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**FINDINGS AND DECISION OF THE PLANNING DIRECTOR:**

**PARTITION, TENTATIVE PLAN APPROVAL FOR AULD/JOHNSTON (PT 06-43)**

**Application Summary:**

Tentative partition plan approval granted to allow division of the subject property into two residential parcels.

**Applicant's Representative:**

Robert Stevens, Metro Planning, (541) 302-9830

**Lead City Staff:**

Shawna Adams, Associate Planner, Eugene Planning Division, (541) 682-2653

**Subject Property/Zoning/Location:**

Tax Lot 6900 of Assessor's Map 17-03-31-32. Zoned R-2, Medium-Density Residential. Located at 933 West 13th Avenue.

**Relevant Dates:**

Application submitted on June 7, 2006; deemed complete on July 26, 2006; supplemental information submitted on August 2, and August 9, 2006; decision granting approval issued on September 8, 2006.

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**Background/Present Request:**

As noted above, the subject application was submitted on June 7, 2006 and was deemed complete by the City on July 26, 2006. The application was referred to the affected neighborhood group (Jefferson Westside Neighbors), various affected City departments, and other public service agencies for review and comment on July 27, 2006. Public notice of the tentative partition application was mailed on July 28, 2006, in accordance with procedural requirements of the Eugene Code (EC). Referral comments on the application were also requested from various affected service providers and City departments. Referral comments and written testimony received by the Planning Division on this application are included in the application file for reference, and considered in the context of applicable tentative partition approval criteria and standards in the following evaluation. Staff notes that testimony was received from numerous individuals in response to the public notice. Written testimony received from the applicant and other interested parties after the close of the public comment period on August 11, 2006 was not considered as part of staff's evaluation of the proposed partition, but is included in the application file for reference.

The present request is for approval of a tentative partition plan, subject to the Type II land use application process, to divide the subject property into two parcels. Relevant application requirements and approval criteria are addressed at EC 9.8200-9.8215. It is further noted that the applicant requests

review of the application under the general approval criteria contained in EC 9.8215, rather than the needed housing criteria as addressed in EC 9.8220. The following evaluation includes findings of compliance with the applicable criteria and related standards as provided in EC 9.8215, with conditions of approval and other requirements or informational items noted where appropriate.

The subject property included in the partition request is located on the north side of West 13<sup>th</sup> Avenue and is zoned R-2 Medium Density Residential. As shown on the applicant's tentative partition plan, the subject property contains approximately 10,715 square feet. Proposed Parcel 1 consists of approximately 7,490 square feet with 20 feet of frontage on West 13<sup>th</sup> Avenue. Proposed Parcel 2 consists of approximately 3,226 square feet with 46.9 feet of frontage on West 13<sup>th</sup> Avenue. The site is currently developed with a residence, which the applicant indicates is to remain on Parcel 2, and a garage off the alley, which the applicant indicates will be removed.

Additional details of the proposal are included on the applicant's tentative partition plan, and are further addressed in the applicant's written statement and supporting documentation, all of which are included as part of the public record and located in the application file for reference.

**Evaluation:**

The following findings demonstrate that the proposed tentative partition plan will comply with all applicable approval criteria and related standards as set forth in EC 9.8215. The approval criteria and related standards are listed below in **bold**, with findings addressing each; various conditions of approval, final plat requirements and informational items are included where appropriate.

**EC 9.8215(1): The proposed partition complies with all of the following (an approved adjustment to a standard pursuant to the provisions beginning at EC 9.8015 of this land use code constitutes compliance with the standard):**

- (a) **Lot standards of EC 9.2000 through 9.3915 regarding applicable parcel dimensions and density requirements. Within the /WR Water Resources Conservation Overlay Zone, no new lot may be created if more than 33% of the lot, as created, would be occupied by the combined area of the /WR conservation setback and any portion of the Goal 5 Water Resource Site that extends landward beyond the conservation setback, making the lot immediately eligible for an adjustment under EC 9.8030(21)(a).**

In regard to net density requirements at EC 9.2750, the allowed net density range for R-2 zoned lots is 10 to 28 dwelling units per acre. Parcel 1 is of sufficient size to enable development within this density range. With one existing residence on approximately 3,226 square feet, Parcel 2 clearly falls within the applicable density range (an approximate net density of 13.5 units per acre). However, staff notes that minimum density requirements will not apply to proposed Parcel 2 pursuant to EC 9.2751(1)(a), as that lot will remain developed with less than 13,500 square feet following the partition.

The proposed partition also complies with the applicable lot standards for R-2 zoned areas, as established at EC 9.2760, Residential Zone Lot Standards and EC 9.2770, Small Lot Standards for R-2, R-3 and R-4 zones. Parcel 1 exceeds the minimum lot size of 4,500 square feet and Parcel 2 exceeds the minimum small lot size of 2,250 square feet. Both lots exceed the minimum street frontage and lot width requirements of 20 feet. The proposed partition is not within the /WR Water Resources Conservation Overlay Zone.

