



## TENTATIVE PARTITION STAFF REPORT

**Application File Name (Number):**

Cox (20-060)

**Applicant's Request:**

Approval of a tentative Land Partition of one existing lot into two parcels in the General Commercial Zone ("C-2").

**Owner:**

Larry & Tommi Cox

**Applicant:**

Larry & Tommi Cox

**Lead City Staff:**

Dana Nichols, Planning Manager (541) 347-7922 ext. 231

**Hearing Date:**

Thursday, April 29<sup>th</sup>, 2021

**Subject Property/Location/Size:**

The property is located on the west side of Highway 101 and currently contains a tire/lube shop on the eastern portion of the lot, abutting the highway, as well as a car wash southwest of the structure. The property is tax lot 100 of map 28S 15W 36DD. The applicant is proposing to partition an existing 2.26 acres lot into two parcels: Parcel 1 will be 1.66 acres and Parcel 2 will be 0.64 acres.

**Current Zone Designation:**

General Commercial (C-2)

**Relevant Dates:**

The applicant submitted a pre-application for a partition in 2019 that was reviewed by City staff and sent to ODOT for development review in December 2019. The applicant then submitted a Planning Permit Application for a Land Partition on July 9<sup>th</sup>, 2020 and the application was deemed incomplete on September 10<sup>th</sup>, 2021. Delays in reviewing the application occurred due to COVID-19 but were allowed as part of the City's Emergency Declaration. The applicant signed and returned the incomplete land use application form on December 9<sup>th</sup>, 2021 and finished submitting supplementary materials on March 25<sup>th</sup>, 2021.

**Purpose of Staff Report:**

Staff reports provide the reviewing body and community members with information regarding current land use requests and staff analysis of the application. The staff report provides only preliminary



information and recommendations. The reviewing body will consider public testimony and other materials submitted to the City in writing, when making decisions on the application.

**Ordinances Referenced**

(See also [http://www.cityofbandon.org/sites/default/files/fileattachments/general/page/280/title\\_17\\_-\\_zoning-2014.pdf](http://www.cityofbandon.org/sites/default/files/fileattachments/general/page/280/title_17_-_zoning-2014.pdf))

**16.32 Land Partitions**

**17.44 General Commercial (C-2) Zone**

**Site Description & Potential Impact**

The parent parcel is tax lot 100 of map 28S-15W-36DD. This lot is 2.26 acres (100,700 square feet) in size and abuts Highway 101 to the east. The lot contains two existing structures, a carwash and an tire/lube shop. A portion of the land surrounding the tire/lube shop is paved with cement and the other surrounding area is gravel. There is an existing 11-foot utility and drainage easement along the east property line (per inst. 2005-14371). The two existing structures currently share utilities, including a separator that is not show on the applicant’s site plan.

TENTATIVE PARTITION - LOCATED IN THE SE1/4 SE1/4  
SEC. 36, T.28S., R.15W., W.M., CITY OF BANDON, COOS COUNTY, OREGON  
(T.L. 100 - 28S 15W 36DD - ACCT.# 1053916 - 2.26 AC.)

