its failed system and take action now to avoid the potentially massive liability to the owners impacted by the failed 12-inch storm line.

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2. The impact on the Applicant of the required improvement the City is trying to exact is not roughly proportionate to the impacts of the prosed development.

The City's findings on rough proportionality are also deficient. Under *Dolan v. City of Tigard*, and the cases that followed, even where a local government can demonstrate the essential nexus required under the 5th Amendment, the local government then has the burden to demonstrate that the exaction from the applicant is roughly proportionate in nature and extent to the impacts of the proposed development. In this matter, if you agree that the essential nexus between impacts the minimum street improvement requirements is not met, there is no need to address rough proportionality. Without new street improvements, there will be no added runoff and no connection to the storm sewer improvements the City is trying to exact.

If the Applicants must add three feet of asphalt to NW Spring Street, with or without the curb, a nominal amount of additional runoff will be generated by the project. The question then is whether the over \$80,000 exaction is roughly proportionate to the negligible impacts of adding that nominal amount of runoff to the flow that currently runs downhill onto Lot 1. As we explained above, the City cannot attribute the existing runoff from Spring Street the project because under any view of the facts, the project is not generating that runoff. Furthermore, as we explained, the City cannot charge the Applicants with the "impact" of filling the ditch two reasons. First, the ditch is not a City storm water facility. It is an existing condition the City has allowed, and which creates a potential risk to private property. Second, filling the ditch does not under any circumstance generate a public impact. The pre-existing runoff will flow substantially the same as it had before over Lot 1 and not go into any City facility.

The City begins by asserting that the exaction of 3 feet of street surface is proportionate to the increased traffic from the development. The City has to look at the complete cost of the exactions to assess whether they are roughly proportionate in extent. In that regard, the City completely ignores that the street widening is simply one element of the minimum requirements the City set forth in its June 5, 2020 email. If the only exaction involved was the street widening, Applicants can assure the Commission, they would not have had any reason to even file their application that led to this appeal.

The City does eventually get to the bigger issue, the exaction of public stormwater improvements. The main problem with this part of the Findings is that same as the problem with the Findings on the essential nexus. The City wrongfully attributes its pre-existing runoff from over 5,440 square feet of impervious surface to Applicants' project. As we explained above, even with the filling of the hazardous street-side ditch, there is no plausible argument for the City to attribute its existing runoff to the project. Applicants presented evidence in their application that even with the street widening, their project will add a negligible amount of runoff to the City facilities. The City did not refute that claim and in fact, agreed with the evidence noting in Finding 10.d that the proposed development will add a "nominal amount of additional run-off." The City further acknowledges that the facilities it expects Applicants to construct will receive runoff from more than 5,640 feet of existing impervious surface unrelated to the proposed development. Finding 10.a.

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The Director's finding that the exaction is roughly proportionate to the project impacts is based on his conclusion that the City can attribute its existing runoff to the project because the Applicants are filling the ditch that "served to manage storm run-off" from at least 5,640 feet of impervious surface. Decision, Exhibit A, p. 12, Conclusion 10.a That finding cannot be sustained in the face of the uncontradicted evidence that the ditch was not a stormwater management facility at all, but rather was a hazardous condition in the right-of-way that allowed public stormwater runoff to infiltrate into Applicants' property. The City accepted that professional conclusion when it accepted the May 8, 2019 KA Engineering report. Exhibit A-11. The City was not managing its storm water runoff; it was maintaining a situation that caused damage to private property.

Consequently, the only legally permissible rough proportionality analysis requires the City to evaluate the total cost of the public improvements it seeks to require, including the value to the property it wants to exact for a public easement, against the nominal increase in runoff it can fairly attribute to the prosed development. There can be no question that over \$80,000 in improvements and 10 feet of beachfront real property is not close to proportionate to what the City agrees is a nominal impact.

