



## City of Mill City

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### MILL CITY PLANNING COMMISSION AGENDA

#### Special Meeting

Tuesday, December 19, 2017 6:30 p.m.

City Hall – 444 S. First Avenue

MILL CITY, OREGON 97360

**Site Visit: The Mill City Planning Commission will do a site visit to 270 SE Whitten Rd. on Monday, December 18, 2017 at 3:30 p.m.**

**1. Call to Order and Flag Salute – 6:30 p.m.** Chair Ann Carey

**2. Approval of Minutes:** December 15, 2017 - Special Meeting

**3. Public Comment:**

*We welcome you to today's special meeting of the Mill City Planning Commission. This is an open meeting of the Commission and you are invited to observe the meeting.*

*If you wish to speak to the Planning Commission regarding an issue which is not on the agenda, the Commission provides time at the beginning of each meeting to listen to public comments. The chairperson will ask for public comment. When you are recognized, please state your name, address and briefly explain the issue you wish to discuss. Depending on the nature of the issue, the Planning Commission may address the issue during this meeting, table the issue to a future meeting or may request that you speak with the City Recorder or Planning Consultant outside the meeting.*

**4. Public Hearings:**

File #: 2017-06  
Purpose: Site Plan Review – Land Use Action Adjacent to North Santiam River Swimming Pool and Patio behind 270 SE Whitten Rd.  
Applicant: Scott Baughman  
Location: 270 SE Whitten Rd., Mill City, Oregon  
Map 9S R3E Section 29CC, Tax Lot 01200

**5. Presentations: None scheduled.**

**6. Old Business**

**7. New Business**

a. Alley Vacation Proposal – SE Juniper & SE Ivy Street

## **8. Adjournment**

### **Upcoming Planning Commission Meetings (All meetings at City Hall)**

***Tuesday, January 16, 2018***     ***6:30 PM***     Meeting may be cancelled or rescheduled. Stacie Cook is available to staff this meeting. Planning Consultant David Kinney will be out-of-state from January 15-February 2, 2018.

## **SCRIPT TO BE READ AT COMMENCEMENT OF A QUASI-JUDICIAL LAND USE PUBLIC HEARING**

Good evening, [Introduce yourself and Commission members].

I will be presiding over this hearing.

This is a public hearing to consider Land Use File #2017-06, a site plan review for an existing swimming pool and patio. The applicant Scott Baughman has constructed an in-ground pool and patio behind his home at 270 SE Whitten Rd. in Mill City. Section 17.44.120 of the Mill City Zoning Code requires the Planning Commission to review site plans for any new structure or use constructed on a lot adjacent to the North Santiam River.

A copy of the agenda and hearing procedures for this meeting is near the entry door. This hearing is now open.

Oregon land use law requires a statement be made available to those in attendance. The detailed Statement, with the information required under ORS 197.763(5), is printed and available.

The Planning Commission will consider the application, written and oral testimony and the criteria listed in the Mill City Zoning Code when making a decision. All testimony, arguments and evidence received during this public hearing must be directed to the approval criteria, or to such other rule, law, regulation or policy which you believe to apply to this case.

If anyone has any questions or objections regarding the Statement or these proceedings, please raise those questions when it comes to your turn to speak during the hearing.

If you testify, please state your name, address, if you support the proposal, are opposed to the proposal or have questions. Please limit your testimony to 3-5 minutes.

## **Objections**

At this time I would ask the audience if there are any objections:

- (1) Are there any objections to the notice that was sent in this case?
- (2) Are there any objections to the jurisdiction of the Planning Commission to hear and consider this case?

*[If there are none, announce "there are objections".]*

## **Declarations of Conflict of Interest, Bias and Ex Parte Contact**

I will now ask the Planning Commission members if they are ready to consider the proposal:

- (1) Are there any declarations of conflict of interest; ex parte contact or bias by any members of this body?

*[If there are, have the Planning Commission member(s) state what the conflict, bias or ex parte contact is]*

We are now ready for the applicant to present the proposal.

***Follow the Hearing Agenda Format for the order of the staff report and public testimony.***

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## **CLOSING STATEMENT**

*At the close of the public hearing, please read:*

The Planning Commission's decision action may be appealed to the City Council within 14 days of the mailing of the notice of decision by the City. If no appeal is filed, the decision is final.

# **ORS 197.763(5) STATEMENT INFORMATION**

## **REGARDING PROCEDURES FOR LAND USE HEARING**

### Site Review – Swimming Pool & Patio @ 270 SE Whitten Rd., Mill City Land Use Action Adjacent to the N. Santiam River

This is a public hearing to consider Land Use File #2017-06. The City has received a land use application from Scott and Shelley Baughman. They have constructed an in-ground pool and patio behind their home at 270 Whitten Street SE in Mill City without obtaining permits from the City and Linn County. Residential uses and accessory uses, such as a swimming pool, are permitted in the CC zone.

Since the property has frontage on the North Santiam River and the pool & patio were constructed near the top of the slope, the applicant is required to submit a site plan showing the location of the in-ground pool, the top of the slope and the identified riparian area adjacent to the river. The home, pool and back yard are located at the top of a slope above the river.

All testimony, arguments and evidence received during this public hearing must be directed toward these approval criteria, or to such other rule, law, regulation or policy which you believe to apply to this case.

An issue which may be the basis for an appeal shall be raised not later than the close of the record at or following the final evidentiary hearing on this case. Such issues shall be raised with sufficient specificity so as to afford this body, and the parties to this hearing an adequate opportunity to respond to each issue.