Testimony was received from several individuals opposing this partition application due to the proposed lot width for Parcel 1 because a portion of the lot is narrower than 20 feet. For clarification, staff calculated lot width in the manner prescribed at EC 9.0500, which defines “Lot Width” as:

*The horizontal distance between the midpoints of the side property lines. Where more than one side property line exists along a given side yard, the combined length of the side property line shall be used to determine the midpoint. Alley access parcel width is the distance between side lot lines measured along the alley property line.*

EC 9.0500 defines “Lot Side Line” as:

*Any lot or parcel line that is not a lot or parcel front or rear line.*

To calculate lot width, staff totaled the westerly side lot lines and divided that length by two to establish the midpoint. With an approximate midpoint at 109.9 feet on the west parcel boundary and a midpoint at 80.1 on the east parcel boundary, the lot width between the two midpoints clearly exceeds 20 feet. Staff notes that the applicant’s evaluation calculated the midpoint along the west parcel boundary based on the lot side lines that provide lot depth (e.g. running perpendicular to West 13<sup>th</sup> Avenue). While this approach minimizes the potential for lot widths measured on the diagonal, it is not supported by the methodology prescribed in the definitions cited above. Irrespective of whether all lot side lines or only side lot lines that provide lot depth should serve as the basis for calculating lot width, in the absence of language suggesting that lot width shall be measured at the narrowest point of the lot or other land use code provisions that set forth an alternative method of measuring lot width for this situation, staff concludes that both proposed parcels clearly meet the minimum lot width requirement. Staff also notes that with the majority of the lot over 66 foot wide, the proposed configuration provides ample building area for development consistent with applicable standards.

With respect to lot frontage, both lots clearly meet the minimum 20-foot street frontage requirement as well. While testimony did not focus on lot frontage requirements per se, the creation of an alley access lot was raised as a major concern, which, according to the testimony is not permitted or consistent with City Council direction. Staff clarifies that an “Alley Access Lot/Parcel” is a parcel that is created with only alley frontage and not street frontage. EC 9.0500, defines an “Alley Access Lot/Parcel” as:

*A lot or parcel abutting an alley and not abutting a street and created from the rear portion of an existing lot or parcel. For purposes of EC 9.3050 through 9.3065, an alley access lot or parcel is one that abuts an alley but does not abut a street.*

Prior to the adoption of the Updated Land Use Code in 2001, alley access lots and parcels were permitted through the partition or subdivision process subject to specific alley access lot standards. Under the current land use code, parcels created through the subdivision and partition process must have frontage on a public or private street, as opposed to an alley alone. Both proposed parcels have the required 20 feet of frontage on West 13<sup>th</sup> Avenue. As an informational item related to code requirements related to the use of the alley for access, staff notes that EC 9.5500(11)(c) provides that development sites with alley access subject to multi-family standards, shall use the alley to provide access to the development site and no direct access to the street other than by the alley, shall be permitted. Staff also notes that the proposed partition will not increase the potential number of units using the alley for access. Whereas the applicable density provisions for the R-2 zone at EC 9.2750 would allow a maximum of 7 dwelling units on the existing parent lot (Tax Lot 6900) to take alley

access, a maximum of 5 units would be allowed on proposed Parcel 1, the parcel adjacent to the alley following the partition.

Written testimony was also received in opposition to the proposed partition due to a lack of compliance with several standards applicable to flag lots in the R-1 Low-Density Residential Zone. Staff clarifies that the Residential Flag Lot Standards for R-1 at EC 9.2775 do not apply because the proposed partition does not create a flag lot in the R-1 Low-Density Residential zone.

The remaining development standards under EC 9.2750 and EC 9.2770 related to maximum building height, minimum setbacks, maximum lot coverage, fencing and specific requirements for small lot development and multi-family development will be addressed at the time of building permit application and review for future structures on the parcels. Conformance of the existing structure to these standards is addressed at EC 9.8215(1)(j).

Based on the available information, and with the findings provided, it is concluded that the proposed partition will comply with the requirements of subsection (a).

**(b) EC 9.6800 through EC 9.6875 Standards for Streets, Alleys, and Other Public Ways.**

The subject property has public street frontage on West 13<sup>th</sup> Avenue and West 12<sup>th</sup> Alley. EC 9.8215(1)(b) requires that the applicant comply with the street, alley and other public way standards set forth in EC 9.6800 through 9.6870. Pursuant to EC 9.6805 “[a]s a condition of any development, the city may require dedication of public ways for ... streets and alleys, provided the city makes findings to demonstrate consistency with constitutional requirements. Public ways for streets and alleys to be dedicated to the public by the applicant shall conform with the adopted Street Right of Way Map, and EC Table 9.6870.” EC 9.6870 provides, in part: “When a street segment right-of-way width is not designated on the Street Right-of-Way map, the required street width shall be the maximum shown for its type in Table 9.6870 Right of Way and Paving Widths unless a lesser width is approved by the planning director and public work director based on adopted plans and policies, adopted ‘Design Standards and Guidelines for Eugene Streets, Sidewalks, Bikeways and Accessways’ or other factors which in the judgment of the planning and public works director allow for a lesser street width.”