The City's Conclusion 10.e that its exaction directly benefits Applicants' development is not supported by the evidence either. The City asserts requiring Applicants to construct the new stormwater facilities avoids the outcome that would potentially destabilize the property that Applicants are developing or nearby properties. The evidence in the record illustrates that it is the existing condition the City is maintaining that creates the risk of potential destabilization. Exhibit A-11. The evidence also illustrates that if the hazardous ditch is filled and no curb installed, the runoff will flow in a similar manner over Lot 1 infiltrating more evenly into the ground. It will not create any increased risk. Moreover, if Applicants are permitted to construct the interim measures they proposed, the runoff from the development of public improvements in connection with Lot 3 will infiltrate in a facility that has been designed and constructed to ensure that the runoff infiltrates in a safe manner until the City corrects its failed public system.

Because this process is available to request relief from the minimum requirements and the Applicants have demonstrated that the required improvements are not sufficiently related to the project to exact improvements, there is no basis for the Commission to uphold the requirements. However, that is not the relief Applicants seek. They want to proceed under the fair cost sharing agreement that the parties initially began discussing. As Mr. Roth explained in Exhibit B-1, Applicants are prepared to pay for the share of the cost of either Option 1 or 2 as long the City accepts what the evidence proves: Applicants contribution of runoff is nominal.

3. The City's disparate treatment of Applicants in inconsistent with the equal protections guaranteed Applicants under the 14th Amendment.

This matter has demonstrated that there is one additional issue that Applicants must raise to preserve any potential claim. The evidence reveals that the City is treating Applicant different than other similarly situate property owners without any rational basis. The primary foundation for the City to seek exactions in the form of public stormwater facilities is its position that its existing facilities have no capacity; they are unable to accommodate any new runoff. Thus,

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according to the City, even if there is only a nominal increase of runoff from the proposed development going into the existing system, the system could not handle it.

Yet, the City has not acted consistent with that foundational claim. As Applicants illustrated previously, the City recently allowed an owner on NW 15th to construct a new garage and driveway, which under Section 14.44.20 generate runoff that will impact the existing system, but did not require any new improvements from that owner. When Applicants inquired of that situation, the Director explained that the runoff from the new garage was allowed to infiltrate into the owner's lot and thus, would not be expected to generate impacts on the public system. He stated that infiltration is allowed because the property is not in a geologic hazard area. As for the driveway, the Director explained that the driveway drains to an alley and that within the last 10 years the catch basin in the alley was upgrade. According to the Director, because the stormwater infrastructure in the alley complies with current City standards, no additional improvements were required. June 22, 202 email from Derreck Tokos to Chris Koback attached to this letter.

The Director's response is less than satisfactory. First, the obvious error is that the new catch basin in the alley to which he refers is connected ultimately to the same 12-inch line that the City claims has no capacity for any new runoff. Claiming that the new catch basin meets current standards misses the entire issue relevant to our matter. The only reason the City will not allow Applicants to direct any stormwater to the public system is because the existing 12-inch public storm pipe is undersized and has a hole in it. The Direct admits that ultimately the new runoff from the driveway at the NW 15th property will flow to that same deficient pipe. There is no legal basis to treat the two owners disparately.

Second, the runoff from the garage on NW 15th does not infiltrate as the Director stated. We are providing photographs taken recently at that site. The photographs graphically illustrate that water from the roof drains seeps underground toward the alley and ultimately to NW 15th where it flows into the public system impacting the failed 12-inch pipe. In short, the City has allowed some owners to place additional impact to the same public facilities it claims have no capacity and have defects without requiring any new improvements while at the same time attempting to force Applicants to spend at least \$80,000 to address existing public runoff that flows to a hazardous ditch creating a risk if slope de-stabilization on Applicants' property. A final point on this topic is the Director tried to claim that the project on NW 15th was allowed to have runoff infiltrate on site because the site is not in a geological hazard area like the Applicants' property.

All that statement does is reinforce the fact that the City must accept responsibility for the existing runoff that now goes into the street-side ditch. For years the City has allowed the ditch, which it admits retains public water allowing it to infiltrate int private property in a geological hazard area. The infiltration in that area was never a problem for the City until Applicants' proposed development cause the City to have to account for its existing public runoff.

