



City of Union

Agenda

Council Special Meeting Meeting
Thursday, November 21, 2024 @ 7:30 PM
Leonard Almquist Council Chambers, 342 S. Main St,
Union, OR 97883

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1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, ROLL CALL:	
Mayor:	Hawkins
Councilors:	Cox, Black, Blackburn, Middleton and Boyer-Davis
2. CONSENT AGENDA:	
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3. OLD BUSINESS:	
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MINUTES

Council Special Meeting Meeting

7:00 PM - Thursday, October 24, 2024

Leonard Almquist Council Chambers, 342 S. Main St, Union, OR 97883

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE, ROLL CALL:

Mayor: Hawkins
Councilors: Cox, Black, Blackburn, Middleton and Boyer-Davis

The City Council of the City of Union was called to order on October 24th, 2024 at 7:32 PM, in the Leonard Almquist Council Chambers, 342 S. Main St, Union, OR 97883, with the following members present:

PRESENT: Susan Hawkins, Tim Cox, Dick Middleton, John Black and Anita Boyer-Davis

ABSENT WITH CONSENT: Jay Blackburn

ABSENT WITHOUT CONSENT:

2. PUBLIC HEARING - REMAND OF APPEAL - MINOR PARTITION PLAT #2023-02

- a) Public testimony, legal presentations, and City Council deliberations and decision on the remand by the Oregon Land Use Board of Appeals of Minor Partition Plat 2023-02, filed by Johnny and Deborah Kennon.

Mayor Hawkins read information about the appeal hearing. She also explained the criteria used to decide this case, the raise it or waive it rule, and the right for the record to remain open for at least 7 days.

Mayor Hawkins explained how the order of the meeting would be run.

Hearing opened at 7:38PM

Applicant Representative Rahn Hostetter discussed the the application for minor partition #2023-02 that was approved with conditions. He discussed that it is not his client's burden to present what the Land Use Board of Appeals said that the City of Union was deficient in imposing condition number four. He said

council did not do it right and is why it is back before council. He and his client said that the condition four to chip seal the road is not constitutional. Mr. Hostetter offered into evidence the written discourse between himself, the counsel for the Kennons, and the counsel for the city Paige Sully, in the previous three days in which there were offers made to accept \$16,500 from his client, the Kennons as an exaction in order for council to proceed and impose that condition four with a ceiling of \$16,500. The offer was rejected but Mr. Hostetter wanted to confirm that the written discourse is part of the record. Affirmation was given that it was part of the record. Mr. Hostetter said it establishes that the \$16,500 so far has no basis in fact or law and it seems to have come out of the air.

Doug Osborne, member of the public and citizen of the City of Union discussed that from what he could gather, there was a part of the ordinance for subdivisions that there was a way for small subdivisions to be divided off and not come under the large subdivision ordinance. He spoke how he felt that council didn't like that part of the ordinance and that the only way council's actions become justified is if council changes that part of the ordinance to not allow small partitions. He felt that the council is trying to be bullies and require this chip seal to be put into place.

Paul Phillips with the City of Union discussed the minor partition and that it is the 4th minor partition that essentially creates a five block subdivision. He discussed that the condition four is to require the minimum requirements of an oil mat road. Not an asphalt road with curved gutters, storm drains and street lighting but the bare minimum of a 3 lift chip seal which equals out to about a 2 inch oil mat surface. He discussed that the figure of \$16,500 came from the Union County estimate of costs for chip sealing next spring with also accounting for potential inflation per their recommendation and includes the needed prep work for the road surface. Some of the benefits to chip seal over a gravel road include the dust that a gravel road will produce. In addition, a 3 lift chip seal will hold up for about five to seven years before needing another lift. With a gravel road, it would need to be graded and possibly rolled to maintain it. The city does offer a dust abatement program where the city would reimburse one third of the cost of dust abatement and the private landowners would pay the other two thirds. He discussed advantages to a chip sealed road would be the maintenance cost to the city for the roughly two block area. The road would need to be graded at least annually and as many as three times per year. Other advantages are that the chip seal would not tend to pothole like a gravel road will when someone is backing out of a driveway and then turning and moving forward and stopping and starting on a turn. He also discussed the though he is not a real estate expert, he would imagine the property value may increase for the lots that are on a chip seal road. Mayor Hawkins asked more about potholes and Mr. Phillips said that potholes develop on gravel roads with anything that it turning and so that would be a cost to the city to grade that road whereas with a chip seal the city would not incur that cost. Councilor Middleton asked about fire trucks going down that road and whether it would be easier for them to turn down on that road if it was a chip seal road. Mr. Phillips said that a