West 13<sup>th</sup> Avenue is identified on the adopted street classification map (Fig. 60 ACSP) as a minor arterial street and does not have a planned right-of-way width (Fig. 61 ACSP). Referral comments from Public Works staff confirms that West 13<sup>th</sup> Avenue was originally improved to City standards in the early 1950s under City Contract No. 0032-0858 and was subsequently was overlaid under City Contract No. 1985-0018. The section of West 13<sup>th</sup> Avenue adjacent to the proposed partition is 36 feet wide curb to curb in an existing 66 feet of right-of-way.

Per EC 9.6870, the paving width for a minor arterial is 46 to 70 feet and the right-of-way width is 65 to 100 feet. Although the street paving width for West 13<sup>th</sup> Avenue is less than 46 feet, as previously noted the street has been improved to City standards. The minimum width of 46 feet is for a two-way street with space for a continuous two-way left turn lane, not needed on a one-way arterial. Moreover, the existing widths are consistent with Table 1 of the Design Standards and Guidelines for Eugene Streets, Sidewalks, Bikeways, and Accessways contained in the Eugene Arterial and Collector Street Plan (ACSP), which identify a 34-70 foot paving width and a 65-100 foot right-of-way for minor arterials without a parking lane. Staff recognizes that there may be a future need for rapid transit along West 13<sup>th</sup> Avenue, however, because there are fewer space constraints in the property on the south side

of West 13<sup>th</sup> Avenue, it is more likely that, if the street is widened, it will be widened on the south side and not on the north side (where the proposed partition is located). Because the street is fully developed to City standards and the existing right-of-way of West 13<sup>th</sup> Avenue is consistent with the design characteristics of existing streets in older developed areas, and is otherwise adequate to accommodate expected traffic demand, there is no requirement that the applicant dedicate additional right-of-way, establish special setbacks or make any improvements to West 13<sup>th</sup> Avenue as a condition of approval for this partition pursuant to EC 9.6805, EC 9.6505, and EC 9.6750, respectively.

West 12<sup>th</sup> Alley has an existing 14-foot wide right-of-way, which was dedicated in the *James Huddleston Extended Addition to Eugene* subdivision. The alley, which has not been improved to City standards, has a gravel surface adjacent to the three most westerly tax lots along the alley and a 9-foot wide asphalt surface adjacent to the two most easterly tax lots, including the subject property. Staff received testimony from numerous individuals opposing the proposed partition, due to the condition of the alley. Staff conducted a site visit and concurs that the alley is unimproved and in substandard condition, noting at least two large depressions in the asphalt section resulting from subsurface failure.

As previously noted, EC 9.8215(1)(b) requires that the applicant comply with the street, alley and other public way standards set forth in EC 9.6800 through 9.6870. Pursuant to EC 9.6805, “[a]s a condition of any development, the city may require dedication of public ways for ... streets and alleys, provided the city makes findings to demonstrate consistency with constitutional requirements.” As previously discussed, the proposed partition reduces the potential number of units taking primary access off the alley. Whereas the applicable density provisions for the R-2 zone at EC 9.2750 would allow a maximum of 7 dwelling units on the existing parent lot (Tax Lot 6900) to take alley access, a maximum of 5 units would be allowed on proposed Parcel 1, the parcel adjacent to the alley, following the partition. Since the proposed partition could not result in an increased usage of the alley (beyond what is currently allowed based on the existing configuration and densities allowed in the R-2 zoning), City staff are unable to make the findings needed to require additional right-of-way pursuant to EC 9.6805 as a condition of partition approval. However, as discussed in EC 9.6750, which is incorporated herein by reference, to ensure that sufficient public right-of-way is available to allow the improvement of West 12<sup>th</sup> Alley to the standards required in EC 9.6505 Improvements – Specifications, a special setback for future right-of-way acquisition at a distance of 10 feet from the centerline of West 12<sup>th</sup> Alley is required to be shown on the final plat.

Referral comments from Public Works staff further indicate that the block length requirements at EC 9.6810 are inapplicable in this instance, as there is no proposal or requirement for a new public street. Regarding EC 9.6815(2), and as confirmed by referral comments from Public Works staff, the proposed partition complies with street connectivity standards without need for the requested exceptions established at EC 9.6815(2)(g)(2). The street infrastructure surrounding the subject property is fully developed with a complete network of public streets and sidewalks, meeting the requirements of street connectivity for this site. There are no undeveloped or partially developed properties to which additional streets must be extended, nor are any additional street connections or extensions of any kind required. With Jackson Street to the west and Adams Street to the east, secondary access is readily available to both parcels. As such, the connectivity standards of this section have been fully met.

Referral comments from Public Works staff further confirm that the remaining standards of EC 9.6800 through EC 9.6875 are either inapplicable or have been met. It is noted that reserve strips and special safety measures are not required pursuant to EC 9.6840 and EC 9.6845, as no additional right-of-way and immediate street improvements are proposed or required in conjunction with the proposed partition.

**(c) EC 9.6500 through EC 9.6510 Public Improvement Standards.**

The applicant does not propose to dedicate public easements. Referral comments from Public Works staff confirm that there is no need for additional public easements for public stormwater and wastewater services pursuant to EC 9.6500. As an informational item, it is noted that that, pursuant to EC 9.6500(3), the final plat must indicate that no building, structure, tree or other obstruction shall be placed or located on or in a public utility easement if any public easements are shown.

Specific to water supply requirements at EC 9.6505(1), referral comments from EWEB staff confirm that water service will be provided in accordance with EWEB policies and procedures. EWEB staff indicates that water service is available via an 6-inch CI water main on the north side of West 13<sup>th</sup> Avenue. Additional informational items from EWEB and the Fire Marshal's office related to water service are noted at the end of this decision.

With regard to the sewage service requirements at EC 9.6505(2), Public Works staff confirms that the existing residence on Parcel 2 (933 West 13<sup>th</sup> Avenue) is currently connected to the existing 22-inch public wastewater mainline in West 12<sup>th</sup> Alley. The applicant proposes to cut back the existing private service to Parcel 2 in order to provide service to Parcel 1, and also proposes to construct a new 4-inch private service line to Parcel 2 within in a proposed 5-foot private utility easement along the west boundary of Parcel 1. Public Works concurs with the wastewater proposal in concept, subject to the condition that the applicant abandons the existing service line to the house at 933 West 13<sup>th</sup> Avenue within 5 feet of the northerly property line of Parcel 1, constructs a 6-inch public lateral, and installs a 4-inch private wastewater service line in the proposed 5-foot private utility easement in order to provide continued service to the existing house at 933 West 13<sup>th</sup> Avenue.

Alternatively, the applicant shall submit a deed restriction which stipulates that prior to the sale of either parcel, the existing private service line to Parcel 2 shall be relocated into the proposed private utility easement along the westerly boundary of Parcel 1. The draft deed restriction shall be subject to review and approval by City staff prior to concurrent recording with the final plat. The applicant shall also create a private wastewater easement in the location of the existing service to Parcel 2 as it crosses Parcel 1. The private wastewater easement shall include language noting that the easement shall be terminated at such time that the existing wastewater service is relocated into Parcel 2. The draft easement shall be subject to review and approval by City staff prior to concurrent recording with the plat. Additionally, the applicant shall include a note on the final plat stating that the easement document includes language of termination. Staff notes that the required plumbing permits for the first option may be obtained at the Permit and Information Center at 99 West 10<sup>th</sup> Avenue.

Regarding EC 9.6505(3) Streets and Alleys, (4) Sidewalks, the findings stated above at EC 9.8215(1)(b) are incorporated herein by reference. As previously noted, because West 13<sup>th</sup> Avenue is designed with a paving width that complies with City standards for public streets and will adequately accommodate expected traffic levels, no additional street improvements are required. However, West 12<sup>th</sup> Alley is not improved to City standards, *i.e.*, it lacks paving that has been constructed to City standards with respect to width and structure and also lacks storm drainage facilities.

EC 9.6870(2) states that "all streets and alleys shall be designed and constructed according to adopted council policy and standards and specifications adopted pursuant to Eugene Code Chapter 7." EC 9.6505(3)(b) further states that "the developer shall pave streets and alleys adjacent to the development site to the width specified in EC 9.6870 Street Width unless such streets and alleys are already paved to that width, provided the City makes findings to demonstrate consistency with constitutional

requirements.” As discussed in EC 9.6750 Special Setback Standards, which is incorporated herein by reference, West 12<sup>th</sup> Alley functions as a primary access alley. Table 9.6870 identifies the paving width for alleys which serve as primary access to be 20 feet for two-way traffic and 12 feet for one-way traffic. However, as previously discussed with regard to EC 9.8215(1)(b), the proposed partition does not create the potential for increased alley use above what is currently allowed. Therefore, even though the alley is in substandard condition, City staff are unable to make the findings needed to require alley improvements as a condition of partition approval. In order to construct the alley to City standards in the future, the applicant shall submit an Irrevocable Petition for alley improvements to West 12<sup>th</sup> Alley to include paving and storm drainage as a condition of approval. The Irrevocable Petition will allow the City to complete the alley improvements in the future and will obligate the property owners to pay their assessable portion of the construction costs. It is noted that a 12-foot wide one-way alley design may be the only feasible design when such improvements in the alley are initiated.

With regard to EC 9.6505(5) Bicycle Paths and Accessways, in accordance with findings at EC 9.8215(1)(b), which are incorporated herein by reference, Public Works staff confirms that additional bicycle paths or public accessways are neither proposed nor required in this instance.

With regards to EC 9.6510 Stormwater Drainage, Public Works staff confirms that the applicant’s proposal to direct stormwater runoff towards weepholes in the curb along West 13<sup>th</sup> Avenue is acceptable; However, storm drainage flowing from Parcel 1 across Parcel 2 must be located within a private storm drainage easement. As a condition of approval to enable stormwater drainage from Parcel 1 as proposed, the applicant shall create on the final plat, a private easement across Parcel 2 for the benefit of Parcel 1.

In consideration of the above findings and conditions, the proposed partition will comply with the applicable approval criterion

**(d) EC 9.6706 Development in Flood Plains through EC 9.6709 Special Flood Hazard Areas – Standards.**

Public Works staff confirms that the proposed partition is not located within an identified floodplain boundary and the provisions of this section are, therefore, inapplicable.

**(e) EC 9.6710 Geological and Geotechnical Analysis.**

The standards for geotechnical analysis do not apply in this instance, as the proposed partition does not include a tentative PUD, subdivision, or site review application, nor dedication or construction of a new public street or alley, public drainage, or public wastewater facilities.

**(f) EC 9.6735 Public Access Required.**

The proposed parcels will have the required legal frontage on a public street and will otherwise allow for public access in accordance with EC 9.6735.

**(g) EC 9.6750 Special Setback Standards.**

As described in EC 9.6750(1), the purpose of Special Setbacks is to “[ensure] that buildings are constructed in such a manner that they will conform with the setbacks required by specific zones when the streets on which they front are widened to the city standard.” It is also noted that proper public right-of-way width is required to allow the improvement of streets to the standards required in EC 9.6505 Improvements – Specifications.

EC 9.6750(2) provides that when there is no planned public right-of-way width for the street, the special setback shall be a distance of one-half of the “the maximum right-of-way width allowed according to Table 9.6870.” Per EC 9.6870 the right-of-way width shall conform to the planned width as identified in the right-of-map unless the Public Works and Planning Directors approve a lesser width. In this case, the applicant submitted supplemental information on August 9, 2006 specifically requesting a 12-foot width for West 12<sup>th</sup> Alley.

Since West 12th Alley is not designated on the street right-of-way map, the right-of-way width is set forth in Table EC 9.6780. Pursuant to Table 9.6870, the right-of-way width for alleys that serve as primary access is 20 feet and the right-of-way width for alleys which serve as secondary access is 14 feet. Under existing conditions, West 12<sup>th</sup> Alley serves as primary access for at least one lot (i.e. TL 6602 which was created by Land Partition Plat Number 96-P0881). Based on aerial photography, it appears that the alley is also the primary access for several other structures located along the alley. As a primary access alley, the applicable alley right-of-way width is 20 feet.

As previously noted in EC 9.6805, the existing West 12th Alley right-of-way is 14-feet wide adjacent to the subject partition and additional right-of-way is not proposed or required. Therefore, as a condition of approval to comply with EC 9.6750, the applicant shall show a special setback line for future right-of-way acquisition at a distance of 10 feet from the centerline of West 12<sup>th</sup> Alley. This will ensure that sufficient public right-of-way is available to allow the improvement of West 12<sup>th</sup> Alley to the standards required in EC 9.6505 Improvements – Specifications.

Based on the findings presented above regarding EC 9.8215(1)(b), which are incorporated herein, West 13<sup>th</sup> Avenue is fully improved to City standards within a 66-foot right-of-way without need for a special setback to accommodate future right-of-way or improvements. Accordingly, the Planning and Public Works Directors approve a lesser width for West 13<sup>th</sup> Avenue than the maximum width for minor arterials provided at EC 9.6870. Referral comments from Public Works staff further confirm that no known planned utility easements or long range infrastructure plans exist that dictate a special setback for future public utility easement acquisition.

In consideration of the above findings and condition, the proposed partition will comply with the applicable approval criterion

**(h) EC 9.6775 Underground Utilities.**

The applicant’s written statement indicates that except for structures with legally established above ground electric service, all new utilities will be placed underground, in accordance with EC 9.6775. It is noted that the existing residence on Parcel 2 is served by overhead electric service. EWEB Electric Division staff confirms that electric service is available consistent with EWEB policies and procedures. EWEB indicates that easements will be required on Parcel 1 to retain the existing service that crosses Parcel 1 for the benefit of Parcel 2. EWEB staff further indicates that the applicant will be responsible for all relocation costs. Additional information regarding EWEB electric service is provided at the end of this decision for the applicant’s reference.

**(i) EC 9.6780 Vision Clearance Area.**

Vision clearance area requirements do not apply, as the proposed parcels are not corner lots.

**(j) All other applicable development standards for features specifically included in the application.**

The existing residence proposed to remain and the existing garage proposed for removal are features explicitly included in the application, in the context of the above criterion. The four-plex referenced in written testimony is not considered a feature specifically included or authorized as part of the application, given that the application materials only reference a proposed four-plex and do not otherwise provide details that suggest the four-plex is specifically proposed or that enable evaluation of such a proposal for compliance with applicable code standards.

Compliance with applicable small lot development standards at EC 9.2770 is required for proposed Parcel 2 in addition to the applicable base zone development standards, because the parcel will have less than 4,500 square feet. As shown on the tentative partition plan and consistent with EC 9.2770, the existing dwelling complies with the applicable 30-foot maximum building height and, considering the lot area, building size, and driveway area, clearly allows for an outdoor living area that exceeds 10 percent or more of the existing gross floor area on the lot. Also, the dwelling will continue to comply with the applicable setback requirements and minimum lot coverage requirements, in accordance with EC 9.2750, subject to the condition that the applicant submits a maintenance access easement in accordance with EC 9.2751(7), to be recorded with the final plat. The applicant is advised to contact Building Code Service Division staff for information regarding building code requirements.

Referral comments from Building Permits staff confirm that as shown on the proposed partition plan, the distance between the proposed lot lines and the residence to remain on Parcel 2 will comply with applicable building code fire separation requirements provided that the roof overhang on the east side of the building does not extend closer than 2 feet to the proposed property line without being one-hour fire rated construction. As a condition of approval to ensure the proposed partition will not create a new nonconformity with respect to fire separation distance requirements of Chapters 6 and 7 Oregon Structural Specialty Code (OSSC), prior to final plat approval the applicant shall submit documentation from Building Permit Services staff verifying the distance between the roof overhang along the east side of the residence to remain on Parcel 2 and the proposed property lines. If the roof overhang is set back less than 2 feet from the property line, the applicant shall either submit documentation from Building Permit Services staff verifying that one-hour fire separation is provided or modify the proposed lot lines adjacent to the roof overhang on the final plat as necessary to provide a minimum 2-foot setback from the proposed property line. Planning staff notes that any potential adjustments to the proposed lot side lines necessary to ensure compliance with fire separation requirements will remain in compliance with applicable lot standards.

With regard to the garage, in accordance with EC 9.2740, and specifically to ensure that the accessory structure does not remain on a lot with no primary use, the existing garage on Parcel 1 shall be removed prior to final plat approval. Alternatively, the applicant can record a "Use Restriction" or a "Code, Covenant, and Restriction" with the final plat that stipulates that Parcel 1 and 2 shall remain in common ownership unless the garage structure on Parcel 1 is removed or if a building permit for a primary residence on Parcel 2 is pending.

Otherwise, there appear to be no other features specifically included in the application which would warrant review of additional development standards, beyond those addressed elsewhere in this evaluation. As such, this criterion is met with the conditions noted.

**(k) The applicable adopted plan policies beginning at EC 9.9500.**

The governing adopted plans for the proposed partition are the Metropolitan Area General Plan (Metro Plan) and the Westside Neighborhood Plan.

The applicant identifies one codified policy as applicable to this request:

*EC 9.9680(2)-Land Use Element-Central Residential Area “The City shall encourage actions that will preserve existing residential structures, including rehabilitation, block planning, infilling, and shared housing.*

The applicant indicates that the proposed partition complies with the above policy because it will accommodate infill to preserve the existing residence on its own lot. To the extent that the above policy applies as mandatory approval criterion, staff concludes the proposed partition is configured to facilitate preservation of the existing residence consistent with the policy direction provided.

Written testimony identifies the following additional policy as applicable.

*EC 9.9680(1) Land Use Element (a)-“Prevent erosion of the neighborhood’s residential character.”*

Testimony was received from numerous individuals opposing the partition based on a lack of compliance with the above policy. The majority of the testimony focuses on undesirable effects of multi-family development on the subject site on the surrounding area. The proposed partition will create two separate residential lots, that may be developed in accordance with applicable requirements. The partition will enable preservation of the existing residence in addition to additional residential development consistent with applicable zoning and land use requirements. Given the existing R-2 zoning, which allows for a net density of 28 units per acres, and multi-family standards applicable to residential developments with 3 or more units, and given that the proposed configuration allows for a buildable area on Parcel 1 with minimal impact to the existing residence and yard on Parcel 2, the act of dividing the subject property into two parcels does not significantly impact the nature of development that can occur on the subject site, and therefore does not pose a significant impact on neighborhood character in the context of the above criterion. To the extent that the above policy applies as a mandatory approval criterion, staff concludes the proposed partition is configured to facilitate preservation of the existing residence and yard and future residential development in accordance with applicable standards, consistent with the policy direction provided.

Otherwise, available information indicates that none of the codified policies from the Metro Plan or the Westside Neighborhood Plan are directly applicable to the proposed partition as mandatory approval criteria.

**EC 9.8215(2): The proposed partition will not create a new nonconforming situation.**

As addressed and with the requirements and conditions identified elsewhere in this evaluation, specifically as addressed under EC 9.8215(1)(j), the proposed partition will not create a new nonconforming situation with this land use code.

**EC 9.8215(3): Partitions abutting collector and arterial streets comply with access management guidelines of the agency having jurisdiction over the street.**

As previously noted, West 13<sup>th</sup> Avenue is a minor arterial street under City jurisdiction. However, there are no applicable adopted access management guidelines in this instance.

**EC 9.8215(4): If the provisions of EC 9.8215(1) require a public street, or if the applicant proposes the creation of a public street, all of the following criteria also apply:**

- (a) The proposal will not impede the future best use of the remainder of the property under the same ownership or adversely affect the development of the remainder or any adjoining land or access thereto.**
- (b) The proposed partition will:**
  - 1. Not result in significant risk of fire, flood, geological hazards, or other public health and safety concerns;**
  - 2. Provide adequate transportation systems, water supply, sewage disposal, drainage, and other public utilities;**
  - 3. Not hamper the adequate provision of publicly owned open space for recreation needs.**
- (c) The proposed partition provides direct bicycle and pedestrian access to nearby and adjacent residential areas, transit stops, neighborhood activity centers, commercial areas, and industrial areas, and provides safe, convenient and direct transit circulation, provided the city makes findings to demonstrate consistency with constitutional requirements. “Nearby” means uses within 1/4 mile that can reasonably be expected to be used by pedestrians, and uses within 2 miles that can be reasonably expected to be used by bicyclists.**

The provisions of EC 9.8215(1) do not require creation of a new public street and no new public street is proposed by the applicant. As such, the above criterion does not apply in this instance.

**EC 9.8215(5): As far as is practicable, lot side lines run at right angles to the street upon which the lots face, except that on curved streets they are radial to the curve.**

The proposed lot side lines run parallel and perpendicular to adjacent streets, as far as practicable.

**EC 9.8215(6): On R-1 zoned property, if the partition results in a parcel greater than 13,500 square feet in size based on EC 9.2761(5)(b), the application shall indicate the location of parcel lines and other details of layout that show future division of the parcel may be made without violating the requirements of this land use code and without interfering with the orderly extension of adjacent streets, bicycle paths, and accessways. If the planning director deems it necessary for the purpose of future land division, any restriction of buildings within future street, bicycle path, and accessway locations shall be made a matter of record in the tentative plan approval.**

This criterion is not applicable because the proposed parcels are not zoned R-1.

**Decision:**

Based upon the available information and findings set forth above, it is concluded that the proposed tentative partition plan for Auld/Johnston (PT 06-43) complies with the applicable approval criteria and related standards set forth at EC 9.8215. Approval of the applicant's tentative partition plan is therefore granted, subject to the conditions of approval noted below. Additional final plat requirements and informational items related to the subsequent building permit process are also included below, for the applicant's benefit.

**Condition(s) of Approval:**

1. The applicant shall submit an Irrevocable Petition for public improvements in West 12<sup>th</sup> Alley to include paving and storm drainage facilities.
2. The final plat shall show a special setback line at a distance of 10-feet from the centerline of West 12<sup>th</sup> Alley.
3. Prior to final plat approval, the applicant shall abandon the existing service line to the house at 933 West 13<sup>th</sup> Avenue within 5 feet of northerly property line of Parcel 1, construct a 6-inch public lateral, and install a 4-inch private wastewater service line in the proposed 5-foot private utility easement to ensure continued service to the existing house at 933 West 13<sup>th</sup> Avenue. Required plumbing permits may be obtained at the Permit and Information Center at 99 West 10<sup>th</sup> Avenue.

Alternatively, the applicant shall submit a deed restriction which stipulates that prior to the sale of either parcel, the existing private service line to Parcel 2 shall be relocated into the proposed private utility easement along the westerly boundary of Parcel 1. The draft deed restriction shall be subject to review and approval by City staff prior to concurrent recording with the final plat. The applicant shall also create a private wastewater easement in the location of the existing service to Parcel 2 as it crosses Parcel 1. The private wastewater easement shall include language noting that the easement shall be terminated at such time that the existing wastewater service is relocated into Parcel 2. The draft easement shall be subject to review and approval by City staff prior to concurrent recording with the plat. Additionally, the applicant shall include a note on the final plat stating that the easement document includes language of termination.

4. On the final plat, create a private easement across Parcel 2 for the benefit of Parcel 1 to facilitate storm drainage disposal from Parcel 1 to West 13<sup>th</sup> Avenue.

For information on above conditions, contact Ed Haney, Public Works Engineering, 682-2705.

5. The existing garage on Parcel 1 shall be removed prior to final plat approval. Alternatively, the applicant may record a "Use Restriction" or a "Code, Covenant, and Restriction" with the final plat that stipulates that Parcel 1 and 2 shall remain in common ownership unless the garage structure on Parcel 1 is removed or if a building permit for a primary residence on Parcel 1 is pending.
6. The applicant shall submit a maintenance access easement in accordance with EC 9.2751(7) to be recorded with the final plat.

For information on above condition, contact Shawna Adams, Planning Division, 682-2653.

7. Prior to final plat approval the applicant shall submit documentation verifying the distance between the roof overhang along the east side of the residence to remain on Parcel 2 and the proposed property lines. If the roof overhang is set back less than 2 feet from the property lines, the applicant shall either submit documentation from Building Permit Services staff verifying that one-hour fire separation is provided or shall modify the proposed lot lines adjacent to the roof overhang on the final plat as necessary to provide a minimum 2-foot setback from the proposed property line.

For information on condition above, contact Steve McGuire, Building Permit Services, 682-6800.

**Other Final Plat Requirements and Informational Items:**

- A plat-check fee will be required at the time of final plat application. These fees are subject to change; plat-check fees will be assessed according to the fee schedule in effect when the final plat application is submitted.
- A current title report must be submitted with the final plat. The final plat must show all easements listed in the title report. All interest-holders must either sign the Declaration or submit concurrences.
- The final plat must show the relationship between the property boundary and right-of-way centerline monuments.
- All City liens and assessments must be paid or segregated prior to final plat approval.
- Taxes for the current year must be paid prior to recording of the final plat. The applicant should contact the Lane County Surveyor's Office to make arrangements.
- If any public utility easements are shown on the final plat, the following restriction will be required to be shown on the final plat in accordance with EC 9.6500(3): "No building, structure, tree or other obstruction shall be placed or located on or in a Public Utility Easement."