Conclusion

For the reasons Mr. Roth provided in Exhibit B-1 and the reasons explained in this letter, Applicants respectfully request that the Planning Commission reverse the Director Decision and Page 12 October 12, 2020

instruct City staff to either waive all minimum requirements or negotiate a cost sharing agreement under which the City pays for what is truly its proportionate share of the costs of improving its public storm water facilities.

Very truly yours,

HATHAWAY LARSON LLP

/s/ Christopher P. Koback

Christopher P. Koback

CPK/ph Enclosures From: Derrick Tokos < D. Tokos@NewportOregon.gov>

Sent: Monday, June 22, 2020 10:45 AM

To: Chris Koback <chris@hathawaylarson.com> **Cc:** David Allen <D.Allen@NewportOregon.gov>

Subject: RE: Tim Roth

Hi Chris,

There were no public improvements required for this project. The construction of a garage on a lot that already contains a residence does not place additional demands on the public transportation system. The impacts (i.e. vehicle trips, pedestrian trips, etc.) are associated with the pre-existing residential use. Accordingly, the provisions of NMC Chapter 14.44 are not triggered as it relates to the street system (ref: NMC 14.44.020).

The roof on the new 576 square foot garage is sloped such that run-off is directed east towards the middle of the lot, where it will be directed by gutter and downspout down to a splash block and infiltrate into the yard. This property, unlike your clients, is outside of the mapped geologic hazards area, so infiltration is an option here whereas it is not for your client's lots per the recommendations of his engineering geologist.

The concrete drive, which is roughly equivalent to the size of the garage, ties into an existing paved alley. Our Public Works Department has indicated that the alley was rebuilt within the last 10 years due to a sewer main that failed. The catch basin and drain lines were upgraded as part of that project, so while the new driveway results in an impact on city storm drainage facilities, the drainage infrastructure in place at this location complies with the City's standards so there is no need for further improvement (NMC 14.44.040).

Derrick I. Tokos, AICP Community Development Director City of Newport 169 SW Coast Highway Newport, OR 97365 ph: 541.574.0626 fax: 541.574.0644

d.tokos@newportoregon.gov

From: Chris Koback <<u>chris@hathawaylarson.com</u>>

Sent: Thursday, June 18, 2020 7:52 PM

To: Derrick Tokos < D.Tokos@NewportOregon.gov > Cc: David Allen < D.Allen@NewportOregon.gov >

Subject: RE: Tim Roth

Derrick:

I am sorry for not being more clear. I am not interested in seeing the full file with plans. I would like to see how public improvements, particularly street widening and stormwater was addressed? I assume that applicant had the same option Tim has to file the challenge improvements? Since it appears the development is adding impact on public facilities and no improvements appear, I assume they successfully challenged them?

From: Derrick Tokos < D. Tokos @ NewportOregon.gov >

Sent: Thursday, June 18, 2020 4:53 PM

To: Chris Koback <<u>chris@hathawaylarson.com</u>> **Cc:** David Allen <<u>D.Allen@NewportOregon.gov</u>>

Subject: RE: Tim Roth

Hi Chris... the building file for 510 NW 15th Street includes oversized paper documents. We can have it scanned and will email it to you early next week.

Derrick

From: Chris Koback < chris@hathawaylarson.com>

Sent: Thursday, June 18, 2020 11:40 AM

To: Derrick Tokos < <u>D.Tokos@NewportOregon.gov</u>>
Cc: David Allen < <u>D.Allen@NewportOregon.gov</u>>

Subject: RE: Tim Roth

Derrick:

Thank you for the information and material. Tim and I will be going over this in the next day or two but I think I understand the nature of the application better.

I was also wondering whether you have available a file or other information on the permit at 510 NW 15th. It appears that the development will add a driveway that will increase runoff to the public system and I am interested in seeing that file to learn how that applicant addressed the issue. Thank you in advance.

From: Derrick Tokos < D. Tokos @ NewportOregon.gov>

Sent: Wednesday, June 17, 2020 4:29 PM

To: Chris Koback < chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com chris@hathawaylarson.com <a href="mailto:chris@hathawaylarson.