The Planning Commission's decision is final, unless it is appealed to the City Council. If the City Council hears an appeal in this case, the City Council's final action may be appealed within 21 days of mailing of notice of the decision to the Oregon Land Use Board of Appeals.

The Presiding Officer over the public hearing reserves the right to limit the time of any presentation. Please try to avoid repetition; if someone else has already expressed the same thoughts, it is perfectly alright to state that you agree with the statements of that previous speaker.

If you have documents, maps or letters that you wish to have considered by this body, they must formally be placed in the record of this proceeding. To do that, either before or after you speak, please leave the material with Planning Staff who will make sure your evidence is properly taken care of.

Prior to the conclusion of the initial evidentiary hearing in this case, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application involved here. Continuances may take the form of holding an additional public hearing with oral testimony allowed, or may consist of holding the evidentiary record open for a period of time designated by the City, for submittal from the public of written evidence.

If you have any questions regarding any of the information contained in this Statement, please voice those questions, or objections at the time you testify. If you do not wish to testify, your questions or objections may be submitted in writing and will be dealt with during the course of the hearing. Any written material must be presented prior to the closure of the record in this case.

## **Public Hearing Format for Land Use Hearings Before the Mill City Planning Commission**

- A. Opening of the Public Hearing & Rules of Conduct Chairperson
- B. Declarations of Ex Parte Contact, Conflicts of Interest or Bias
- C. Applicant's Presentation of the Application
- D. Staff Report Planning Consultant for the City
- E. Proponent's Testimony (Persons in Favor)
- F. Opponent's Testimony (Persons Opposed)
- G. General Testimony of Individuals or Organizations
- H. Questions of Clarification from the Planning Commission and Staff
- I. Applicant's Summary and Rebuttal
- J. Staff Summary
- K. Close of Public Hearing

### **Planning Commission Deliberation & Decision**

*No public testimony is permitted during the Planning Commission's deliberation. The Planning Commission will normally make a recommendation or a decision on an issue following a public hearing, but may continue their deliberation to either a special meeting or the next regular meeting of the Planning Commission.*

### **Guidelines for Public Testimony:**

The Chair of the Planning Commission, as presiding officer, will recognize all speakers. If you wish to testify during the public hearing, please assist the Chairperson by abiding by the following rules:

1. State your name and address.
2. Indicate whether you support the application, oppose the application or wish to offer general testimony. Provide factual evidence and direct your testimony to the decision criteria.
3. Please keep your testimony brief and to the point. Limit comments to 3-5 minutes per person.
4. Direct any questions you have to the Chairperson. The Chairperson will direct your question to the applicant, city staff or other person who may be able to provide an answer.
5. The Chairperson may limit testimony when it is cumulative, repetitive, irrelevant or immaterial to the issues being considered.



**MILL CITY PLANNING COMMISSION**  
**STAFF REPORT**

**STAFF REPORT DATE:** December 11, 2017  
**HEARING DATE:** December 19, 2017  
**FILE NUMBER:** 2017-06  
**APPLICANT:** Scott and Shelley Baughman  
PO Box 943, Mill City, OR 97360  
**PROPERTY OWNERS:** Scott and Shelley Baughman  
**PROPERTY:** 270 SE Whitten Rd., Mill City, OR

Assessor's Map	Tax Lot	Account	Acres	Zoning	Address
T09S R3E 29CC	01200	910574	0.63	CC Commercial	270 SE Whitten

**EXHIBITS:** EXHIBIT A Application & Site Map  
EXHIBIT B Aerial Photo  
EXHIBIT C Linn County Assessor's Map 9S 3E 29CC  
EXHIBIT D Whitten Addition Subdivision Riparian Assessment

**REQUEST:** Site Plan for a Swimming Pool and Patio in Rear Yard  
Land Use Action Adjacent to the North Santiam River

**CRITERIA:** **Mill City Municipal Code (MCMC) – Title 17 - Zoning**

- **Chapter 17.16** **Multi-Family Residential Zone (R-2)**
  - Section 17.16.020 Uses Permitted Outright
- **Chapter 17.20** **Central Commercial Zone (CC)**
  - Section 17.20.020 Uses Permitted Outright
  - Section 17.20.060 Yard Requirements
- **Chapter 17.44.120** **Land Use Action on the North Santiam River**



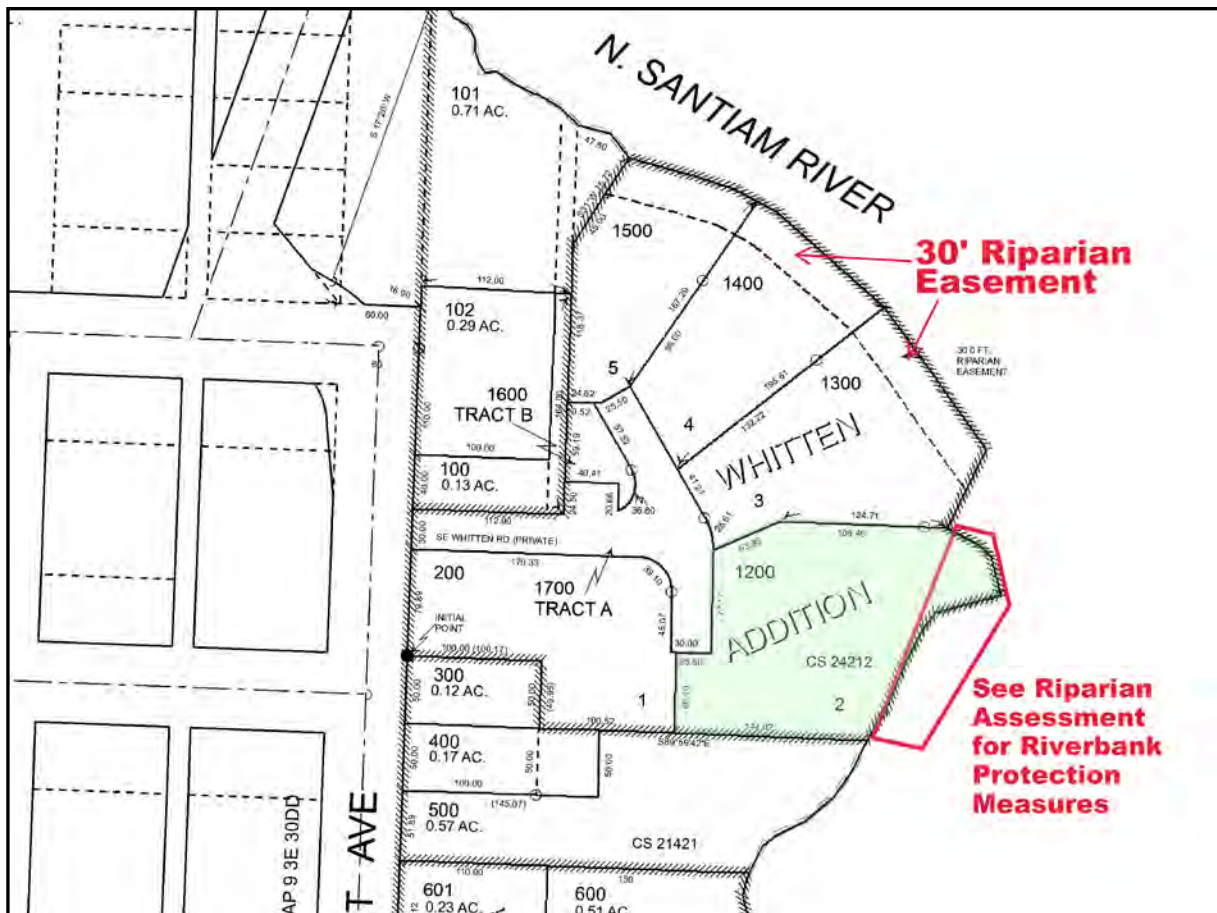
# I. Applicant's Proposal

## A. Overview

The City has received a land use application from Scott and Shelley Baughman. They have constructed an in-ground pool and patio behind their home at 270 Whitten Street SE in Mill City without obtaining permits from the City and Linn County. Residential uses and accessory uses, such as a swimming pool, are permitted in the CC zone.

Since the property has frontage on the North Santiam River and the pool & patio were constructed near the top of the slope, the applicant is required to submit a site plan showing the location of the in-ground pool, the top of the slope and the identified riparian area adjacent to the river. The home, pool and back yard are located at the top of a slope above the river. The property is shown in Figure 1.

Figure 1  
Linn County Assessor's Map - 270 SE Whitten Rd.



## B. Site Review – Land Use Action for Property Adjacent to the North Santiam River

Under Mill City Municipal Code (MCMC) Section 17.20.025.G and 17.44.120 any new building or permitted use constructed on a parcel of land adjacent to the North Santiam River must obtain site plan approval and comply with development standards and measures to protect the riparian area, river ecosystem and steep slopes abutting the North Santiam River.

**C. Location of Flood Plain and Riparian Area behind 270 SE Whitten Rd.**

The ordinary high-water line for the North Santiam River flow is typically at elevation 805'-808'+/-. FEMA flood maps show the 100-year base flood elevation at 810'-811' next to the applicant's property. Due to the steep slopes on the south side of the river, the 100-year flood plain is confined to the area within 10'-from the ordinary high-water line for the river segment adjacent to 270 SE Whitten Rd.

The N. Santiam River has a wide riparian area that includes trees and shrubs from the river up to the applicant's back yard. This vegetation provides summer shade and habitat along the river. The applicant has trimmed trees and recontoured the upper third of the slope. The slope from the river up to the building site has very steep slopes (>25%). Figure 2 shows the location of the 100-year flood plain and the steep slope elevations.

Figure 2  
Aerial Photo showing approximate location of pool and patio

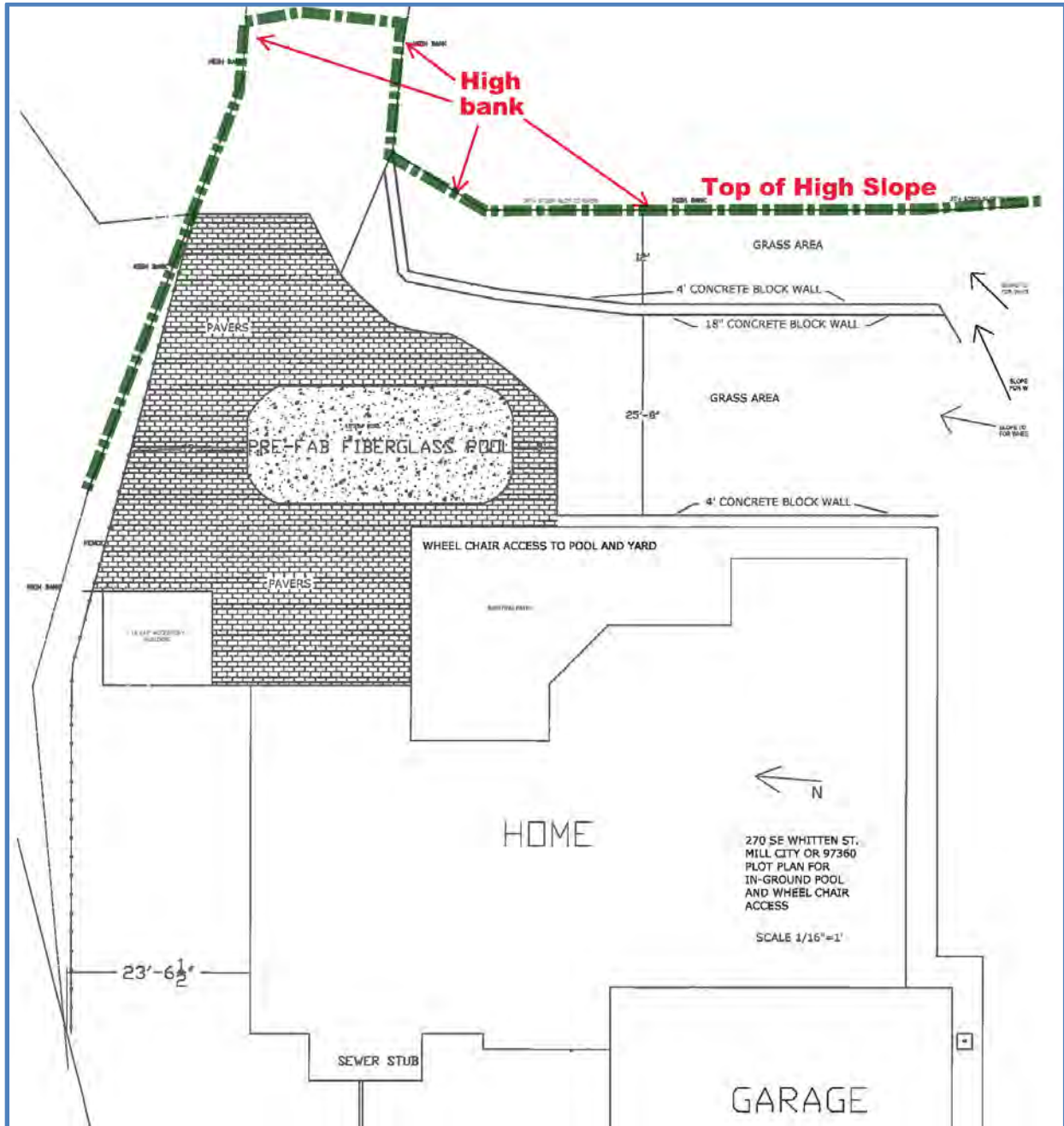


**D. Pool and Patio**

An in-ground fiberglass pool and the surrounding patio have been constructed in the rear yard of the house overlooking the river. The pool and house were built on the flat plateau at an elevation of 830'+,

well above the designated 100-year flood plain and the steep slope down to the river. Figure 3 is the applicant's plan showing the location of the pool and patio behind the home.

Figure 3  
 Site Plan showing location of pool and patio behind home @ 270 SE Whitten Rd.



**E. Building Code Requirements**

The State of Oregon Building Codes requires permits for the installation of an in-ground swimming pool. The inground pool must comply with Appendix G of the Oregon Residential Specialty Codes.

On December 11, 2017 Suzanne Larson, Linn County Building Official, informed the City's planning consultant that the applicant will need to obtain a building permit and electrical permits for the pool. She noted an inground pool must comply with all code requirements for safety issues including electrical grounding and barriers/fencing around the pool area.

After a site inspection, the building inspector may require a geotechnical report if there are any concerns with soil stability and a grading permit for the excavation, contour work and the retaining wall.

#### **F. Environmental Report and Recommendations for Whitten Addition Subdivision (2004)**

In 2004, the applicant had a consultant review the riparian area, vegetation and slopes on the property. A copy of this riparian assessment report is included as Exhibit "D". Environmental Technology consultants made the following recommendations in the Whitten Addition report:

*Therefore, based on observations of the proposed development site, the following professional opinion as to adequate buffering is proposed:*

- 1. Those areas along the north boundary of the site which interfaces at water level with the North Santiam River should maintain a minimum 30' undisturbed buffer. In addition, additional buffer should be included where possible with allowances for low impact activities such as trails and picnic areas. Trees and native vegetation within the low impact zone should be maintained to the extent possible while still allowing property owners adequate use of their property. CC&R's or other legally defensible covenants, fencing or public agency dedication should be put in place to ensure that the undisturbed 30-foot buffer is not impacted in any way.*
- 2. The areas along the top of the cliff that makes up the east property boundaries above the river should have setbacks as dictated by personal safety or geotechnical issues. However, in no circumstances should the existing fringe of vegetation along the top of the cliff, or any vegetation between the top of the cliff and the river be altered. In addition, any setbacks as dictated by the above concerns should be planted in low growing native vegetation to augment existing conditions while still providing existing views for residents.<sup>1</sup>*

Mr. Baughman has modified the contours of his back yard near the top of the slope, removed noxious vegetation, planted grass above the top of the slope and added a concrete block walls.

## **II. BACKGROUND INFORMATION**

### **A. Pre-Application Information and Application Submittals:**

The applicant filed an application with the City on October 23, 2017. The application was deemed complete by the planning consultant on October 27, 2017. Therefore, the final local decision must be made by February 23, 2018, to comply with the "120 Day Rule".

### **B. Application, Land Use Procedure and Review Requirements:**

Chapter 17.64 of the Mill City Municipal Code (MCMC) outlines the application, notice and review requirements for land use applications. A proposed land use action for a new structure or permitted use on a lot adjacent to the North Santiam River requires a quasi-judicial review process. The Mill City Planning Commission will hold a public hearing on December 19, 2017 and at the conclusion of the hearing will deliberate and make a decision to approve or deny the proposal. An appeal of the Planning

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<sup>1</sup> *Riparian Buffer Assessment (Whitten Addition Subdivision)* prepared for Scott Baughman Construction dated August 12, 2004 by Environmental Technology Consultants, Vancouver, WA, p. 5.

Commission decision may be filed with the City Council.

The City Council must review the Planning Commission's decision before it becomes final and the City Council has the option of calling the application up for a public hearing and further City Council review.

### **C. Burden of Proof:**

The burden of proof is on the applicant to present the application to the Planning Commission and to present information which shows that the application meets the criteria for approval. The Planning Commission must make a decision within 120 days of receipt of the application.

### **D. Public Hearing and Notices of Public Hearing:**

A public hearing concerning the matter will be held before the Planning Commission on Tuesday, December 19, 2017 beginning at 6:30 p.m. at the City Hall, 444 South First Avenue in Mill City, Oregon. The Planning Commission will make its decision based on the criteria found in the Mill City Zoning Code, Section 17.44.120. The Searchable City Code can be viewed under "Documents" at the City of Mill City website: <http://www.ci.mill-city.or.us/>.

Notice of any public hearings must be provided to affected governmental agencies and adjacent property owners. Written notice shall be mailed to owners of property within 100' of the subject property at least 20 days prior to the initial evidentiary hearing. Notice of the initial evidentiary hearing was mailed 20 days prior to the December 19, 2017 hearing.

### **E. Existing Conditions:**

The applicant's home, pool and yard are located on the property at 270 SE Whitten Rd. The buildable area of the site is located on the flat upland terrace at the 830'+/- elevation. A steep slope descends down to the water's edge of the river at the 810'+/- elevation.

Adjacent uses are:

EAST:	N. Santiam River
NORTH:	Single family home at 244 SE Whitten Rd.
SOUTH:	Single family homes at 328 and 354 1 <sup>st</sup> Avenue.
WEST:	Santiam Medical Clinic

### **F. Utilities:**

The home is served by existing city services and private utilities. No changes are proposed.

### **G. Agency Comments and Public Testimony:**

1. Agency Comments. Agency comments were solicited from the Department of State Lands and Linn County Building Department. Responses were requested back by December 19, 2017.

**Linn County Building Department:** On December 11, 2017 Suzanne Larson, Linn County Building Official, informed the City's planning consultant that the applicant will need to obtain a building

permit and electrical permits for the pool. After a site inspection, the building inspector may require a geotechnical report if there are any concerns with soil stability. She noted an inground pool must comply with all code requirements for safety issues including electrical grounding and barriers/fencing around the pool area.

**Mill City Rural Fire District:** On December 13, 2017 the Fire District responded and stated they did not have any comments.

**Department of State Lands:** [Insert information when received]. On December \_\_\_\_ 2017 DSL sent a response stating: "..."

As of December 13, 2017, the City had not received any other agency comments. Any other agency comments received prior to or during the public hearing will be made part of the record.

2. **Public Testimony.** The City sent notices of the public hearing to surrounding property owners. As of December 12, 2017, the City had not received any written testimony from adjacent property owners. Any written public testimony received prior to or during the public hearing will be made a part of the record. Oral testimony will be included in the meeting minutes.

### III. FINDINGS

The application was reviewed to determine whether the proposal complies with the applicable standards and criteria in Title 17-Zoning of the Mill City Municipal Code.

#### A. Chapter 17.20 – Central Commercial (CC) Zone

The following standards in the CC zone apply to this proposal.

**17.20.020 Permitted Uses.** In a CC zone, a single-family home and related accessory uses are allowed as an outright permitted use, subject to the standards for single family homes included in the R-2 zone (Chapter 17.16).

**17.20.025.G Uses Permitted Subject to Site Plan Review.** Section 17.20.025.G states: "*Any permitted use or conditional use proposed on a lot or parcel adjacent to the North Santiam River shall comply with the requirements of Section 17.44.120.*"

**FINDINGS:** The CC zone allows single family homes and their related uses subject to a site plan review for the home and accessory uses. The home was approved when it was constructed. The pool is an accessory use subject to a site review because of its location adjacent to the N. Santiam River. The pool must be installed per the State of Oregon building and electrical code requirements.

#### B. Chapter 17.44.120 – Land Use Action on the North Santiam River

Any new building or use on a lot abutting the North Santiam River must comply with Section 17.44.120 of the Mill City Zoning Code. This section reads as follows:

**17.44.120 Review of land use action involving the North Santiam River.**

Existing or proposed lots that adjoin the North Santiam River shall comply with the following requirements.

- A. Land Use. Any land use change involving a current lot or proposed lot that adjoins the North Santiam River shall be submitted to the planning commission for review. Land use changes include, but are not limited to,

new building construction, enlargement of a building, or landscaping that requires the addition or removal of soil except as outlined in subsection D of this section. The planning commission shall use the following guidelines in approval or denial of an application.

1. The removal of any existing trees or other forms of existing natural vegetation such as shrubs, brush, plants or grasses between the stream channel and the topographical break at the top of the stream bank which might be harmful to existing fish and wildlife habitats;
  2. A use expressed in the proposed request that might have a damaging impact on existing fish or wildlife habitats along the river.
- C. Hearing and Action on Land Use Change Application Involving the North Santiam River. Before the planning commission may act on an application for a land use change involving the North Santiam River, it shall hold a public hearing in accordance with the provisions of Sections 17.64.080 and 17.64.090 of this title. Hearing notice shall also be provided to the Oregon Department of Fish and Wildlife and to the Oregon Department of Forestry. After the public hearing is closed, the planning commission shall either approve, deny, or approve with conditions or modifications, the application.
- D. Time Limit on Approved Land Use Change Involving the North Santiam River. Authorization of land use change involving the North Santiam River shall be void one year after the date of approval unless a building permit has been issued and substantial construction pursuant thereto has taken place. However, upon written request, the planning commission has the authority to grant an additional period, not to exceed one year, to complete the project.

Section 17.44.120.E. authorizes the Planning Commission to place conditions on the approval of a land use action involving the river. This section reads as follows:

- E. Conditions. If the planning commission finds that damaging effects set forth in subsection A of this section could occur from the proposed request, the commission may impose conditions to any land use application approval in order to maintain, enhance and protect existing fish and wildlife habitat along the river. Such conditions may include, but are not limited to, the following.
1. Replanting of any existing trees or any other forms of existing natural vegetation which are removed;
  2. Requirement of additional or special setbacks from the water's edge or at the topographical break at the top of the stream bank;
  3. Installation of fencing.

**Criteria 1: 17.44.120.A.1 – Removal of Riparian Vegetation.** The removal of any existing trees or other forms of existing natural vegetation such as shrubs, brush, plants or grasses between the stream channel and the topographical break at the top of the stream bank which might be harmful to existing fish and wildlife habitats.

**Facts:**

1. Under the city code, the applicant may remove diseased or dying trees and remove noxious vegetation (blackberry and ivy) and replant with native plants.
2. The patio and pool are located in the backyard plateau, well above the flood plain. The pool and patio are above the topographical break of the bank. (830' elevation line).
3. There is a 35'-40'-wide riparian vegetation zone along the edge of the river. It includes several large and smaller shrubs. Figure 2, the aerial photo of the site, shows the riparian vegetation and slopes along the river edge, the parcel boundaries and the backyard including the approximate location of the pool.
4. The applicant terraced the ground at the top of the slope for the new grass area and patio. He removed natural vegetation on the hillside and at the top of the slope.
5. The applicant installed concrete block walls to create the terraces and lawn areas.

6. The grading work done on the slope did not comply with recommendation #2 in the Whitten Addition riparian assessment.

**Conclusion:** Removal and regrading of the site did not comply with the terms of the riparian assessment report, which was one of the conditions for development of the Whitten Addition Subdivision.

The City staff recommends the applicant be required to have an environmental consultant prepare and submit a plan to the City to replant the disturbed area of the slope with native vegetation (trees and shrubs) and that the property owner replant the slope in compliance with the consultant's recommendations by July 1, 2018.

The Linn County Building Department will need to look at the block retaining walls and determine if permits were needed.

**Criteria 2:** 17.44.120.A.2 - Use Detrimental to Fish & Wildlife Habitats. A use expressed in the proposed request that might have a damaging impact on existing fish or wildlife habitats along the river.

**Facts:**

1. The Upper Willamette River Conservation and Recovery Plan for Chinook Salmon and Steelhead is a state and federally approved recovery plan under the federal Endangered Species Act and a conservation management plan under the State of Oregon's Native Fish Conservation Policy. It outlines strategies for the protection and recovery of Upper Willamette spring Chinook and winter run Steelhead in the Willamette River and its tributaries, including the North Santiam River.

Chapter 7 of the plan outlines strategies and actions to reduce or eliminate limiting factors and threats that prevent fish population recovery. The plan outlines 14 recovery strategies. One of the key strategies to maintain or restore riparian conditions and minimize further degradation of fish habitat. The long-term plan is designed to benefit water quality and complexity. A few applicable short-term strategies include land management actions to reduce manmade impacts on habitat, restoration of riparian areas, retention of shade and implementation of TMDL plans by local jurisdictions.<sup>1</sup>

2. In April 2017 the National Marine Fisheries Service (NMFS) issued a biological opinion that concluded the Federal Emergency Management Agency's historic management of flood hazard management programs in Oregon coupled with the proposed actions presented in its 2013 DRAFT Biological Opinion will jeopardize the continued existence of the listed species, including the Upper Willamette Spring Chinook and Winter Steelhead that are in the North Santiam River basin, and will destroy or adversely affect their critical habitat. NMFS also concluded that protection of the existing flood plains and restoration of flood plain habitat are necessary for the listed salmon and steelhead to survive and recover. Based on those conclusions, the April 2017 NMFS BiOp outlines a list of six "Reasonable and Prudent Alternative" (RPA) actions. NMFS recommends FEMA, and its participating Oregon NFIP communities, implement these RPA's over a period of 5-8 years. FEMA is now in the process of determining what steps it will take and what directions it will provide to Oregon's

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<sup>1</sup> *Upper Willamette River Conservation and Recovery Plan for Chinook Salmon and Steelhead*, Chapter 7, pages 7-1 to 7-10.



cities. Cities are expected to take steps to protect the flood plain and riparian habitat along major rivers and tributaries.

3. The riverbank has trees and low vegetation within the first 35'-50' feet from the ordinary high-water mark of the North Santiam River. The City's TMDL plan approved by DEQ recommends retention of trees to keep river temperatures cool.

**Conclusion:**

The City has a responsibility to protect water quality, fish and wildlife habitat along the North Santiam River. This includes compliance with the City's flood plain management ordinance, in recognition of the April 2017 FEMA/NMFS BiOp and also comply with the City's TMDL plan as approved by DEQ and protect the riparian corridor. The recommended condition to have an environmental consultant prepare a plan for replanting the disturbed slope and the completion of replanting by July 1, 2018 will address this requirement.

## **IV. CITY PLANNER CONCLUSION AND RECOMMENDATION**

Based on the findings contained in this report, the City's Planning Consultant concludes the location of the pool and patio at 270 SE Whitten Rd. can comply with the city's code requirements, if the applicant obtains required permits and complies with conditions of approval.

The Planning Consultant recommends the Commission impose the following condition of approval.

1. **EXPIRATION DATE:** The site plan for the swimming pool and patio at 270 SE Whitten Rd. is hereby approved. The approval will expire on December 31, 2018 at 4:00 p.m. if the applicant does not file applications for building and electrical permits and complete the riparian slope plant restoration.

2. **RIPARIAN PLANTING REQUIREMENTS:**

In order to maintain, enhance and protect existing fish and wildlife habitat along the river the applicant and future property owners will preserve the riparian area described in Riparian Assessment Report for the Whitten Subdivision.<sup>2</sup>

- a. An environmental consultant will prepare and submit to the City Recorder a plan to replant the disturbed area of the slope, behind 270 SE Whitten Rd., with native vegetation (trees and shrubs) for review and approval by the City.
- b. The property owners will replant the slope, in accordance with the consultant's recommendations, by July 1, 2018.
- c. This does not restrict the property owner's ability to continuously maintain riparian vegetation, including but not limited to, removal of dead or hazardous trees or limbs, removal of noxious vegetation, or replanting the riparian area and slope with native plants.

3. **BUILDING PERMITS AND ELECTRICAL PERMITS:**

The property owner will obtain building permits and electrical permits for the in-ground pool and comply with Appendix G of the Oregon Residential Specialty Codes The in-ground pool and patio

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<sup>2</sup> *Riparian Buffer Assessment (Whitten Addition Subdivision)* prepared for Scott Baughman Construction dated August 12, 2004 by Environmental Technology Consultants, Vancouver, WA, p. 5.

area must comply with all code and safety requirements, including electrical grounding and barriers/fencing around the pool area. If required by the Linn County Building Department, the applicant will also obtain permits for the retaining walls on the site and/or submit a geotechnical report with the building permit application(s).

## V. PLANNING COMMISSION OPTIONS

- A. Approval of the site plan for an in-ground swimming pool and patio at 270 SE Whitten Rd., File No. 2017-06 and adoption of the proposed findings and the recommended conditions of approval.
- B. Approval of the site plan for an in-ground swimming pool and patio at 270 SE Whitten Rd., File No. 2017-06 and adoption of amended findings and conditions of approval to reflect the Planning Commission deliberations.
- C. Denial of the proposal, File No. 2017-06 and to direct the City Planning Consultant to modify the findings to reflect the Planning Commission’s deliberations that the proposal does not meet the applicable approval criteria.
- D. Continue the hearing, to a date and time certain, if additional information is needed to determine whether applicable standards and criteria are addressed.

## VI. MOTIONS

- Approval: To approve the site plan for Scott Baughman for the existing swimming pool at 270 SE Whitten Rd, to adopt the findings of fact, conclusions and the recommended conditions of approval for File No. 2017-06.
- Approval (modified): To approve the site plans for Scott Baughman for the existing swimming pool at 270 SE Whitten Rd, to direct the staff to modify the findings of fact and conclusions to reflect the Planning Commission’s deliberations and adopt the conditions of approval for File No. 2017-06.
- Continue: To continue deliberations to the next meeting of the Planning Commission on ***(insert DATE and TIME)***.
- Denial: To deny the application because the applicant has not demonstrated the proposal complies with all of the Mill City Development Code criteria and to direct the staff to modify the findings and prepare a final order to reflect the Planning Commission’s deliberations and conclusions.

## VII. FINAL ORDER AND NOTICE OF DECISION

A FINAL ORDER and a written NOTICE OF DECISION will be issued to the applicant and all participants of record within five (5) business days of the Planning Commission’s decision. The City Council will review the Planning Commission decision at its next regularly scheduled City Council meeting and may elect to call a public hearing to consider the proposal. If the Council calls for a public hearing, then the Council will make the final decision. If the City Council does not call for a public hearing, the planning commission is final and takes effect at the end of the appeal period.

## **VIII. APPEAL PERIOD**

Any person aggrieved by the Planning Commission decision may appeal the decision to the City Council by filing a written appeal with the City of Mill City within fifteen (15) calendar days of the date the Notice of Decision is mailed by the City.

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**To:** Mill City Planning Commission  
**From:** David W. Kinney, Planning Consultant  
**Date:** December 19, 2017  
**Subject:** SE Juniper/Ivy Alley Vacation – 3<sup>rd</sup> to 4<sup>th</sup>

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**Enclosures:**

1. Map showing proposed alley vacation

**A. Alley Vacation Request:**

The City has been approached by the adjacent property owners asking if the City would consider vacating the alley between 3rd/4<sup>th</sup> – Juniper/Ivy streets as shown on the enclosed map. In the past, the Planning Commission has recommended the City Council initiate an alley vacation process when the Planning Commission has concluded an alley is not needed for City/private utilities and is not needed for fire access or driveway access to the adjacent properties.

Before the Planning Commission makes a recommendation, the City staff will:

- Send a Notice to Utilities asking if they have utilities in the alley and asking if the utility has any objection to the City vacating the alley.
- Determine if the alley is needed for city utilities: water, sewer, storm.
- Determine if the alley is needed to provide access to the adjacent lots.

**B. ORS 271 Street Vacation Requirements**

ORS 271 allows cities to vacate unused street and alley rights-of-way and deed them back to the adjacent property owners. Street and alley vacations may be initiated by two methods:

- (1) Petition. Adjacent property owners may file a petition to vacate a street or alley. The petition process requires the applicant to get signatures from all abutting property owners plus signatures from 2/3rds of all other property owners within 250' (east-west) and 450' (north-south) of the street/alley to be vacated.
- (2) City Resolution. A city can initiate vacation proceedings by adoption of a resolution by the City Council. If the City initiates the alley vacation process, the City has required the affected property owners to pay for all costs related to the vacation proceedings and filings in the County Deed Records.

**C. Vacation Procedures**

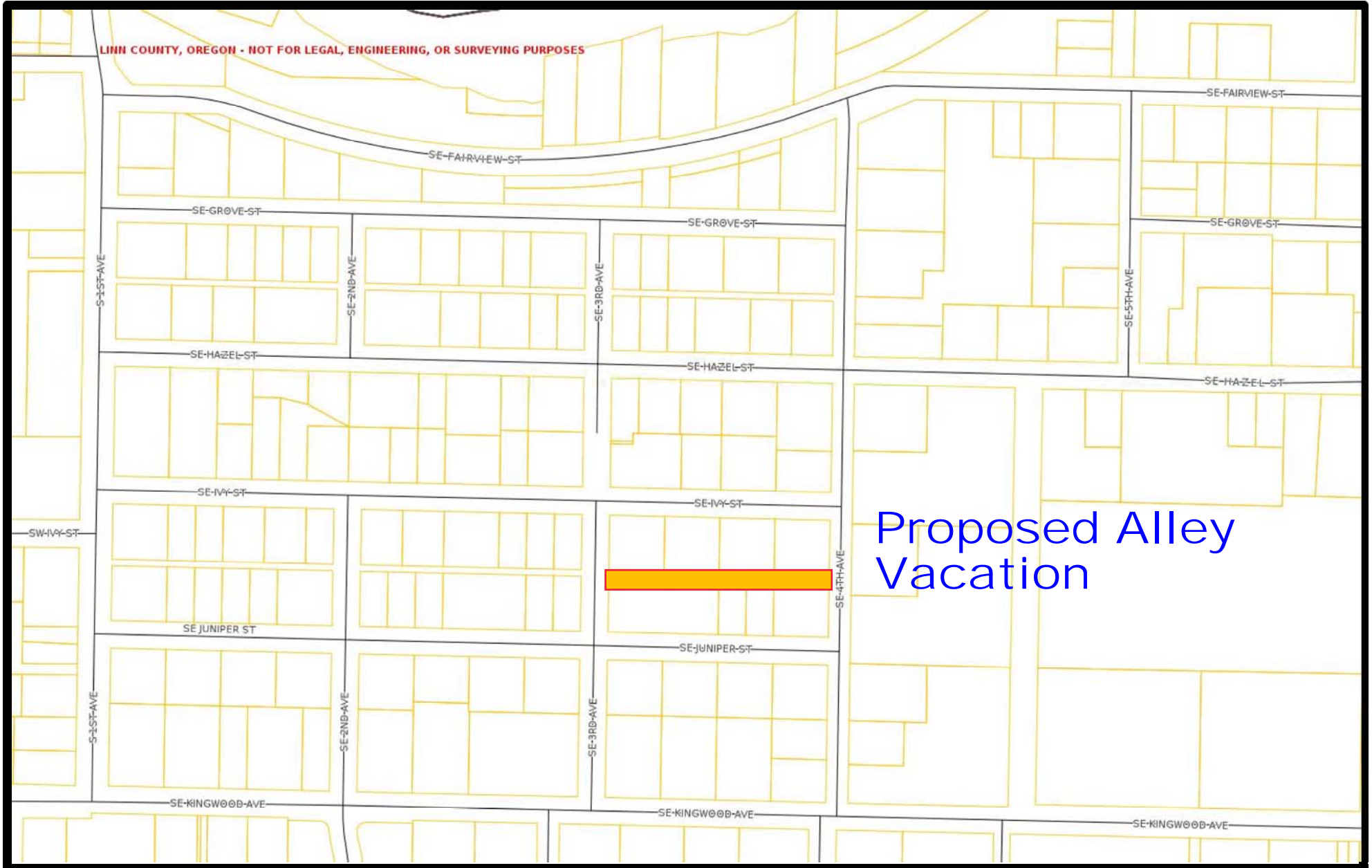
After adoption of a resolution initiating the vacation proceedings, the City must

- post the property
- send notices to property owners in the affected area
- send notices to utilities and the Linn County Roads Department
- publish a notice about the proposed alley vacation in the Canyon Weekly
- City Council will hold a public hearing on the vacation proposal

If the City Council determines it is appropriate for the City to vacate the property, then the City Council must adopt an ordinance and record the ordinance in the Linn County Deed Records.

# Proposed Alley Vacation SE Juniper/SE Ivy, Mill City

December 2017



Proposed Alley  
Vacation

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