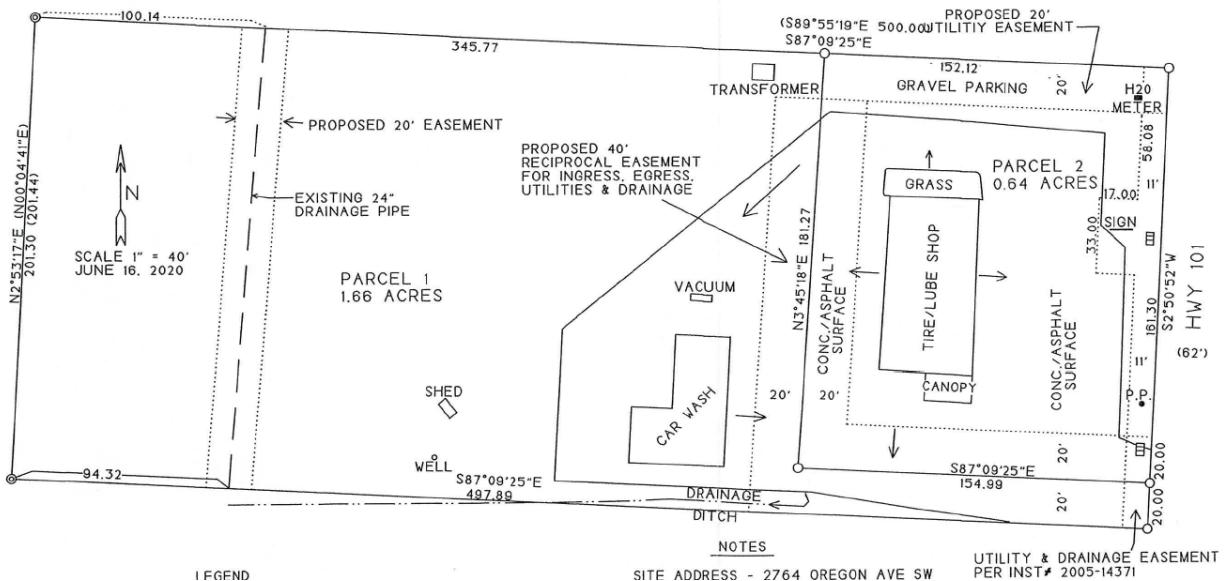


Figure 1 Tentative Partition Plat



Figure 2 Tax Lot Map and Designation



Figure 3 Aerial View of Subject Property



**Procedural – Required Burden of Proof**

**Title 16 – Chapter 16.32 – Land Partitions**

**16.32.020 Scope**

*The land partition is used in situations where lot lines need to be changed or added. If a street is created, the action is considered to be a subdivision and subject to the requirements of Chapter 16.12. The proposed partition adds a lot line and does not create a street, therefore this criterion has been met.*

**16.32.060 Application requirements**

*All applicants shall submit to the city information and materials consistent with the requirements of this section. The applicant must submit all additional information one hundred and eighty (180) days from the date of initial submission. The application shall be deemed complete for purposes of this subsection upon receipt by the city of the missing information.*

- A. *Completed Application Form*
- B. *Site Plan*
- C. *Application Fee*
- D. *Legal Description*
- E. *Vicinity Map*
- F. *Deed Restrictions*

Staff finds that these requirements have been met and the application was deemed complete on March 25<sup>th</sup>, 2021.

**16.32.080 Quasi-judicial/expedited action**

*Processing a commercial land partition proposal is a quasi-judicial action requiring discretionary decision-making. Commercial land partition approval is a land use decision and subject to the procedures*



*established by ORS 197.763. Following review and recommendation by the development review board, the planning commission has the authority to base its decision on the evidence and interpretation of comprehensive plan and zoning ordinance criteria and standards.*

This application is being heard through the city's quasi-judicial land use process and was properly noticed, per the requirements of BMC 17.120.090.

#### **16.32.100 Conversion plan requirement**

*At the time an application is made to divide a parcel into any number of lots, a conversion plan must also be submitted, if the parcel will have additional division potential after the current proposal is completed. The conversion plan must show how the parcel can be ultimately divided into the maximum practical number of lots allowed by the zoning.*

The applicant's proposed partition cannot be further subdivided without creating an alternative access point. For this reason, Staff finds this criterion is met.

#### **16.32.160 Mandatory street access**

*After partition, all resulting lots must directly access an open street with a minimum frontage dimension of forty (40) feet. Parcel 1 has 20 feet of street frontage and Parcel 2 has 181.30 feet of street frontage. Staff finds this criterion has not been met.*

#### **16.32.180 Flag lot standards**

- A. A deep lot may be split into a front and rear lot, creating a maximum of one flag lot, if the original lot cannot be otherwise divided separately or in conjunction with adjoining lots.*
- B. Flag lots which would take access on an identified future or existing collector street shall not be allowed.*
- C. Flag lots which would take access on a local street shall only be allowed through the granting of a variance by the planning commission in conformance with Chapter 17.112.*

Staff finds that these criteria have not been met. The lot can be split without requiring a flag lot, and the subject property abuts an arterial.

#### **16.32.200 Approval criteria.**

*The application must meet all of the following objective criteria:*

- A. The submission contains all of the information asked for in the application.*
- B. The application does not violate any city or state regulations, including but not limited to lot configuration requirements, unimpeded drainage, accessibility by public utilities and vehicular/foot traffic and zoning requirements.*
- C. The project is compatible and suitable within the context of its surroundings. This shall include, but not be limited to, consideration of human scale, street scape, landscaping, and any view shed, noise and lighting impacts.*
- D. The development will be compatible with the use or character of any adjacent resource land.*



- E. Development conforms to or minimally alters existing topographic features and seeks to preserve natural features. Development in areas adjacent to streams and those characterized by steep slopes has been limited to the extent necessary to minimize risk to acceptable levels as determined by the Bandon Comprehensive Plan, or where objective levels are not available, as determined by the planning commission.*
- F. Natural wildlife habitats and wetlands have been identified, preserved and protected.*
- G. Adjoining land under the same or separate ownership can either be developed or be provided access that will allow its development in accordance with the Bandon Comprehensive Plan and this code, and with the Coos County Comprehensive Plan and code, where applicable.*
- H. The drawing is technically correct and the final partition plat conforms with the approved site plan.*

The applicant submitted an application for a Land Partition, separating the two existing structures on the lot onto separate parcels. The applicant submitted a site plan, as well as a deed and information about the existing easements. No narrative or findings were submitted for this application, so Staff has interpreted the content of the site plan for the tentative partition to prepare this Staff Report. The applicant has proposed to create a flag lot, which will use a proposed 40' reciprocal access easement for ingress, egress, utilities, and drainage (20' on each property) for access from Highway 101. The City's flag lot standards preclude this property from dividing in the manner presented.

The applicant has also shown a proposed drainage system that will output on both the properties to the north and south. No information has been provided about the proposed drainage easement that will incorporate an existing 24" drainage pipe. At a minimum, a drainage plan should be required to better understand how each of these properties will be responsible for managing their drainage after the partition.

Finally, the applicant has not clearly shown how they will separate the utilities for the two structures, nor have they shown a separator that both the carwash and tire/lube shop are tied into. Staff recommends that an additional sewer and water meter be installed to serve either the carwash or the tire/lube shop, and that a plan be presented to explain how the separator will either be shared by the two structures or decommissioned.

## **Title 17 – Chapter 17.44 – General Commercial (C-2) Zone**

### **17.44.010 Purpose**

*The purpose of the C-2 zone is to provide sufficient and appropriate space for the general shopping, business and commercial needs of the city and surrounding areas, and to encourage the development of such space in a pleasant and desirable manner. These areas are intended to encourage the continuing quality of business retail services and to protect these uses from uses which would break up such continuity.*



**17.44.020 Permitted uses**

In the C-2 zone, *automobile repair and sales and service*, is permitted outright provided that the use promotes the purpose of the zone and all other requirements of this title are met.

**17.44.060 Lot size**

In the C-2 zone, *lot size shall have no requirements*, therefore Staff finds this criterion has been met.

**17.44.070 Yards**

Except as provided in Section 17.104.060, in the C-2 zone minimum yards shall be as follows:

- A. *In the event of a common property line, a side yard abutting a residential zone shall be at least fifteen (15) feet plus one foot for each two feet by which the height of the building exceeds twenty-eight (28) feet.*
- B. *The rear yard shall meet the same requirements as a side yard.*

The property does not abut a residential zone, so Staff finds these criteria are not applicable.

**17.44.090 Lot Coverage**

*In the C-2 zone, buildings shall not occupy more than seventy-five (75) percent of the developed lot or lots.* While this information was not provided on the site plan, it does not appear that either building will occupy more than seventy-five percent of the lot.

**Discussion**

This application has not met the minimum requirements of the city's land partition code. When initially deemed incomplete, staff indicated that the applicant shall establish separate water and sewer service for each lot and indicate where those utilities will be located. A new site plan was submitted that showed a 20-foot utility easement on the north side of the property, but did not indicate how and where new utility service will be located. Further, staff is still concerned about the known existing separator that has not been shown on plans and which is connected to both existing structures.

Initially, the applicant proposed that parcel 1 would retain 40 feet of physically accessible street frontage. In their resubmittal after being deemed incomplete, the applicant changed that access to only 20 feet, which does not meet the requirements of the city code. It is possible that the applicant may reapply with a different configuration, however at that point, staff would recommend including a circulation plan to show how each structure will continue to operate without use of the other.

Finally, the applicant has not clearly shown how drainage on the two properties will be dealt with. Oregon drainage law allows adjoining landowners to have a normal course of natural drainage maintained, meaning that the lower owner must accept water that naturally comes to their land from above, but is entitled to not have that normal drainage changed or substantially increased. The applicant



has proposed an easement along the existing drainage pipe in the rear of parcel 1 that drains onto a surrounding property, which we assume would be in favor of Parcel 2. There is also an existing storm drain in the 11' easement on the east side of the property. The plan shows that drainage currently runs off the property in a drainage ditch that veers onto the property to the south before entering the pipe. If the Planning Commission chooses to approve this application, staff recommends that a condition be placed on the application to contain all drainage on the subject property and supply information about where each parcel will drain to (the drainage pipe or the storm drain system).

### **Recommendations**

Staff finds that the application has not met the minimum requirements of the code, and therefore recommends denial. The application proposes a flag lot for access, which is not permitted by code.