Subject: RE: Tim Roth

Hi Chris,

The application we are asking you to submit is a mechanism for obtaining an appealable land use decision explaining how the public improvement requirements are, or are not, roughly proportional to the impact of the development on public facilities.

We need you to provide a brief description of the public improvement requirements that your client is not voluntarily accepting. This can be done in the section of the form that asks you to provide a "Brief description of Land Use Request(s)" or in a separate document. You are welcome to provide a rationale as to why the required improvements are not being accepted, but are not required to do so. Under "Application Type" please check other.

Land use codes applicable to required public improvements are listed in Newport Municipal Code (NMC) Chapter 14.44. While a dwelling is a permitted use in the base zone district, that use right is subject to compliance with other applicable standards of the Newport Zoning Ordinance, codified as Title XIV of the

Municipal Code. Your client has diligently worked through those requirements, obtaining a Geologic Hazards Permit and setback Variance, neither of which were appealed. The transportation standards of NMC Chapter 14.44 are the only remaining land use standards that need to be addressed.

The process that I have outlined is what we use to resolve disagreements over the scope of public improvements required pursuant to NMC Chapter 14.44. Attached are a couple of examples, one involving a residential development and the other a commercial project. Any new development or redevelopment that places demands on public/private transportation facilities or city utilities is subject to review (NMC 14.44.020). That doesn't necessarily mean public improvements are required. If the public facilities in place conform to the provisions of the Code, namely NMC 14.44.050, then public improvements are not required (NMC 14.44.040).

The scope of required improvements is addressed in Condition #4 of the Geologic Hazards Permit (enclosed). Compliance with the permit condition is noted as a requirement that must be addressed prior to occupancy on the grading/retaining wall and building permits that your client pulled.

We have been working on a cost sharing agreement with your client because we would like him to construct a new storm drain line that is larger than what he would otherwise need to install to accommodate run-off from his project. That is something we would still like to pursue. It was only recently, that your client indicated that he may object to required improvements. The "minimum requirements" referenced in our City Manger's correspondence are intended to provide clarity as to the improvements your client must construct to address impacts his development has on public transportation facilities and city utilities. To my knowledge, we have yet to receive anything in writing from your client indicating that improvements required as a condition of development approval (i.e. Geologic Hazards Permit Condition No. 4) are not being accepted voluntarily, which triggers the rough proportionality analysis (NMC 14.44.040). If you identify the improvements at issue, then we would be happy to prepare a land use decision per the process described above.

Thank you,

Derrick I. Tokos, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365
ph: 541.574.0626 fax: 541.574.0644
d.tokos@newportoregon.gov

From: Derrick Tokos

Sent: Thursday, June 11, 2020 4:15 PM

To: 'Chris Koback' < chris@hathawaylarson.com
Cc: David Allen < d.allen@newportoregon.gov

Subject: RE: Tim Roth

Hi Chris,

I just wanted to briefly acknowledge receipt of your email. Our office will be closed tomorrow on furlough, so I will plan to get back to you with a response early next week.

Derrick I. Tokos, AICP
Community Development Director
City of Newport
169 SW Coast Highway
Newport, OR 97365
ph: 541.574.0626 fax: 541.574.0644
d.tokos@newportoregon.gov

From: Chris Koback < chris@hathawaylarson.com>

Sent: Thursday, June 11, 2020 3:56 PM

To: Derrick Tokos < <u>D. Tokos@NewportOregon.gov</u>>
Cc: David Allen < <u>D. Allen@NewportOregon.gov</u>>

Subject: Tim Roth

Derek:

David Allen advised me that I have his consent to communicate directly with you if I have questions regarding the process the City is proposing Mr. Roth use to contest the public improvement requirements the City expects him to make in connection with constructing his new home.

