



## Staff Report

**To:** Planning Commission

**Through:** Chris Kerr, Community Development Director *C.K.*

**From:** Dan Handel, AICP, Planner

**Meeting Date:** January 26, 2023 (Prepared January 19, 2023)

**Item:** PAR 22-04 & VAR 22-11 "Commerce Way Partition" at 1420 Commerce Way

**Tax Lot:** 051W08CB04900

### Issue before the Planning Commission

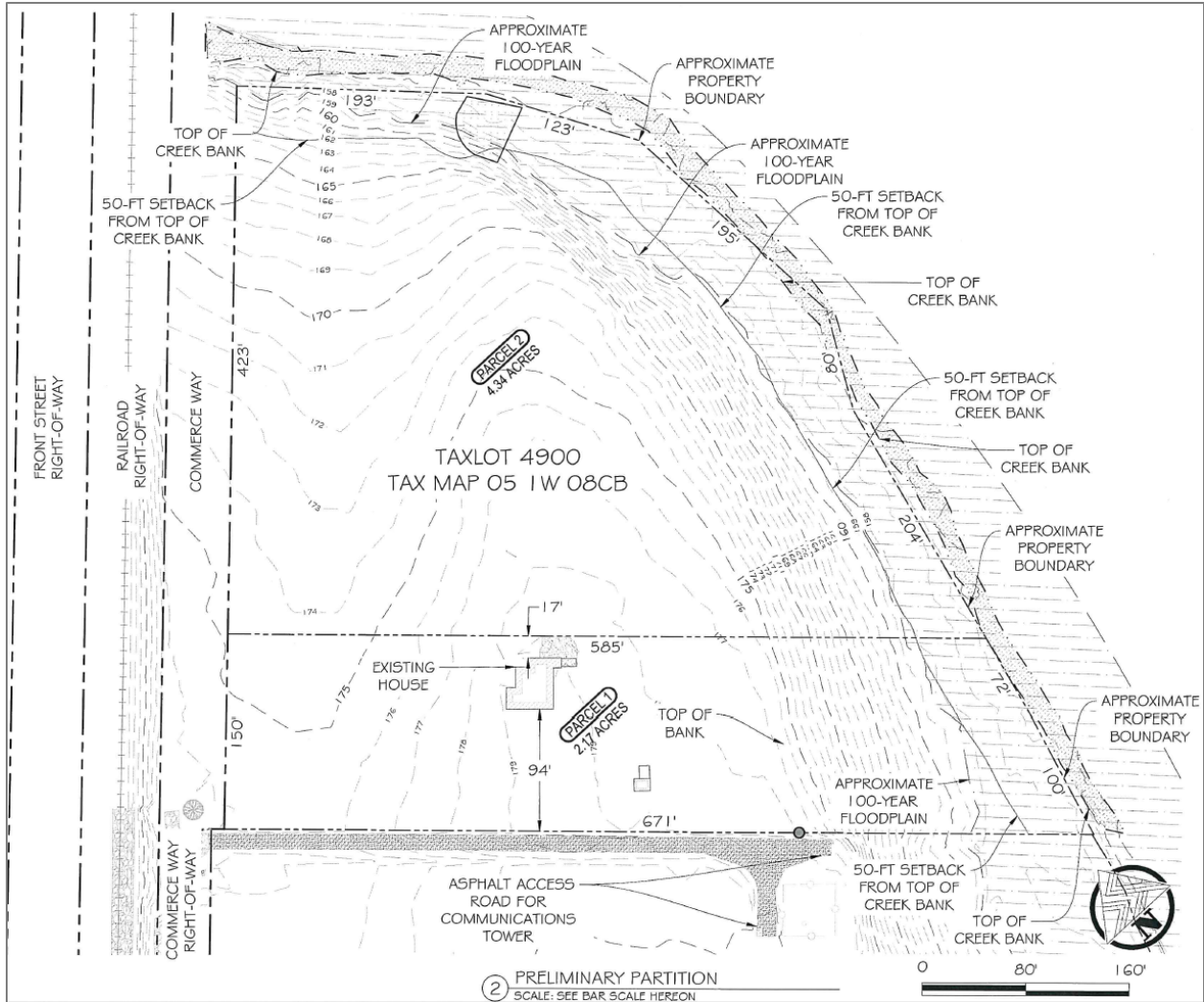
Action on a land use application package, Preliminary Partition PAR 22-04 & Variance VAR 22-11 (Type III), for the proposed two-parcel partition of the subject property.

### Executive Summary

The subject property, 1420 Commerce Way, is a 6.44-acre property within the Light Industrial (IL) zone. It is developed with a single-family dwelling, which was built in 1890, and the remaining land has historically been used for agricultural purposes.

The applicant seeks to partition the property into two new parcels in preparation for future industrial redevelopment of the site. A variance application is included with a request to defer the following requirements to future site redevelopment:

- Street frontage improvements (3.01.03-05);
- Mill Creek greenway improvements (3.01.08);
- Streetside public utility easement (3.02.01B), Mill Creek trail public access easement (3.02.01D), and creek maintenance easement (3.02.02A);
- Street lighting (3.02.03);
- Underground utilities (3.02.04C); and
- Street trees (3.06.03A).



**Proposed Partition Plan**

**Recommendation**

Approval with conditions: Staff recommends that the Planning Commission consider the staff report and its attachments and approve the application with the condition recommended by staff in Attachment 101.

**Actions**

The Planning Commission may act on the land use application to:

1. Approve per staff recommendations,
2. Approve with modified conditions, or
3. Deny, based on WDO criteria or other City provisions.

If the Planning Commission were to act upon the recommendation, staff would prepare a final decision document for signature by the Chair.