fire truck turning sharp on that road would eat up the road if it is a gravel road or super thin which is why the requirement is a minimum of three lifts or two inches. Councilor Black asked whether there were any advantages during the winter to having chip seal versus gravel for things such as plowing. Mr. Phillips responded that as long as there are no manholes or other things sticking up you can plow it. It is easier on a chip sealed road versus gravel to plow it but you can still plow a gravel road. Councilor Middleton asked if the road had been rolled to which the answer was yes, that the gravel road was built to the city's standards for a gravel road and that it had been compacted and tested. Councilor Middleton asked whether the road would need to be rolled again before it would be chip sealed to which the answer from Mr. Phillips was that yes the road would need to be prepped before it would be chip sealed by the county.

Mr. Kyle Carpenter with the City of Lagrande gave testimony as an engineer for 20 years in the state of Oregon. He mentioned that he could discuss for a while about the structural and widely accepted engineering benefits of a chip seal road versus a gravel road but he did not think that there was any dispute on that. Therefore, he focused his testimony on his role as the Public Works Director for the City of Lagrande. He discussed how when looking at these developments, there also needs to be a consideration for the cost to the city on not just the road that is in front of the development, but the cost to the transportation system as a whole by increasing traffic. Generally when offering a development of three or more lots it is a subdivision plat. The conditions for approval are then greatly exceeded as they would include things like curbed sidewalks and drainage. The conditions of approval are generally balanced again what does the development cost to the city. When looking at those additional costs, there is a need to look at what costs those additional trips put on the transportation system. The idea would be to get a road from the development that would equate roughly to what those costs will be in the future. When looking at what those costs of those additional homes will put on the transportation system, those costs are going forever. Those costs will not end. Therefore, it is not an equitable point where you can ask one person or one development to meet that so generally what is seen is that a city will ask for the portion of a city's transportation system that is coming to the city to put in a condition where the city will not have an undue burden to bring it to a standard that the city has adopted. He discussed that it is common practice in land development to require those things on the front end when looking at a developer who is going to be developing for mostly the sole purpose of making money, the idea would not be to put the burden of that earned money on the city and its citizens to make up the difference. Councilor Cox asked Mr. Carpenter whether he was saying that the lowest standard of chip seal besides just gravel, when adding lots whether he would require that. Mr. Carpenter responded that with the design standards that he has, if there is a development with two or more houses that are not even going to be dedicating the right of way to the city, they are required to pave the driveway for two houses or more which is an asphalt road which is generally in excess of three times the cost of a chip seal. The City of Lagrande designates chip seal as the lowest level of

road surfacing, due to the lifespan of seven years whereas asphalt normally has a lifespan of twenty years if adequately maintained. Chip seal has a purpose to seal off the gravel for the shove that will come from large heavy trucks, but also in looking at a drainage perspective, that oil seals off the road. Drainage and puddling is a major driver in subbase failures and pothole development. It also gives longevity and lessens the amount of maintenance that is going to be required by city crews.