I appreciate you sending me the City's land use application form to which Mr. Nebel referred in his recent email. However, I am confused over why Mr. Roth would have to file a land use application and exactly what he would request. The form provides that the applicant must offer a brief explanation of the development they plan to perform. As I understand the way the City code reads, on a residentially zoned property a dwelling is outright permitted and the only application one must submit is an application for a building permit? If that is true, there would be no land use code provisions that apply so there would be no need to seek any interpretation. I am trying to get a better understanding of what an applicant would request and what standards the City would apply.

Is this a process that the City uses consistently for residential development and redevelopment? If so, what have other residential owners stated in the land use application explaining the development request? How has the City applied this process in the past? Does it apply only when the City requires an applicant for a residential permit to make public street improvements? In 14.44.020, the code states that the standards for improvements apply to any permit for development or redevelopment that increases demands on City utilities. That suggests to me that any permit to build or alter a residence that adds any impervious surface that flows to the street would trigger this process. Is that an accurate observation?

That gets me to another area where I have some questions. Mr. Nebel states that the proposed process is available for Mr. Roth to contest one or more requirements. I have seen emails from the City expressing that there are "minimum requirements" triggered by 14.44.020. Is there a written decision that actually imposes requirements on the building permit? It seems to me that if the process you proposed is available to contest something, there must first have to be a decision with findings that the applicant could contest? Has there been a finding that Spring Street is currently not wide enough to support one new single-family dwelling?

I believe you previously advised Mr. Roth that 14.44.040 requires improvements before development may occur. That provision then states that if improvements are required as a condition of development, when not accepted by the applicant the City must make rough proportionality findings. Development has commenced under a permit that was issued. Has the required findings been made?

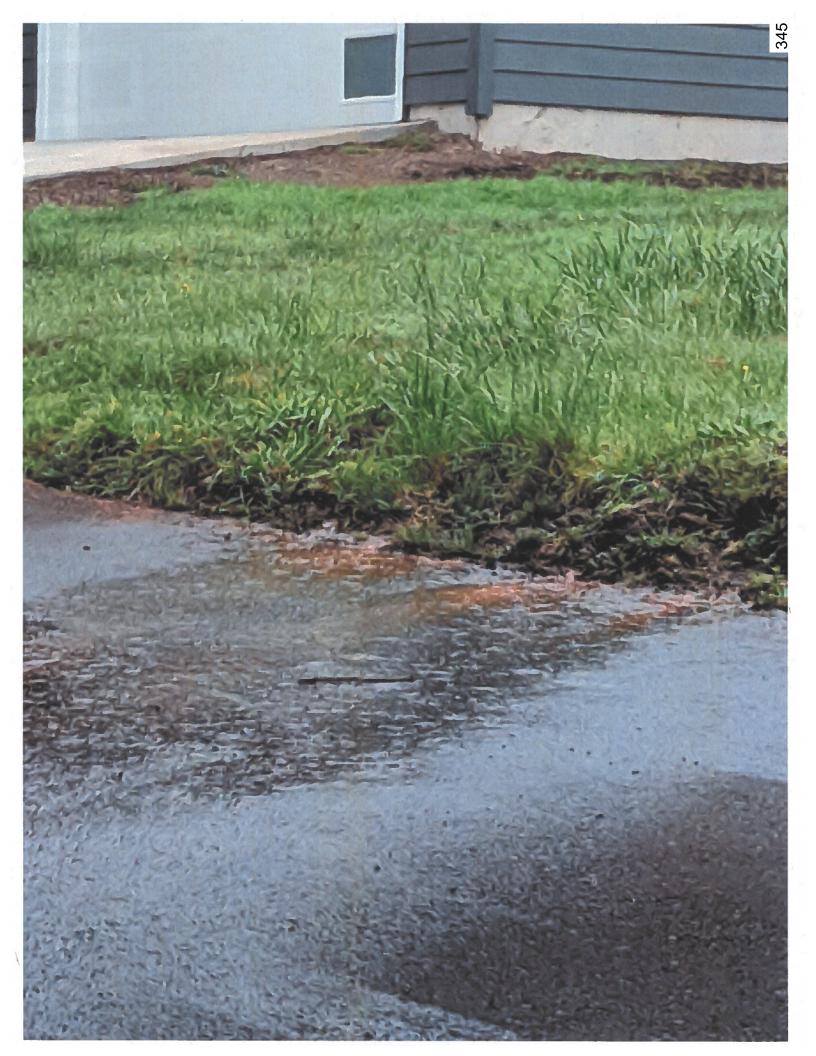
Mr. Nebel suggests that the proposed process is used to make those findings. I am confused by that. If the City has made a determination that Mr. Roth must make street improvements, as the emails state, it seems to me that the City is required to have already made finding required under 14.44.040. I believe the Federal exaction cases are clear that the local government is required to demonstrate the essential nexus and rough proportionality before it imposes a condition that exacts property. Your proposed process appears to me to place the burden on the applicant to file an application asking the City to make the findings its code already requires the City to make before imposing a requirement.

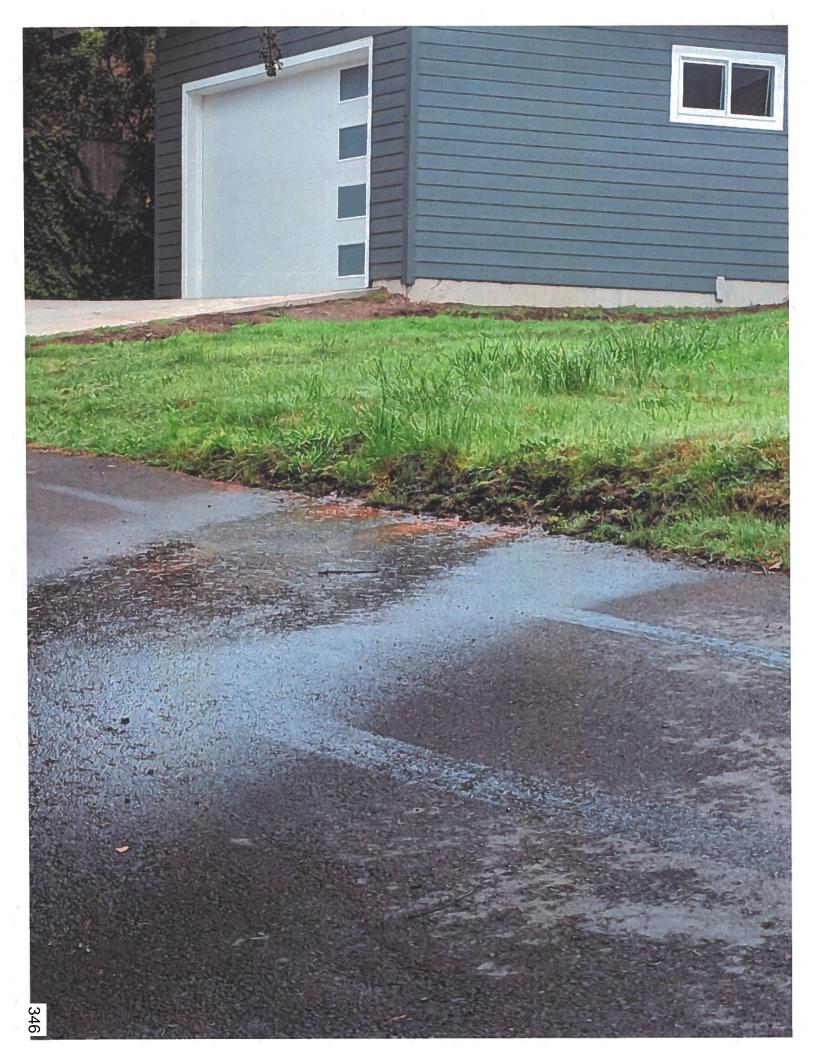
Again, can you point to other instances involving similar residential development where the proposed process was used and the rough proportionality findings came after the City imposed the requirements that the applicant complete public improvements?

Mr. Roth recognizes the urgency to find a fair and equitable solution that is consistent with how the City has treated new development or redevelopment projects that have occurred within the City of Newport since the code was adopted. We respectfully ask that you would give your immediate attention to our questions and concerns to allow this process to proceed with minimal delays.

I appreciate your responses to my questions on the proposed process.







Sherri Marineau

From: John and Chris <honekiri@gmail.com>
Sent: Monday, October 05, 2020 1:04 PM

To: Public comment **Subject:** J. T. Roth appeal

Re: J. T. Roth appeal

The City's requirements for the Roth development are based solely on the additional impact of the proposed residences on public infrastructure. Standard engineering analysis was used by the City to determine the impact and the requirements to address it. The City for many years has applied similar methods in determining any needed changes to infrastructure for other development proposals.

Mr. Roth did not file an objection to the requirements before starting construction on the first structure. He only challenges the City now, after the land is cleared and development is well underway. Further, he has not provided any objective evidence that the City's requirements are not appropriate. His appeal should be firmly denied.

Sincerely, Chris Schneller 1234 NW Spring St. Newport

Sherri Marineau

From: Derrick Tokos

Sent: Friday, October 09, 2020 3:14 PM

To: Sherri Marineau

Subject: Fwd: Testimony for October 15th Planning Commission Hearing Date for J. T. Roth Appeal

Sent from my iPhone

Begin forwarded message:

From: Yahoo! Mail <asigleo@yahoo.com> Date: October 9, 2020 at 3:02:08 PM PDT

To: Derrick Tokos < D.Tokos@NewportOregon.gov >, Anne Sigleo < asigleo@yahoo.com >

Subject: Testimony for October 15th Planning Commission Hearing Date for J. T. Roth Appeal

File NO: 2-MISC-20

9 October, 2020

Testimony from Anne Sigleo

1541 NW Spring St, Newport, OR 97365

To Planning Director, Community Development Department

We continue to support the City of Newport requirement for new construction at 1535 NW Spring Street to construct off-site public street and stormwater improvments. As stated in our communication of August 3, 2020, the construction has eliminated a swale (ditch) and vegetation that had provided significant short term stormwater storage. This short term stormwater storage was replaced by a large impermeable building and cement/flagstone patio. Stormwater from a minor rain event at the end of September 2020 in fact ran down the north side of the subject property and eventually disappeared into the neighbors vegetation to the north.

It is clear from the minor rain event that the City's requirement for stormwater improvement and control is necessary.

Respectfully, Anne Sigleo

On Friday, September 25, 2020, 05:06:16 PM PDT, Derrick Tokos <d.tokos@newportoregon.gov> wrote:

Hi Anne,

er runoff storage had

A public hearing before the Newport Planning Commission has been scheduled for 6pm on Thursday, October 15, 2020 where they will consider Mr. Roth's appeal of the Community Development Director's decision concerning the street frontage and storm drainage improvements the City is requiring he construct as part of his development. Copies of the hearing notice and grounds for appeal are enclosed. A staff report will be available 7-days prior to the hearing. Packets will be distributed to the

Commission members at close of business on Friday, October 9, 2020. Any information you provide prior to that date will be included with the packet materials.

It is likely that the appeal hearing will be conducted by videoconference. We will let you know if that changes; otherwise, you can expect to receive an email with the meeting login information a few days before the hearing. Written comment will be accepted if received by 2pm the day of the hearing. We will also need to know if you, or anybody representing you, will be dialing in to the meeting. That information is also needed by 2pm on the hearing date and can be emailed to publiccomment@newportoregon.gov.

Derrick I. Tokos, AICP Community Development Director City of Newport 169 SW Coast Highway Newport, OR 97365 ph: 541.574.0626 fax: 541.574.0644 October 11, 2020

Newport Planning Commission October 15, 2020 Public Hearing

2-Misc-20, Appeal of Planning Director Denial Appellants/Applicants J.T. Roth and Theresa Roth 1515, 1525, and 1535 NW Spring St., subject property

Response to Appellants' Grounds for Appeal:

Given the lack of evidence and detail in the <u>Grounds for Appeal</u>, the Appellants may be offering additional information up to and including the October 15 public hearing. In order to have the time to evaluate additional information presented close to or at the hearing, I request the record remain open for an additional seven days.

In his October 7, 2020 Memorandum, the Community Development Director notes "(a)t this time, staff is satisfied that the Director decision adequately addresses the issues raised by appellants and provides the Planning Commission with sufficient body of evidence to support denial of the appeal." I concur with this observation. My response to the Appellants' <u>Grounds for Appeal</u> is not exhaustive nor intended to imply that the Director's September 11, 2020 Notice of Decision, Final Order, and Findings of Fact are not substantial. My intent is only to highlight certain aspects of the record that reveal flaws in the Appellants' Grounds for Appeal as stated.

First, however, please see my submission dated July 31, 2020, Attachment "A-24" 2-MISC-20 in the current appeal record. I did raise the issue of the Appellants not meeting the appeal deadline of June 18, 2019 for the Geologic Permit which included Condition 4, being contested currently. Appellants, under <u>Grounds for Appeal</u>, point out they were notified they had the right to file this appeal. In Attachment "A-24" the City Manager provided under <u>Appeal Rights</u>: "If Mr. Roth believes these minimum requirements are not directly related or roughly proportional to the impact of his development then he may file for an administrative decision of the Community Development Director contesting one of more of the requirements. Attached is an application form and there is a filing fee of \$504. Upon receipt of the application, the Director will provide require

public notice, followed by a written decision containing rough proportionality findings. Such Type II land use decisions may be appealed to the Newport Planning Commission." Removing my assertion that the deadline for appeal was not met from the City's <u>Findings of Fact</u> and <u>Conclusions</u> in no way diminishes the fundamentals of the City's facts and evidence. These facts and evidence form the basis of the City's denial of the Appellants' request for relief from conditions imposed by the City of Newport requiring applicants/owners construct off-site public street and stormwater improvements.

Continuing, in the Director's October 7 Memorandum, again, he refers to "sufficient body of evidence to support denial of the appeal." One must look at the totality of the evidence presented in the Director's findings when evaluating the Appellants' remaining Grounds for Appeal. Included in the Director's Findings of Fact and Conclusions, there are references to supporting Attachments. Applicable municipal codes are provided, including purpose statements indicative of legislative intent. Attachment "A-20" provides the methodology for determining proportionality. Attachment "A-24", by reference, lists an application that clearly details the rationale behind applicable code and e.g. street improvements. When reading the Grounds for Appeal, don't be mislead by the Appellants' statement e.g. that the City identified a swale (roadside ditch), formerly on the west side of NW Spring St., as a public storm water facility of which there is no evidence. Actually, the Director details how this area "transitioned into a storm runoff detention facility...", a functioning natural (from my observation) storm water holding area (page 2 of 14, item 7 Findings of Fact and page 11 of 14 item 7 Conclusions). This was supported by Anne Sigleo Attachment "A-25" including contemporaneous photo evidence and corroborated by Susan Cooper "A-26". Having observed changes in storm water flow myself for over fifty years in this area, this swale may not have been a formally designated storm water facility as a matter of law, but it did perform those functions as a matter of fact.

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¹ See page 3 of 14 Findings of Fact, item No. 10. There is discussion of the filling in of the swale (road-side ditch) and the absence of any reference to the perforated pipe "recommended in the Geologic Report that is to collect the "filtered" run-off and subsurface ground water and direct it into a piped system." Possibly I overlooked the corrective measure to be taken as I am sure there will be a corrective measure needed.

Again, whether or not the Appellants met the test for filing an appeal for the Geologic Report, the City's larger picture arguments are developed in a methodical manner with supporting substantial evidence which supports the denial of this appeal. I have included easily identified specifics only to illustrate how the Appellants' narrative is inadequate and can mislead the reader.

You have before you the needed substantial findings in the record to deny this appeal. Your decision will have huge implications in how the City of Newport assures that conditions for approval of land use applications are upheld.

Thank you for your attention,

Mona Linstromberg

Family home: 1442 NW Spring St.

Newport, OR 97365

541-265-7581

Lindym@peak.org