**Attachments:**

101. Recommended Condition of Approval
102. Analyses & Findings
103. Partition Plan

## Recommended Condition of Approval

1. Substantial conformance: The applicant or successor shall develop the property in substantial conformance with the final plans submitted and approved with these applications, except as modified by these conditions of approval. Were the applicant to revise plans other than to meet conditions of approval or meet building code, even if Planning Division staff does not notice and signs off on building permit issuance, Division staff retains the right to obtain restoration of improvements as shown on an earlier land use review plan set in service of substantial conformance.
2. Recordation: After obtaining Partition Final Plat approval from the City, record the partition with Marion County in a manner acceptable to the County Surveyor.
3. Addressing: Prior to receiving Partition Final Plat approval from the City, submit an [Address Assignment Request Form](#), with accompanying fee payment and materials, to the Community Development Department to begin the process of getting addresses assigned for the new parcels.

## Notes to the Applicant

The following are not planning / land use / zoning conditions of approval, but are notes for the applicant to be aware of and follow:

1. Mylar signature: The Community Development Director is the authority that signs plat Mylars and not any of the mayor, City Administrator, Public Works Director, or City Engineer. Only one City signature title block is necessary.
2. Plat Tracker: Marion County maintains a plat tracking tool at <http://apps.co.marion.or.us/plattracker/>. Use it to check on the status of a recordation request to the County. City staff does not track County plat recordation.
3. Records: Staff recommends that the applicant retain a copy of the subject approval.

# Analyses & Findings

This final decision analyzes the application materials and finds through statements how the application materials relate to and meet applicable provisions such as criteria, requirements, and standards. They confirm that a given standard is met or if not met, they call attention to it, suggest a remedy, and have a corresponding recommended condition of approval. Symbols aid locating and understanding categories of findings:

<i>Symbol</i>	<i>Category</i>	<i>Indication</i>
✓	Requirement (or guideline) met	No action needed
✗	Requirement (or guideline) not met	Correction needed
⊖	Requirement (or guideline) not applicable	No action needed
▲	<ul style="list-style-type: none"> <li>• Requirement (or guideline) met with condition of approval</li> <li>• Other special circumstance benefitting from attention</li> </ul>	Modification or condition of approval required
■	Deviation from code: Variance	Request to modify, adjust, or vary from a requirement

## Land Use & Zoning

<i>Comprehensive Plan Land Use Designation</i>	Industrial
<i>Zoning District</i>	Light Industrial (IL)
<i>Overlay District(s)</i>	Riparian Corridor & Wetlands Overlay District (RCWOD)
<i>Existing Use(s)</i>	Single-family dwelling



An excerpt from the City zoning map (site outlined in red).

The subject property appears to include Lot 7 and a fraction of Lot 6 of the Ocobock's Addition to Woodburn subdivision plat recorded December 18, 1891. Staff surmises that the subject property is a legal lot of record.

The applicable provisions the [Woodburn Development Ordinance \(WDO\)](#) appear in bold below and on the following pages.

## Applicable Provisions

### 2.04 Industrial and Public Zones

A. The City of Woodburn is divided into the following industrial and public zones:

1. The Light Industrial (IL) zone, which is intended for industrial activities that include land-intensive activities;

C. Development Standards (Tables 2.04B-E)

<b>Light Industrial (IL) - Site Development Standards Table 2.04B</b>		
<b>Lot Area, Minimum (square feet)</b>		<b>No minimum</b>
<b>Lot Width, Minimum (feet)</b>		<b>No minimum</b>
<b>Lot Depth, Minimum (feet)</b>		<b>No minimum</b>
<b>Street Frontage, Minimum (feet)</b>		<b>No minimum</b>
<b>Front Setback and Setback Abutting a Street, Minimum (feet)</b>		<b>10<sup>1</sup></b>
<b>Side or Rear Setback, Minimum (feet)</b>	<b>Abutting P/SP zone or a residential zone or use</b>	<b>30</b>
	<b>Abutting a commercial or industrial zone</b>	<b>0 or 5<sup>2</sup></b>
<b>Setback to a Private Access Easement, Minimum (feet)</b>		<b>5</b>
<b>Lot Coverage, Maximum</b>		<b>Not specified<sup>3</sup></b>
<b>Building Height, Maximum (feet)</b>	<b>Primary or accessory structure</b>	<b>70</b>
	<b>Features not used for habitation</b>	<b>100</b>
<p><b>1. Measured from the Street Widening Setback (Section 3.03.02), if any.</b></p> <p><b>2. A building may be constructed at the property line, or shall be set back at least five feet.</b></p> <p><b>3. Lot coverage is limited by setbacks, off-street parking, and landscaping requirements.</b></p>		

The proposal is a two-parcel partition in the IL zone therefore the applicable site development standards are per Table 2.04B. There is no minimum lot area, lot width, lot depth, nor street frontage in this zone.

Parcel 1 is already developed with a single-family dwelling. The partition plan illustrates setbacks that will exceed the minimum requirements for this zone. There is no maximum lot coverage specified. Building height is not proposed to change.

Parcel 2 remains undeveloped therefore setbacks, lot coverage, and building height would be reviewed at the time of development for these parcels.

✓ The provisions are met.

## **2.05 Overlay Districts**

### **2.05.05 Riparian Corridor and Wetlands Overlay District**

#### **A. Purpose**

The Riparian Corridor and Wetlands Overlay District (RCWOD) is intended to conserve, protect and enhance significant riparian corridors, wetlands, and undeveloped floodplains in keeping with the goals and policies of the Comprehensive Plan. The RCWOD is further intended to protect and enhance water quality, prevent property damage during floods and storms, limit development activity in designated areas, protect native plant species, maintain and enhance fish and wildlife habitats, and conserve scenic and recreational values.