City Administrator Celeste Tate testified that with this minor partition, there will be an addition of 40% more lots which means 40% more traffic that is solely because of this proposed partition plat. The area that has been asked to be chip sealed is approximately two blocks. She discussed that her understanding in speaking with folks is that potholes are development when vehicles are trying to turn and the wheels are trying to grip the road while turned which would mean on a cul-de-sac that is one big turn, it would be important to try to prevent huge potholes. There was an email referenced from Stephanie Inslee as part of the record that spoke to the fragility of the road. She was concerned about damaging the road while they were developing their property that is within the cul-de-sac and that there was someone who was causing damage to the road. If condition four is upheld, it would mitigate the negative effects of the increase in traffic. It would also prevent dust and the longevity of the roadway on a chip seal is five to seven years and has lower maintenance. It would also be a benefit to the residents there by not having the dust or potholes. Though the city has a dust abatement program, it would only be for one third of the cost, the residents would have to cover two thirds of the cost. The \$16,500 is the approximate cost for two blocks of chip seal, which would be served by 4 more lots to be sold. The one lot that was sold was originally listed for \$89,000. With that amount multiplied by four, that is a total of \$356,000 of which \$16,500 would be approximately 4.5% of the revenue from those four lots. Chip sealing the road also would make those lots more attractive to buyers if you have two lots, all other things being equal, the lot that has a chip sealed road in front is more likely to sell faster or first, before a lot with a gravel road. The amount of \$16,500 is what would be available to the applicant to chip seal the road. Mayor Hawkins asked Ms. Tate about the cost of dust abatement and Ms. Tate also mentioned that the city only has a set amount each year for dust abatement and that it is first come first served and when the money is gone, there is no more money available that year for dust abatement and that the money is completely used each year. Councilor Middleton asked about the cost of \$16,500 and clarification on that. Ms. Tate discussed that the number was based upon the current cost of chip seal with adding an inflationary factor of 10% per the recommendation from the county. It could be more than that as there were some years that things were increasing by 30% such as insurance but that the city can only base it upon what the current costs are which was currently \$7,500 per block and so adding 10% and multiplying it by two for two blocks is where the \$16,500 comes from. Ms. Tate read the written testimony from a real estate agent Anna Goodman from Eaglecap realty who stated "I do think that the chip sealing increases the value of the properties on the cul-de-sac. It's hard to say how much it would increase it. I think it would mean less

upkeep on the road over time. And it makes it nicer for the people who would be suing the road regularly. If you had two lots that were the same and one had a gravel road and one had the chip sealed road I think the one with the chip sealed road would sell faster and for more.

Mr. Hostetter provided a rebuttal to some some evidence. He said that Kyle Carpenters testimony is irrelevant because the City of LaGrande has nothing to do with this. He also said that yes it is a common practice when a city gets a subdivision in that it triggers things such as curbs and storm and sewer drains and things that a partition does not do. He discussed that this is not a subdivision. The city made a mistake in not understanding that this was already a street and dedicated to the city and accepted into the road system years ago with an earlier application. The city cannot now say that the road needs to be dedicated and completed as that was already done. The city cannot say that there is already a street and that the Kennons have to improve the city street. Mr. Hostetter said it is an exaction and not constitutional. he mentioned that the staff report gave a good summary of what the council must find and what the evidence has to show in order for the council to make a constitutional exaction. He said that the \$16,500 needs more clarification. He said that there is no nexus in the evidence on whatever negative impacts this proposed development would bring from the three additional lots. He discussed that there is no figures or estimates on the cost to the city of whatever negative impacts there will be.

Deborah Kennon discussed the letter that the Inslee's presented was to protect themselves as they wanted it known that the damage to the road was not caused by them. She also discussed the offer from the city of \$16,500 and said who would accept that without a bid and that there was no information. Paige Sully and Mayor Hawkins said that this is beyond the scope of the hearing and that the scope of the hearing is about the chip seal. Ms. Kennon clarified that on the amount of \$16,500, there is no information on the square footage, how many blocks.

Mr. Hostetter urged council to not make the same mistake and impose that exaction based upon the evidence presented or they would be going back to the Land Use Board of Appeals

Mayor Hawkins asked Mr. Hostetter asked why he said everything is over and done because why would the Land Use Board of Appeals come back to council and say that council needs to give them more evidence to support condition number four if everything was over and done. Mr. Hostetter said LUBA did not say to come back to them with anything. LUBA said that the council had no right to impose an exaction with this insufficient evidence, and with these findings of fact and said if council wants to take another shot at it, take a shot at it but they are not expecting anyone to come back to them with anything. LUBA said that council can give it another try or just issue the permit.

Mayor Hawkins said if there was no further testimony, she would close the public hearing. The room remained silent. The hearing and record were closed at 8:38PM.

The council deliberated on the criteria in the evidence.

Councilor Middleton made a motion to impose condition four being the requirement Kennon Court and the roadways serving it to be improved to the city of Union public works standards of a 3 lift chip seal with two 3/4 lifts and one 1/2 inch lift. Motion seconded by Councilor Boyer-Davis. Motion passed unanimously.

