



Community Development Department  
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## Appeal Application to Planning Commission

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PLEASE NOTE: INCOMPLETE APPLICATIONS **WILL NOT BE ACCEPTED**

Original File Number # PA-25-0001

**Fee \$250.00**

**File Number #** A-25-0002

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PERSON FILING APPEAL: Stephen Williams (Applicant)

ADDRESS: 19781 Astro Place

CITY: Bend

STATE: Oregon

ZIP: 97702

PHONE: (541) 325-2639

EMAIL: stephen@preparetheway.us

### IN ORDER TO APPLY FOR AN APPEAL:

1. THE FILER MUST HAVE SUBMITTED TESTIMONY AT THE HEARING, **OR** MUST HAVE SUBMITTED WRITTEN TESTIMONY PRIOR TO THE HEARING, **OR** MUST BE A PERSON TO WHOM NOTICE WAS TO BE MAILED **AND** TO WHOM NO NOTICE WAS MAILED.
2. IF A HEARING WAS HELD, A TRANSCRIPTION OF THE MAGNETIC/CD TAPE RECORD MUST BE SUBMITTED BY THE APPLICANT. FAILURE TO SUBMIT THE TRANSCRIPTION WITHIN TEN DAYS AFTER THE NOTICE IS FILED SHALL RENDER A NOTICE OF APPEAL INSUFFICIENT.
3. A BURDEN OF PROOF STATEMENT MUST BE ATTACHED. THE BURDEN OF PROOF SPECIFIES THE GROUNDS FOR THE APPEAL AND ADDRESSES ERRORS WITHIN THE ADOPTED FINDINGS OF FACT DOCUMENT.



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4. THE FILING FEE MUST ACCOMPANY THE APPLICATION FOR APPEAL.

I AM APPEALING THE STAFF REPORT / FINDINGS OF FACT OF THE PROPERTY KNOWN AS:

T-15    R-13    SECTION 36, TAX LOT 2501,

REFERENCED IN PA-25-0001 (FILE NUMBER)

A handwritten signature in black ink, appearing to read "Shawn".

SIGNATURE

A handwritten date in black ink, "8/26/25".

DATE

**FOR OFFICE USE ONLY**

Date Received: \_\_\_\_\_

Rec'd By: \_\_\_\_\_

Fee Paid: \_\_\_\_\_

Receipt #: \_\_\_\_\_

## **BURDEN OF PROOF STATEMENT**

**File No. PA-25-0001**

### **Notice of Appeal:**

The Applicant Stephen Williams and Property Owner, John 3:16 Properties LLC ("Applicant/Owner"), is appealing the imposition of Conditions 17, 18, 23, 24, 25, 28, and 30, all of which relate to dedications and public improvements that the city seeks to exact from the Applicant/Owner as a condition to issuing approval of a three-parcel partition.

### **Grounds for Appeal:**

#### **1. Estoppel.**

During the Applicant/Owner's due diligence before acquiring the subject property, the Applicant/Owner met with Rachel Vickers, a representative of the city with authorization to determine the extent of dedication and public improvements that the city will demand as part of approving land use applications. The Applicant/Owner specifically requested a determination on the extent to which the city would require public improvements if the Applicant/Owner acquired the property and applied for a three-parcel partition.

Ms. Vickers unequivocally stated that the city would not require any public improvements in connection with a partition application. Ms. Vickers did not mention any required dedication. Specifically, Ms. Vickers stated that because the applications would be for a partition and not a subdivision, public street improvements would not be required. She mentioned the possibility of the city requiring a fee for sidewalks along Pine Street based on a formula of \$3.50 per foot. In a subsequent telephone call, Brent Bybee confirmed what Ms. Vickers had represented to the applicant/owner. The city representatives were fully aware that the Applicant/Owner was relying on the representation of the city representatives in deciding whether to acquire the subject property. If the city representatives had told the Applicant/Owner that dedication and public improvements would be required, the Applicant/Owner would not have acquired the subject property.

After the Applicant/Owner acquired the subject property and applied for a partition, Mr. Bybee changed the city's position and indicated that the city was going to require public street improvements. Then, in the city's administrative decision, the city required that the Applicant/Owner dedicate seven feet of property along the Pine Drive frontage and five feet along the Burgess Road frontage. The city imposed a condition requiring that the Applicant/Owner construct public improvements, including widening Pine Drive. The city added a fee for sidewalks along Burgess Road that was never mentioned. In the city's calculation of the sidewalk fee, it increased the fee from \$3.50 per foot to \$15.00 per foot contrary to Ms. Vicker's representation. As part of the decision, the city also required the Applicant/Owner to enter into an agreement for the improvements and post a bond prior to construction. The city further requires that the Applicant/Owner waive his right to remonstrate against the formation of a local improvement agreement ostensibly for the construction of even more public improvements. The city is estopped by its express representation from exacting the dedications and public improvements set forth in the above conditions.

2. Lack of essential nexus for exaction of property/improvements.

Before a local government may exact property, which includes public improvements and money to construct them, it has the burden to demonstrate that (1) it has a legitimate governmental interest, (2) that the condition or conditions serve the same legitimate interest, and (3) that project impacts so substantially impeded that interest that the local government has a valid basis to deny the permit outright. *Hill v. City of Portland*, 293 Or App 283 (2018). The city failed to meet its burden in this matter and therefore has no legal basis to impose the challenged conditions. The city has not explained how partitioning land generates impacts that substantially impede any legitimate governmental interest related to the safety, capacity or operation of the streets involved. *Brown v. City of Medford*, 251 Or App 42 (20121). In fact, the city decision acknowledges the lack of project impacts in that it prefers that the Applicant/Owner pay money for the improvements rather than complete them. The fact that the city admits that the improvements are not required now to address any specific impacts means there is no essential nexus to support the conditions exacting property. Furthermore, the city acknowledged in prior partitions that simply partitioning property does not provide a legitimate basis to exact street improvements.

Furthermore, the city did not conduct a proper rough proportionality assessment. The city did not identify much less quantify individualized impacts from the partition of property and explain how the impacts of the project are roughly proportional in nature and extent to the impacts on the applicant/owner.

Because the city has not met its burden under the Fifth Amendment and related case law, any conditions requiring dedication, street improvements, an improvement agreement, or bonding are not lawful.

3. Waiver of right to remonstrate.

The Applicant/Owner has a protected right to remonstrate against the formation of a public improvement district. The city exacted a waiver of that right as a condition to approving the partition application discussed above. The city did not even attempt to demonstrate that there are project impacts that substantially impede a legitimate governmental interest related to the formation of an LID that would justify a denial of the partition application. Indeed, the city is double dipping by trying to exact money for specific public improvements and forcing the Applicant/Owner to give up their right to object to a LID which would result in the Applicant/Owner having to fund even more unspecified public improvements.

4. Equal Protection.

In prior decisions the city acknowledged that impacts from a similar partition do not provide a legitimate basis to exact street improvements. Imposing them on the applicant in this matter violates the applicants right to equal protection under the laws.