#### **B. Boundaries of the RCWOD**

##### **1. The RCWOD includes:**

- a. Riparian corridors extending upland 50 feet from the top of the bank of the main stem of Senecal Creek and Mill Creek and those reaches of their tributaries identified as fish-bearing perennial streams on the Woodburn Wetlands Inventory Map; and
- b. Significant wetlands identified on the Woodburn Wetlands Inventory Map. Where significant wetlands are located fully or partially within a riparian corridor, the RCWOD shall extend 50 feet from the edge of the wetland; and
- c. The 100-year floodplain on properties identified as vacant or partly vacant on the 2005 Woodburn Buildable Lands Inventory.

##### **2. The approximate boundaries of the RCWOD are shown on the Zoning Map. The precise boundaries for any particular lot should be verified by the property owner when making a land use application. Map errors may be corrected as provided in this Ordinance (Section 1.02.04).**

#### **C. Permitted Uses and activities**

The following uses and activities are allowed, provided they are designed and constructed to minimize intrusion into the RCWOD:

1. Erosion or flood control measures that have been approved by the Oregon Department of State Lands, the U.S. Army Corps of engineers, or another state or federal regulatory agency
2. Maintenance of existing structures, lawns and gardens
3. Passive recreation uses and activities
4. Removal of non-native plant species and replacement with native plant species
5. Streets, roads, and paths that are included in an element of the Comprehensive Plan
6. Utilities
7. Water-related and water-dependent uses, including drainage facilities, water and sewer facilities, flood control projects, drainage pumps, public paths, access ways, trails, picnic areas or interpretive and educational displays and overlooks, including benches and outdoor furniture

#### **D. Prohibited Uses and Activities**

1. New buildings or structures or impervious surfaces, except for replacement of existing structures within the original building footprint
2. Expansion of existing buildings or structures or impervious surfaces
3. Expansion of areas of pre-existing non-native landscaping such as lawn, gardens, etc.
4. Dumping, piling, or disposal of refuse, yard debris, or other material
5. Removal of vegetation except for:

- a. Uses permitted by this section
- b. Perimeter mowing of a wetland for fire protection purposes;
- c. Water-related or water-dependent uses, provided they are designed and constructed to minimize impact on the existing riparian vegetation;
- d. Removal of emergent in-channel vegetation that has the potential to cause flooding;
- e. Hazardous tree removal.

6. Grading, excavation and the placement of fill except for uses permitted by this Section.

#### E. Variances

The restrictions of this Section may be reduced or removed if they render an existing lot or parcel unbuildable or work an excessive hardship on the property owner. The reduction or removal shall be decided through the Variance process.

#### F. Site Maintenance

1. Any use, sign or structure, and the maintenance thereof, lawfully existing on the date of adoption of this ordinance, is permitted within the RCWOD. Such use, sign or structure may continue at a similar level and manner as existed on the date of the adoption of this ordinance.
2. The maintenance and alteration of pre-existing ornamental landscaping is permitted as long as no native vegetation is disturbed. Maintenance of lawns, planted vegetation and landscaping shall be kept to a minimum and not include the spraying of pesticides or herbicides. Vegetation that is removed shall be replanted with native species. Maintenance trimming of existing trees shall be kept at a minimum and under no circumstances can the trimming maintenance be so severe as to compromise the tree's health, longevity, and resource functions. Vegetation within utility easements shall be kept in a natural state and replanted when necessary with native plant species.

#### G. Site Plan

When a use or activity that requires the issuance of a building permit or approval of a land use application is proposed on a parcel within, or partially within the RCWOD, the property owner shall submit a site plan to scale showing the location of the top-of-bank, 100-year flood elevation, jurisdictional delineation of the wetland boundary approved by the Oregon Department of State Lands (if applicable), riparian setback, existing vegetation, existing and proposed site improvements, topography, and other relevant features.

#### H. Coordination with the Department of State Lands

The Oregon Department of State Lands shall be notified in writing of all applications to the City for development activities, including applications for plan and/or zone amendments, development or building permits, as well as any development proposals by the City that may affect any wetlands, creeks or waterways.

The subject property abuts Mill Creek and City GIS data illustrates the 100-year floodplain along the east boundary. The applicant submitted a wetland evaluation letter that estimates approximately 1,700 square feet of wetlands exist on site; notably, this letter is not an official wetland delineation report. The partition plan notes approximate boundaries of the floodplain, top of creek bank, and 50-foot setback from top of creek bank.

The applicant is not proposing any uses within the RCWOD boundary. Because the proposal is only a partition, and not further development of the site, staff considers the submitted materials sufficient to meet these provisions.



Staff submitted a wetland land use notice to the Oregon Department of State Lands on August 30, 2022.

✓ The provisions are met.

## 2.06 Accessory Structures

⊖ The provisions are not applicable.

## 2.07 Special Uses

⊖ The provisions are not applicable.

## 2.08 Specific Conditional Uses

⊖ The provisions are not applicable.

## 3.01 Streets, Greenways & Other Off-Street Bicycle/Pedestrian Corridors, and Bus Transit

### 3.01.01 Applicability

A. Right-of-way standards apply to all public streets and public alleys.

B. Improvement standards apply to all public and private streets, public alleys, sidewalks, landscape strips, and on and off-street public bicycle pedestrian corridors. Standards do not exclude conformance with the public works construction code that the Public Works Department administers.

C. The Woodburn Transportation System Plan (TSP) designates the functional class of major thoroughfares and local streets.

D. This applies to all development as Section 1.02 defines, and is not limited to partitions, subdivisions, multi-family, commercial or industrial construction, or establishment of a manufactured dwelling or recreational vehicle park; however, a lesser set of standards applies to infill residential development of 4 or fewer dwellings and where no land division or Planned Unit Development is applicable, including construction of a single-family dwelling or placement of a manufactured dwelling on an infill lot. See Section 3.01.03C.2.