3. ADJOURNMENT:

This meeting was adjourned at 9:18PM

Mayor

City Administrator

**BEFORE THE CITY COUNCIL
IN AND FOR THE CITY OF UNION
IN AND OF THE STATE OF OREGON**

**IN THE MATTER OF REMAND OF) FINDINGS OF FACT,
APPEAL OF APPLICATION FOR) CONCLUSIONS OF
MINOR PARTITION PLAT 23-02) LAW, AND DECISION**

Whereas, Johnny Kennon and Deborah Kennon (hereinafter “Applicant Kennon”) owned real property in City of Union City limits identified as 04S40E18CB, Tax Lot 806; and

Whereas, on August 17, 2023 Appellant applied for a Minor Partition Plat 2023-02 requesting approval of a minor partition plat creating three (3) parcels from the parent parcel owned by Applicant Kennon; and

Whereas, the Planning Commission for the City of Union granted the application for Minor Partition 2023-02, subject to conditions of approval, and the Applicant Kennon timely filed an appeal to the City Council; and

Whereas, the City Council of the City of Union, after timely notice, entertained the appeal de novo, held a public hearing to receive additional evidence and legal authority from interested parties, and affirmed the decision of the Planning Commission; and

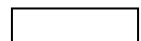
Whereas, the Applicant timely appealed to the Oregon Land Use Board of Appeals, which board reviewed the matter and remanded it for further proceedings consistent with its Ruling; and

Whereas the City Council held a de novo hearing, taking testimony and legal argument on the issues on remand, held on October 24, 2024, and deliberated in open session on the matter and came to a resolution on the issues on remand;

**NOW THEREFORE THE COUNCIL MAKES THE FOLLOWING FINDINGS
OF FACT AND CONCLUSIONS OF LAW:**

The Board finds that the following facts have been proven by substantial evidence:

1. Applicant Kennon filed an application for a minor partition plat in 2016 (MNP 2016-0003T), which was approved and created three parcels from real property owned by Applicant within the city of Union 04S40E18CB, Tax Lot 806).
2. In 2020, Applicant Kennon filed a second application for minor partition plat (MNP



2020-0009) to create additional parcels from those created as a result of MNP 2016-0003T. This application was approved and three new parcels were created.

3. In 2021, Applicant Kennon filed a third application for minor partition plat (MNP 2021-0024) intending to create three additional parcels from one of those established in MNP 2020-0009.

4. The application for MNP 2021-0024 was approved and required construction of a roadway and cul-de-sac by Applicant to provide access to the newly created parcels as described in Exhibit A.

5. The roadway required in MNP 2021-0024 was constructed to gravel road standards and accepted by the City of Union by dedication deed dated September 16, 2020.

5. Applicant Kennon filed a subsequent application for minor partition plat on August 17, 2023 (MNP 2023-02) seeking to create two additional parcels from one of the parcels created as a result of 2021-0024.

6. Approval of proposed MNP 23-02 would increase the number of parcels being served solely by the dedicated roadway constructed in 2021 for vehicular access from three parcels to five parcels, a 40% increase in potential vehicular traffic use on the road as well as the increased traffic to the transportation system as a whole.

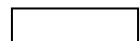
7. Minor Partition Plat 23-02 was approved with conditions of approval, including Condition Four which required improvement of the previously dedicated roadway and cul-de-sac constructed by Applicant in 2021 which would serve the newly created parcels to a chip sealed surface.

8. Gravel road surfaces in the City of Union are less resilient to damage from vehicular traffic than those roads constructed to a higher standard such as chip sealed, including increased risk of potholes, wash boarding, and other damage requiring grading or the addition of additional gravel material – the cost of which maintenance and damage is borne by the City of Union.

9. The risk of pothole creation is increased when vehicles are backing out of driveways, turning, stopping and starting such as in a cul-de-sac.

10. Gravel roads within the City of Union typically require grading at least annually and as many as 3 times per year in order to maintain adequate suitability for vehicular traffic.

11. The fragility of the graveled road is demonstrated by the information provided by a property owner whose property is accessed by the roadway regarding misuse by off-road vehicles resulting in visible impacts to the gravel road surface.