For information on items above, contact Ed Haney, Public Works Engineering, at 682-2705.

- Water and electric service for the proposed development shall be provided in accordance with EWEB policies and procedures which are available at their main office or online at: <http://www.eweb.org/News/Projects/Policies/Index.htm>.
- Water service is available via a 6-inch CI water main on the north side of West 13<sup>th</sup> Avenue.
- State drinking water regulations (OAR 333-061-0050(10)) require a minimum separation between water and sewer lines of 10 feet where they run parallel to each other.
- EWEB owned water facilities will be located in the right-of-way or in a minimum 7-foot public utility easement adjacent to the right-of-way. Private utility easements may be necessary for private service lines if they cross other lots or common ground.
- The existing houses to remain on Parcel 2 is served from the overhead electric service from pole #3916. Service to Parcel 1 is available from existing overhead facilities in West 12<sup>th</sup> Alley.

- EWEB will require an easement for the existing overhead services crossing Parcel 1 to serve Parcel 2. It is recommended that the applicant relocate the existing service to Parcel 2 within a 5-foot EWEB utility easement contiguous to the proposed 5-foot private utility easement on the west property line of Parcel 1, so future development on Parcel 1 is not limited by the current service line. The property owner will be responsible for the cost of new pole installation and overhead service work associated with relocation.
- The width of the easement should be no less than 5 feet. If an easement is not desirable, the property owner should coordinate with EWEB Electric Distribution to relocate the existing service at the owner's expense. Any questions regarding the easement description should be directed to EWEB Property Management.

For more information about EWEB water service comments, contact Jay Bozievich, at 684-4759; For the information about EWEB electric comments, contact Lon Pfaller, at 341-8518.

**Building Permit Requirements:**

- Prior to applying for a building permit it is recommended that a fire flow test and report be obtained to verify that the correct fire flow is available. (IFC 508.4).

For information on the building permit requirements identified above, please contact Shawn Durham, Fire Marshal's Office, at 682-8361. For the flow test contact Water Operations Division at 484-3766.

**Post-Approval:**

Pursuant to EC 9.7220(3), the Planning Director's decision regarding this Type II application is effective on the 13<sup>th</sup> day after notice of this decision is mailed, unless appealed according to the procedures in EC 9.7605.

Once the decision becomes effective, pursuant to EC 9.7230, the Planning Director's approval of this Type II tentative partition application shall remain effective for 18 months. As stated in EC 9.7230(4), within that time, any conditions of approval shall be fulfilled and the final plat, as approved by the City, shall be recorded at Lane County Deeds and Records. If the approved final plat is not recorded within 12 months after the final plat is submitted, the tentative partition approval is revoked and the land division procedures must be repeated.

It is also noted that this tentative partition approval does not relieve the applicant of complying with other applicable provisions of the Eugene Code or Oregon Revised Statutes which may govern the development of this property.

**Approval Date:**

\_\_\_\_\_

**Approval Granted By:**

\_\_\_\_\_,  
Gabriel Flock, Interim Principal Planner  
For the Eugene Planning Director



# NOTICE OF DECISION

**File Name:** Auld/Johnston

**File Number:** PT 06-43

## **Action/Location:**

On September 8, 2006, the Eugene Planning Director conditionally approved the tentative partition application listed above, pursuant to Eugene Code Section 9.8215, to allow division of the subject property into two residential parcels. The property is located at 933 West 13<sup>th</sup> Avenue on Tax Lot 6900 of Assessor's Map 17-03-31-32.

## **Learn More about the Project:**

A copy of the application, the application approval criteria, public testimony, and all documents and evidence submitted by or on behalf of the applicant are available for inspection at the address listed below and copies of these materials may be obtained at a reasonable cost. This notice and the Planning Director's decision will also be available from the Pending Applications web site located at the internet address listed below. If you have questions regarding this application, contact the planner listed below or visit the planner-on-duty at the City's Permit and Information Center between 1 p.m. and 5 p.m. at the address listed below.

## **Appeal Procedures/Expiration:**

Any person who is adversely affected or aggrieved by this decision, or who is mailed this written notice, may appeal the decision and pay an appeal fee in accordance with procedures listed in Section 9.7605 of the Eugene Code. The Planning Director's decision will become effective when the appeal period has expired. In this case, any appeal must be received by 5 p.m. on **September 25, 2006**, at the City's Permit and Information Center. Appeal procedures, forms, and fee information are available at the City's Permit and Information Center or on our web site. In accordance with Section 9.7055 of the Eugene Code, the Eugene Hearings Official will consider any appeals of this land use application.

**Visit our Web Site:** [www.eugeneplanning.org](http://www.eugeneplanning.org)

## **Contact the Planner:**

**Shawna Adams, Associate Planner**

City of Eugene Planning Division  
99 West 10<sup>th</sup> Avenue  
Eugene, OR 97401

E-mail: [shawna.l.adams@ci.eugene.or.us](mailto:shawna.l.adams@ci.eugene.or.us)

Phone: (541) 682-2653

**Date of Notice:** September 12, 2006