

AGENDA

KEIZER CITY COUNCIL **REGULAR SESSION**

Monday, November 5, 2012

7:00 p.m.

Robert L. Simon Council Chambers
Keizer, Oregon

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **PLEDGE OF ALLEGIANCE**

4. **PUBLIC TESTIMONY**

This time is provided for citizens to address the Council on any matters other than those on the agenda scheduled for public hearing.

5. **PUBLIC HEARINGS**

a. Keizer Station Area C Master Plan Remand

6. **ADMINISTRATIVE ACTION**

a. **RESOLUTION** – Authorizing the City Manager to Execute Park Management Agreement with Keizer Youth Sports Association (KYSA) and Keizer Little League (KLL)

b. **RESOLUTION** – Authorization for Supplemental Budget Cherry Avenue Pump Station

RESOLUTION – Authorizing City Manager to Enter Into a Sale Agreement and Receipt for Earnest Money to Purchase a Portion of Property Located at 4100 Cherry Avenue Northeast, Keizer, Marion County, Oregon (Keizer Lions Club, Inc.)

7. **CONSENT CALENDAR**

a. **RESOLUTION** – Naming Community Garden Located at Chalmers Jones Park The “Rickman Community Garden”

- b. RESOLUTION – Authorizing the City Manager to Enter Into Agreement for Exhibition of City-Owned Property with Keizer Chamber of Commerce
- c. Approval of September 11, 2012 Work Session Minutes
- d. Approval of October 15, 2012 Regular Session Minutes

8. COMMITTEE REPORTS

- a. Keizer Storm Water Advisory Committee Appointment

9. OTHER BUSINESS

This time is provided to allow the Mayor, City Council members, or staff an opportunity to bring new or old matters before the Council that are not on tonight's agenda.

- a. New Business or Old Business Issues

10. WRITTEN COMMUNICATIONS

To inform the Council of significant written communications.

11. AGENDA INPUT

November 13, 2012 (Tuesday)

5:45 p.m. – City Council Work Session

- Storm Water Fee Adjustment

November 19, 2012

7:00 p.m. – City Council Meeting

December 3, 2012

7:00 p.m. – City Council Meeting

12. ADJOURNMENT

Upon request, auxiliary aids and/or special services will be provided. To request services, please contact us at (503)390-3700 or through Oregon Relay at 1-800-735-2900 at least two working days (48 hours) in advance.

TO: MAYOR CHRISTOPHER AND CITY COUNCIL MEMBERS

THROUGH: CHRIS EPPLEY, CITY MANAGER

THRU: NATE BROWN, COMMUNITY DEVELOPMENT DIRECTOR

FROM: SAM LITKE, SENIOR PLANNER

SUBJECT: REMAND OF MASTER PLAN / SUBDIVISION APPLICATION AREA C

ATTACHMENTS:

- LUBA Remand Order
- Applicant response relating to master plan
- Applicant response to subdivision
- Revised Site plans of Area C
- Letter from Krawczuk of Perkins Coie relating to legal considerations dated 9-11-12
- Letter from Hughart of Kittleson Transportation Engineering dated 9-12-12
- Letter from Dick Woelk dated 10-26-12
- Letters from Raskin of Cardno on storm drainage dated 10-24-12, 9-18-12 and site plans
- Letter from Cerbone of Cardno Engineering relating to remand issues dated 9-20-12
- Letter from Tami Neiman (Citizen Comment)
- Agency comments

BACKGROUND:

Chuck Sides of E Village, LLC submitted an application for a Master Plan and a Subdivision application of Area "C" of the Keizer Station that was approved by the City Council on April 18, 2011. The Council's decision was then appealed to the Land Use Board of Appeals (LUBA) and the Court of Appeals which remanded it back to the city for additional review citing clarification pertaining to the traffic engineer's analysis, and the timing of a condition of approval which required concurrent construction of a large format store which required mixed use development. The applicant has submitted revised material for the city's review which he believes addresses the issues raised by LUBA.

This matter is before the Council instead of the Planning Commission for three reasons. First, LUBA's remand is a remand to the City Council; LUBA does not remand the matter back to the Planning Commission. Second, state statute allows the City ninety (90) days from the time the developer requests the remand to begin to make a decision. Staff reviewed the matter and determined that it would be very difficult to schedule, notice, hold a public hearing before the

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Planning Commission, repeat that process and allow adequate time for Council deliberation all within a 90 day period. Third, the issues are quite narrow as is discussed in more detail below. The Council's review is limited to only a few issues.

It is important to point out that this is not a new application but is rather a continuation of the existing record associated with the previously submitted land use applications. As such, the existing record is carried over into this hearing and is limited to specific issues. The hearing is limited to the issues that were raised by LUBA, and to any that might be directly related to the specific revisions of the revised master plan. This will preclude any issues which either were not raised in the original hearings or do not relate to the proposed changes. The changes made to the site plan are well within the guidelines established by LUBA and the courts regarding modified land use applications.

ISSUE:

Whether the revised master plan satisfies the issues raised by LUBA and meets the applicable criteria.

DISCUSSION:

The revised materials address the two directives of the LUBA remand and in doing so make revisions to the site plan and proposed designation of uses.

LUBA remand concerning concurrency:

Keizer Development Code (KDC) has certain requirements for building required mixed use development depending on the size of the stores in the same master plan area. KDC 2.107.05(D) requires the following:

D. Larger Format Stores.

1. Retail buildings of the type described in Section 2.107.02(I) that exceed 10,000 square feet ("Larger Format Stores") require the development of non-retail/non-single family home uses in the Master Plan area that have a total square footage of at least 25% of the gross leasable area of the Larger Format Store. As used herein, "non-retail" shall mean uses other than those listed in Section 2.107.02(I). (04/08)
2. Larger Format Stores in excess of 80,000 square feet of the type described in Section 2.107.02(I) shall meet the requirement set forth in Subsection D(1) above. In addition to such requirement, for each square foot of vertical mixed use development in the Master Plan area, the Larger Format Store can be increased above 80,000 square feet by an equivalent amount.

The mixed use square footage requirements of Subsection D(1) and this Subsection cannot be combined. (04/08)

3. The development required in Subsections D(1) and D(2) above shall take place in the same Master Plan area. The approved Master Plan shall be conditioned to require such development to be constructed before or concurrently with the Larger Format Store. (04/08)

As can be seen from above, there are two separate mixed use requirements. First, if a retail building is going to be over 10,000 square feet, there is a requirement for building non-vertical mixed use development. Second, if the building is going to be in excess of 80,000 square feet, there is a requirement for vertical mixed use construction. Finally, the subsection (D)(3) requires the mixed use development to be constructed “before or concurrently with the Larger Format Store.”

LUBA’s main objection was related to the lack of a deadline related to the concurrency requirement for the construction of the vertical mixed use development that is required in conjunction with a retail building that is larger than 10,000 square feet. The revised site plan eliminates the original 116,884 square foot large box retail and is replaced with a building which will have two retail tenant spaces that total 72,000-- less than 80,000 square feet threshold established in the zone which requires vertical mixed use. The need for vertical mixed use is eliminated. However, non-vertical mixed use development is still required, so the concurrency condition is still necessary. Condition 57 in the adopted Order approving the Master Plan is proposed to be modified to reflect both the LUBA Order and the revised site plan submitted by the applicant. This revised condition keeps in place essential code language and addresses LUBA’s concern. If the Council chooses to approve the application, the proposed language replacing the previous concurrency condition would be:

Keizer Development Code has “concurrency” requirements that must be met to allow construction of a retail use building over 10,000 square feet (Larger Format Store). For a building under 80,000 square feet this will require non-retail/non-single family home uses (“required mixed use development”) in the master plan area have a total square footage of at least 25% of the gross leasable area of the Larger Format Store. KDC 2.107.05(D)(1).

KDC 2.107.05(D)(3) provides required mixed use developments be constructed before or concurrently with the Larger Format Store. The applicant shall demonstrate compliance with these requirements as follows:

- a. The applicant shall apply for all necessary building permits for required mixed use development prior to or simultaneously with the application for building permits for the Larger Format Store.
- b. The applicant shall receive the necessary building permits for the required mixed use development prior to or simultaneously with the necessary building permits for the

Larger Format Store. The building permits for the Larger Format Store shall not be issued unless the building permits for the required mixed use development have been granted.

- c. All certificates of occupancy for the required mixed use development shall be issued prior to or simultaneously with the certificate of occupancy for the Larger Format Store. The certificate of occupancy for the Larger Format Store shall not be issued unless the certificate of occupancy for the required mixed use development has been granted.

This condition may be modified prior to Council adoption if deemed appropriate by the Council.

In essence, KDC 2.107.05(D)(1) requires that the mixed use development's (non-retail/non-single family) square footage be at least 25% of size of the Larger Format store. A building of 72,000 square feet will require a minimum of 18,000 square feet of mixed use constructed in Area C. There are 362,790 square feet of multi-family residential proposed. The developer may choose to construct any combination of office or multi-family residential uses that total a minimum of 18,000 sq ft at the same time or before construction of the 72,000 sq ft building.

LUBA remand concerning traffic engineer's analysis:

The LUBA remand relating to the traffic analysis centered on the calculation methodology. The submission previously relied on extrapolation of material in the Institute of Transportation Engineers (ITE) manual. Given that the size of the original larger format retail building (116,882 square feet) was smaller than the case studies cited within the ITE reference manual, an extrapolation was used to determine the anticipated traffic volumes. LUBA found fault with the extrapolation method. With the elimination of the large box retail building, being replaced with a smaller 72,000 square building, has resulted in traffic analysis which does not rely on any extrapolation.

The City's Traffic Engineer indicated that the applicant's traffic analysis is consistent with the trip generation contained in the Institute of Transportation Engineers (ITE) manual. Further, there is no longer any reliance on extrapolation of trips generated, such as was presented with the first proposal of a "Free Standing Discount Superstore". By eliminating this category from their site plan, all of the uses rely on established documentation in the ITE manual. The analysis of a 72,000 sq ft retail building (101,000 sq ft total of retail space) is well within the range of 1,700 to 2,200,000 sq ft range of centers studied and documented in the ITE manual in the category of "Shopping Center".

The revised plan show a decrease in the total number of trips being generated, therefore, the proposed traffic mitigations as shown in the original plan, which were not challenged to LUBA as to their efficacy, are sufficient to meet the requirements of the city. It is important to note that even though the number of trips is reduced the revisions do not propose a reduction in the level of transportation mitigations. (See Kittleson letter.)

Site plan alterations:

In addition to the LUBA remand issues, there are a few changes in the revised plan. The first major change is the elimination of the 116,000 square foot larger format store. This building was the focus of much of the testimony during the public hearings before both the planning commission and the city council. The building has been eliminated and is replaced with 2 retail tenant spaces which have a combined area of 72,000 square feet and are located north of the original building location.

The second change is that there are 83 additional Apartment units of multi-family development in 11 buildings. These additional units are located in the area that had originally been proposed for development with a larger format store. This will result in a total of 156 multi-family units in Area C.

In addition to the major revisions noted above there are several revisions that are considered to be minor. These include:

- some of the sizes of the proposed lots have been adjusted, however the overall number of proposed lots (nine) within the subdivision has not changed;
- the configuration of the apartment buildings in the southwest quadrant of Area C has been reconfigured from 3 parallel buildings to 6 buildings in a u-shaped design;
- access to the Harner property to the southwest of the medical center is shown consistent with one of the conditions;
- access serving the medical center as well as the access serving the retail center to the east has been shifted slightly to the south;
- access serving the residential area is shifted to the east; given the elimination of the big box retail store and the shifting of the revised building footprint to the north has resulted in the parking lot redesign of the parking lot serving this building;
- storm water detention basins are shown on the site plan;
- retail building 8 and 9 are each slightly larger than previously shown;
- building shown as restaurant “3” is slightly larger than was previously shown as office “4”;
- retail “4” and “5” are both slightly smaller than was previously shown.

Storm Water Revisions:

The revised site plan reconfigures some of the storm water facilities. For example, the location of the detention facilities has been moved as a result of the reconfiguration of the larger format store. The standards established in the original decision are still in effect and must be adhered to, including outflow release rates and quantities, sustainable development standards (i.e. rain gardens water quality design) and infrastructure access. No changes to the proposed conditions are anticipated.

Staff has reviewed the revised site plan and it appears that the buildings in their revised locations meet setback requirements. The exception is the medical center building which is shown with a setback of 22' from Chemawa Road where condition #61 requires a 30 foot building setback.

Staff believes that the issues of concurrency and traffic analysis are satisfied as a result of the revised plan and the proposed language in the concurrency condition. The new proposed language in the concurrency condition mirrors the Planning Commission's recommended language in large part, which LUBA approved. The elimination of the larger format store of 116,000 square feet and the shifting of the smaller replacement to the north will then result in additional multi-family development in the area that was planned for the larger format store.

The revisions will utilize the site in an efficient manner. The use that is entirely consistent with the underlying zone and, importantly, consistent with the uses proposed in the original submission previously approved by the City Council. The MU zone allows for a range of uses including, retail, office, and residential uses and the uses will be consistent with this zone.

The transportation and infrastructure are consistent with the original decision. The road configurations are in the same location with only minor alterations such as the shifting of access points. No major revisions have been proposed. While there will be revisions to the placement of water and sanitary lines to serve the revised configuration these will be on private property and will not affect any infrastructure locations that the city has placed as conditions of approval with regard to size and within the right of way of any street. The revisions that have been proposed to driveway accesses to the public street have improved the safety factor of the design and staff is supportive of all proposed changes.

The packet also includes comments from various agencies and from one adjacent property owner. If additional material arrives after this report was drafted, it will be forwarded to the council for consideration.

RECOMMENDATION: That the Council open the public hearing to accept public testimony related to the issues in the LUBA remand and proposed site plan revisions. If the Council has no further questions, close the hearing and direct staff to prepare an appropriate order with revised findings and conditions approving the proposed revised Master Plan / Subdivision.

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 KEEP KEIZER LIVABLE and KEVIN HOHNBAUM,
5 *Petitioners,*

6
7 vs.

8
9 CITY OF KEIZER,
10 *Respondent,*

11
12 and

13
14 E-VILLAGE, LLC,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2011-043

18
19 FINAL OPINION
20 AND ORDER

AUG19'11 PM 2:54 LUBA

21
22 Appeal from City of Keizer.

23
24 Kenneth D. Helm, Beaverton, filed the petition for review and argued on behalf of
25 petitioners.

26
27 E. Shannon Johnson, City Attorney, Keizer, filed a joint response brief and argued on
28 behalf of respondent. With him on the brief were Zachary Dablow and The Ghiorso Law
29 Firm.

30
31 Zachary Dablow, Salem, filed a joint response and argued on behalf of intervenor-
32 respondent. With him on the brief were E. Shannon Johnson and The Ghiorso Law Firm.

33
34 BASSHAM, Board Member; RYAN, Board Chair, participated in the decision.

35
36 HOLSTUN, Board Member, concurring.

37
38 REMANDED

08/19/2011

39
40 You are entitled to judicial review of this Order. Judicial review is governed by the
41 provisions of ORS 197.850.

NATURE OF THE DECISION

Petitioners challenge a city council decision that approves the Master Plan for Area C of the Keizer Station planned mixed-use development.

MOTION TO INTERVENE

E-Village, LLC (intervenor), the applicant below, moves to intervene on the side of respondent. No party opposes the motion, and it is granted.

FACTS

The challenged decision approves the Master Plan for Area C of Keizer Station—part of a larger planned development. The previously approved Keizer Station Plan established Area C as an approximately 34-acre property to the south of earlier phases of Keizer Station, which are largely developed with commercial retail establishments. Area C is primarily zoned Mixed Use. In a portion of Area C designated as “Anchor 9” intervenor intends to develop a 116,000-square foot “Larger Format Store.” In an adjoining area designated as sub-area C-3 intervenor proposed to construct non-retail and multifamily residential developments. The proposed non-retail and multifamily residential developments are located between the Larger Format Store and existing residential neighborhoods that abut the southwestern boundary of Area C.

Under Keizer Development Code (KDC) 2.107.05(D)(1), “Larger Format Stores” are allowed in the Mixed Use zone as part of a master plan, subject to approval criteria that obligate the applicant to also construct a certain amount of “non-retail/non-single-family” development, depending on the size of the Larger Format Store. Further, KDC 2.107.05(D)(2) allows the size of the Larger Format Store to be increased above 80,000 square feet if the applicant constructs a proportionate amount of “vertical mixed use” development. The decision and parties collectively refer to the “non-retail/non-single family” development and the “vertical mixed use” development as “required mixed use

development.” Under the above formulas, the proposed 116,000-square foot Larger Format Store required a minimum of 29,000 square feet of non-retail or multifamily residential development in addition to 36,000 square feet of vertical mixed use development. The application proposed several mixed use or multi-family residential buildings in sub-area C-3 to satisfy the requirements of KDC 2.107.05(D)(1) and (2) for the required mixed use development.

Apparently to ensure that the required mixed use development is actually constructed, KDC 2.107.05(D)(3) also establishes what the parties call a “concurrency” requirement, providing that:

“The development required in Subsection D(1) and D(2) above shall take place in the same Master Plan area. The approved Master Plan shall be conditioned to require such development *to be constructed before or concurrently with* the Larger Format Store.” (Emphasis added).

To satisfy the concurrency requirement in KDC 2.107.05(D)(3), the planning commission recommended a condition of approval requiring that the building permit for the required mixed use development be issued prior to or simultaneously with the building permit for the Larger Format Store, and similarly that certificates of occupancy for the required mixed use development be issued prior to or simultaneously with the issuance of a certificate of occupancy for the Larger Format Store.

The city council held public hearings on February 22 and March 7, 2011. During a city council meeting on April 4, 2011, the council voted to impose Condition 57, which like the planning commission-recommended condition requires that the building permit for the required mixed use development be issued prior to or simultaneously with the building permit for the Larger Format Store. However, unlike the planning commission-recommended condition, Condition 57 allows the Larger Format Store to be constructed and issued a certificate of occupancy before the mixed use development is constructed and issued a certificate of occupancy. Specifically, Condition 57 provides that, prior to issuance of a

1 certificate of occupancy for the Larger Format Store, the applicant must take four actions,
2 including completing the foundation work for the mixed use development and providing a
3 bond or guarantee that the mixed use development will be completed.¹ Once those four
4 actions are taken, the city manager will issue a letter certifying full satisfaction of the
5 concurrency requirement. In its final written decision on April 18, 2011, the city council

¹ Condition 57 provides, in relevant part:

"KCD 2.07.05(D)(3) provides that the Required Mixed Use Developments be constructed before or concurrently with the Larger Format Store. The applicant shall demonstrate compliance with [this] requirement[] as follows:

"a. The applicant shall apply for all necessary building permits for Required Mixed Use Developments prior to or simultaneously with the application for building permits for the Larger Format Store. The Required Mixed Use Developments property must be owned or controlled by the applicant at the time of building permit application.

