



GARVEY SCHUBERT BARER  
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

PORTLAND OFFICE  
eleventh floor  
121 sw morrison street  
portland, oregon 97204-3141  
TEL 503 228 3939 FAX 503 226 0259

anchorage, alaska  
beijing, china  
new york, new york  
seattle, washington  
washington, d.c.  
GSBLAW.COM

Please reply to CARRIE A. RICHTER  
crichter@gsblaw.com  
Direct Dial 503 553 3118

## MEMORANDUM

TO: City of Oregon City Planning Commission  
FROM: Carrie A. Richter, Deputy City Attorney  
DATE: September 14, 2015  
RE: Pavilion Park III – ZC 15-02 and TP 15-03

---

Icon Construction and Development LLC submitted an application for approval of a Zone Change from “R-10” Single-Family Dwelling District to “R-6” Single-Family Dwelling District (Planning file ZC 15-02) and a 25-Lot subdivision (Planning file TP 15-03). Staff has drafted a staff report with findings to applicable sections of the Oregon City Municipal Code (OCMC) and recommended conditions for the Planning Commission and City Commission review.

In the revised Condition 10, city staff has recommended extension of the existing 12-inch water main located at the intersection of Leland Road and Kalal Court to the southwestern most boundary of the proposed development’s frontage along Leland Road. This condition requires extending the line approximately 182’ along Leland Road, in front of two existing properties not subject to this application, to reach the 50’ of frontage within the proposed development, also known as Lot 16. The applicant objects to this condition arguing that it imposes off-site improvements to serve a single lot that are not roughly proportional. The applicant claims that the cost of extending the city water line to serve this single lot is \$50,000 to \$60,000, nearly offsetting the value of the lot itself.<sup>1</sup>

### Essential Nexus Analysis

As explained in the staff report, the existing CRW water mains in this area are in poor condition. They are scheduled to be abandoned in the future, and new lines are needed to serve the subject property. Section 1.03 of the Water Distribution System Design Standards states that permanent distribution facilities shall be provided to all lots created by subdivision, and along the subject site frontage. Section 2.00 of the standards states that the main shall be extended across the street frontage when the main is located within the right-of-way. The only way to satisfy these standards, given the connective, linear nature of a water line, is to require that in addition to installing the pipe along the frontage of Lot 16, the applicant must also extend the line approximately 182 feet as necessary to reach the lot in the first instance.

---

<sup>1</sup> The applicant’s cost estimate assumes an obligation to construct 228 linear feet of water line along Leland Road. As shown in the attached exhibit, the city calculates the total obligation to be 232 feet, although 50 of those feet do front Lot 16. If the applicant’s objection is to the off-site improvements, they extend for 182 feet and applying the applicant’s cost estimate, would impose an additional burden of \$41,071.



The City's 2012 Water Distribution System Master Plan Figure ES-2 shows a future system pipeline extending along Leland Road in a southwesterly direction onto S. McCord Road and then turning northward along McCord Road and connecting with the S. McCord Road line that must also be constructed by the applicant. In addition to providing service to Lot 16, the extension of the water line within Leland Road towards McCord Road serves all of the Pavilion Park III lots because once the McCord Road / Leland Road lines are connected, the entire development will benefit in the following ways:

1. The water line will provide increased water pressure for the entire property subject to the zone change.
2. The water line will provide increased public safety by enhancing fire flows for the entire property subject to the zone change.
3. Improved system connectivity will increase the water quality enjoyed by the entire property subject to the zone change.
4. Looping provides a redundancy benefit allowing for service to the entire property in the event of an outage.

As a result, Lot 16 is not the only lot that will benefit by the requirement to construct an additional 182' off-site improvement. The whole of the Pavilion Park III development benefits from a connected, complete waterline within the public right-of-way. Thus, it appears that the *Nollan v. California Coastal Commission* requirement for an essential nexus is met – the condition of approval requiring construction of water improvements has an essential nexus to the connectivity contemplated in the OCMC and the Water Master Plan necessary to serve this development.

#### Rough Proportionality Analysis

Determining the proportional share of improvements that should be shouldered by this applicant requires an individualized determination that the required improvements are related both in nature and extent to the impact of the proposed development. In a case called, *McClure v. City of Springfield*, the court upheld a local government's use of ratios to justify such a determination.

ZC 15-02 is a request to increase the number of homes that could be placed on the subject property from 16 lots, assuming that there is no zone change to 25 lots. This additional 9 units of density places an increased demand on the city water system.

The total length of pipe installation necessary to provide the enhanced connectivity benefits to all of the proposed development, from the existing water line terminus at Leland Road to the northwest corner of the subject property on McCord Road is 1,625 feet. As shown in the attached exhibit, the conditions of approval require that the applicant install a total of 800 feet of water line, including 308 feet necessary to connect the existing line to the northeast corner of the property fronting McCord Road, 260 feet fronting the subject property along McCord Road, 50 feet along the Lot 16 frontage and 182 feet to connect to the existing terminus on Leland Road. Dividing the necessary 800 feet of water line by the 25 lots that will benefit by this improvement results in an allocation of 32 linear feet of pipe exaction per lot.