12. Gravel road surfaces in the City of Union cause the transmission of dust, which results in the need for application of dust abatement products by the City of Union.

13. Chip-Sealed roads seal off the gravel, increase resiliency to vehicular traffic and increase drainage, preventing puddling and in turn prevent subbase failures and pothole development.

14. Chip-sealed roads are more resilient to damage from vehicular usage and require less maintenance and repair by the City of Union. They also do not require dust abatement processes as no dust of any significance results from use of a chip sealed roadway.

15. In general roads that are constructed to a chip seal standard will withstand damage resulting in potholes and other such damage from customary and regular use for at least five years and up to seven years after construction.

16. Requiring the improvement of the dedicated roadway to a chip sealed standard from that of a gravel road will mitigate the damaging impacts that will result from the increased traffic usage created by 40% more real property access users.

17. City of Union Code section 152.10(8) provides that while a graveled roadway is the minimum standard to which the roadway serving the proposed new parcels shall be constructed, the plain language of that code section allows the City to require construction to a higher standard as necessary.

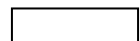
18. Access to services and materials for chip sealing the required roadway sections by use of the City of Union's agreement with Union County can be had by Applicant Kennon for the cost of \$16,500.00, which will include the City's costs in preparing the roadway surface.

19. Real property parcels that are served by roadways constructed to a higher standard than gravel, such as chip seal or other hard surfaces, tend to be more attractive to prospective buyers and may be sold for more than properties served by a gravel road only.

20. Real property parcels served by chip sealed roadways will not incur the costs associated with the placement of dust abatement products that may be required by tax lots served by gravel roadways.

21. The one-time cost of chip sealing the roadway by Applicant Kennon is proportional to the City of Union's interest in avoiding the long-term requirements to grade, fill, repair, and apply dust abatement products that will result from a gravel road.

21 There is short-term benefit to Applicant Kennon that will result from chip sealing the roadway in terms of increasing the salability and potential price of the lots served by the improved roadway, and long-term benefit to the future buyers of the lots in terms of a more



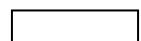
resilient roadway requiring less maintenance and repair, and no need for dust abatement processes of which the future property owners would bear at least two-thirds and possibly the entirety of the cost of the same.

The Board makes the following conclusions of law:

1. Notice of the hearing on remand of appeal was timely provided to the parties entitled to notice.
2. It is within the discretion of the City of Union to condition approval of land use permits and application on requirements that have a rational nexus to the proposed development and are reasonably related to the mitigation or remediation of negative impacts that may result from the approval, as authorized by Oregon State statutes and the City of Union's Planning Code.
3. Conditions of approval must be related to the nature and type of impacts resulting from the requested land use action and also must be reasonably likely to mitigate those impacts, and improving the road surface of the dedicated roadway as set out in Condition Four will mitigate the negative impacts that will reasonably result from the increased vehicular traffic created by approval of MNP 23-02.
4. Conditions of approval can require improvement of existing municipal infrastructure so long as the improvements are related and proportional to the impacts sought to be mitigated, and are likely to succeed in doing so.
5. The burden to Applicant Kennon by requiring chip sealing of the roadway is roughly proportional to the long-term benefit to the City of Union and its citizens due to the enhanced resiliency of the road advancing a legitimate public purpose, with the need for less maintenance, upkeep, dust abatement and resulting cost for the same.
6. There is benefit to the Applicant resulting from imposition of Condition Four in terms of the reasonable likelihood that any lots served by the relevant roadway not already sold to third parties will have increased salability, sell faster, and for an increased purchase price than properties served by a gravel roadway.

Appellant's Appeal is denied and the decision of the Planning Commission to impose Condition Four as a condition of approval of Minor Partition Plat 2023-02 is affirmed.

Notice of Appeal Rights: Final action of the City Council for the City of Union may be appealed to the Oregon Land Use Board of Appeals (LUBA), as provided by ORS Chapter 197. Notice of intent to appeal shall be filed within 21 days of the date of final action by the City of Union City Council, or as specified in ORS Chapter 197.805 through 197.860, and OAR 660-010-0015(1).



DONE AND DATED in regular session on the 21 day of November 2024.

Approved:

Attest:

