

**BEFORE THE PLANNING COMMISSION**  
**OF**  
**ROCKAWAY BEACH, OREGON**

Applicant: Troy Johns  
Agent: OTAK Engineering

) Case File: SUB-23-01  
) Findings, Conclusions, and Final Order

**Nature of the Application**

The Applicant is requesting approval of an 85-lot subdivision of vacant land to be named Lake Lytle Estates Phases IV-VII, on land zoned R-3 (Lower Density Residential). Details of the request are included on the submitted application materials and are available for inspection at Rockaway Beach City Hall.

**Relevant Facts**

The following is a summary of the facts and testimony found to be relevant to this decision:

1. The property is located to the south of the existing Lake Lytle Estates Subdivision Phases I-III, east of Lake Lytle in Rockaway Beach, and is further identified on Tillamook County Assessor's Map # 2N10W Lot #5201. Access to the property is proposed via existing Tillamook, Frances, and Necarney Streets at their south terminus at the subject property.
2. The Comprehensive Plan designation is Residential.
3. The subject property is zoned R3 (Lower Density Residential Zoning)
4. The subject property is approximately 18.9 acres.
5. Adjacent to the north is the existing Lake Lytle Estates Subdivision Phases III. To the east is industrial forest land outside of the Rockaway Beach city limits. To the south is undeveloped land zoned R-R (Residential Resort), and the existing Timberlake Subdivision further to the south. West of the subject property is undeveloped land zoned S-A (Special Area Wetlands) adjacent to Lake Lytle.
6. The property contains wetlands that have been delineated by a professional wetlands consultant, and the Oregon Department of State Lands has given agency concurrence with the delineation. The Applicant's proposal includes impacts to portions of the wetlands for street and utility

construction, and the Applicant understands that permits from DSL and the U.S. Army Corps of Engineers are required before any disturbance or impacts to the wetlands takes place.

7. Details of the Applicant's proposal can be found in the staff's report and evidence submitted by the Applicant, which is incorporated into the record herein. Included in the application materials is the Burden of Proof document, which provides responses to the applicable criteria.
8. A public hearing was held before the Rockaway Beach Planning Commission on Thursday, October 19, 2023. All interested parties were given an opportunity to attend the public hearing and to present written and oral testimony.
9. Written comments from the City Engineer are on record and have been provided to the Applicant. These comments indicate that significant public infrastructure improvements will be necessary for the development to occur, and that the Developer will be required to bear the costs of these improvements, both on and off-site.
10. The Applicant gave testimony on the request, summarizing the proposal. The Applicant explained the development would be phased and estimated to produce approximately 10 homes per year. The Applicant acknowledged that significant and detailed engineering design was needed before the plan could be ready for City review.
11. The Applicant provided further testimony regarding street connections to the adjoining property to the south of the property site and explained that Tillamook Avenue was not proposed to be extended as a through street to the adjoining property to the south due to opposition from the Oregon Department of State Lands. The Applicant emphasized that the proposed application was prepared to minimize wetland impacts.
12. Testimony in opposition to the request were presented as follows:
  - a. Terry Savino, a resident of the neighboring Lake Lytle Estates subdivision, shared her opposition to the proposed street to go through the Francis Street cul-de-sac, which would go through wetlands. She expressed concerns about the proposed neighborhood having only one access point from 12<sup>th</sup> Street and stated that she believed a connection to the south would be necessary. She expressed additional concerns regarding the application proposal that only open space areas would be wetlands and felt this would be insufficient for the proposed development.
  - b. Owe Berg, a resident of the neighboring Lake Lytle Estates subdivision, expressed concerns about the additional traffic the proposed neighborhood would have on the intersection of Highway 101 and 12<sup>th</sup> Street and potential congestion throughout the existing neighborhood. He shared additional concerns about the city's water supply and questioned if the city water supply was sufficient for the additional homes proposed.

- c. James Young, a resident of the neighboring Lake Lytle Estates subdivision, expressed concerns the impact the additional traffic would have on the existing roads, particularly at the intersection of Highway 101 and 12<sup>th</sup> Street, which he stated is already eroding. He stated that the additional traffic would cause the existing road to deteriorate rapidly. He expressed additional concerns regarding the 12<sup>th</sup> Street bridge and its capacity to handle the additional traffic and heavy machinery that would be necessary to develop. He stated that the 12<sup>th</sup> Street bridge is already rutted. He shared additional concerns regarding the number of homes in the proposed development that would become short term rentals.
- d. Ted Hewitt, a resident of the neighboring Lake Lytle Estates subdivision, expressed concerns regarding the age of the reports and studies included in the application materials. He expressed additional concerns about the amount of traffic the proposed development would generate throughout the neighborhood, as well as at the intersection of Highway 101 and 12<sup>th</sup> Street. He shared additional concerns regarding the number of homes in the proposed development that would become short term rentals.
- e. Maggie Hewitt, a resident of the neighboring Lake Lytle Estates subdivision, expressed concerns regarding the impacts the proposed development would have on livability in the current neighborhood. She shared a personal experience of having lived through quick and expansive development in Portland, which she stated negatively impacted the community and neighborhood feel. She stated that she would like to see the proposed development slowed and that 85 homes would be too much. She shared additional concerns regarding the number of homes in the proposed development that would become short term rentals. Additionally, she voiced concerns about the noise the development construction would create.
- f. Todd Bostick, a resident of the neighboring Lake Lytle Estates subdivision, expressed concerns the number of vehicles and traffic congestion the proposed development would generate. He stated that the intersection of 101 and 12<sup>th</sup> Street would be worsened with traffic congestion and would become less safe. He shared additional concerns that the existing roads would be damaged through the construction period. He stated that water pressure is already an issue in the Lake Lytle Estates neighborhood and expressed concern that the additional connections to the water system would worsen this problem.
- g. Robert Tarter, a resident of the neighboring Lake Lytle Estates subdivision, expressed concerns about the Francis Street connecting through to serve additional homes and stated that the street is not wide enough as is when residents park on the street in front of their homes. He stated that he is opposed to the proposed street to go through the Francis Street cul-de-sac. He shared additional concerns regarding poor water pressure in the neighborhood.

- h. Mary King, a resident of the neighboring Lake Lytle Estates subdivision, shared her opposition to the proposed street to go through the Francis Street cul-de-sac. She stated that she purchased her home because it was located on a cul-de-sac, which she felt kept her autistic child safer, since there is little traffic in the cul-de-sac. She shared that she works for the local school and stated that with their current staffing levels, they would not be able to provide for more children.
  - i. Kat Wright, a resident of the neighboring Lake Lytle Estates subdivision, expressed concerns regarding the proposed street to go through the Francis Street cul-de-sac. She stated that living on the cul-de-sac makes her feel safe and has less traffic. She expressed concern that her home no longer being located on a cul-de-sac may negatively impact her property value. She stated that there are several children with special needs that live on the cul-de-sac who often play in the road in front of their homes. She shared additional concerns about the number of homes in the proposed development that would become short term rentals and how this may lead to higher crime in the neighborhood. She stated that she would like to see more housing for the local workforce.
- 13. Written testimony in opposition to the request was received from Michael King, Richard Dilbeck, Theodore Hewitt and Margaret Blanke-Hewitt, and Linda Battson, which are incorporated into the record herein.
- 14. In rebuttal to the opposing testimony, David Rosenberger, on behalf of the Applicant, addressed the concerns raised by the public. Mr. Rosenberger agreed with the public comments that had been made regarding the age of the materials contained in the application. He stated that the application had been approved over 10 years ago, however due to numerous circumstances, the development was not constructed and the Applicant was required to bring the application back to the city for consideration a second time. At the time the application approval lapsed, the Applicant was advised by the previous City Planner to bring the application back to be reconsidered. He stated that the reports and studies included in the application materials would be updated through the engineering and planning process. Mr. Rosenberger stated that the proposed street through the Francis Street cul-de-sac is not something the Applicant would like to do, as there are wetland impacts, but believed an alternative could be determined through the engineering process to reduce the need for the connection. Mr. Rosenberger acknowledged the public's concerns regarding the intersection of Highway 101 and 12<sup>th</sup> Street and stated that this issue would be addressed through the traffic study. Mr. Rosenberger stated that they would be conditioned to look at the 12<sup>th</sup> Street bridge, which would be done. Mr. Rosenberger acknowledged that there were multiple comments opposed to short term rentals, but stated that the Applicant would not go against current city standards or regulations, but encouraged the public to address this issue with their City Council. Mr. Rosenberger addressed the public concern regarding the speed at which the development would progress and stated that this would be a phased development, constructed as the market dictated. Mr. Rosenberger stated that water supply concerns would be addressed with the City Engineer and Public Works Department. Mr. Rosenberger stated that the concerns raised

regarding school impacts could possibly be addressed through development impact fees, if those exist within this jurisdiction.

### **Relevant Criteria**

1. Rockaway Beach Zoning Ordinance
  - a. Section 3.090 – Lower Density Residential Zone (R-3)
  - b. Section 3.080 – Special Area Wetlands (SA)
  - c. Section 3.092 – Flood Hazard Overlay Zone (FHO)
  - d. Section 3.094 – General Provisions
  - e. Section 3.095 – Administration
  - f. Section 3.096 – Provisions for Flood Hazard Reduction
  - g. Section 4.041 – Shoreland Development Criteria
2. Rockaway Beach Subdivision Ordinance
  - a. Section 5 – Procedure for Review
  - b. Section 7 – Information on Tentative Plan
  - c. Section 8 – Partial Development
  - d. Section 9 – Information in Statement
  - e. Section 10 – Supplemental Proposals with Tentative Plan
  - f. Section 32 – Principals of Acceptability
  - g. Section 33 – Streets
  - h. Section 34 – Utility Easements
  - i. Section 35 – Building Sites
  - j. Section 36 – Blocks
  - k. Section 37 – Large Building Sites
  - l. Section 38 – Water Courses
  - m. Section 39 – Land for Public Purposes
  - n. Section 40 – Unsuitable Land
  - o. Section 41 – Land Subject to Inundation
  - p. Section 42 – Proposed Name of Subdivision
  - q. Section 43 – Improvement Standards and Approval
  - r. Section 44 – Improvement Requirements

The above criteria are found in the Applicant's Burden of Proof, which is attached to this document as Exhibit "A", and the Staff Report – Supplemental 2, which is attached as Exhibit "B".

### **Findings**

The Planning Commission finds:

1. The subject property consists of 18.9 acres of land zoned R-3 (Lower Density Residential) on which subdivision of land may be allowed when the subdivision meets applicable standards of the Rockaway Beach Zoning Ordinance and the Rockaway Beach Subdivision Ordinance. The

Applicant has submitted a detailed subdivision plan with supporting evidence and documentation to support the request.

2. As proposed, each lot in the subdivision would meet the minimum standards of the R-3 zone for lot size, width, area, and access.
3. Overall density of the subdivision does not exceed the density provision of the R-3 zone.
4. The request provides for open space within the development that includes wetlands and other natural vegetation, a pedestrian pathway, and other areas below the 100-year floodplain elevation. A homeowner's association is necessary to take responsibility of the ownership and management of these natural open space areas.
5. Streets in the subdivision are of adequate widths to serve the development and are located such that future street projections to the adjacent property to the south are possible by the extension of Necarney Street.
6. Proposed public street improvements include curbs, gutters, sidewalks, paving, and storm drainage facilities. Appropriate conditions of approval will ensure that the details of street improvements are in accordance with applicable City Technical Specifications and Design Standard, which are applied by the City Engineer at the time of engineering plan review.
7. The Applicant has submitted materials in support of the request, including a Burden of Proof document, which provides specific responses to the applicable criteria under review. These responses, attached as Exhibit "A" in the Burden of Proof, demonstrate that the applicable criteria for land-use approval are met, and serve as findings to support a decision to approve the request.

## **Conclusion**

The record and findings support the conclusion that:

1. Substantive evidence in the record demonstrates that the proposed 85-lot subdivision can be developed in accordance with the applicable standards of the Rockaway Beach Zoning Ordinance and the Rockaway Beach Subdivision Ordinance.
2. Future review and necessary approval of the Applicant's detailed engineering plans for streets and utilities by the City Engineer is necessary. Such review and approval, prior to development, will ensure that the required improvements are in accordance with applicable City of Rockaway Beach Technical Specifications and Design Standards.

## **Order**

It is ORDERED by the Rockaway Beach Planning Commission that Case File #SUB-23-01 be APPROVED, subject to the following conditions:

1. Approval is based upon the submitted plan. Any substantial change in the approved plan shall be submitted to the City of Rockaway Beach as a new application for a subdivision.
2. Tentative approval of the subdivision shall be for a period of one year. The Planning Commission, upon written request by the Applicant, may grant an extension of the tentative plan approval for a period of one year. Failure to obtain a time extension or final plat approval prior to expiration of the tentative plan shall render the tentative plan approval void. Such yearly time extensions will be necessary until all four phases of the development have been granted final plat approval.
3. The Applicant shall provide documentation that the proposed subdivision name has been approved and reserved by the Tillamook County Surveyor.
4. The Applicant shall provide an Engineer's Estimate to the City of Rockaway Beach for the public improvements required for each phase for bonding and for factoring the plan review fee by the City Engineer.
5. The Applicant shall provide updated preliminary plat plans, and all additional plat plans, with scales and north arrow to each sheet for review by the City Engineer.
6. The Applicant shall provide updated preliminary plat plans, and all additional plat plans, with existing waterline sizes for review by the City Engineer.
7. The Applicant shall provide a topographic survey stamped by a professional license surveyor.
8. The Applicant shall provide a phasing plan for review by the City Engineer for each phase, depicting how pedestrian circulation, traffic circulation and utility extensions will be provided.
9. The Applicant shall submit detailed engineered plans for review by the City Engineer, that demonstrate that City standards for access, street improvements, sewer and water services, fire flow, storm water drainage, and other improvements deemed necessary as determined by the City Engineer have been satisfied. The cost for plan review by the City Engineer shall be the responsibility of the Applicant/Developer.
10. The Applicant shall provide a traffic study for the subdivision and NE 12th Avenue.
11. The Applicant shall provide a study of the impacts to the NE 12th Avenue bridge and analysis of the bridge structural capacity.

12. The Applicant shall provide the City Engineer with a preliminary profile of the streets, including the extensions for 200 feet past the project on all streets. The Applicant shall include vertical curves and large culverts in the profile for review.
13. The Applicant shall extend the Tillamook Avenue full street improvements to the southern edge of the property.
14. The Applicant shall extend the Necarney Street improvements to the north end of the existing cul-de-sac and show the culvert size on the north end. The Applicant shall provide easements for utility extensions east of Necarney Street into the UGB.
15. The Applicant shall place street barricades at the end of the phases and southern end of Necarney Street.
16. The Applicant shall use curbs and gutters on street sections per City standards. The Applicant shall follow ODOT design for pavement callouts per City standards.
17. The Applicant shall provide the City Engineer with pipe inverts for the storm crossing at the north end of Tillamook Avenue and for Necarney Street crossing.
18. The Applicant shall extend the pavement north to Charlotte Street and show the culvert size on the north end. The City Engineer will review existing pavement from Charlotte Street south to the site to determine its ability to handle traffic.
19. The Applicant shall add stationing to all roads and identify between what stations the road sections will be used at and supply this information to the City Engineer for review.
20. The Applicant shall provide easements for any sidewalks on public street sections that expand outside of the right-of-way.
21. The Applicant shall provide the City Engineer with sewer inverts, rim elevations, and existing ground shots across the wetlands for review. The sewer line shall be in a casing. The sewer bore option will require a public sewer easement. The Applicant shall provide Department of State Lands and U.S. Army Corps of Engineers approval for this sewer bore.
22. The Applicant shall provide the City Engineer with preliminary profiles with slopes for all gravity sewers.
23. The Applicant shall provide an all-weather access to all sewer manholes located in the easement or right-of-way.
24. The Applicant shall extend the maintenance road and easement beyond the sewer manhole at least 5 feet.




25. The Applicant shall construct a new Lake Lytle Pump Station and force main to 6th Street prior to the first phase. The Applicant shall submit a pre-design report to the City Engineer for review and approval.
26. The Applicant will provide preliminary sewer inverts at manholes. The Applicant will provide sewer stubs on Florence Street as determined by the City Engineer.
27. The Applicant shall provide concurrence from Department of State Lands and U.S. Army Corps of Engineers for the wetland in the common space and obtain permits prior to approval of the construction drawings. The approval from Department of States Lands must be current (no more than 2 years old).
28. The Applicant shall provide a geotechnical report covering roadway construction, including wet weather sections and fills on the lot.
29. The Applicant shall ensure all lots are numbered sequentially throughout the subdivision and provided verification from the County Surveyor.
30. Applicant shall hold a pre-design conference with the City Engineer prior to beginning the final design to ensure utility line locations conform to City standards and confirm mainline locations.
31. The Applicant shall provide a public utility easement at the north end, west side of Tillamook Avenue. The Applicant shall provide evidence to the City Engineer that all public utility easements will not impact stormwater quality swale.
32. On the 32-foot public street section of Francis Court, the Applicant shall reduce the swale width to 4 feet so that it is entirely in the right-of-way, ensure the maximum depth of the swale is 6 inches, and construct the swale to City standards.
33. The Applicant shall modify the easement description on the 32-foot public street section for Florence Street and Troy Street to include utility/road construction.
34. The Applicant will provide the City Engineer with a survey of the roadway, extensions and drainage areas. This survey must extend into the wetlands and into the existing roadways.
35. The Applicant shall provide a storm drainage study, including basin map and flow rates.
36. The Applicant shall provide details for roof drainage piping for lots 19 through 21, block 12, and all lots on the west side of Nearnay Street to the City Engineer for review.
37. The Applicant shall provide a cross section and plan view of the proposed swales, including tract 3 and 4. The Applicant shall provide the City Engineer with the outlet elevation to the wetlands.

38. The Applicant shall provide the City Engineer with detailed information for how the creek/ditch at the south end of Nacarney Street, which crosses under the sidewalk and through Block 20, Lot 5, will impact to the roadway, utilities and lots.
39. The Applicant shall submit evidence that all necessary permits and approval from the U.S. Army Corps of Engineers and Oregon Department of State Lands have been obtained for impacts to wetlands in accordance with the approval plan.
40. The Applicant shall submit evidence of approval from the State Fire Marshall for all fire hydrant locations, street widths, and applicable Fire Code requirements.
41. The Applicant shall provide evidence that a 1200C Permit has been obtained from the Oregon Department of Environmental Quality for erosion control prior to grading and construction of the development.
42. The Applicant shall provide the City Engineer with a street lighting plan to ensure lighting is provided on pedestrian paths.
43. The Applicant shall construct sidewalks and directional ADA ramps on all public frontage areas. The Applicant shall provide the City Engineer with information on the construction materials of the pavement section of the pedestrian path to ensure compliance with City standards, increase the rock section of the path to 6 inches and ensure positive drainage away from the trail.
44. Prior to final plat approval, the Applicant shall be responsible for providing and installing all improvements including sewer, water, street and sidewalks, stormwater management facilities, street lights, street name signs, and street trees in accordance with Subdivision Ordinance Section 44 entitled Improvements Required, and in accordance with the City Engineer approved plans.
45. The Applicant shall be responsible for all costs necessary for off-site public infrastructure improvements that are triggered by the proposed new subdivision.
46. The applicant shall establish a homeowner's association for the development, and all open space within the development shall be owned and maintained by the homeowner's association. The required homeowner's association shall be responsible for any and all necessary stormwater maintenance facilities that serve the development. The required homeowner's association shall be responsible for maintaining the pedestrian paths within the development. The required homeowner's association shall be responsible for maintaining the storm water quality tracts.
47. The Applicant shall record a deed restriction or other covenant applicable to each lot in the subdivision, in a form acceptable to the State of Oregon Fish and Wildlife Department, that indemnifies ODFW for any damage or inconvenience to persons, real property, or personal property caused by big game and furbearing animals.
48. The Applicant shall investigate an alternative traffic route that does not require connection through the Francis Street cul-de-sac. If no alternative can be used, the Applicant shall show the need for the connection through Francis Street in the traffic study.

49. The Applicant shall dedicate a suitable area for a public park and playground for the use of the residents of the subdivision.

This ORDER was presented to and approved by the Rockaway Beach Planning Commission Chair on October 27<sup>th</sup>, 2023

  
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William Hassell