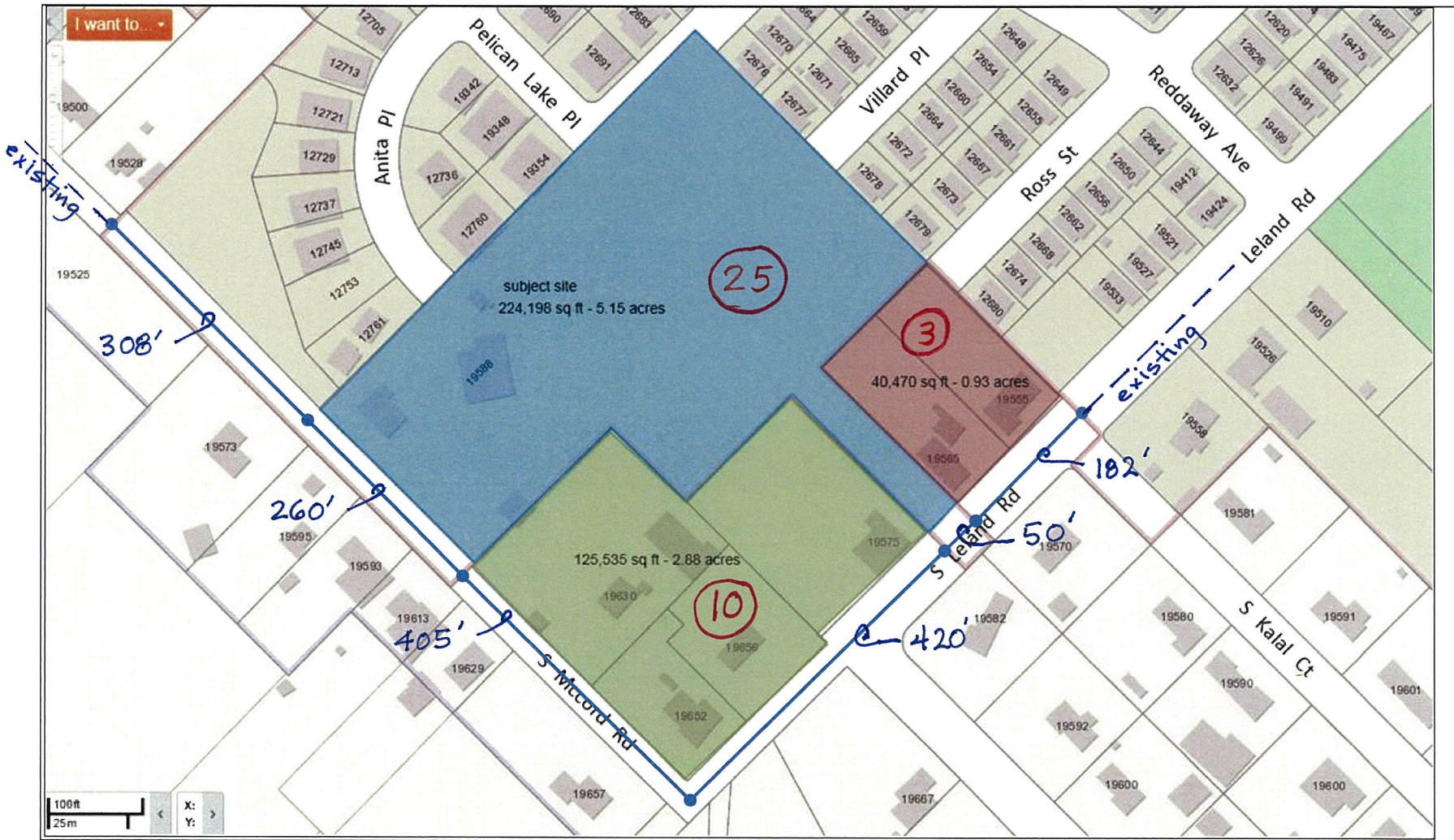
To determine if this 32 linear feet exaction is proportional to the impacts of development, it is compared against the amount of pipe that would need to be installed to serve the adjacent properties at their maximum development potential under existing zoning. The length of pipe necessary to serve the area south of the proposed development, noted in green on the map, is 825 feet. This area could be redeveloped to include 10 lots. Thus, the extension per lot allocation for this area would be 82 linear feet per lot, significantly higher than that the



obligation imposed for this development. Similarly, the frontage extension obligation for the two lots located northeast of the subject property along Leland Road, noted in red on the map, is 182 feet. If three lots were developed within the red portion of the map, the extension per lot benefit would be 61 feet per lot. Again, this suggests that the obligation to construct only 32 feet per lot is less than or at least proportional to the per lot benefit realized by the proposed development.

Another way to look at this would be to consider the total land area affected by development. As explained above, the applicant is being asked to install 492 feet of a 1,317 foot total water system or 37% of the system. The applicant is rezoning and subdividing a total of 224,198 square feet of land. The total land area that will benefit by the fully connected water line is 390,204 square feet. Taken together, the applicant is proposing to develop 57% of the land but is being asked to pay for only 37% of the total system necessary to serve that land.

As the Supreme Court noted in *Dolan v. City of Tigard*, “no precise mathematical calculation is required,” only rough proportionality. Because the proposed development will increase the demand on the City’s water system as necessary to support the proposed 25 lots in a per lot assessment or total area basis that is less than would be imposed on the remaining lots that will receive the same benefit, it appears that the condition is roughly proportional to the impacts from the development.



Frontage extension to benefit Subject:  $308 + 260 + 50 + 182 = 800$  LF/25 lots = 32 LF/lot

Frontage extension to benefit Green:  $405 + 420 = 825$  LF/10 lots = 82 LF/lot

Frontage extension to benefit Red:  $182$  LF/3 lots = 61 LF/lot