### 3.01.02 General Provisions

A. No development shall be approved, or access permit issued, unless the internal streets, boundary streets and connecting streets are constructed to at least the minimum standards set forth in this Section, or are required to be so constructed as a condition of approval.

B. Private streets are prohibited, except in manufactured dwelling parks, pursuant to State statute (ORS Chapter 446 and OAR 918-600). All private streets in manufactured dwelling parks shall comply with statute and WDO standards.

C. Materials and construction shall comply with specifications of the City of Woodburn.

D. The standards of this Section may be modified, subject to approval of a Street Adjustment, Planned Unit Development, Zoning Adjustment, or Variance. Other sections restrict where and how these application types apply.

E. When all public improvements are due: The construction of all public improvements, their passing City inspections, and acceptance by the City are due no later than by either 5.01.06B in the context of land division final plat application to the City or by building permit issuance, except if (1)

the developer applies to the City through the Public Works Department for deferral and (2) the City Administrator or designee issues a document approving and describing a bond or performance guarantee pursuant to Section 4.02.08. Administration of bonding and performance guarantees for improvements that are public defaults to the Public Works Department, and the department shall notify the Community Development Director of deferral applications and any approvals and conditions of approval.

F. Fees in-lieu: Per Section 4.02.12.

### 3.01.03 Improvements Required for Development

A. With development, the Internal, Boundary, and Connecting streets shall be constructed to at least the minimum standards set forth below.

#### C. Boundary Streets

1. The minimum improvements for a Boundary Street may be termed “half-street” improvements and shall be as follows, except per subsection 2:

- a. One paved 11-foot travel lane in each direction, even though this results in required improvements being slightly more than half-street by exceeding what the applicable cross section figure would require for a half-street;
- b. On-street parking on the side of the street abutting the development, if the required cross section includes on-street parking;
- c. Curb on the side of the street abutting the development;
- d. Drainage facilities on the side of the street abutting the development;
- e. Landscape strip with street trees and lawn grass on the side of the street abutting the development; and
- f. Sidewalk on the side of the street abutting the development.

#### D. Connecting Streets

1. The minimum improvements for a Connecting Street shall be one paved 11-foot travel lane in each direction.
2. Connecting streets shall extend from the boundary street of a development, to the nearest intersection that meets the cross-section and improvement requirements of this Section, or 1,000 feet, whichever is less.

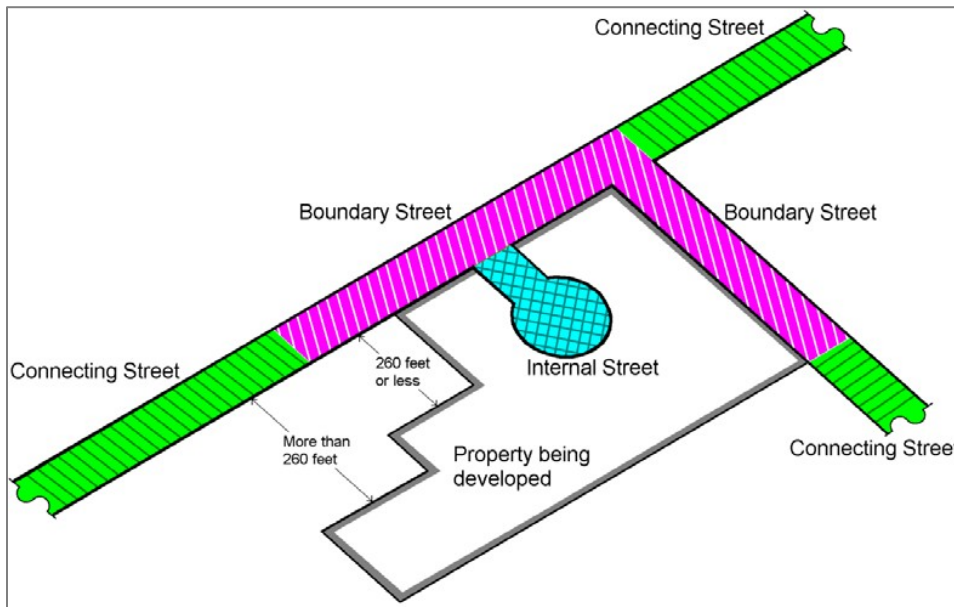


Figure 3.01A – Internal, Boundary, and Connecting Streets

G. ADA: The minimum standards of this Section 3.01 apply to development such that implementation includes constructing new or upgrading existing public improvements to be ADA-compliant.

### 3.01.04 Street Cross-Sections

A. These standards are based on the functional classification of each street as shown in the Woodburn TSP. The street right-of-way and improvement standards minimize the amount of pavement and right-of-way required for each street classification, consistent with the operational needs of each facility, including requirements for pedestrians, bicycles, and public facilities.

B. All public streets under the jurisdiction of the City of Woodburn shall comply with the cross-sections depicted in this Section, unless the developer obtains approval of Street Adjustment, modification through Planned Unit Development, Zoning Adjustment, or Variance as the WDO allows them to be applicable.

Landscape or planter strips shall have area remaining after street tree plantings landscaped with lawn grass or, if the Public Works Director in writing allows, a species of groundcover.

Cobblestones, gravel, pebbles, and rocks are prohibited. Bark dust, mulch, or wood chips are permissible only within the immediate vicinity of a street tree trunk. The developer shall install landscape strip irrigation, and shall provide temporary irrigation during construction, per the public works construction code.

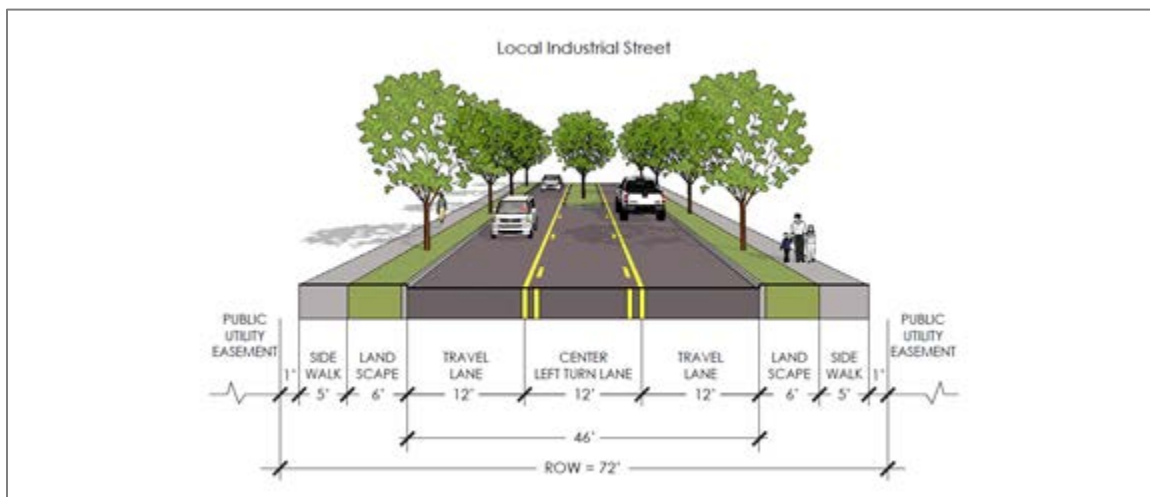


Figure 3.01F – Local Industrial Street

A partition is development therefore the provisions of 3.01 apply. The subject property has frontage along Commerce Way, a local street. Because the site is zoned IL, the applicable standard cross-section is 3.01F.

Existing conditions of Commerce Way along the property include approximately 50 feet of right-of-way and a 12-foot gravel road that curves into the property and heads to the existing house. The gravel road connects into paved improvements approximately 600 feet southwest of the subject property (along the frontage of 1370 Commerce Way, Tax Lot 051W07DA00200).

These existing conditions do not meet the minimum improvement requirements for Boundary Streets nor Connecting Streets therefore the standard requirement would be to construct

minimum half-street Boundary Street and Connecting Street improvements consistent with Figure 3.01F. The applicant submitted a Variance application with a request to defer the street improvement requirements to future redevelopment of the site.

- Staff addresses the street improvement requirements further under the Variance provisions.

### 3.01.05 Street Layout

#### B. Termination of Streets and Off-Street Bicycle/Pedestrian Facilities

##### 1. Cul-de-sac Streets

- a. The maximum length of a cul-de-sac street shall be 250 feet. Cul-de-sac length shall be measured along the center line from the nearest right-of-way line of the nearest intersecting street, to the point of curvature of the cul-de-sac bulb.
- b. The minimum radius of a cul-de-sac bulb right-of-way shall be 55 feet.
- c. The minimum improved street radius of a cul-de-sac shall be the number of feet per OFC Figure D103.1 or as amended plus the number that fits curb, planting strip and sidewalk.
- d. The Director may require bikeway and pedestrian facilities to connect from one cul-de-sac to an adjacent cul-de-sac or street, except where the cul-de-sac abuts developed property, or where the Director determines that there is no need for a connection.

##### C. Block Standards

1. Block length shall not be less than 200 feet and not more than 600 feet, except where street location is precluded by any of the following;
  - a. Natural topography, wetlands, significant habitat areas or bodies of water, or pre-existing development;
  - b. Blocks adjacent to arterial streets, limited-access highways, collectors or railroads;
3. On any block longer than 1,200 feet, corridors per Section 3.01.07 and 3.01.08 may be required through the block at 600 foot intervals.
4. In a proposed development including partition and subdivision, or where redevelopment potential exists and a street connection is not proposed, one or more off-street bicycle/pedestrian facilities may be required as partition or subdivision connection paths or shortcut paths to connect a cul-de-sac or other public street to other public streets, to other bicycle/pedestrian facilities, or to adjoining land to allow for future connections.

Commerce Way is an existing cul-de-sac street that is approximately 2,400 linear feet in length and is not improved with a cul-de-sac bulb. The street right-of-way runs parallel to railroad right-of-way on the west side, while Mill Creek flows along the eastern edge of the properties that front this street. The standard requirement would be to construct a cul-de-sac bulb consistent with 3.01.05B1. The bicycle/pedestrian facility standards in 3.01.07-08 would also apply. The applicant submitted a Variance application with a request to defer the street improvement requirements to future redevelopment of the site.

- Staff addresses the street improvement requirements further under the Variance provisions.

### 3.01.07 Off-Street Public Bicycle/Pedestrian Corridors

**B. Applicability: Where a development includes or abuts an off-street public bicycle/pedestrian corridor, other than greenway, subject to improvement as the Director determines. For Mill Creek**

Greenway standards, see instead Section 3.01.08. For purpose of applying improvement standards, corridors are any of the following:

**3.01.08 Mill Creek Greenway**

**B. Applicability:** Where a development includes or abuts the Mill Creek Greenway, the developer shall construct or install greenway trail and related improvements per this section.

**C. Corridor width:** The corridor of land dedicated to accommodate the trail and related improvements and landscaping shall be either dedicated to the City or covered with one or more public easements that accomplish granting the City and the public access. The presumptive minimum width shall be 24 feet.

**D. Improvement, amenity, and support facility standards:** A developer shall construct trail as a Class A facility. Additional standards are per the Director.

**E. Landscaping:** Per Section 3.06.

**F. Fees in-lieu:** Per Section 4.02.12.

Mill Creek runs along the eastern edge of the subject property therefore the Mill Creek greenway corridor standards apply. The applicant submitted a Variance application with a request to defer the Mill Creek greenway improvement requirements to future redevelopment of the site.

■ Staff addresses the street improvement requirements further under the Variance provisions.

**3.02 Utilities and Easements**

**3.02.01 Public Utility Easements & Public Access Easements**

**A. The Director shall require dedication of specific easements for the construction and maintenance of municipal water, sewerage and storm drainage facilities located on private property.**

**B. Streetside:** A streetside public utility easement (PUE) shall be dedicated along each lot line abutting a public street at minimum width 5 feet. Partial exemption for townhouse corner lot: Where such lot is 18 to less than 20 feet wide, along the longer frontage, streetside PUE minimum width shall be 3 feet; or, where the lot is narrower than 18 feet, the longer side frontage is exempt from streetside PUE.

**C. Off-street:** The presumptive minimum width of an off-street PUE shall be 16 feet, and the Public Works Director in writing may establish a different width as a standard.

**D. City & public access:** The minimum width of a public access easement along either a bicycle/pedestrian corridor or sidewalk overlap of property, where the easement serves instead of dedication of either land or ROW to the City, shall be per Section 3.01.07C.

**E. As a condition of approval for development, including property line adjustments, partitions, subdivisions, design reviews, Planned Unit Developments (PUDs), Street Adjustments, Zoning Adjustments, or Variances, the Director may require dedication of additional public easements, including off-street public utility easements and other easement types such as those that grant access termed any of bicycle/pedestrian access, cross access, ingress/egress, public access, or shared access, as well as those that identify, memorialize, and reserve future street corridors in place of ROW dedication.**

**F. Streetside PUE maximum width:**

**2. Standards:** Exempting any lot or tract subject to Figure 3.01B “Major Arterial”, the following standards are applicable to a lot or tract with:

**a. No alley or shared rear lane: 8 feet streetside.**

There are no public water, sewer, or stormwater facilities crossing through the subject property.

There is no existing streetside public utility easement along Commerce Way. The applicant submitted a Variance application with a request to defer the streetside public utility easement to future redevelopment of the site.

As analyzed for 3.01.08, Mill Creek greenway improvements are required therefore the public access easement provision within 3.02.01D also applies. The applicant submitted a Variance application with a request to defer the public access easement to future redevelopment of the site.

■ Staff addresses the creek maintenance easement further under the Variance provisions.

### **3.02.02 Creeks and Watercourse Maintenance Easements**

**A. Public improvement and maintenance easements shall be dedicated along all creeks and other water courses. On streams and waterways where development is regulated, based on Federal Emergency Management Administration (FEMA) flood hazard delineation, the minimum width shall be adequate to accommodate the 100-year floodway.**

**B. On other open channel water courses, such easements shall, at a minimum, extend from the top of one bank to the top of the other bank. These easements shall include an additional 20 feet in width at the top of the bank along the entire length, on one side of the open channel.**

**C. On all piped systems, the easement shall be a minimum of sixteen feet in width. Wider easements may be required by the Director, when needed to accommodate the installation of, or access to, larger and/or deeper pipes.**

As noted for the RCWOD analysis under 2.05.05, the 100-year floodplain covers a portion of the subject property where Mill Creek runs along the east property boundary. The applicant submitted a Variance application with a request to defer this easement requirement to future redevelopment of the site.

There are no other open channel water courses or piped systems on site.

■ Staff addresses the creek maintenance easement further under the Variance provisions.

### **3.02.03 Street Lighting**

#### **A. Public Streets:**

**Public streets abutting a development shall be illuminated with street lights installed to the standards of the City and the electric utility. A developer shall provide documentation to the attention of the Public Works Director indicating that any needed illumination complies with the standards. A developer is to refer to Illuminating Engineering Society (IES) of North America Recommended Practice 8, Roadway Lighting (RP-8) or other source as the public works construction code specifies.**

The applicant submitted a Variance application with a request to defer the street lighting requirement to future redevelopment of the site.

- Staff addresses the street lighting requirement further under the Variance provisions.

### 3.02.04 Underground Utilities

**B. Street: All permanent utility service within ROW resulting from development shall be underground, except where overhead high-voltage (35,000 volts or more) electric facilities exist as the electric utility documents and the developer submits such documentation.**

**1. Developments along Boundary Streets shall remove existing electric power poles and lines and bury or underground lines where the following apply:**

- a. A frontage with electric power poles and lines is or totals minimum 250 feet; and**
- b. Burial or undergrounding would either decrease or not increase the number of electric power poles. The developer shall submit documentation from the electric utility.**

**Where the above are not applicable, a developer shall pay a fee in-lieu, excepting residential development that has 4 or fewer dwellings and involves no land division.**

**2. Fees in-lieu: Per Section 4.02.12.**

**C. Off-street: All permanent utility service to and within a development shall be underground, except where overhead high-voltage (35,000 volts or more) electric facilities exist.**

There are no power lines running along the Commerce Way frontage of the subject property. There are above-ground power lines serving the existing single-family dwelling, the lines come off a pole that is within right-of-way along the frontage of the adjacent property to the south.

The applicant submitted a Variance application with a request to defer the required undergrounding of power services to future redevelopment of the site.

- Staff addresses the underground utility service requirement further under the Variance provisions.

### 3.03 Setbacks and Open Space

The partition plan notes the existing building on Parcel 1 will exceed all minimum setback requirements. Setbacks for development of Parcel 2 will be reviewed through a future Design Review process.

- ✓ The provisions are met.

### 3.04 Vehicular & Bicycle/Pedestrian Access

#### 3.04.01 Applicability and Permit

##### A. Street Access

**Every lot and tract shall have minimum access per subsection 1. or 2.:**

- 1. Direct access to an abutting public street, alley, or shared rear lane; or**
- 2. Access to a public street by means of a public access easement and private maintenance agreement to the satisfaction of the Director, revocable only with the concurrence of the Director, and that is recorded. The easement shall contain text that pursuant to Woodburn Development**



**Ordinance (WDO) 3.04.03B.3, the public shared access (ingress and egress) right of this easement is revocable only with the written concurrence of the Community Development Director.**

The partition plan illustrates that both parcels will directly abut Commerce Way, a public street.

✓ The provisions are met.

#### **3.04.03 Access Management: Driveway Guidelines and Standards**

##### **3.04.04 Driveway & Drive Aisle Improvement Standards**

The proposal is a 2-parcel partition with no development proposed. Driveways would be reviewed through a future Design Review application for development on the parcels.

⊖ The provisions are not applicable.

##### **3.04.05 Traffic Impact Analysis**

The proposal is a 2-parcel partition with no development proposed. Traffic impacts would be reviewed through a future Design Review application for development on the parcels.

⊖ The provisions are not applicable.

##### **3.04.06 Bicycle/Pedestrian Access between Sidewalk and Building Entrances**

The proposal is a 2-parcel partition with no development proposed. These provisions would be reviewed through a future Design Review application for development on the parcels.

⊖ The provisions are not applicable.

#### **3.05 Off-Street Parking and Loading**

⊖ These standards would be reviewed for conformance through a future Design Review application for development on the parcels.

#### **3.06 Landscaping**

##### **3.06.03 Landscaping Standards**

###### **A. Street Trees**

**The purpose of the street tree provisions is to get and preserve street trees, to shade those walking and provide them psychological protection from passing vehicles, to calm those driving, to help spatially define streets through canopy, to absorb stormwater and pollutants, to reduce the urban heat island effect, and to raise value of adjacent property.**

**Within the public street right-of-way abutting a development, street trees shall be planted to City standards, prior to final occupancy or earlier if conditioned.**

- 1. A number of trees equal to one tree per every 30 feet of street frontage within a block face, shall be planted within the right-of-way.**



**2. Street trees shall be planted according to the Boundary Street classification per the Transportation System Plan:**

**c. Small trees shall be planted along all other streets.**

**Refer to Table 3.06B below for the definition of size categories at maturity.**

**3. Root barriers: The developer shall install root barriers per the public works construction code.**

**4. Fee in-lieu: Per Section 4.02.12.**

The subject property has approximately 573 feet of frontage along Commerce Way, a local industrial street, therefore 19 small street trees are required. The applicant submitted a Variance application with a request to defer the street tree requirements to future redevelopment of the site.

■ Staff addresses the street tree requirements further under the Variance provisions.

### **3.07 Architectural Design**

⊖ These standards would be reviewed for conformance through a future Design Review application for development on the parcels.

### **3.08 Partitions and Subdivisions**

#### **3.08.01 Requirements**

**All partitions and subdivisions shall comply with the standards of ORS Chapter 92 and the Woodburn Development Ordinance.**

This final decision does not address the requirements of ORS 92 separately, because they are addressed through the review of WDO sections or addressed by the applicant either as part of the final partition or upon development applications. This decision establishes compliance or non-compliance with applicable WDO provisions. However, for clarity for future staff, staff cites two statutory provisions relating to preliminary land divisions about (1) what regulations apply as time passes and (2) when a decision expires:

“92.040 Application for approval of subdivision or partition; tentative plan; applicability of local government laws. ...

(2) After September 9, 1995, when a local government makes a decision on a land use application for a subdivision inside an urban growth boundary, only those local government laws implemented under an acknowledged comprehensive plan that are in effect at the time of application shall govern subsequent construction on the property unless the applicant elects otherwise.

(3) A local government may establish a time period during which decisions on land use applications under subsection (2) of this section apply. However, in no event shall the time period exceed 10 years, whether or not a time period is established by the local government. [Amended by 1955 c.756 §7; 1973 c.696 §7; 1983 c.826 §8; 1989 c.772 §5; 1995 c.812 §9; 2005 c.22 §71]”

Item (2) is not applicable because the proposal is for partition, not subdivision. Regarding (3), WDO 4.02.04B cited below establishes such a time period, which does not exceed 10 years.

✓ The provisions are met.

### 3.09 Planned Unit Developments

⊖ Not applicable.

### 3.10 Signs

⊖ Not applicable.

### 3.11 Lighting

⊖ These standards would be reviewed for conformance through a future Design Review application for development on the parcels.

### 4.01 Decision-Making Procedures

#### 4.01.07 Consolidated Applications

**An applicant may request, in writing, to consolidate applications needed for a single development project. Under a consolidated review, all applications shall be processed following the procedures applicable for the highest type decision requested. It is the express policy of the City that development review not be segmented into discrete parts in a manner that precludes a comprehensive review of the entire development and its cumulative impacts.**

The application package consists of a Type II Preliminary Partition and Type III Variance. Per 4.01.07, the two are consolidated and reviewed at the Type III level.

✓ The provision is met.

### 5.02 Type II (Quasi-Administrative) Decisions

#### 5.02.05 Partition, Preliminary Approval

**A. Purpose: The purpose of this Type II review is to ensure that partitions - the dividing of a single lot into 3 or less lots within one calendar year - comply with this Ordinance, with the Land Use and Development Standards and Guidelines (Sections 2 and 3), and applicable Oregon State Statutes.**

**B. Criteria: Preliminary approval of a partition requires compliance with the following:**

- 1. The preliminary partition complies with all applicable provisions of this ordinance.**
- 2. Approval does not impede the future best use of the remainder of the property under the same ownership or adversely affect the safe and efficient development of any adjoining land.**
- 3. The proposed partition is served with City streets, water, sewer and storm drainage facilities with adequate capacity.**
- 4. That the partition takes into account topography, vegetation and other natural features of the site.**
- 5. That adequate measures have been planned to alleviate identified hazards and limitations to development:**

- a. For regulatory wetlands, these shall be the measures required by the Division of State Lands.
- b. For unstable areas, demonstration that streets and building sites are on geologically stable soil considering the stress and loads to which the soil may be subjected.

As examined elsewhere throughout this staff report, the proposal either meets all relevant provisions or can meet provisions through approval of Variance requests. The existing development on site is contained within Parcel 1, while Parcel 2 is undeveloped. The proposal is a partition in order to prepare the land for future industrial redevelopment. Future development of the parcels will include extension of public utility facilities. The property is generally quite flat until it slopes down near Mill Creek along the eastern edge. This area is within the 100-year floodplain and appears to contain wetlands. A formal wetland delineation report would be submitted as part of a future application for development. Regarding any potential unstable areas, a geotechnical report would be submitted and reviewed alongside a building permit for any future development on site.

✓ The provisions are met with approval of the Variance requests.

#### 5.03.12 Variance

**A. Purpose: The purpose of this Type III Variance is to allow use of a property in a way that would otherwise be prohibited by this Ordinance. Uses not allowed in a particular zone are not subject to the variance process. Standards set by statute relating to siting of manufactured homes on individual lots; siding and roof of manufactured homes; and manufactured home and dwelling park improvements are non-variable.**

Applicant's response:

The purpose of this Variance Request is to seek approval to defer compliance with certain items of the WDO until a project application for a new industrial park, currently in design, can be submitted for review and approval of entitlements and permitting.

In the interim, we request the Minor Land Partition be allowed to proceed so the Lot 4900 conveyance can be completed and then incorporated into the larger industrial park project comprised of Lot 4900, Lot 5000 and Lot 100. COBALT already owns Lots 5000 & 100.

The entire three-parcel, three-facility industrial park would comply with the WDO and the Light Industrial (IL) zoning and site development standards for the entire site.

As stated by the applicant and noted throughout this staff report, the applicant submitted a Variance application with a request to defer multiple requirements to future redevelopment of the site. These requirements include:

- Street frontage improvements (3.01.03-05);
- Mill Creek greenway improvements (3.01.08);

- Streetside public utility easement (3.02.01B), Mill Creek trail public access easement (3.02.01D), and creek maintenance easement (3.02.02A);
- Street lighting (3.02.03);
- Underground utilities (3.02.04C); and
- Street trees (3.06.03A).

**B. Criteria:** A variance may be granted to allow a deviation from development standard of this ordinance where the following criteria are met:

1. Strict adherence to the standards of this ordinance is not possible or imposes an excessive burden on the property owner, and
2. Variance to the standards will not unreasonably impact existing or potential uses or development on the subject property or adjacent properties.

**C. Factors to Consider:** A determination of whether the criteria are satisfied involves balancing competing and conflicting interests. The factors that are listed below are not criteria and are not intended to be an exclusive list and are used as a guide in determining whether the criteria are met.

1. The variance is necessary to prevent unnecessary hardship relating to the land or structure, which would cause the property to be unbuildable by application of this Ordinance. Factors to consider in determining whether hardship exists, include:
  - a. Physical circumstances over which the applicant has no control related to the piece of property involved that distinguish it from other land in the zone, including but not limited to, lot size, shape, and topography.
  - b. Whether reasonable use similar to other properties can be made of the property without the variance.
  - c. Whether the hardship was created by the person requesting the variance.
2. Development consistent with the request will not be materially injurious to adjacent properties. Factors to be considered in determining whether development consistent with the variance materially injurious include, but are not limited to:
  - a. Physical impacts such development will have because of the variance, such as visual, noise, traffic and drainage, erosion and landslide hazards.
  - b. Incremental impacts occurring as a result of the proposed variance.
3. Existing physical and natural systems, such as but not limited to traffic, drainage, dramatic land forms or parks will not be adversely affected because of the variance.
4. Whether the variance is the minimum deviation necessary to make reasonable economic use of the property;
5. Whether the variance conflicts with the Woodburn Comprehensive Plan.
6. If and where a variance includes a request to vary from minimum public improvements per Section 3.01, from Section 5.02.04E about Street Adjustment factors, those factors are applicable as Variance additional factors.

Applicant's response:

We propose that requiring ROW & Street Frontage compliance for the Minor Land Partition instead of deferring said compliance to the forthcoming TYPE III DESIGN REVIEW application imposes an excessive burden on both the existing and future property owners because it needlessly obstructs the conveyance necessary for the cohesiveness of the larger industrial park project.

We propose that deferral of compliance does not impact existing or potential uses or development on the subject or adjacent properties, and, in fact, facilitates those uses and development on the subject and adjacent properties by allowing the larger industrial park project to expeditiously proceed in whole.

Staff generally concurs with the applicant's response. The applicant has long-term plans to redevelop the site with industrial buildings and this partition is a necessary first step in moving those plans forward. There is no development proposed alongside this partition, and the variance requests are simply to defer the standard requirements to future development of the site, not to remove the requirements.

Approval of the variance requests would not negatively impact the development potential of the subject property or adjacent properties. There are no impacts to physical and natural systems. Approval of the requests would not conflict with the Comprehensive Plan; it would actually help further the economic development goals for industrial areas.

Staff considers the variance review criteria to be met and recommends approval of the requests.

✓ The provisions are met.