"b. The applicant shall receive the necessary building permits for the Required Mixed Use Developments prior to or simultaneously with the necessary building permits for the Larger Format Store. The building permits for the Larger Format Store shall not be issued unless the building permits for the Required Mixed Use Developments have been granted.

"c. *The applicant shall complete the following prior to issuance of any certificate of occupancy for the Larger Format Store:*

"1. *Submittal and approval by the City Manager of a certified copy of a formal loan commitments [sic] and/or unpledged, deposited funds available for the Required Mixed Use Developments. The total amount of such loan commitment and/or funds shall equal 100% of the Required Mixed Use Developments' remaining project costs. * * **

"2. *Applicant shall rough grade the entire Required Mixed Use Developments sites.*

"3. *Applicant shall commence construction and complete at a minimum at least 100% of the foundation work for the Required Mixed Use Developments.*

"4. *Submittal and approval by the City Manager of an appropriate guarantee, completion/performance bond, or other reasonably acceptable form of security to guarantee the completion of the Required Mixed Use Developments."*

"d. Upon completion and satisfaction of subsections a, b, and c above, the City Manager shall issue a letter certifying satisfaction of this certificate of occupancy condition for the Larger Format Store. This letter from the City Manager shall constitute full satisfaction of the concurrency requirement for the Larger Format Store." Record 249-51 (Emphasis added).

1 interpreted KDC 2.107.05(D)(3) not to require completion of the required mixed use
2 development in order to issue a certificate of occupancy to the Larger Format Store. This
3 appeal followed.

4 **FIRST ASSIGNMENT OF ERROR**

5 Petitioners challenge the city council's interpretation of KDC 2.107.05(D)(3), that the
6 concurrency requirement does not require completion of the required mixed use development
7 before the Larger Format Store can obtain a certificate of occupancy. Petitioners also argue
8 that Condition 57 does not ensure that the required mixed use development will ever be
9 completed.

10 As noted, KDC 2.107.05(D)(3) requires that the master plan be conditioned to require
11 that the required mixed use development "be constructed before or concurrently with the
12 Larger Format Store." The city council interpreted KDC 2.107.05(D)(3) to be met in either
13 of two alternative ways, either by "completion of construction of the required mixed use
14 before the Larger Format Store or construction of the required mixed use 'concurrently with'
15 the Larger Format Store." Record 100. The city council then explained:

16 "The Council interprets the 'concurrency' requirement of its code to mean that
17 the Required Mixed Use is either fully constructed [] before an occupancy
18 permit for the Larger Format Store is issued, or the Required Mixed Use
19 Developments is [sic] in the process of being constructed at the same time as
20 the Larger Format Store is being constructed []. The development time tables
21 need not be identical for the Larger Format Store and the Required Mixed Use
22 Developments. The Council concludes that there is substantial evidence in the
23 record that the Larger Format Store and Required Mixed Use could be
24 constructed concurrently, and the Larger Format Store could be finished first
25 or vice versa. 'Constructed * * * concurrently' does not require that
26 construction of the Required Mixed Use be completed before the Larger
27 Format Store can obtain a certificate of occupancy." (Quotations and ellipses
28 in original). Record 101.

29 In other words, according to the city council, the concurrency requirement is fully satisfied as
30 long as *some* construction of the required mixed use development occurs at the same time
31 that the Larger Format Store is in the process of being constructed.

1 Petitioners argue that the city council's interpretation of KDC 2.107.05(D)(3) is
2 inconsistent with the express language of KDC 2.107.05(D)(3), and cannot be affirmed under
3 ORS 197.829(1)(a).²

4 Whether the city's interpretation of KDC 2.107.05(D)(3) is inconsistent with the
5 "express language" of a local provision, within the meaning of ORS 197.829(1)(a), "depends
6 on whether the interpretation is plausible, given the interpretive principles that ordinarily
7 apply to the construction of ordinances under the rules of *PGE [v. Bureau of Labor and*
8 *Industries*, 317 Or 606, 859 P2d 1143 (1993)]." *Foland v. Jackson County*, 215 Or App 157,
9 164, 168 P3d 1238, *rev den* 343 Or 690, 174 P3d 1016 (2007); *see also Siporen v. City of*
10 *Medford*, 349 Or 247, 243 P3d 776 (2010). Under *PGE*, a court first analyzes the statutory
11 text and context, using the "plain, natural, and ordinary" meaning of undefined language used
12 in the statute, along with applicable rules of construction that directly bear on the
13 interpretation of text. If the intended meaning remains unclear after a text and context
14 analysis, the court can proceed to consider legislative history, if any, and finally if the
15 meaning is still unclear apply general maxims of statutory construction that do not bear
16 directly to the reading of the text. The *PGE* analysis was developed to guide a court's *ab*
17 *initio* interpretation of a statute, and was presumably not intended to be used to refine the
18 standards under which a court or appellate body *reviews* an interpretation of another body
19 under an explicit standard of review such as ORS 197.829(1). Nonetheless, *Foland* and

² ORS 197.829(1) provides, in relevant part:

"[LUBA] shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:

- "a. Is inconsistent with the express language of the comprehensive plan or land use regulation;
- "b. Is inconsistent with the purpose for the comprehensive plan or land use regulation;
- "c. Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation[.]"

1 *Siporen* instruct us to apply the *PGE* framework in determining whether a local government's
2 interpretation of a local code provision is "inconsistent" with the express language of that
3 code provision. Under *Foland* and *Siporen*, after conducting a first level PGE analysis of text
4 and context, we must affirm the local government's local code interpretation under ORS
5 197.829(1)(a) if that interpretation is "plausible." *Siporen*, 349 Or at 266.

6 The text at issue requires that "[t]he approved Master Plan shall be conditioned to
7 require such development to be constructed before or concurrently with the Larger Format
8 Store." KDC 2.107.05(D)(3). Grammatically speaking, "to be constructed" is the core of an
9 infinitive verb phrase in the passive voice.³ The object of that transitive verb is "such
10 development," *i.e.*, the required mixed use development. "Before" and "with" are
11 prepositions, part of a compound prepositional phrase, the shared object of which is "the
12 Larger Format Store." That compound prepositional phrase as a whole acts as an adverbial
13 phrase modifying the verb "constructed." "Concurrently" is a single adverb embedded within
14 that compound prepositional phrase, which modifies only the preposition "with."
15 Structurally and semantically, the compound prepositional phrase as a whole prescribes *when*
16 the required mixed use development must be "constructed," using as a reference point the
17 construction of the Larger Format Store: the construction of the mixed use development
18 must occur before, or concurrently with, the construction of the Larger Format Store.

19 The city's code does not define the key terms in KDC 2.107.05(D)(3). Webster's
20 Third New International Dictionary (Unabridged 1981), 489, defines the transitive verb
21 "construct" in relevant part to mean "to form, make, or create by combining parts or elements
22 : BUILD, FABRICATE." The most relevant definition of the synonym "build" is to "to form by
23 ordering or uniting materials by gradual means into a composite whole — used esp. with

³ The grammatical relations would be simplified somewhat if the sentence were re-phrased entirely in the active voice, *e.g.*, "The city shall condition the approved Master Plan to require the applicant to construct such development before or concurrently with the Larger Format Store."

1 reference to comparatively large or massive structures[.]” *Id.* at 291. The entry for “build”
2 explains that the synonyms “build” and “construct” have “in common the sense of to form a
3 structure or something comparable to a structure.” *Id.* at 292. The most relevant meaning of
4 the preposition “before” is “preceding” in time. *Id.* at 197. The common preposition “with”
5 has many definitions, but the most relevant seem to be “9 * * * b : at the moment or time of *
6 * * d : at the same time as : at the time a specified action or event is performed * * *.” *Id.* at
7 2626. Webster’s defines the adverb “concurrently” to mean “in a concurrent manner.” *Id.* at
8 472. In turn, the most relevant definition of “concurrent” is “occurring, arising, or operating
9 at the same time[.]” *Id.*

10 As noted above, the city deconstructed the phrase “constructed before or concurrently
11 with the Larger Format Store” into two separate, alternative requirements. The city first
12 interpreted the text fragment “constructed before * * * the Larger Format Store” to mean that
13 construction of the required mixed use development must be “complet[ed]” before the Larger
14 Format Store. Record 362. That interpretation seems straightforward and indisputable.

15 The city council then interpreted the text fragment “constructed * * * concurrently
16 with the Larger Format Store” to mean that the concurrency requirement is fully satisfied if
17 some temporal overlap occurs between the construction schedules of the mixed use
18 development and the Larger Format Store, even if the Larger Format Store is completed long
19 before the mixed use development. On appeal, we understand the city and intervenor to
20 argue that under the city’s interpretation of “constructed * * * concurrently with” the mixed
21 use development need not ever be completed. Viewed in isolation, that interpretation of the
22 text fragment “constructed * * * concurrently with the Larger Format Store” is textually
23 plausible, but considering the grammatical structure in which that text occurs, and the
24 relevant definitions cited above, we agree with petitioners that the city’s interpretation is
25 inconsistent with the express language of KDC 2.107.05(D)(3) as a whole.

1 As noted, the compound preposition phrase “before or concurrently with the Larger
2 Format Store” modifies the verb “constructed,” prescribing when the mixed use development
3 must be constructed vis-à-vis the construction of the Larger Format Store. The city council
4 initially interpreted “constructed” when combined with the preposition “before” to mean that
5 the mixed use development must be “complet[ed]” before the Larger Format Store is
6 completed. Record 100. That is consistent with the definition of “construct” and its
7 synonyms, which indicate that a structure is “constructed” when its materials are united into a
8 “composite whole.” The mere commencement of construction does not make a “whole” of
9 any kind. Inexplicably, the city council then interpreted the verb “constructed” to mean
10 something different when combined with the preposition plus adverb of “concurrently with.”
11 The city council interpreted “constructed” when combined with “concurrently with” to mean
12 essentially “undergoing the process of construction” at the same time. However, as noted
13 above, both prepositions “before” and “with” are part of a compound phrase prescribing
14 *when* the mixed use development must be “constructed” in relation to the construction of the
15 Larger Format Store. As those terms are defined, “before” simply adds the sense of
16 “preceding,” while “concurrently” and “with” add only the sense of “at the same time.”
17 Neither preposition alters the basic meaning of the verb “constructed.” Put another way, the
18 city interprets the same verb “constructed,” as used in the same sentence, to have multiple,
19 conflicting meanings. That is simply not consistent with the express language of KDC
20 2.107.05(D)(3).

21 In sum, the only plausible interpretation of the whole text of KDC 2.107.05(D)(3),
22 with its key words given their plain and ordinary meaning, is that the required mixed use
23 development must be “constructed” (made into a composite whole) before or at the same
24 time the Larger Format Store is constructed (made into a composite whole). The city may
25 have some latitude to prescribe what construction of both developments “concurrently” or “at
26 the same time” means as a practical matter. For example, the city could presumably deem

1 KDC 2.107.05(D)(3) satisfied if the certificate of occupancy for the Larger Format Store is
2 issued contemporaneously with, or no earlier than, the certificate of occupancy for the mixed
3 use development, as the planning commission recommended. Presumably there are other
4 approaches that would adequately assure that the mixed use development is constructed
5 before or reasonably contemporaneously with the construction of the Larger Format Store.
6 But the city's interpretation would allow the required mixed use development to remain at
7 best partially constructed for an indefinite period after the Larger Format Store is completed.
8 It is impossible to square that interpretation with the plain meaning of the express language
9 "constructed before or concurrently with."

10 The city did not expressly consider any context for KDC 2.107.05(D)(3), but the
11 city's interpretation is also at odds with its immediate context. Under KDC 2.107.05(D)(1), a
12 Larger Format Store may lawfully exist only upon the "development" of non-retail uses.
13 Under KDC 2.107.05(D)(2), a Larger Format Store may be increased in size above 80,000
14 square feet only upon a corresponding increase in vertical mixed use "development." The
15 concurrency requirement in KDC 2.107.05(D)(3) functions as the means to ensure that the
16 quid-pro-quo required under KDC 2.107.05(D)(1) and the bonus obtained under KDC
17 2.107.05 (D)(2) are complied with and earned.⁴ In other words, the scenario that KDC
18 2.107.05(D)(3) is clearly intended to prevent is having a constructed Larger Format Store in
19 place without the mixed use development that is essential justification for the Larger Format
20 Store. That scenario is not possible if the city gives effect to the plain meaning of the words
21 in KDC 2.107.05(D)(3), and imposes conditions like those recommended by the planning
22 commission. Yet that scenario is entirely possible under the city's interpretation of KDC
23 2.107.05(D)(3) and the Condition 57 it imposed. The city determined that the concurrency

⁴ Petitioners also argue that the city relied on the required mixed use development to buffer the impacts of the Larger Format Store from the nearby residential neighborhood, for purposes of criteria requiring that development be "compatible * * * with existing residential development." Record 79.

1 requirement is fully satisfied once the city manager issues a letter finding that the conditions
2 in Condition 57(c)(1) to (4) are met. Those conditions include several financial incentives
3 for the applicant to some day complete the construction of the required mixed use
4 development, but do not in fact require or ensure actual completion at any time, or provide
5 any mechanism for the city to enforce Conditions 57(c)(1) to (4) to require completion.
6 Notably, there are no time restrictions at all in Conditions 57(c)(1) to (4), and nothing that
7 could possibly be enforced after the city manager issues the letter. The applicant can delay
8 completion for as long as the applicant wishes or is willing to accept the financial
9 consequences, and need not ever construct the mixed use development. Indeed, it is difficult
10 to imagine what set of conditions operable *after* the Larger Format Store is completed and
11 issued an certificate of occupancy that could ensure that the required mixed use development
12 would in fact be completed.

13 As explained, the apparent purpose of the concurrency requirement at KDC
14 2.107.05(D)(3), read in context with KDC 2.107.05(D)(1) and (2), is to prevent a
15 circumstance where a constructed Larger Format Store is in place without the required mixed
16 use development. Although petitioners do not cite it, ORS 197.829(1)(b) provides that
17 LUBA must affirm a local government's plan or code interpretation unless it is "inconsistent
18 with the purpose for the comprehensive plan or land use regulation[.]" ORS 197.829(1)(b)
19 codifies language in *Clark v. Jackson County*, 313 Or 508, 515, 836 P2d 710 (1992), stating
20 that LUBA must defer to a governing body's interpretation of local legislation unless that
21 interpretation is inconsistent with the "apparent purpose" of the legislation. The ORS
22 197.829(1)(b) "purpose" prong is independent of the ORS 197.829(1)(a) "express language"
23 prong. Therefore, even if we concluded that the city's interpretation of isolated text in KDC
24 2.107.05(D)(3) were "plausible," or consistent with its text and context, LUBA could not
25 affirm that interpretation if it is inconsistent with the purpose of KDC 2.107.05(D)(3). Here,
26 the city's interpretation would allow the very outcome that KDC 2.107.05(D)(3) is plainly

1 intended to prevent, and therefore the city's interpretation is inconsistent with the purpose of
2 KDC 2.107.05(D)(3).

3 The first assignment of error is sustained in part.⁵

4 **SECOND ASSIGNMENT OF ERROR**

5 KDC 2.301(B) adopts the latest edition of the International Traffic Engineer's Trip
6 Generation Manual (the Manual) as the "standards by which to gauge average daily trips."
7 Intervenor's traffic engineer used the Manual to calculate the traffic generated by the
8 proposed 116,000 square foot Larger Format Store. The engineer used the category Free
9 Standing Discount Superstore in the Manual to estimate traffic generation. Apparently, the
10 Free Standing Discount Superstore category assumes a certain square footage or range of
11 square footage, and the lowest square footage assumed for that category is about seven
12 percent higher (123,000 square feet) than the 116,000-square foot building proposed. To
13 compensate for that fact, intervenor's traffic engineer interpolated values for the lower square
14 footage and produced traffic generation figures based on that interpolated value.

15 Petitioners argue that the city committed legal error in accepting trip generation rates
16 based on that interpolation. According to petitioners, the Manual provides that if the actual
17 size of the proposed development is outside the "range of data" for the appropriate use
18 category, then the traffic impact analysis must "collect local data and establish a local rate."
19 Petition for Review 15.⁶ Petitioners' traffic expert argued below, based on this language in

⁵ In a sub-assignment of error, petitioners also challenge the decision because it does not provide a mechanism for challenging the City Manager's decisions regarding satisfaction of aspects of Condition 57. Because we determine that the plain language of KDC 2.107.05(D)(3) requires completion of the required mixed use development prior to or at the same time as completion of the Larger Format Store, we do not reach this sub-assignment of error.

⁶ Petitioners state that relevant portions of the Manual are included in an appendix to the petition for review, but no portions of the Manual are attached. The Manual is not in the record, but if the city has adopted the Manual pursuant to KDC 2.301(B) it is presumably subject to official notice. No party argues otherwise, or disputes to the accuracy of the quoted portions in the petition for review, and we therefore assume those quotations are accurate.

1 the Manual, that interpolation is an impermissible approach and that, pursuant to the Manual,
2 trip estimates for the Larger Format Store outside the relevant "range of data" must be based
3 on the collection of "local data." Record 994. Intervenor's traffic engineer responded that, in
4 his judgment, it was "appropriate to interpolate," especially given the seven percent
5 difference between the lowest size in the data range and the size of the proposed store.
6 Record 706-07.

7 In its findings, the city council echoed that testimony, finding briefly that "[a]lthough
8 the size of the Larger Format Store falls outside of the ITE data range [for the category of
9 Freestanding Discount Superstore], it is appropriate to interpolate for values especially since
10 the proposed square footage is within 7 percent of the lowest data point and there is no 'local'
11 data or ability to obtain representative local data." Record 154. Petitioners argue that the
12 finding that it is "appropriate" to interpolate fails to explain why the requirement in the
13 Manual for the collection of "local data" in the present circumstance can be ignored. With
14 respect to the finding that there is no local data and no ability to obtain representative local
15 data, petitioners argue that there are multiple existing Larger Format Stores in the area from
16 which representative traffic counts can be obtained.

17 In the joint response brief, respondents do not dispute that the Manual requires the use
18 of "local data" in the present circumstance, but argue that the city has discretion under KDC
19 2.301.04(D)(3) to waive or modify any required elements of the traffic impact analysis. KDC
20 2.301.04(D)(3) states:

21 "Pre-application Conference. The applicant will meet with Keizer Public
22 Works prior to submitting an application that requires a Traffic Impact
23 Analysis. *The City has the discretion to determine the required elements of the*
24 *TIA and the level of analysis expected.*" (Emphasis added).

25 Respondents argue that the city council interpreted KDC 2.301.04(D)(3) to grant it the
26 discretion to waive the requirement imposed by the Manual to use "local data," and to the

1 extent there is a conflict between the code and the Manual, the city's choice is entitled to
2 deference under *Siporen* and ORS 197.829(1).

3 The city's findings do not mention KDC 2.301.04(D)(3), as far as we are informed,
4 and it is not clear to us that the finding that it is "appropriate" to use interpolated values
5 rather than local data is based on any code interpretation at all, express or implied. To the
6 extent there is some implied interpretation of the Manual or a code provision on this point, it
7 is not adequate for review. ORS 197.829(2).

8 We agree with petitioners that the city's findings on this point are inadequate to
9 explain why the requirement to use "local data" in this circumstance can be avoided. The
10 city may consider on remand whether KDC 2.301.04(D)(3) allowed the city to waive or vary
11 that requirement as part of the pre-application process. We also agree with petitioners that
12 the finding that no representative local data can be obtained is not supported by the record.
13 Area C is part of a large existing commercial development, and no party disputes that there
14 are one or more Larger Format Stores nearby from which local trip data can be gathered.

15 The second assignment of error is sustained.

16 The city's decision is remanded.

17 Holstun, Board Member, concurring.

18 I disagree with intervenor's and the city's position in their joint response brief
19 regarding what is required to comply with KDC 2.107.05(D)(3). But I write separately to
20 address two aspects of the majority's resolution of the first assignment of error.

21 KDC 2.107.05(D)(3) provides as follows:

22 "The development required in Subsection D(1) and D(2) above shall take
23 place in the same Master Plan area. The approved Master Plan shall be
24 conditioned to require such development *to be constructed before or*
25 *concurrently with* the Larger Format Store." (Emphasis added).

26 As the majority explains, the development required by Subsection D(1) and D(2) is
27 the mixed use development. I agree with the majority that to comply with the KDC

1 2.107.05(D)(3) requirement that the mixed use development "be constructed * * *
2 concurrently with the Larger Format Store," construction of the mixed use development must
3 be *completed* concurrently with the completion of construction of the Larger Format Store.
4 KDC 2.107.05(D)(3) is not satisfied by simply making sure that the mixed use development
5 and Larger Format Store are both under construction at the same time. In their joint brief,
6 intervenor and the city appear to argue that some overlap in the construction process is all
7 that is required and that KDC 2.107.05(D)(3) does not require that construction of the mixed
8 use development ever be completed:

9 "Keizer's use of additional guarantees of project completion, and securing
10 financing for required mixed use development as part of satisfying KDC
11 2.107.05(D)(3) are additional protections that Keizer may include, but are not
12 required to be included to satisfy the concurrency requirement, as plausibly
13 interpreted.

14 "* * * *

15 "[A]s interpreted, there is no completion guarant[ee] in KDC 2.107.05(D)(3)."
16 Joint Response Brief 16.

17 I agree with the majority that the above reading of KDC 2.107.05(D)(3) not tenable, although
18 it is not entirely clear to me that the city council actually adopted that interpretation in its
19 decision. But since the city argues in its brief that it adopted that interpretation, I agree with
20 the majority's rejection of that interpretation of KDC 2.107.05(D)(3). I completely agree that
21 KDC 2.107.05(D)(3) requires that construction of the mixed use development must be
22 completed before or concurrently with the completion of construction of the Larger Format
23 Store.

24 Where I may part company with the majority is the majority's statement that the
25 words "concurrently with" must be interpreted to mean that the Larger Format Store and
26 mixed use development must be completed "at the same time as the Larger Format Store is
27 constructed (made into a composite whole)." The majority opinion includes language that

1 seems to take a less rigid position regarding the level of deference the city council might be
2 entitled to in interpreting KDC 2.107.05(D)(3):

3 "The city may have some latitude to prescribe what construction of both
4 developments 'concurrently' or 'at the same time' means as a practical matter.
5 For example, the city could presumably deem KDC 2.107.05(D)(3) satisfied if
6 the certificate of occupancy for the Larger Format Store is issued
7 contemporaneously with, or no earlier than, the certificate of occupancy for
8 the mixed use development, as the planning commission recommended.
9 Presumably there are other approaches that would adequately assure that the
10 mixed use development is constructed before or reasonably
11 contemporaneously with the construction of the Larger Format Store. But the
12 city's interpretation would allow the required mixed use development to
13 remain at best partially constructed for an indefinite period after the Larger
14 Format Store is completed. It is impossible to square that interpretation with
15 the plain meaning of the express language 'constructed before or concurrently
16 with.'"

17 Based on the above-quoted language, it is clear that the majority is not saying KDC
18 2.107.05(D)(3) must be interpreted to require that the last nails that complete the Larger
19 Format Store and the mixed use development must be driven at precisely the same instant or
20 that the *only* way the city can ensure concurrent completion of construction of the Larger
21 Format Store and mixed use development is to withhold the occupancy permit for the Larger
22 Format Store until construction of the mixed use development is complete.

23 I believe it would be entirely appropriate for the city to recognize that the KDC
24 2.107.05(D)(3) requirement that the mixed use development "be constructed * * *
25 concurrently with the Larger Format Store" is being applied to complicated construction
26 projects and that some uncertainty about and lack of effective control over the actual end
27 dates for those construction projects is unavoidable. Given that reality, I do not believe that
28 the city is required to read and apply the dictionary definition of "concurrently" so narrowly
29 that it would require that construction of the mixed use development must be completed on
30 the same day, same week, or even the same month as the completion date of the Larger
31 Format Store. I am not sure what the outer limits of *concurrently* completing construction
32 might be, but in the context in which KDC 2.107.05(D)(3) is being applied I do believe the

1 city council has a fair amount of discretion in deciding what concurrency means in this
2 context.

3 I also do not believe the only option the city has if construction of the Larger Format
4 Store is completed before the mixed use development is completed is to require that the
5 Larger Format Store sit empty and unoccupied until the mixed use development is completed.
6 Specifically, I believe the city has the interpretive discretion under *Siporen* to plausibly
7 interpret KDC 2.107.05(D)(3) to allow it to issue an occupancy permit for the Larger Format
8 Store first, so long as the city requires that the applicant provide an adequate and enforceable
9 performance guarantee to ensure that construction of the mixed use development can be
10 completed within some reasonably contemporaneous period of time following issuance of an
11 occupancy permit for the Larger Format Store, in the event the applicant fails to complete
12 that construction within a reasonably contemporary time frame.

13 Finally, I agree with the majority and petitioner that there are some problems with the
14 guarantee required by Condition 57, not the least of which is the failure of Condition 57 to
15 specify a deadline for the applicant to complete construction of the mixed use development if
16 the Larger Format Store is completed first and a permit allowing occupancy of the Larger
17 Format Store is issued first. Without such a deadline, it is not clear when, if ever, the city
18 could exercise the performance guarantee in the event the applicant fails to complete
19 construction of the mixed use development before or concurrently with the Larger Format
20 Store. But since the city takes the position that the guarantee is unnecessary, we need not
21 consider what changes to Condition 57 might be sufficient to make that condition an
22 acceptable means of ensuring that construction of the mixed use development is completed
23 concurrently with completion of the Larger Format Store.

Supplemental Materials for Keizer Station Area C Master Plan (including Design and Development Approval for two Larger Format Stores and Multi-Family Residential uses) and Subdivision Approval

Applicant: E Village LLC

Request: Revise Keizer Station Area C Master Plan that was Previously Approved and Remanded

DATE: Submitted November 12, 2010, Supplemented September 20, 2012

GENERAL INFORMATION

- A. 2011 APPROVALS:** In April 2011, the City approved a Master Plan and related tentative plat approval for Area C of the Keizer Station Plan (collectively, the "2011 Approvals"). The 2011 Approvals were appealed to the Oregon Land Use Board of Appeals (LUBA), who remanded the City's decision based upon the condition of approval related to the timing of when the non-retail vertical mixed use building needed to be constructed (the concurrency requirement) and the methodology for calculating the projected traffic generated from the project. In response to these remand issues, the applicant has modified the Master Plan and the tentative plat proposal that were approved in the 2011 Approvals. As detailed in the supplemental information, to address LUBA's remand the applicant has reduced the size of the Larger Format Store so that the vertical mixed use building is not required, made minor changes to the mix of uses, adjusted the location of some of the buildings, and consolidating and relocating some access points. The purpose of this narrative is to supplement the materials that were provided as part of the initial review and approval of the 2011 Approvals, and demonstrate that the Master Plan as modified continues to comply with all of the applicable approval criteria. When the initial Master Plan Application (and related exhibits) is described, it is referred to as the "Master Plan Application." These supplemental materials specifically address the approval criteria that are affected by the modifications to the Master Plan and related tentative plat approval, and demonstrate that the development as modified continues to comply with all of the applicable approval criteria. The findings and conditions from the 2011 Approvals related to the unchanged elements of the approved Master Plan and tentative plat remain effective, and are not revisited as part of this remand supplement.

It is important to keep in mind that this is not a new application. Instead, the initial proposal remains fundamentally intact, and is revised to respond to the issues raised during previous hearings and by LUBA. The modified proposal will be considered at a public hearing where public testimony and new evidence will be accepted, which provides interested parties substantive rights to fully participate in the process.

B. OWNERSHIPS: The Ownerships remain unchanged from the 2011 Approvals.

C. PROPERTY LOCATION: The Property Location remains unchanged from the 2011 Approvals.

C. EXISTING DEVELOPMENT AND PUBLIC FACILITIES: The Existing Development and Public Facilities remain unchanged from the 2011 Approvals.

D. PLAN DESIGNATION AND ZONING: The Plan Designations and Zoning remain unchanged from the 2011 Approvals.

E. ADJACENT ZONING AND LAND USES: The adjacent zoning and land uses remain unchanged from the 2011 Approvals.

F. SUBMITTAL REQUIREMENTS: The application for Master Plan approval includes a number of exhibits designed to comply with KDC 3.113.03 “Submittal Requirements” as follows:

- 1. Infrastructure engineering and architectural site plans showing all structures in relation to projected final topography of the project, all proposed connections to existing or proposed roads, transportation facilities (including proposed right-of-way and pedestrian connections), utilities, open space and parking areas, depicting the number and types of spaces.**

RESPONSE:

The plan set demonstrates that each proposed building and use can be serviced by appropriate infrastructure to support development. The on site improvements, and connections to the

public systems for all private infrastructure serving the area are designed according to City standards.

2. Landscape plans generally showing the common and botanical name of plant species, the number and size of plantings and demonstrating the location and type of irrigation. (2/03)

RESPONSE:

Landscape plans are included in the Master Plan submittal as Sheets L1, 12 & 13 to this application. The location and type of irrigation is not specifically shown on these plans but is explained in this narrative. The proposed landscaping is reflective of the intended final design. The proposed changes to the Master Plan will be landscaped with species as detailed within the attached landscape plans, Sheets L1 through L-3 thereby meeting this standard.

- 3. Building elevations, typical cross-sections and typical wall sections of all building areas.**
- 4. Typical elevations of the buildings to determine the specific configuration and relationship of design elements of the typical building exteriors, which describe the general aesthetic and technical aspects of the building exterior, including materials.**
- 5. Elevations, typical cross sections of the interior space layout of the building areas, entrance canopies, interior public courts, specialty areas, and service area layouts.**
- 6. Preliminary outline specifications describing exterior construction materials and methods, including indications of colors, finishes, and patterns.**

RESPONSE:

The architectural theme that was approved in the 2011 Approvals (see Sheets MP7-MP24 from the Master Plan Application) remains unchanged by this supplement. However, because some of the proposed buildings have changed (i.e., reducing the Larger Format Store from 116,000 sf to 80,000 sf or less), the typical building elevations have changed slightly. The modified building elevations, cross-sections and typical wall sections are attached to this supplement.

7. A description of servicing requirements, trash compactors and related areas, loading docks, etc.

RESPONSE:

These elements are shown on Sheets MP3-MP3.4 to this application. The proposal approved in the 2011 Approvals to provide trash and recycle storage areas throughout all areas of the project, and are enclosed or screened from adjacent activities and properties remains unchanged. See Sheets MP3-MP3.4, attached to Master Plan Application. The enclosures are still designed and will be constructed with like building materials and colors, minimizing visual impacts.

Due to the slight modifications to building orientation, location and size, the loading facilities that were approved in the 2011 Approvals has been revised. Loading facilities have been provided as required by the KDC. Area 'C-1' will be provided with two (2) spaces; Area 'C-2a' will be provided with two (2) spaces; Area 'C-2b' will be provided with one (1) space; Area 'C-2c' is designed to accommodate three (3) large truck loading bays directly next to the building structure; and Area 'C-3' will be provided with two (2) spaces.

.

8. Calculation of gross building, parking and open space.

RESPONSE:

The gross building and parking areas are shown on Sheet MP3 to this supplement.

9. For any project for which the projected daily average daily traffic will exceed 250 vehicle trips per day, in accordance with the Institute of Traffic Generation Manual, a traffic impact analysis will be required and a written explanation how negative impacts will be mitigated.

RESPONSE:

The 2011 Approvals were supported by a Traffic Impact Analysis (TIA) and multiple supplemental memos and testimony prepared by Kittelson and Associates. Kittelson has analyzed the traffic impacts associated with the modified Master Plan in the attached supplemental TIA.

The 2011 Approvals were based upon the assumption that Area C would generate 1,055 PM Peak trips. Accordingly, certain public improvements were required to mitigate the impact to the transportation system caused by the projected trips. See conditions of approval 20-24, 25-32, and 64-70 from the 2011 Approvals. LUBA determined that the methodology for calculating the projected number of PM Peak trips was flawed. However, appellants did not allege and LUBA did not find that the consequences of those PM Peak trips were not appropriately mitigated, or that approval criteria related to the transportation system were not met. This is a critical point because on remand the applicant has addressed the methodology of how the projected 1,055 PM Peak trips are calculated. As demonstrated in the supplemental TIA, the ITE-based projection of traffic generated from the site is 1,040 PM Peak trips, which is a slight reduction in the number of trips approved in the 2011 Approvals. The impact of those trips, and the mitigation measures required to address those trips are unchanged and are therefore not subject to review during the remand proceedings.

Because the projected transportation impacts for the modified proposal are consistent with what was analyzed and approved in the 2011 Approvals, the findings and Conditions of Approval 20-24, 25-32, and 64-70 from the 2011 Approvals continue to adequately address the transportation impacts of the proposal and are not subject to review as part of the remand proceeding because of the waiver doctrine. See September 11, 2012 letter from Perkins Coie LLP.

10. Location of land uses, open spaces, and pedestrian and vehicular circulation and a written explanation showing how these features achieve the purpose of the activity center design plan.

RESPONSE:

These elements are generally shown on Sheets MP1-MP6 to this supplement.

G. PROPOSAL: The 2011 Approvals approved a Master Plan and tentative plat for a majority of the land within KSP Area C. Area C continues to be divided into sub-areas Areas 'C-1 ', 'C-2' (C-2 is in turn divided into three smaller subareas), and 'C-3', but the dimensions of the sub-areas have been modified. However all of these Master Plan sub-areas are part of a single master planned Area C.

As part of the 2011 Approvals, the City found that the uses proposed complied with the design and development standards in the KDC and KSP (KDC 3.113.04). The findings and conditions related to the elements of the Master Plan that remain unchanged are not affected by this supplement, and are not subject to review during these remand proceedings because of the waiver doctrine. Additionally, many of the interpretational findings adopted by the City in the 2011 Approvals (i.e., definitions for terms such as "compatible" or "existing residential development") were not challenged to LUBA, and are therefore not subject to review on remand because of the waiver doctrine. Only the design and development elements of the Master Plan that are modified by this supplement are subject to review. The attached Cardno memo summarizes the modifications to the Master Plan, which are also described below.

AREA 'C-1'

Area 'C-1' is composed of predominately MU zoning except for a 2.77 acre portion that is zoned Commercial Retail (CR). Area C-1 is bounded by Lockhaven Drive N.E. to the North, Chemawa Road N.E. to the East, and McLeod Lane to the Southwest. This triangular shaped parcel is approximately 3.55 acres in size.

Area C-1 includes "Retail 1," 8,000 sf of retail use in a single story structure, and "Office 2," 37,500 sf of office in a three story structure. The revisions from the 2011 Approvals are that the mix of retail and office uses are slightly changed, and building pad 1 is reduced in size. The building orientation, public spaces and access to this area is unchanged from the 2011 Approvals.

AREA 'C-2'

Area 'C-2' is bounded by Chemawa Road N.E. to the North, Chemawa Road N.E. to the West, the new proposed McLeod Lane extension to the Southwest and South, and the existing railroad tracks to the East. This site for all practical purposes is primarily a rectangular parcel in shape, and is approximately 16.97 acres in size.

For ease of reference, Area C-2 is divided into three sub-areas: C2a, C2b and C2c. Each area is described below.

Area C2a

Area C2a includes "Restaurant 3" a 5,000 sf restaurant use in a single story structure, "Retail 4" 5,000 sf of retail in a single story structure and "Retail 5" 3,000 sf of retail in a single story structure. This portion of the Master Plan has been revised so that the office use is replaced by retail and restaurant uses, and the buildings' sizes are slightly changed. The building orientation, public spaces and access to this area is unchanged from the 2011 Approvals.

Area C2b

Area C2b includes "Retail 8" 6,500 sf of retail in a single story structure and "Retail 9" 6,500 sf of retail in a single story structure. This portion of the Master Plan has been revised slightly so that each of the buildings in the couplet is increased in size by 375 sf, and the office use is eliminated. Building orientation and access from Chemawa Road remains unchanged. The open space area is increased.

Area C2c

Area C2c includes "Retail Tenant 6" 27,000 sf of retail in a single story structure, "Retail Tenant 7" 45,000 sf of retail in a single story structure and 92 multifamily units in several two story buildings. The tenants for Retail Tenant 6 and Retail Tenant 7 have not been identified. The single structure is designed to be flexible, and it is possible that the precise allocation of tenant space may be changed (i.e., 3 tenants with smaller spaces, or a single tenant). Regardless of the size of Retail Tenants 6 and 7, the overall trips generated from the Master Plan will not exceed 1,055. For example, if Retail Tenants 6 and 7 are a total of 75,000 sf (which is 3,000 square feet more than is depicted on the site plan), other retail uses will be reduced by 3,000 square feet – i.e., Retail 1 may be reduced from 8,000 sf (as shown on the site plan) to 5,000 sf. This flexibility is needed so that the project can respond to market needs, and is consistent with the code.

Area C2c has been modified so that the 116,882 sf Larger Format Store is replaced with 92 multi-family residential units along the southern portions of the area and between 72,000 and 80,000 square feet of retail use in the northern portion of the area. Reducing the size of the Larger Format Store to 80,000 square feet or less eliminates the requirement for vertical mixed use development. However, KDC 2.107.05.D.1 provides that retail buildings that are over 10,000 sf are characterized as Larger Format Stores, and requires the Master Plan include non-retail and non-single family uses with a total square footage of at least 25% of the gross leasable area of the LFS. Retail Tenant 6 and 7 include between 72,000 and 80,000 sf of LSF retail in a single building, which means that between 18,000 sf and 20,000 sf of non-retail and non-single family uses must be included in the Master Plan. The mixed use requirement will be satisfied by the over 150,000 sf of multi-family housing proposed in Area C2 and C3. The Master Plan goes above and beyond the minimum required mixed use component by also including 90,500 square feet of office use (Medical Center and Office 2). The Applicant expects a condition of approval that the up to 20,000 sf of multi-family use required to satisfy KDC 2.107.05.D.1 must be constructed and completed on a schedule that complies with LUBA's remand of the 2011 Approvals.

The retail building(s) have been shifted north, reoriented to face McLeod Lane and ensure that loading facilities are screened from roadways. Additional area has been allocated within the area to provide for stormwater treatment. The circulation and access has been improved by consolidating access points and relocating new access points to areas that will facilitate safe and efficient access to and from the site.

AREA 'C-3'

Area C-3 is the portion of the Master plan that is west and southwest of the McLeod Lane Extension. This site for all practical purposes is primarily a rectangular parcel in shape, and is approximately 7.97 acres in size. Area C-3 continues to include the "Medical Center" (53,000 sf of medical office) and multi-family residential (64 units) uses. The layout of the proposed multi-family units is slightly modified. The access point has been modified to provide improved site

distance, which also allows for a larger stormwater detention area. The medical center is unchanged.

H. BACKGROUND: The proposal is for modifications to the Master Plan for KSP Area C approved in the 2011 Approvals that address the specific issues identified within the remand issues by the Oregon Land Use Board of Appeals. Responses to specific criteria based on the revisions submitted herein are detailed below. The applicant has only provided responses for those sections of the code that have changed with the proposed revisions to the master plan:

I. APPROVAL STANDARDS

KDC 3.113.04.A

The master plan shall meet the purpose and objectives identified in the Keizer Station Design Plan.

I. Purpose and Objectives

The purpose and objectives for Area 'C' – Keizer Station Center, are identified beginning on page 28 of the Keizer Station Plan as follows:

A. Purpose. Area C (36 acres) is intended to allow for a mix of uses, both residential and commercial as well as opportunities for connection to public transit. Key issues that will need to be considered as the Keizer Station Center area develops include:

- **Traffic operations on Lockhaven and Chemawa, especially at the intersection;**
- **Appropriate mix of uses;**
- **Compatibility with existing residential development**

RESPONSE:

The 2011 Approvals found compliance with the purposes and objectives for Area C. See pages 9-23 of Exhibit C to 2011 Approvals, and related conditions. Many of these findings and conditions continue to apply to the supplemented Master Plan. For example, the City Council's finding that none of the purpose statement objectives are dispositive and interpretation of terms such as "compatibility" and "existing residential development"

continue to apply to the supplemented master plan, were not previously challenged and cannot now be challenged because of the waiver doctrine.

As explained elsewhere in these materials, the traffic operations at Lockhaven and Chemawa were addressed in the 2011 Approvals and are not affected by the supplemental revisions to the Master Plan on remand. These transportation findings, such as "Lockahven Drive and Chemawa Road corridors will operate at acceptable standards" and that the conditions include "necessary mitigation measures required to adequately provide for an efficient and safe transportation system to serve the area," and conditions in the 2011 Approvals related to traffic operations at Lockhaven and Chemawa, cannot be re-opened as part of these proceedings because of the waiver doctrine.

The mix of uses proposed in this supplement is similar to what was approved in the 2011 Approvals; both include general restaurant, restaurant, retail, medical office and multi-family development mixed horizontally throughout the site. The primary difference is the Larger Format Store has been reduced in size, better articulated and shifted away from the southeastern corner of the site. The mix of uses complies with the code's requirements for balancing retail and non-retail/multi-family development and can be adequately served with infrastructure. The findings in the 2011 Approval that determined that the mix of uses was appropriate relied upon Area C's zoning, the KSP's allocation of 135,000 sf of retail to Area C, the intent of Area C to be an economic engine, and the "critical mass" of office, retail and multi-family uses in Area C. None of these elements of appropriateness have been modified by the supplemental proposal, so the 2011 Approvals' findings remain valid.

As noted above, the interpretations in the 2011 Approval related to "compatibility" and "existing residential development," continue to apply and are not subject to review. The existing residential development in proximity to the site is predominately to the southwest of the project. The edge of the project that is closest to the existing residential development (Area C3) is virtually unchanged by the revisions to the Master Plan – the

medical center office size and location remain unchanged, and multi-family housing continues to be located south of the medical center office. The only modification is the location of garages for the multi-family units that were approved 2011 Approvals has been changed so that the garages no longer abut the existing residential lots. Access to the Master Planned area will continue to be restricted to McLeod and Chemawa Road. Therefore, all of the findings and conditions of approval in the 2011 Approvals related to compatibility with existing development remain applicable to this supplement.

The revisions to Area C2 also increase compatibility with existing residential development. The Larger Format Store has been reduced in size and moved north, so that the LFS is separated from the existing church by multi-family housing. The location of these uses establish an appropriate transition from this mixed use area to the single family area in an effort to be sensitive to and consistent with the existing development pattern.

The proposed Master Plan maintains the KSP objective of compatibility with the existing residential development in the area by including a buffering multi-family residential use, generous landscaping, thoughtful street connections that avoid intrusions and cut through traffic into existing residential development serve the neighborhood, as well as pedestrian scale amenities such as the proposed plaza, gathering areas, and pathways.

B. Objectives: Development in Area C will be focused on achieving the following objectives:

- **Compatibility with existing residential development;**
- **Mix of uses that support transit development; and**
- **Preserving opportunities to support a future Commuter Rail Transit Station.**

RESPONSE:

The Master Plan's compliance with the KSP's objectives was thoroughly addressed in the 2011 Approvals, and the related findings (pages 20-22 of Exhibit C) and conditions continue to apply to the Master Plan as supplemented.

The Master Plan's compatibility with existing residential development is addressed above. Consistent with the 2011 Approvals, the revised Master Plan continues to offer a mix of uses that supply crucial critical mass of transit ridership to support the significant proposed and approved transit investments in nearby portions of Area B. Further, the proposed Master Plan provides for a variety of commercial businesses including medical services, retail, restaurants, offices and the like providing a walkable destination that does not currently exist for many of these services in this area. Development of the proposed Master Plan will provide convenient pedestrian, bicycle and other vehicle access to Area C from the nearby residential area. This convenience will allow for increased opportunities to walk or bicycle from the surrounding neighborhoods to Area C supporting interconnection, needed services and improving livability for the existing residential areas.

The street improvements required by the 2011 Approvals improves the street systems between Area C and Area B such that access to and from the transit facilities is improved for an contemplated in Area B are safely and conveniently accessible in ways they are not currently. The proposed mix of uses supports transit development in not only the proposed Master Planned portion of Area C as well as nearby areas, it especially supports the significant transit development approved and contemplated in Area B by providing

significant mixed ridership. The proposal preserves all opportunities to support a future Commuter Rail Transit Station currently planned for Area B.

iii KDC 2.107.05(B)(4)

“Include architectural features that reflect those of the remainder of the building around any outdoor garden / nursery area to include such things as hard walls, windows and awnings.”

RESPONSE:

No outdoor garden or nursery is proposed within the master plan.

vii. KDC 2.107.05(B)(8)

“Drive-thru businesses shall have the drive-thru oriented away from both existing and planned residential areas.”

RESPONSE

There is no drive-thru business proposed at this time within the master plan area.

viii. KDC 2.107.05D(1)

“Retail buildings of the type described in Section 2.107.02(I) that exceed 10,000 square feet (“Larger Format Stores”) require the development of non-retail/non-single family home uses in the Master Plan area that have a total square footage of at least 25% of the gross leasable area of the Larger Format Store. As used herein, “non-retail” shall mean uses other than those listed in Section 2.107.02(I).”

RESPONSE

Retail Tenant 6 and 7 include between 72,000 and 80,000 sf of LSF retail in a single building, which means that between 18,000 sf and 20,000 sf of non-retail and non-single family uses must be included in the Master Plan. The mixed use requirement will be satisfied by the over 150,000 sf of multi-family housing included in the Master Plan. The Master Plan goes above and beyond the minimum required mixed use component by also including 90,500 square feet of office use (Medical Center and Office 2).. The Applicant expects a condition of approval that the up to 20,000 sf of multi-family use required to

satisfy KDC 2.107.05.D. 1 must be constructed and completed on a schedule that complies with LUBA's remand of the 2011 Approvals

ix. KDC 2.107.05D(2)

“[F]or each square foot of vertical mixed use development in the Master Plan area, the Larger Format Store can be increased above 80,000 square feet by an equivalent amount.”

RESPONSE

The applicant is not proposing to construct any retail buildings that exceed 80,000 square feet, therefore this standard is not applicable to the review of this application.

x. KDC 2.107.05(D)(3)

“The development required in Subsections D(1) and D(2) above shall take place in the same Master Plan area. The approved Master Plan shall be conditioned to require such development to be constructed before or concurrently with the Larger Format Store.

RESPONSE

Both the LFS and multi-family residential uses are located within Master Plan Area C. The Applicant expects a condition of approval that the up to 20,000 sf of multi-family use required to satisfy KDC 2.107.05 must be constructed and completed on a schedule that complies with LUBA's remand of the 2011 Approvals.

xi. KDC 2.107.05(E)

“A limitation of the total floor area for specified uses applies to all of Area C – Keizer Station Center of the Keizer Station Plan. A maximum total floor area shall apply to the uses identified in Section 2.107.02(I). This maximum floor area is set forth in the Keizer Station Plan, however this maximum floor area may change as part of an approved master plan or amended master plan.”

RESPONSE

The KSP allocates 135,000 square feet for the 2.107.02(1) "specified uses." The Master Plan observes this restriction. No reallocation is sought as part of this application. The

applicant is proposing to construct up to 106,000 square feet of retail use (including restaurants space), below the 135,000 square feet permitted within the master plan.

xiii KDC 2.107.05.G.2 Vehicular Movement

- a. Encourage traffic to enter and exit the development at locations in a safe manner.**

RESPONSE

The proposed revisions to the master plan have resulted in a proposed transportation system for the master plan area that better meets this requirement. Specifically the applicant has consolidated access points along McLeod reducing the potential for conflicts that occur with turn movements and improving the site distance for the access to the multifamily residential area proposed north of McLeod.

xviii KDC 2.107.06 Dimensional Standards

A. Minimum Lot Dimension and Height Requirements

DIMENSION	Single Family	Duplex or Multi-Family	Commercial	Mixed Use
Lot Size	4,000 sq. ft. (1)	6,000 sq. ft. (2)	None (3)	None (3)
Average Width	40 feet	50 feet	None	None
Average Depth	70 feet	80 feet	None	None
Maximum Height	35 feet	50 feet	50 feet	50 feet(4)

(1) * * * * *

(2) *Multi-family development must comply with the density standard in Section 2.107.07.I*

(3) *Parcel size shall be adequate to contain all structures within the required yard setbacks.*

(4) *Height of vertical mixed use development may exceed this limitation without a concurrent variance and maximum height will be determined during master plan process.*

RESPONSE

As is evident from review of the Master Plan and its exhibits, each of the buildings shown on the proposed Master Plan within the MU zone complies with these standards.

xxii. KDC2.107.07.C Subdivisions and Partitions: Land divisions shall be reviewed in accordance with the provisions of Section 2.310.

RESPONSE

The applicant has revised the corresponding subdivision request (Case No. 2010-18) to correspond with the proposed revisions to the master plan necessary to comply with the land use decision that was remanded by LUBA.

xxviii KDC 2.107.07.I

Density: For property zoned MU as identified in the Keizer Station Plan, the minimum density for subdivisions, partitions, multi-family or any residential development shall be a minimum 8 units per acre and a maximum 24 units per acre, except there shall be no minimum residential density requirement for multi-family development within a mixed use building.

The minimum density for multi-family development shall be 8 units per acre; the maximum density shall be 24 units per acre, except there shall be no minimum residential density requirement for multi-family development within a mixed use building.

RESPONSE:

The Master Plan includes a 3.47 acre area in the southwest in Area C-3 and a 4.84 acre area in Area C-2 that are devoted to multifamily development. The site plan for this part of Area C establishes that all of the above standards either are satisfied or can feasibly be satisfied at the time of building permit approval. Specifically, the attached site plan Sheet MP3 shows that the proposed density for these multifamily units is approximately 18 dwelling units per acre, which is within the allowed density range. These standards are met.

KEIZER STATION CENTER SUBDIVISION

KEIZER, OREGON

AN APPLICATION FOR:
SUBDIVISION
TREE REMOVAL PLAN

Submitted:
DECEMBER 14, 2010

REVISED:
SEPTEMBER 20, 2012

APPLICANT:
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EXHIBITS

EXHIBIT A	PLAN SET
EXHIBIT B	SUPPLEMENTAL TRANSPORTATION IMPACT ANALYSIS MEMO
EXHIBIT C	STORMWATER MEMO

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INTRODUCTIONS

In April 2011, the City approved the tentative subdivision plat for the Keizer Station Plan Area C, which was associated with a Master Plan for the area (collectively, the "2011 Approvals"). The 2011 Approvals were appealed to the Oregon Land Use Board of Appeals (LUBA), who remanded the City's decision based upon the condition of approval related to the timing of when non-retail vertical mixed use building needed to be constructed (the concurrency requirement) and the methodology for calculating the projected traffic generated from the project. In response to these remand issues, the applicant has modified the Master Plan. The Master Plan modifications result in similar changes to the tentative plat proposal. As detailed below and in the supplemental information related to the Master Plan, to address LUBA's remand the applicant has reduced the size of the Larger Format Store so that the vertical mixed use building is not required, made minor changes to the mix of uses, adjusted the location of some of the buildings, and consolidating and relocating some access points.

The purpose of this narrative is to supplement the materials that were provided as part of the initial review and approval of the tentative plat, and demonstrate that the tentative plat as modified continues to comply with all of the applicable approval criteria. It is important to keep in mind that this is not a new application. Instead, the initial proposal remains fundamentally intact, and is revised to respond to the issues raised during previous hearings and by LUBA. The modified proposal will be considered at a public hearing where public testimony and new evidence will be accepted, which provides interested parties substantive rights to fully participate in the process.

As demonstrated below, the existing preliminary utility designs demonstrate that each of the proposed 9 lots can be served by water, sanitary sewer and stormwater infrastructure consistent with City standards. Additionally, the traffic generated from the project continues to be less than 1055 PM Peak hour trips as originally approved.

The applicant re-affirms that it does not object to a condition of subdivision tentative plat approval to the effect that any amendment of the approved tentative plat, that is not of the type in "substantial conformity" to the approved tentative plat (ORS 92.090(3)(d)), shall be reviewed and approved by the city council (not the city hearings officer), so long as it is clear that an amendment of the approved tentative plat is an independent action and is not an amendment of the approved Master Plan. The previous approval requested a three (3) phased subdivision, the applicant has revised the request to allow for all of the property to be platted in one (1) phase.

EXISTING CONDITIONS

Located within the city limits of Keizer, Oregon, the subject area is approximately 28.23 acres in size and is zoned Mixed Use and Commercial Retail. The proposed subdivision is comprised of forty (40) tax lots, located in Section 36, Township 6 South, Range 3 West of the Willamette Meridian. The subject area is located within Area C of the Keizer Station Master Plan area and is bordered by Chemawa Road NE and Lockhaven Drive NE to the north, Ridge Drive NE to the west, McLeod Lane NE (proposed) to the south and McLeod Lane NE and Chemawa Drive NE the west. The easterly and southerly portions of the development site currently surface drain northwest to Chemawa Road NE. The northwester portion of the site currently surface drain to the Chemawa Road NE, NE Lockhaven Drive NE and McLeod Lane NE. There are existing stormwater facilities along Chemawa Road NE and Lockhaven Drive NE.

Site Information	Keizer Station Center
Overall Site Size	760,417 square feet (28.23 acres)
Existing Lots	40
Land Use Districts	Commercial Retail & Mixed Use
Existing Use	Residential
Surrounding Zoning	Designation
North	Commercial Retail & Commercial Mixed Use
East	Industrial Business
South	Public & Mixed Use
West	Commercial Office & Single Family Residential
Streets	Functional Classification
Lockhaven Drive NE	Major Arterial
Chemawa Road NE	Minor Arterial
McLeod Lane NE	Collector

PRELIMINARY SUBDIVISION REVIEW

The Applicant is requesting preliminary approval for a Subdivision that will result in nine (9) lots and new right of way within the subject area.

- Lot 1: 1.04 acres (45,192 square feet)
- Lot 2: 1.26 acres (54,765 square feet)
- Lot 3: 12.8 acres (557,688 square feet)
- Lot 4: 1.47 acres (64,196 square feet)
- Lot 5: 1.23 acres (53,574 square feet)
- Lot 6: 0.82 acres (35,851 square feet)
- Lot 7: 1.28 acres (55,777 square feet)
- Lot 8: 4.37 acres (190,167 square feet)
- Lot 9: 3.47 acres (151,140 square feet)
- ROW: 2.05 acres (89,142 square feet)

TRANSPORTATION AND OFF-SITE PUBLIC IMPROVEMENTS

The 2011 Approvals were based upon the assumption that Area C would generate 1,055 PM Peak trips. Accordingly, certain public improvements were required to mitigate the impact to the transportation system caused by the projected trips. LUBA determined that the methodology for

calculating the projected number of PM Peak trips was flawed. However, appellants did not allege and LUBA did not find that the consequences of those PM Peak trips were not appropriately mitigated, or that approval criteria related to the transportation system were not met. This is a critical point because on remand the applicant has addressed the methodology of how the projected 1,055 PM Peak trips are calculated. As demonstrated in the Supplemental Traffic Impact Analysis memo (TIA) at Exhibit B, the ITE-based projection of traffic generated from the site is 1,040 PM Peak trips. The impact of those trips, and the mitigation measures required to address those trips are unchanged and are therefore not subject to review during the remand proceedings.

Approved Public Improvements

Because the projected transportation impacts for the modified proposal are consistent with what was analyzed and approved in the 2011 Approvals, Conditions of Approval 20-24, 25-32, and 64-70 from the 2011 Approvals continue to adequately address the transportation impacts of the proposal.

In summary, those conditions require:

- The extension and reconfiguration of the existing street system to serve the development. The existing Ridge Drive NE will be vacated from McLeod Lane NE north to Chemawa road NE. The vacated right-of-way (ROW) will be incorporated into the properties west of the existing roadway. The eastern-most fifteen (15) feet of the existing ROW to be vacated will be replaced with a 15' access easement that will accommodate a ten (10) foot wide multi-use path. McLeod Lane NE will be widened and extended to the southeast to connect in with an existing public street ROW, this roadway will continue south. Lockhaven Drive NE and Chemawa Road NE will be widened and realigned to form a new intersection.
- Off-site improvements such as widening, realignment and addition or modifications to signals added or upgraded, and certain streets realigned to accommodate the increased traffic to and from the development and the regional traffic growth, including:
 - o Chemawa Road Corridor: Five-lane section from Lockhaven to 400' south of McLeod with raised median. Two northbound right turn lanes at Lockhaven.
 - o Chemawa Road / McLeod Lane Corridor: New signal with shared through/right-turn lane on east and west McLeod approach.
 - o Lockhaven / 14th Ave: Add a westbound right-turn lane on Lockhaven.
 - o Lockhaven / River Road: Dual westbound left lanes, a single through lane and a single right lane.
 - o Chemawa Road / I-5 NB Ramp: Provide dual eastbound left-turn lanes (and accompanying northbound on-ramp lane widening).

PUBLIC INFRASTRUCTURE

As demonstrated in the attached Stormwater memo, the modified tentative plat and Master Plan do not alter the demand on public infrastructure that was analyzed and approved in the 2011

Approvals. Accordingly, the conditions of approval from the 2011 Approvals continue to be feasible and ensure compliance with all approval criteria. The required improvements are summarized below.

Water: As required by conditions 8-12, 25-32, and 64-70 from the 2011 Approvals, the existing water line within Ridge Drive NE will be removed. A 12-inch water line will be extended from Ridge Drive NE within the McLeod Lane NE, connecting in with an existing water line located southeast of the McLeod/Lockhaven intersection. A new 12-inch waterline will be extended from the McLeod/Chemawa intersection to an existing line within Lockhaven Drive NE. Within the southwest quadrant of the project a new 10-inch water line within a 20-foot easement will be extended southeast from Chemawa Road NE, connecting back into the water line within McLeod Lane NE. Within the Northwest quadrant of the project a new 10-inch water line within a 20-foot easement will connect McLeod Lane NE and Chemawa Road NE.

Sanitary Sewer: As required by conditions 1-7, 25-32, and 64-70 from the 2011 Approvals, the project will be served by connection to the existing 15-inch sewer main at the intersection of existing Chemawa Road NE and the McLeod Lane NE. An 8-inch public sewer main will be extended to the southeast within the McLeod Lane NE connecting in with an existing sanitary line within Ridge Road NE. A new 8-inch sanitary sewer line will be extended within an 10-foot wide easement from Chemawa Road NE south and then west connecting back into a new 8-inch line that will be extended southwest within the Chemawa Road NE ROW. The public sewer will be designed to meet current City of Keizer design standards. All private sewer services will be designed to Uniform Plumbing Specialty Code.

Storm Water: As required by conditions 13-19, 25-32, and 64-70 from the 2011 Approvals, the project will construct public storm drainage facilities with the public roadway system to collect and convey runoff from the development. The project site has been delineated into ten (10) basins to facilitate stormwater collection and conveyance to appropriate treatment facilities. The project will utilize a mixture of low impact design (LID) stormwater facilities and mechanical facilities to treat stormwater generated within the project boundary and new roadways. To the maximum extent practical LID techniques will be utilized, however in some instances existing grade, existing facilities and proposed development will necessitate the use of mechanical treatment. Water quality structures in the public roadway system will be provided in accordance with city standards. Each private lot will provide water quality treatment and detention of its storm water runoff. All private storm drainage facilities will be designed to meet the Uniform Plumbing Specialty Code, and City of Keizer design standards. All public storm drainage facilities will be designed to meet City of Keizer standards, facilities that will serve or be located within ODOT ROW will be designed to ODOT standards.

TREE PLAN

As part of the 2011 Approvals and application materials, a Tree Plan was prepared for the subject area (see sheet C1.1 of Exhibit A to initial applications) that evaluated all of the trees and vegetation on site. Despite the modifications to the proposal, due to the site layout of proposed roadways, building locations, grading, and overall site development, coupled with the observable condition and/or hazard potential, most trees will still need to be removed. Removal of existing significant trees shall meet the requirements of Keizer Development Code (KDC) 2.309.04 b.7 and Tree Preservation Ordinance 95-332. Current KDC regarding tree replacement mitigation requires a ratio of two new trees for every one tree removed. The Landscape Master Plan development for Keizer Station reflects a proposed ratio of 7.7 new trees for every one tree removed.

RIGHT-OF-WAY VACATION

As approved as part of the 2011 Approvals, portions of Chemawa Road and portions of Ridge Drive, as well as all of St Croix Road will need to be vacated in order to facilitate the proposed land division. The request for these road vacations have been submitted under separate cover to the City. The applicant understands that these road vacations will likely be processed separately and in any case, will need to be approved by City Council.

THE KEIZER DEVELOPMENT CODE

2.302.03 TRANSPORTATION GENERAL PROVISIONS

- B. Continuation of Streets.** Development proposals, including subdivisions and partitions, shall provide for the continuation of, and connection to, streets where necessary to promote appropriate traffic circulation in the vicinity of the development. Where necessary to give access or permit a satisfactory future division of adjoining land, streets and utilities shall be extended to property boundaries to allow the future extension of streets and infrastructure. A temporary turnaround shall be constructed for stub streets in excess of 150 feet in length. (01/02)

Response: The modified tentative plat proposal does not affect compliance with the right of way standards. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference.

The proposed subdivision includes adequate right-of-way (ROW) to accommodate the widening and realignment of Chemawa Road NE and Lockhaven Drive NE as well as the extension of McLeod Lane NE. The proposed subdivision provides for the extension of planned streets necessary to provide for the development of the site.

- C. Alignment.** All streets other than minor streets or cul-de-sacs, as far as practical, shall be in alignment with existing streets by continuation of the existing centerlines. The staggering of street alignments resulting in "T" intersections shall, wherever practical, leave a minimum distance of 200 feet between the center lines of streets having approximately the same direction and otherwise shall not be less than 100 feet. (5/98)

Response: The modified tentative plat proposal does not affect compliance with the street alignment standards. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference.

All new and realigned intersections meet City of Keizer standards, no offset "T" intersections area proposed.

- D. Future extension of streets.** When it appears possible to continue a street, bicycle path and/or pedestrian accessway into a future subdivision, adjacent acreage or area attractors such as schools and shopping centers, streets, bicycle paths and/or pedestrian accessway facilities shall be platted and built to a boundary of the subdivision. The street may be platted without a turnaround unless the Public Works Department finds a turnaround is necessary for reasons of traffic safety. Any street extension exceeding 150 feet in length shall be provided with an approved turnaround as set forth in Section 902.2.2.4 "Dead Ends" of the Uniform Fire Code, 1994 edition. (5/98)

Response: The modified tentative plat proposal does not affect compliance with the future extension of streets standards. The related findings and conditions

of approval in the 2011 Approvals are incorporated by reference.

McLeod Lane NE connects into Ridge Drive NE, no turnarounds are proposed or necessary.

- E. Intersection angles. Streets shall be laid out to intersect at angles as near to right angles as practical, except where topography requires lesser angles. Intersections of less than 60 degrees shall require special intersection designs. Streets shall have at least 50 feet of tangent adjacent to intersections unless topography requires lesser distances. Intersections that are not at right angles shall have minimum corner radii of 15 feet. Major arterial intersections shall have curb radii of not less than 35 feet. Other street intersections shall have curb radii of not less than 20 feet. (5/98)**

Response: The modified tentative plat proposal does not affect compliance with the intersection angle standards. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference.

The roadway improvements have been prepared consistent with these requirements, see sheet EX-2 in Exhibit A to the initial application for more detail on road design and radii for each intersection and roadway.

- F. Existing Streets. Whenever existing public streets adjacent to or within a tract are of a width less than the street design standards, additional right-of-way shall be provided at the time of subdivision, partitioning, or development. (5/98)**

Response: The modified tentative plat proposal does not affect compliance with the right of way standards or proposed ROW dedication. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference

The Applicant is dedicating ROW along Chemawa Road NE and McLeod Lane NE to accommodate improvements identified in the attached TIA (Exhibit B). Also see the TIA attached to the initial application as Exhibit C.

- G. Half-Streets. Half-streets may be approved where essential to the reasonable development of an area and when the City finds it to be practical to require the dedication of the other half when the adjoining property is developed. When a $\frac{3}{4}$ width street can reasonably be developed, as determined the Department of Public Works, a half street will be constructed with an additional 10 feet of pavement on the opposite side of the street from full improvement. (5/98)**

Response: The modified tentative plat proposal does not affect compliance with the roadway improvement standards. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference.
The Applicant is dedicating ROW along Chemawa Road NE and McLeod Lane NE to accommodate improvements identified in the attached TIA

(Exhibit B). Also see the TIA attached to the initial application as Exhibit C.

- J. Grades and Curves. Grades shall not exceed 7 percent on arterials, 10 percent on collector streets or 15 percent on any other street. Street grades of 15 percent shall not exceed 200 feet in length. To provide for adequate drainage, all streets shall have a minimum slope of 0.5 percent. On arterials there shall be a tangent of not less than 100 feet between reversed curves. (5/98)**

Response: The modified tentative plat proposal does not affect compliance with the grades and curves standards. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference.

The extension of McLeod Lane NE does not exceed 15 percent, see sheet EX-2 in Exhibit A from the initial application for more detail on road design and radii for each intersection and roadway.

- K. Frontage Streets. If a development abuts or contains an existing or proposed arterial or collector street, the City may allow frontage streets, or may require reverse frontage lots with suitable depth, screen planting contained in a non-access reservation along the rear or side property line, or such other treatment as may be necessary for adequate protection of residential properties, to afford separation of through and local traffic, and to preserve the capacity and safety of the collector or arterial street. (5/98)**

Response: The modified tentative plat proposal does not affect compliance with the frontage streets standards. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference.

The existing and proposed transportation provide for the full build out of the subject area, no additional frontage roads are proposed or necessary to support the full build-out of the area.

- L. Alleys. Alleys shall be provided in commercial and industrial zones unless other permanent provisions for access to off-street parking and loading facilities are provided. The corners of alley intersections shall have radii of not less than 10 feet. (5/98)**

Response: The modified tentative plat proposal does not affect compliance with the alley standards. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference.

Provisions for access to off-street parking and loading facilities will be determined as each individual lot develops. No alleys are proposed or required to allow for future development of the site as each lot has adequate width and depth to accommodate future access.

- M. Street Landscaping. Where required as part of the right-of-way design, planting strips shall conform with the following standards: (5/98)**

Response: The modified tentative plat proposal does not affect compliance with the street landscaping standards. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference.

Sheet L1 of Exhibit A of the initial application details the proposed street landscaping with the existing and proposed right-of-way. Streetscapes include five (5) foot wide planter strips with trees planted 30 feet on center along the corridors.

O. Access Control Standards. The following access control standards apply to public, industrial, commercial and residential developments including land divisions.

1. Traffic Impact Analysis Requirements. The City or other agency with access jurisdiction may require a traffic study prepared by a qualified professional to determine access, circulation and other transportation requirements. (See also, Section 2.301.03 Traffic Impact Analysis.) (07/09)

Response: As explained above, the projected transportation impacts for the modified proposal are consistent with what was analyzed and approved in the 2011 Approvals. See the supplemental TIA at Exhibit B and the TIA attached to the initial application as Exhibit C, both prepared by Kittelson and Associates. Both TIAs identify improvements necessary to ensure that access, circulation and safety of the surrounding transportation system is maintained as the subject area develops. Specific transportation improvements will be completed as necessary as each lot develops.

Because the modified tentative plat proposal does not affect compliance with the access control standards, the related findings and conditions of approval in the 2011 Approvals (conditions 20-24, 25-32, and 64-70) are incorporated by reference.

3.108.06 SUBDIVISION REVIEW CRITERIA

Approval of a subdivision, PUD, or manufactured home park shall require compliance with the following: (2/01)

A. The proposal shall comply with the applicable development standards in Section 2.405 and Section 2.3, as appropriate, including provisions for streets and utilities. (5/98)

Response: The modified tentative plat proposal does not affect compliance with the applicable development standards. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference.

Detailed finding demonstrating compliance with all applicable standards in section 2.405 and section 2.3 of The Keizer Development Code are provided later on in this narrative. The requested subdivision meets this criterion.

- B. Each lot shall satisfy the dimensional standards and density standard of the applicable zoning district, unless a variance from these standards is approved. (5/98)**

Response: No variance is requested. Neither the Mixed Use nor Commercial Retail zone has a minimum lot size, average width or depth requirement. The proposed lots meet this criterion.

- C. Adequate public facilities shall be available and shall serve the existing and newly created parcels. (2/01)**

Response: Because the modified tentative plat proposal does not affect the adequacy of public facilities, the related findings and conditions of approval in the 2011 Approvals are incorporated by reference.

As explained above, the projected transportation impacts for the modified proposal are consistent with what was analyzed and approved in the 2011 Approvals. See the supplemental TIA at Exhibit B and the TIA attached to the initial application as Exhibit C, both prepared by Kittelson and Associates. Both TIAs identify improvements necessary to ensure that access, circulation and safety of the surrounding transportation system is maintained as the subject area develops. Specific transportation improvements will be completed as necessary as each lot develops.

Each proposed lot has access to public water and sanitary sewer service as detailed in Sheets C3.0 and C4.0 of Exhibit A to the initial application. The existing system coupled with proposed improvements that are consistent with the City's adopted master plans ensure that adequate capacity exists to serve each proposed lot. Furthermore, the needs of each individual lot will be determined as each lot is reviewed by City staff and developed by each user. The subdivision continues to meet this criterion.

- D. D. Rough Proportionality. Improvements or dedications required as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of development. Findings in the development approval shall indicate how the required improvements or dedications are roughly proportional to the impact. (01/02)**

Response: The improvements and dedications required as part of the 2011 Approvals were roughly proportional to the impact of the development. Because the conditions of approval are expected to be substantially similar to the 2011 Approvals, the applicant expects that the required dedications and improvements will continue to be roughly proportional to the impact of the development.

2.310.03 STANDARDS FOR LOTS OR PARCELS, LOT LINE ADJUSTMENT REQUIRED

- A. Minimum lot area. Minimum lot area shall conform to the requirements of the zoning district in which the parcel is located. (5/98)**

Response: There is no minimum lot size for the Commercial Retail or Mixed Use Zone. The proposed lots conform to the requirements of the Commercial Retail and Mixed Use zones.

B. Lot Line Adjustment. Any adjustment of a lot line between two adjacent parcels shall require approval of a Lot Line Adjustment in accordance with the standards of Chapter 3.1 and the procedures of Chapter 3.2. (07/07)

Response: The Applicant is not requesting a lot line adjustment. The Applicant is requesting approval of a nine-lot subdivision. This criterion is not applicable to this review.

C. Lot width and depth. The depth of a lot or parcel shall not be more than 3 times the width of the parcel, with the following exceptions: (5/98)

Parcels created for public utility uses or in zones where there is no minimum lot area requirement shall be exempt from width to depth ratio provisions. (5/98) A

Response: Neither zone has a minimum lot area, therefore the proposed lots in the subdivision are exempt from this standard.

D. Access. All lots and parcels created after the effective date of this Ordinance shall provide a minimum frontage, on an existing or proposed public street, equal to the minimum lot width required by the underlying zone. The following exceptions shall apply: (5/98)

Response: There is no minimum lot width identified in either the Commercial Retail or the Mixed Use Zone. Proposed lot 2 is permitted as a flag lot as permitted in 2.310.03, E. Aside from lot 2, each proposed lot has at least seventy-five (75) feet of frontage on a public street. The proposed lots meet this requirement.

4. Flag lots, as permitted in Subsection 2.310.03, E. (5/98)

Response: Lot 2 is proposed as a Flag Lot consistent with the provisions of 2.310.03, E. Detailed findings demonstrating compliance are set forth alter on this narrative.

E. Flag Lots. Flag lots shall only be permitted if it is the only reasonable method by which the rear portion of a lot being unusually deep or having an unusual configuration may be accessed and when in compliance with Section 2.302.03.B. If a flag-lot is permitted, the following standards shall be met: (5/98)

1. The access strip shall not be less than 20 feet wide. The access strip shall be improved with a minimum 12 foot wide paved driveway and paved encroachment which meet applicable City standards. (5/98)
2. The access strip shall not be included in the calculation of lot area for purposes of determining compliance with any minimum lot size provision of this Ordinance. (5/98)

Response: Proposed Lot 2 has direct access to Chemawa Road NE via an access strip that is in excess of 20 feet wide. The extension of McLeod Lane NE creates a practical difficulty in providing for the development of the property located north and west of McLeod Lane NE. The proposed flag

lot provides for the ability to develop this area efficiently.

- F. Through Lots. Through lots shall be avoided except where essential to provide separation of residential development from major streets, adjacent non-residential activities, or to overcome specific development constraints due to topography or lot orientation. Through lots shall be no less than 100 feet in depth. Lots having their access off a private access easement or adjacent to a private access easement shall not be construed as qualifying as through lots. Screening or buffering, pursuant to the provision of Section 2.307, may be required by the City during the review of the land division request. (06/07)

Response: The subdivision is designed consistent with this requirement. Lots are arranged to accommodate existing and proposed transportation corridors.

- G. Lot Lines. The side lines of lots, as far as practicable, shall run at right angles to the right-of-way line of the street upon which the lots face. The rear lot line shall be no less than 1/2 the dimension of the front lot line. (5/98)

Response: The site has been designed to consistent with this requirement. Proposed Lot 5 and Lot 6 are irregular in shape due to the existing and proposed transportation system.

- H. Utility Easements. Utility easements shall be provided on lot areas where necessary to accommodate public utilities. Such easements shall have a minimum total width as specified in Section 2.302.04 of this Code. (5/98)

Response: Necessary utility easements will be shown on the final plat consistent with section 2.302.04.

2.310.04 ADDITIONAL DESIGN STANDARDS FOR SUBDIVISIONS

A. Standards for Blocks

1. General: The length, width, and shape of blocks shall be designed with regard to providing adequate building sites for the use contemplated; consideration of needs for convenient access, circulation, control, and safety of street traffic; and recognition of limitations and opportunities of topography. (5/98)

Response: The length, width and shape of the blocks within the subdivision are dictated by the existing and proposed transportation system. The resulting lots are appropriate for uses ranging from residential, to office and commercial retail. The proposed subdivision has been designed consistent with this provision.

2. Sizes: Blocks should not exceed 600 feet in length between street lines, except blocks adjacent to arterial streets, or unless the previous adjacent development pattern or topographical conditions justify a variation. The recommended minimum distance between intersections on arterial streets is 1,800 feet. (5/98)

Response: The proposed subdivision is bisected by Chemawa Road NE and

Lockhaven Drive NE, both designated as Arterials. The larger lots created within the subdivision will provide for local circulation and connectivity as they develop. The proposed subdivision has been designed consistent with this requirement,

- B. Traffic Circulation. The proposed subdivision shall be laid out to provide safe and, convenient vehicle, bicycle and pedestrian access to nearby residential areas, transit stops, neighborhood activity centers such as schools and parks, commercial areas, and industrial areas; and to provide safe and convenient traffic circulation. At a minimum, "nearby" is interpreted to mean uses within 1/4 mile which can be reasonably expected to be used by pedestrians, and uses within 1 mile of the subdivision boundary which can reasonably be expected to be accessed by bicyclists. (5/98)

Response: Existing sidewalks coupled with new sidewalks along Chemawa and the extension of McLeod will provide new and improved pedestrian connections to and from the site. Connections within the site will be assured as each lot develops. The proposed improvements integrate well with existing and planned transportation improvements within the area consistent with the intent of this requirement.

- C. Connectivity. To achieve the objective in B., above, the Director may require
1. Stub Streets: Where the potential exists for additional residential development on adjacent property. (5/98)
 2. Pedestrian/Bicycle Accessways: Public accessways to provide a safe and efficient connection from a residential area to nearby residential areas, transit stops, neighborhood activity centers, including schools, parks, shopping centers, other community services and other commercial and industrial areas when such connections are not available by streets and when a pedestrian must go at least one quarter of a mile out of his or her way to make that connection using the street system. (5/98)

Response: The modified tentative plat proposal does not affect compliance with the connectivity standards. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference.

The proposal to construct a new Pedestrian/Bicycle Accessway in a 15' wide access easement along the eastern portion of the existing Ridge Drive NE that is to be vacated that was approved in the 2011 Approvals is not modified. The easement will extend from the proposed connection of McLeod Lane NE north to Chemawa Road NE. The proposed subdivision as designed provides efficient and direct connections for all modes of travel consistent with the intent of this requirement.

- D. Design Standards. Pedestrian/bicycle accessways shall meet the following design standards: (5/98)
1. Minimum dedicated width: 10 feet
 2. Minimum improved width: 10 feet

3. Maximum length: 250 feet. A clear line of vision for the entire length of the accessway shall be required. (5/98)
4. Lighting shall be provided illuminating any walkway exceeding 150 feet in length to a level where the system can be used at night. Lighting shall be included in the lighting district(s) established for the subdivision. (5/98)
5. The accessway shall be designed to prohibit vehicle traffic. (5/98)

Response: The modified tentative plat proposal does not affect compliance with the pedestrian/bicycle accessways standards. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference.

The proposed Pedestrian Bicycle Accessway is proposed to be 10 feet wide in a 15 foot wide public access easement. The final design of the route will be consistent with the design standards detailed above.

2.310.06 IMPROVEMENT REQUIREMENTS - SUBDIVISIONS

The following improvements shall be required for all subdivisions in the City of Keizer:

- A. Frontage Improvements. Street improvements to full City Standards shall be required for all public streets on which a proposed subdivision fronts in accordance with Section 2.302 of this Code. Such improvements shall be designed to match with existing improved surfaces for a reasonable distance beyond the frontage of the property. Additional frontage improvements shall include: sidewalks, curbing, storm sewer, sanitary sewer, water lines, other public utilities as necessary, and such other improvements as the City shall determine to be reasonably necessary to serve the development or the immediate neighborhood. (5/98)

Response: The modified tentative plat proposal does not affect compliance with the frontage improvement standards. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference.

As each individual lot develops, those improvements necessary to support the development will be constructed. Frontage improvements as may be required or necessary will be constructed as each lot develops.

- B. Walkways for Private Streets. Sidewalks shall be required in accordance with applicable provisions in Sections 2.302 and 2.316 only if sidewalks currently exist along the connecting street. (10/02)

Response: The modified tentative plat proposal does not affect compliance with the walkways improvement standards. Each lot will have sidewalks in accordance with this provision. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference.

- C. Project Streets. All public or private streets within the subdivision shall be constructed as required by the provisions of Section 2.302. (5/98)

Response: The modified tentative plat proposal does not affect compliance with the project streets standards. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference.

- D. Monuments. Upon completion of street improvements, centerline monuments shall be established and protected in monument boxes at every street intersection and all points of curvature and points of tangency of street center lines. (5/98)

Response: The applicant understands this provision and will comply.

- E. Bench Marks. Elevation bench marks shall be set at intervals established by the City Engineer. The bench marks shall consist of a brass cap set in a curb or other immovable structure. (5/98)

Response: The applicant understands this provision and will comply.

- F. Surface Drainage and Storm Sewer System. Drainage facilities shall be provided within the subdivision and to connect the subdivision drainage to drainage-ways or to storm sewers outside the subdivision. Design of drainage within the subdivision shall take into account the capacity and grade necessary to maintain unrestricted flow from areas draining through the subdivision and to allow extension of the system to serve such areas. Drainage shall be designed to avoid impacts on adjacent property. (5/98)

Response: The Stormwater Memo (Exhibit C) demonstrates that it is feasible for the modified tentative plat to comply with the surface drainage and storm sewer standards. Also see Sheet C4.0 of Exhibit A of the initial application. The findings and conditions of approval related to surface drainage and storm sewer systems in the 2011 Approvals are incorporated by reference.

- G. Sanitary Sewers. Sanitary sewer shall be installed to serve the subdivision and to connect the subdivision to existing mains both on and off the property being subdivided. (5/98) If the required sewer facilities will, without further sewer construction, directly serve property outside the subdivision, the City may recommend to the City Council construction as an assessment project with such arrangement with the subdivider as is equitable to assure financing his share of the construction and to provide for appropriate reimbursements of costs above those directly attributable to the subdivision. The City may require that the subdivider construct sewage lines of a size in excess of that necessary to adequately service the development in question, where such facilities are or will be necessary to serve the entire area within which the development is located when the area is ultimately developed. The City may also require that the construction take place as an assessment project with such arrangement with the subdivider as is desirable to assure his share of the construction. (5/98)

Response: The modified tentative plat proposal does not affect compliance with the sanitary sewer standards. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference. See the preliminary utility design has been provided as Sheet C3.0 of Exhibit A to the initial application.

- H. Water System. Water lines with valves and Fire District approved fire hydrants serving the subdivision and connecting the subdivision to the City mains shall be installed and operating prior to start of combustible construction. The design shall take into account provisions for extension beyond the subdivision to adequately grid the City system and to serve the area within which the development is located when the area is ultimately developed. However, the developer will be responsible for water main sizes necessary to meet minimum fire flow requirements per Uniform Fire Code. The City will not expect the developer to pay for the extra pipe material cost of mains exceeding 8 inches in size. (5/98)

Response: The modified tentative plat proposal does not affect compliance with the water system standards. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference. See the preliminary utility design has been provided as Sheet C3.0 of Exhibit A to the initial application.

- I. Sidewalks. Sidewalks shall be installed along both sides of each public street and in any pedestrian ways within the subdivision. The City may defer sidewalk construction until the dwellings or structures fronting the sidewalk are constructed. Any required off-site sidewalks (e.g. pedestrian walkways) or sidewalks fronting public property shall not be deferred. (5/98)

Response: The modified tentative plat proposal does not affect compliance with the sidewalks improvement standards. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference.

- J. Street Lights. The installation of street lights is required at locations and of a type required by City standards. (5/98)

Response: The modified tentative plat proposal does not affect compliance with the street lights standards. Compliance with these standards will be assured at the time of development review. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference.

- K. Street Signs. The installation of street name signs and traffic control signs is required at locations determined to be appropriate by the city and shall be of a type required by City standards. Each street sign shall display the one hundred block range. Street signs shall be installed prior to obtaining building permits. (5/98)

Response: The modified tentative plat proposal does not affect compliance with the street signs standards. The related findings and conditions of approval in

the 2011 Approvals are incorporated by reference..

- L. Public Works Requirements. All facility improvements shall conform to the requirements and specifications of the Keizer Department of Public Works. (5/98)

Response: The modified tentative plat proposal does not affect compliance with the public works requirements standards. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference.

- M. Curb Cuts. Curb cuts and driveway installations, excluding common drives, are not required of the subdivider, but if installed, shall be according to the City standards. (5/98)

Response: The modified tentative plat proposal does not affect compliance with the curb cut standards. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference.

- N. Street Trees. Street tree planting is mandatory where a planting strip is part of the street design. Plantings shall conform to Section 2.302.03(M). (5/98)

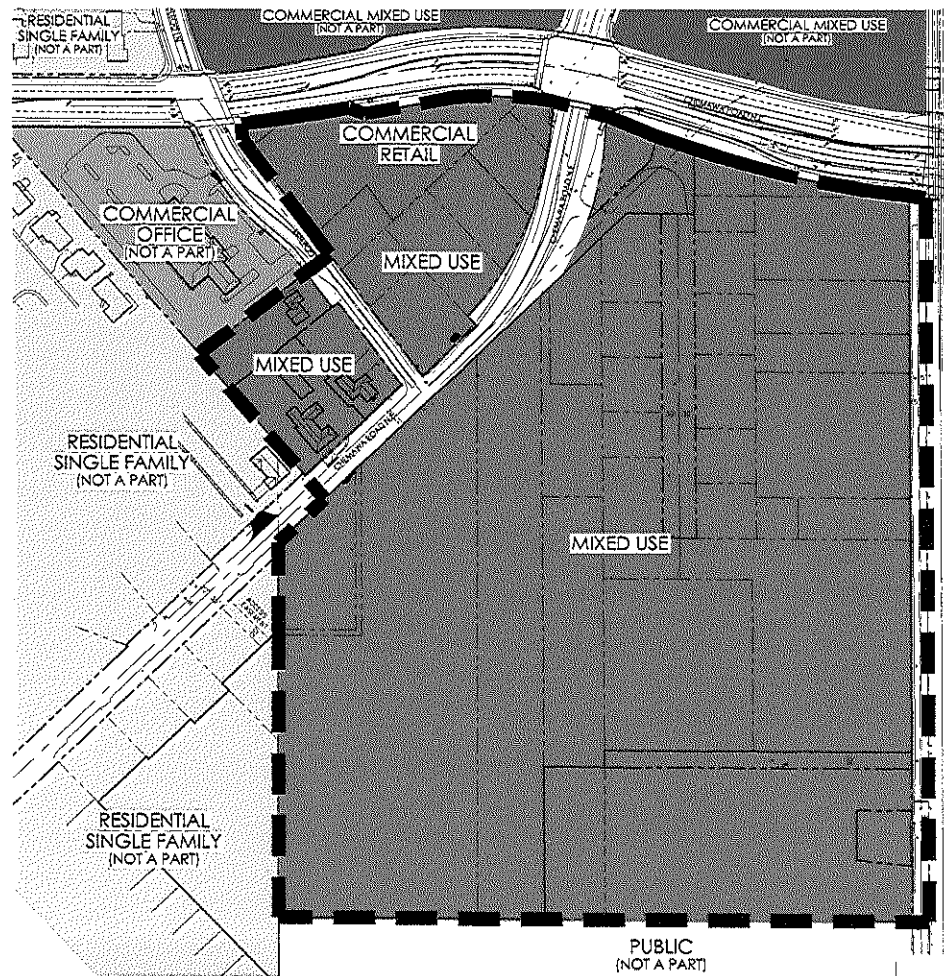
Response: The modified tentative plat proposal does not affect compliance with the street tree standards. See the preliminary street tree plan, attached as Exhibit A to the initial application. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference

- O. Grading & Fills. All grading which results in fills in excess of 3 feet located within the identified building envelope on a subdivision lot or parcel must be engineered. (5/98)

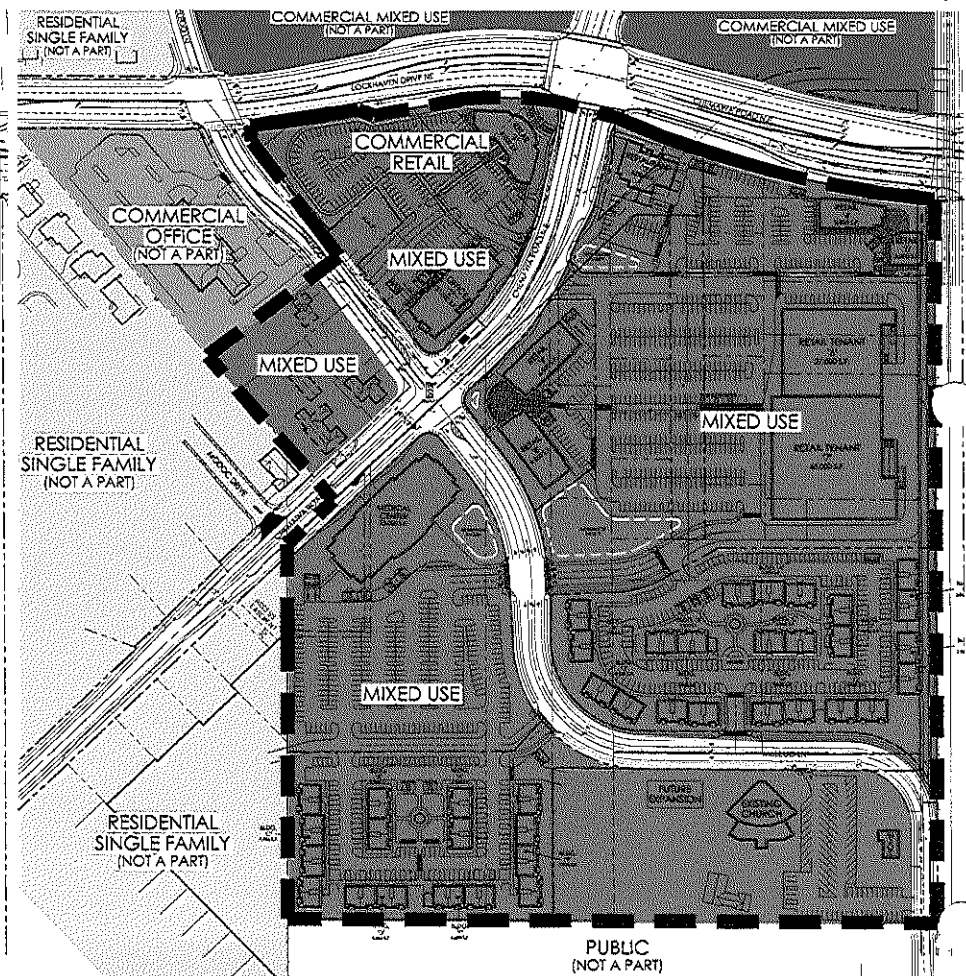
Response: The modified tentative plat proposal does not affect compliance with the grading & fills standards. The related findings and conditions of approval in the 2011 Approvals are incorporated by reference.

- P. Financial Requirements. All improvements required under this Section shall be completed to City standards or assured through a performance bond or other instrument acceptable to the City Attorney, prior to the approval of the Final Plat of the subdivision.

Response: The applicant understands this provision and may elect to bond for some or all improvements prior to final plat.



EXISTING ZONING PLAN - AREA 'C'



PROPOSED ZONING PLAN - AREA 'C'

— — — — — OUTLINE OF AREA 'C'

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Keizer Station Center

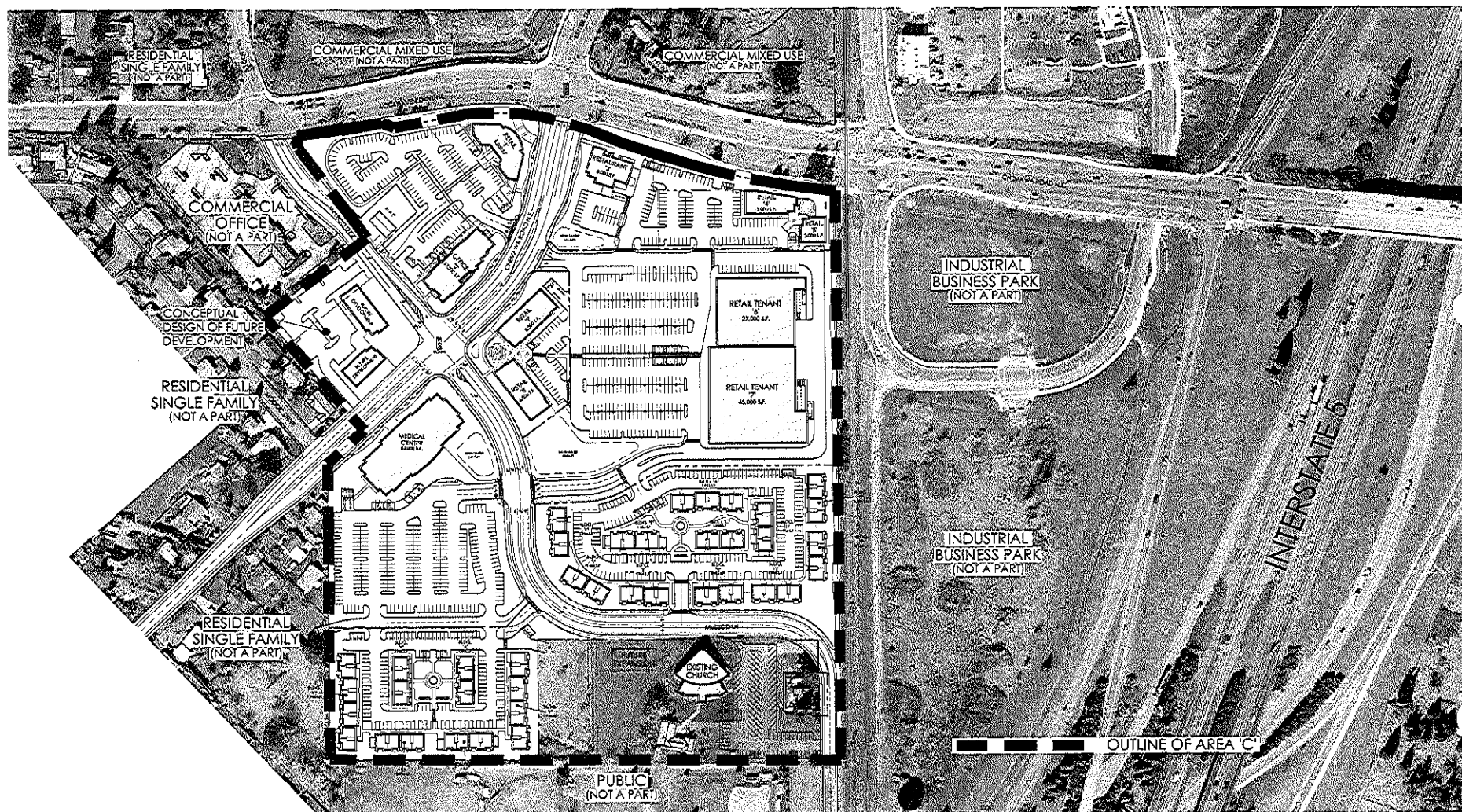
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September 10, 2012



SITE PLAN w/ AERIAL - AREA 'C'

September 10, 2012

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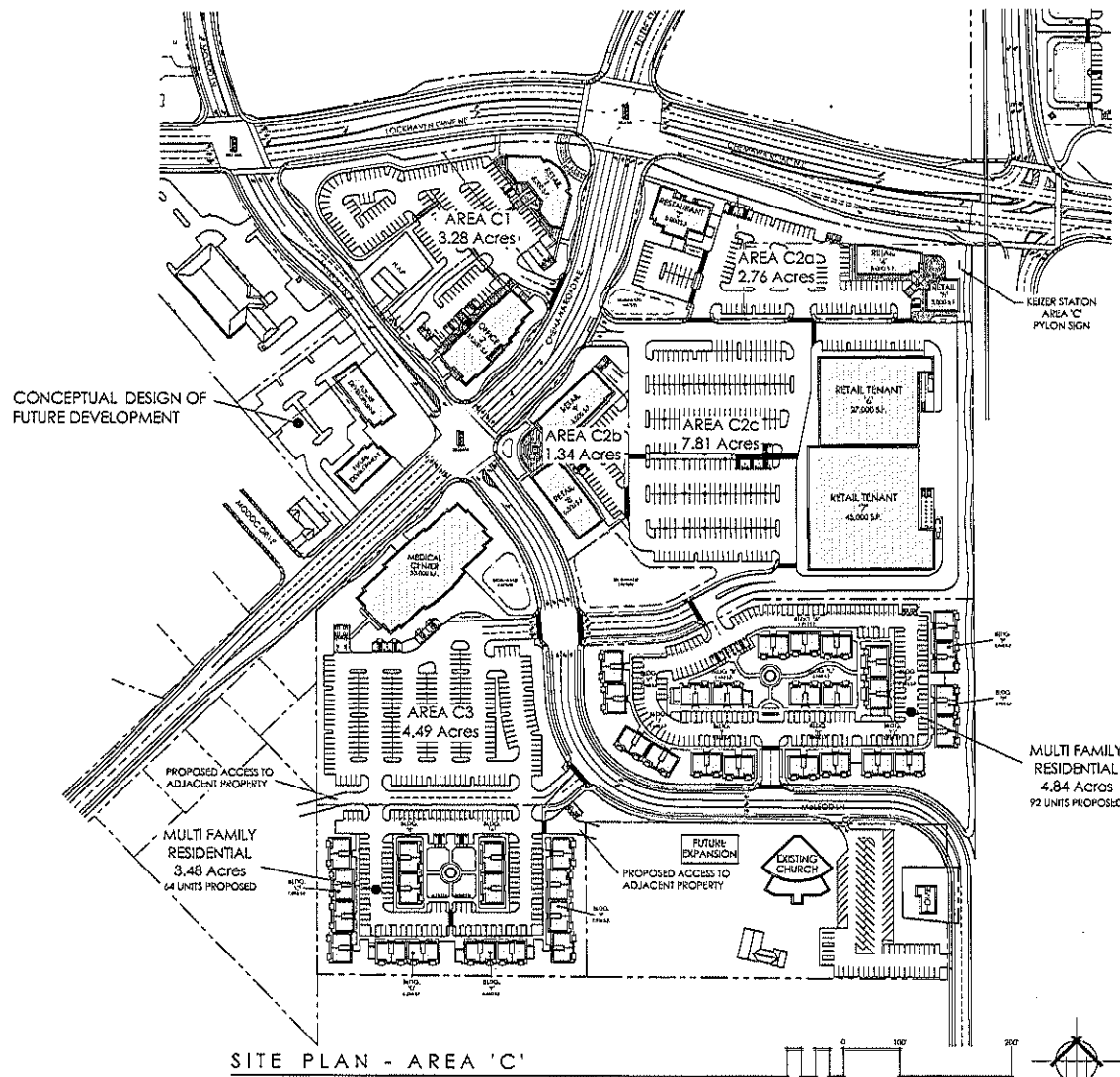
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SITE DATA - AREA 'C-1'		
SITE AREA:	14,000 S.F. (0.32 ACRES)	SITE COVERAGE: 17.0%
TOTAL BUILDING AREA:		45,000 S.F.
STANDARD PARKING PROVIDED:		147 SPACES
COMPACT PARKING PROVIDED:	(0.0%)	0 SPACES
HANDICAP PARKING PROVIDED:		9 SPACES
TOTAL PARKING PROVIDED:		156 SPACES

SITE DATA - AREA 'C-2'		
SITE AREA:	3,000 S.F. (0.11 ACRES)	SITE COVERAGE: 18.0%
TOTAL BUILDING AREA:		15,000 S.F.
STANDARD PARKING PROVIDED:		45 SPACES
COMPACT PARKING PROVIDED:	(0.0%)	0 SPACES
HANDICAP PARKING PROVIDED:		3 SPACES
TOTAL PARKING PROVIDED:		48 SPACES

SITE DATA - AREA 'C-3'		
SITE AREA:	19,500 S.F. (0.45 ACRES)	SITE COVERAGE: 17.0%
TOTAL BUILDING AREA:		58,000 S.F.
STANDARD PARKING PROVIDED:		211 SPACES
COMPACT PARKING PROVIDED:	(0.0%)	0 SPACES
HANDICAP PARKING PROVIDED:		6 SPACES
TOTAL PARKING PROVIDED:		217 SPACES

MULTI FAMILY RESIDENTIAL		
SITE AREA:	27,000 S.F. (0.62 ACRES)	SITE COVERAGE: 12.0%
TOTAL BUILDING FOOTPRINT AREA:		46,000 S.F.
STANDARD PARKING PROVIDED:		130 SPACES
COMPACT PARKING PROVIDED:	(0.0%)	0 SPACES
HANDICAP PARKING PROVIDED:		4 SPACES
TOTAL PARKING PROVIDED:		134 SPACES

MULTI FAMILY RESIDENTIAL		
SITE AREA:	10,750 S.F. (0.25 ACRES)	SITE COVERAGE: 17.0%
TOTAL BUILDING FOOTPRINT AREA:		32,714 S.F.
STANDARD PARKING PROVIDED:		94 SPACES
COMPACT PARKING PROVIDED:	(0.0%)	0 SPACES
HANDICAP PARKING PROVIDED:		3 SPACES
TOTAL PARKING PROVIDED:		97 SPACES

GROSS SITE DATA		
SITE AREA:	1,200,000 S.F. (27.68 ACRES)	SITE COVERAGE: 22.0%
GROSS BUILDING AREA:		279,714 S.F.
STANDARD PARKING PROVIDED:		1,061 SPACES
COMPACT PARKING PROVIDED:	(0.0%)	0 SPACES
HANDICAP PARKING PROVIDED:		43 SPACES
TOTAL PARKING PROVIDED:		1,104 SPACES

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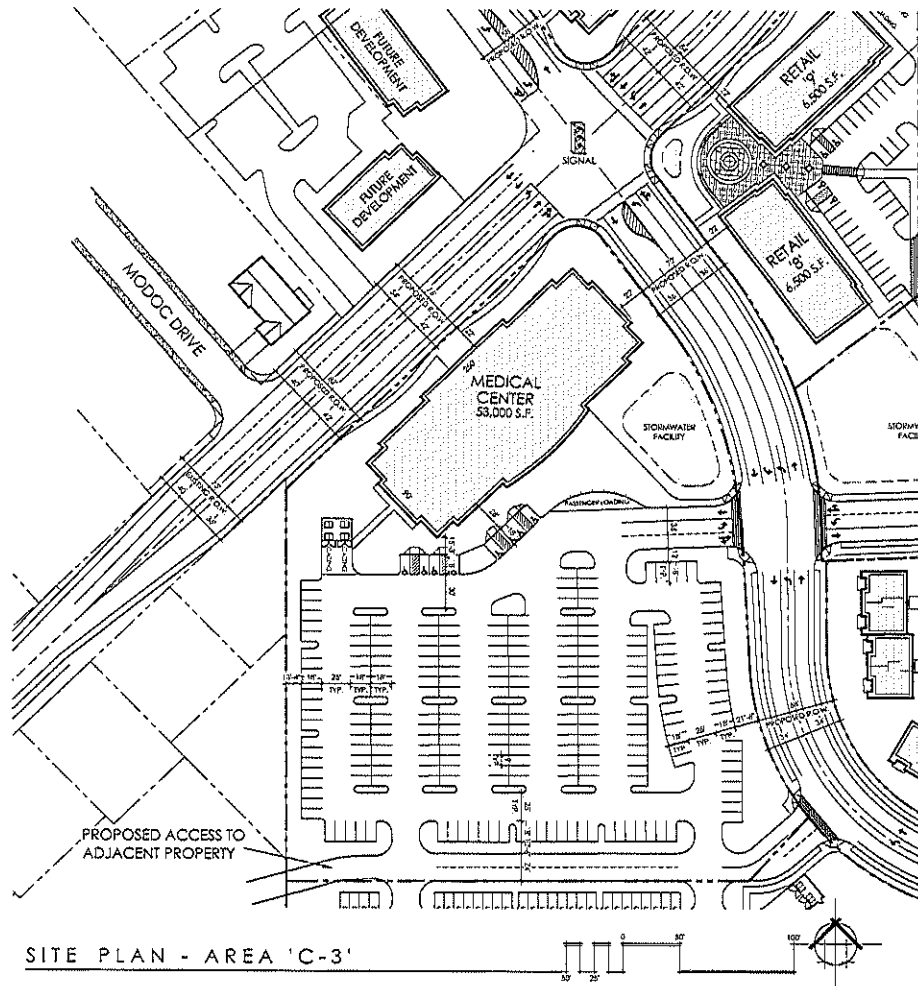
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BSAA
ARCHITECTURE & PLANNING

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September 10, 2012



SITE DATA - PARCEL 'C-3'			
SITE AREA:	175,583 S.F.	(4.49 ACRES)	SITE COVERAGE: 27.1%
BUILDING	PARKING REQUIREMENT	AREA	
MEDICAL CENTER:	(1/300)	53,000 S.F.	
TOTAL BUILDING AREA:		53,000 S.F.	
MINIMUM PARKING REQUIRED:		151 SPACES	
MAXIMUM PARKING ALLOWED:		227 SPACES	
STANDARD PARKING PROVIDED:		240 SPACES	
COMPACT PARKING PROVIDED:		0 SPACES	
HANDICAP PARKING PROVIDED:		8 SPACES	
TOTAL PARKING PROVIDED:		248 SPACES	
PARKING RATIO:		4.68	SPACES/1,000 S.F.

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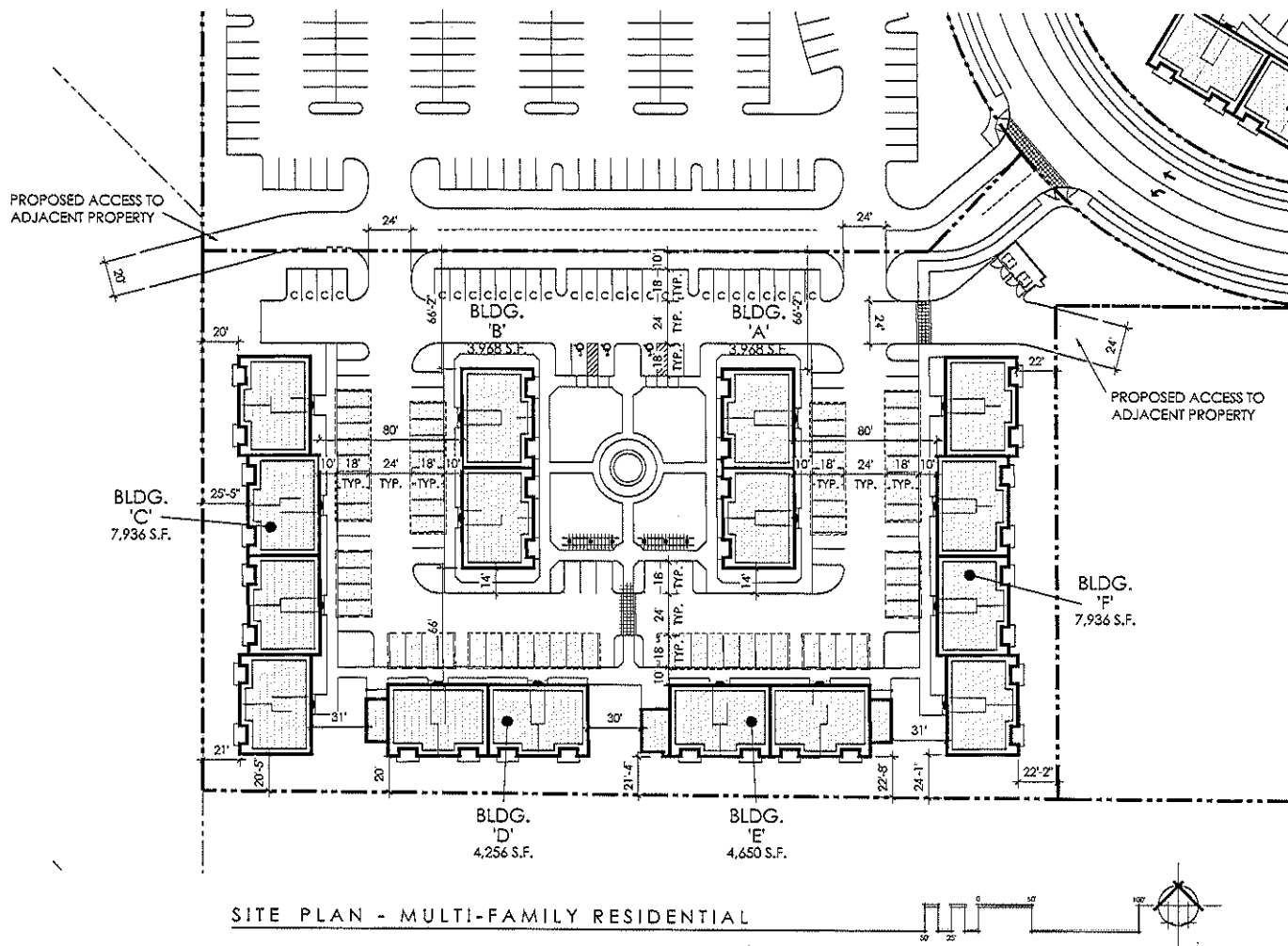
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September 10, 2012

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MULTI-FAMILY RESIDENTIAL

SITE AREA:	151,758 S.F.	(3.48 ACRES)	SITE COVERAGE: 27.6%
BLDG. 'A':	(8 UNITS)	3,968 S.F.	
BLDG. 'B':	(8 UNITS)	3,968 S.F.	
BLDG. 'C':	(8 UNITS)	7,936 S.F.	
BLDG. 'D':	(8 UNITS)	4,256 S.F.	
BLDG. 'E':	(8 UNITS)	4,650 S.F.	
BLDG. 'F':	(8 UNITS)	7,936 S.F.	
	(48 UNITS)		TOTAL BUILDING FOOTPRINT AREA: 32,714 S.F.

STANDARD PARKING PROVIDED:		94 SPACES
COMPACT PARKING PROVIDED:	(23.4%)	30 SPACES
HANDICAP PARKING PROVIDED:		4 SPACES
TOTAL PARKING PROVIDED:		128 SPACES
TOTAL PARKING REQUIRED:	2 SPACES / UNIT	96 SPACES

Northwest National, LLC

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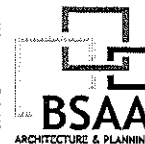
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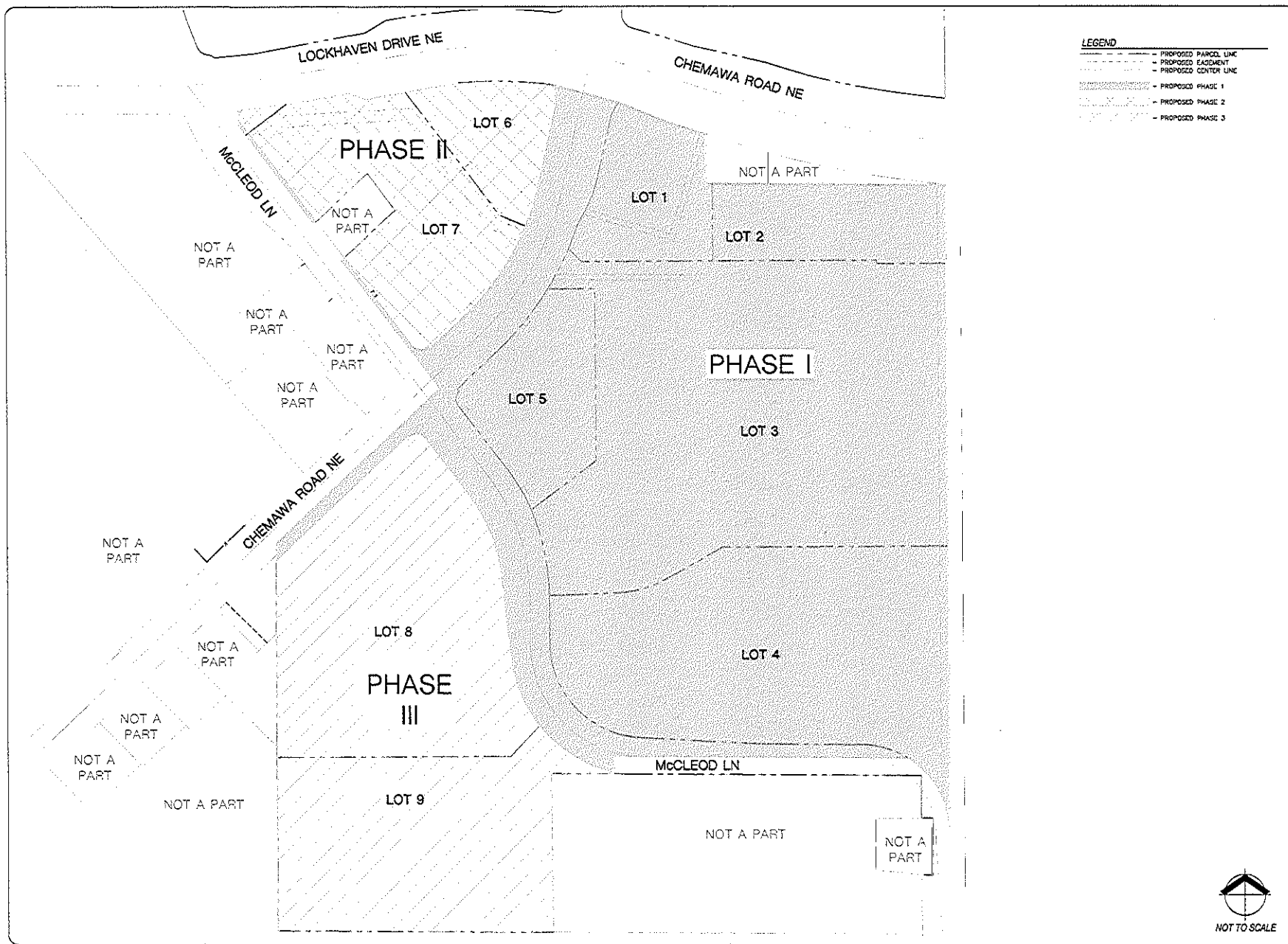
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September 10, 2012

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- LEGEND**
- PROPOSED PARCEL LINE
 - - - PROPOSED EASEMENT
 - - - PROPOSED CENTER LINE
 - PHASE I (stippled)
 - PHASE II (diagonal lines)
 - PHASE III (cross-hatch)



PROJECT NO.	10/000000
DATE	04/05/2019
DESIGNED BY	SCD
DRAWN BY	SCD
CHECKED BY	NAC



1120 N.W. Couch Street, Tenth Floor

Portland, OR 97209-4128

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Dana L. Krawczuk

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EMAIL: DKrawczuk@perkinscoie.com

September 11, 2012

VIA E-MAIL

Mr. Nate Brown
Community Development Director
City of Keizer
PO Box 21000
Keizer, OR 97307-1000

Re: Legal Considerations for Remand Proceedings to Consider Supplemental Information to Address Issues in *Keep Keizer Livable v. City of Keizer*, LUBA No. 2011-043 (Master Plan Case 2010-12 and Subdivision Case 2010-18).

Dear Mr. Brown:

We represent the applicants in the above referenced applications. Please include this letter and the enclosed materials in the record, and consider this the applicant's written request to begin the 90-day period for a final action following remand, pursuant to ORS 227.181.

The City approved the Master Plan and Tentative Plat applications for Keizer Station Area C (Master Plan Case 2010-12 and Subdivision Case 2010-18) in April 2011. Collectively, we refer to these approvals as the "2011 Approvals." The 2011 Approvals were appealed to the Land Use Board of Appeals (LUBA), who remanded the decision back to the City based upon two issues. The two issues and the applicant's proposal to respond to those issues are detailed in the accompanying memo by Cardno, the project's planner. The applicant will provide a more detailed analysis of the approval criteria that are affected by the revisions to the 2011 Approvals and are subject to the City's review on remand.

The purpose of this letter is to provide a framework for the City's proceedings on remand. A local government has considerable discretion in determining the procedures on remand. In this case, we understand that the record will be open to new evidence and a public hearing before the City Council will be held. The ability to provide evidence and participate in a public hearing assures that all interested parties will be able to substantively participate in the remand proceedings in a full and fair manner.

85928-0001/LEGAL24640610.1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DENVER · LOS ANGELES · MENLO PARK
OLYMPIA · PHOENIX · PORTLAND · SAN FRANCISCO · SEATTLE · SHANGHAI · WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

When conducting its review, it is important that the City and participants keep in mind that a proceeding on remand is part of a continuous process that began when the applications were initially filed. Meaning, this is not a new application; it is simply a continuation of the process that began in 2010. As a result, the record includes all of the information that was previously submitted and the remand hearing before the City Council is not the first evidentiary hearing.

The fact that the proceedings on remand are part of a continuous process is not just a procedural issue. It also has significant substantive implications. The waiver doctrine that is explained in *Beck v. City of Tillamook*, 313 Or 148, 831 P2d 678 (1992) requires that issues that could have been raised during the first appeal to LUBA, but were not, cannot be raised on remand. In essence, an appellant "waives" the right to challenge an issue on remand if that issue could have been raised during the first appeal, but it was not.

The waiver doctrine is particularly relevant to the City's consideration of the 2011 Approvals on remand because although some elements of the approved Master Plan are proposed to be modified to respond to the remand, a substantial number of issues, findings and conditions are not affected. The City's findings of compliance with applicable approval criteria and related conditions of approval from the 2011 Approvals that are not affected by the modifications on remand cannot be challenged now.

An example of how the waiver doctrine applies to this case is transportation. The 2011 Approvals determined that Area C would generate 1,055 total weekday PM peak hour trips. LUBA determined that the City's findings that explained how the trips generated from the 116,882 sf Larger Format Store were calculated were inadequate. Both the challenge to LUBA and LUBA's decision were limited to the calculation methodology, which relied upon extrapolation because the size of the proposed retail use was smaller than the square footage range in the correlating ITE category. The applicant has resolved this issue on remand by replacing the 116,882 sf Larger Format Store with a mix of uses that squarely fit into the ITE and generates fewer trips than what was previously approved.

What was not challenged at LUBA is as important as how the applicant has resolved the error in the trip generation calculation that LUBA found. The appellants did not allege, and LUBA did not find, that the consequences of the projected 1,055 PM peak trips were not appropriately mitigated through the transportation related conditions of approval, or that the findings did not demonstrate compliance with the approval criteria related to the transportation system. Said differently, while there was a dispute at LUBA about if 1,055 PM peak trips was an accurate projection of trip generation, no one challenged the adequacy of the measures required to mitigate 1,055 PM peak trips, and now it is too late to do so. Because the revised Master Plan does not exceed 1,055 PM peak trips, the waiver doctrine prohibits challenges to the findings or conditions of approval from the 2011 Approvals related to the transportation system or required transportation mitigation measures.

Mr. Nate Brown
September 11, 2012
Page 3

We encourage the City to keep the procedural and substantive nuances of the limits on review on remand in mind during the remand proceeding. Thank you for your consideration.

Very truly yours,

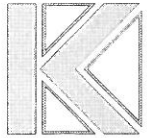


Dana L. Krawczuk



Mark D. Whitlow

DLK:crl
Enclosures



KITTELSON & ASSOCIATES, INC.

TRANSPORTATION ENGINEERING / PLANNING

610 SW Alder Street, Suite 700, Portland, OR 97205 P 503.228.5230 F 503.273.8169

September 12, 2012

Project #: 8610

Nate Brown
City of Keizer
PO Box 21000
Keizer, OR 97307-1000

RE: September 2012 Keizer Station Area C Submittal

Dear Nate,

Kittelison & Associates, Inc. has reviewed the revised Area "C" plans for the Keizer Station development that have been submitted under separate cover by the project team. These plans include modifications to the development plan that are different from the plans that were in place at the time the October 2010 *Keizer Station Area C Master Plan Transportation Impact Analysis* was prepared. As such, the purpose of this letter is to address how these modifications are still consistent with the original transportation impact analysis findings and recommendations and the City's related findings and conditions of approval.

AREA "C" DEVELOPMENT PLAN

The site layout for Area C as studied in the October 2010 *Area "C" Transportation Impact Analysis* assumed a mix of proposed land uses. The trip generation potential for these uses is outlined in Table 1 below.

The revised vision for Area "C" includes modifications to the overall development mix and square footage. The focal point of these changes is centered in Area C-2 where the previously assumed Free Standing Discount Superstore has been replaced with reduced square footage of Shopping Center uses¹. Other changes include an increase in the amount of office space, an increase in the number of apartment units, and the elimination of townhomes/condominiums. These changes are summarized along with their trip generation potential in Table 2.

¹ It should be noted that the trip generation rate used for the Free Standing Discount Superstore was a point of contention in the October 2010 *Keizer Station Area C Master Plan Transportation Impact Analysis* and related appeal of the approved Master Plan to LUBA. The updated version of the Area C proposal no longer assumes a Free Standing Discount Superstore. The proposed Shopping Center square footage in the latest proposal is a reasonable representation for trip generation purposes and is consistent with the ITE Trip Generation methodology.

TABLE 1 OCTOBER 2010 TRIP GENERATION ESTIMATE FOR AREA "C"

Land Use	Source	Size (sq. ft.)	Weekday PM Peak Hour Trips		
			Total	In	Out
General Office	ITE 710	18,486	30	5	25
High Turnover Sit-Down Restaurant	ITE 932	5,800	65	40	25
Shopping Center	ITE 820	33,090	130	60	70
Medical Dental Office Building	ITE 720	53,000	185	50	135
Free Standing Discount Superstore	ITE 813	116,882	540	265	275
Residential Condominium/Townhouse	ITE 230	60 units	30	20	10
Apartments	220	117 units	75	50	25
Total Trips for Area C			1,055	490	565
<i>Internal Trips</i>			<i>110</i>	<i>50</i>	<i>60</i>
<i>Pass-by & Diverted Trips</i>			<i>140</i>	<i>70</i>	<i>70</i>
<i>Primary Trips</i>			<i>805</i>	<i>370</i>	<i>435</i>

TABLE 2 SEPTEMBER 2012 TRIP GENERATION ESTIMATE FOR AREA "C"

Land Use	Source	Size (sq. ft.)	Weekday PM Peak Hour Trips		
			Total	In	Out
General Office	ITE 710	37,500	55	10	45
High Turnover Sit-Down Restaurant	ITE 932	5,000	55	30	25
Shopping Center	ITE 820	101,000	640	315	325
Medical Dental Office Building	ITE 720	53,000	185	50	135
Apartments	ITE 220	156 units	105	70	35
Total Trips for Area C			1,040	475	565
<i>Internal Trips</i>			<i>105</i>	<i>50</i>	<i>55</i>
<i>Pass-by & Diverted Trips</i>			<i>130</i>	<i>65</i>	<i>65</i>
<i>Primary Trips</i>			<i>805</i>	<i>360</i>	<i>445</i>

As outlined in Table 2, the trip generation potential of the revised development layout is estimated to be approximately equal to the trip generation potential outlined in the October 2010 *Keizer Station Area C Master Plan Transportation Impact Analysis*. As such, we conclude that the traffic impacts associated with revised Area C development proposal are consistent with the previous output and findings in the October 2010 transportation impact study and the testimony we provided during the public hearings related to the Master Plan. As such, the overall set of

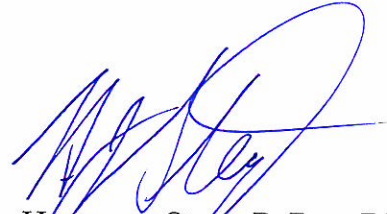
findings and recommendations from that study are still applicable. Furthermore, the City's findings, recommendations, and conditions are also still applicable and ensure compliance with the applicable approval criteria.

We trust that this letter adequately address the modifications to the Area "C" development assumptions and infrastructure layout. If you have any questions, please contact us.

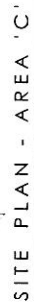
Sincerely,
KITTELSON & ASSOCIATES, INC.



Matt Hughart, AICP
Associate Planner



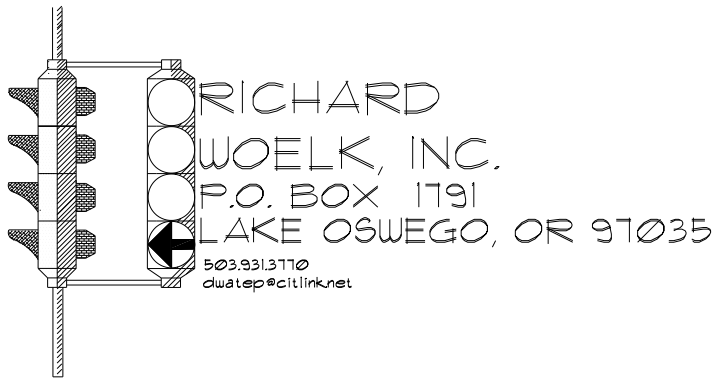
Hermanus Steyn, Pr.Eng., P.E.
Principal Engineer



McMinnville, OR 97128
Phone: 503 435 4907
Fax: 503 435 4909

Keizer, Oregon

BSAA



MEMORANDUM

DATE: October 26, 2012

TO: Bill Lawyer, Public Works Director
Nate Brown, Community Development.

FROM: Dick Woelk, Keizer Traffic Engineer

PROJECT: Keizer Station

SUBJECT: Area C Traffic Memo Review

As requested I have reviewed the Keizer Station Area C submittal provided by Kittelson and Associates dated September 12, 2012. This review pertained to the review of the changes in land use and the Trip Generation assumptions used in the report for Area C.

In reviewing the memo I find all of the trip generation figures are within the acceptable parameters to meet the City of Keizer Development Code. The increases in building square footage and the removal of the Big Box Store designation are in line with the total number of trips projected by the Keizer Station Area C Master Plan Transportation Impact Analysis, October 2010.

Base on the review I find that all of the recommendations and the City findings are still applicable.

If you have further questions you can call me at 503.931.3770

Dick

MEMORANDUM



Shaping the Future

To: Nate Brown, Community Development Director, City of Keizer

From: Atalia Raskin, PE
Water Recourse Project Engineer

Date: October 24, 2012

Project: Keizer Station Center
CardnoWRG#: RPS9109
Re: Detention Analysis

5415 SW Westgate Drive
Suite 100
Portland, Oregon 97221
USA

Phone (503) 419-2500
Fax (503) 419-2600

www.cardnowrg.com

This memorandum and technical analysis has been updated with the September 2012 site plan for Keizer Station Center. A master plan level analysis was performed to determine the location to discharge stormwater, calculate the allowable release rates and the amount of detention required at the proposed Keizer Station Center. This memorandum is a summary of those findings.

The proposed design will meet City of Keizer detention and conveyance standards as provided in *Chapter 4 Storm Drainage Design Standards* and the Conditions of Approval. All stormwater runoff draining to Lockhaven Drive will be detained to the critical basin detention standards. A downstream study will be completed to determine the drainage capacity for the Tecumseh/Allendale Drainage Basin.

Project Overview

The proposed project was sub-divided into 15 basins. Four basins are public road that will be built or improved during the construction of this project. The remaining basins are retail, office or residential type developments.

Table 1 lists the basin area impacted by this project, for both pre and post-developed conditions. The attached basin delineation map shows the general drainage pattern of each basin.

Development Condition	Imp Area, ac	Per Area, ac	Total Area, ac
North			
Pre	4.88	14.79	19.67
Post	15.88	3.79	19.67
South			
Pre	1.86	17.25	19.11
Post	11.86	7.25	19.11

Table 1 – Area Table

The rainfall distribution to be used is the design storm of 24-hour duration based on the standard NRCS Type 1A rainfall distribution. The total precipitation depths for the 2, 5, 10, 25, 50 and 100-year storm events are 2.5, 3.0, 3.5, 3.9, 4.45 and 4.6 respectively.

The peak runoff rates during the pre and post 2 through the 100-year storm events for basins draining north are shown in Table 2. Table 3 lists the peak runoff rates for the 5-yr pre and 10-yr post-developed rates for the basins draining south.

Basin ID	2	5	10	25	50	100
Pre						
1	0.200	0.312	0.436	0.542	0.697	0.741
2	0.275	0.399	0.533	0.646	0.807	0.853
3	0.352	0.443	0.537	0.613	0.719	0.748
4.1	0.330	0.440	0.558	0.656	0.796	0.835
4.2	0.235	0.348	0.471	0.576	0.728	0.771
4.3	0.184	0.307	0.446	0.566	0.742	0.791
4.4	1.088	1.622	2.212	2.717	3.447	3.652
9	0.170	0.226	0.286	0.336	0.407	0.427
10	0.146	0.225	0.313	0.389	0.499	0.530
11	0.547	0.710	0.881	1.022	1.221	1.276
Post						
1	0.607	0.760	0.916	1.043	1.221	1.269
2	0.603	0.754	0.908	1.034	1.208	1.256
3	0.452	0.552	0.652	0.732	0.842	0.872
4.1	0.451	0.574	0.701	0.805	0.951	0.991
4.2	0.583	0.729	0.879	1.001	1.170	1.217
4.3	0.698	0.872	1.050	1.194	1.396	1.451
4.4	3.206	3.955	4.711	5.321	6.166	6.397
9	0.328	0.399	0.471	0.528	0.607	0.629
10	0.499	0.615	0.731	0.825	0.955	0.990
11	0.854	1.046	1.240	1.395	1.608	1.667

Table 2 – Peak Runoff – North

Basin ID	5-yr Pre, cfs	10-yr Post, cfs
5	0.712	2.745
6	1.218	1.558
7	0.428	1.838
8	0.262	1.171
12	0.322	1.459

Table 3 – Peak Runoff - South

Downstream Analysis

Runoff generated on the site generally flows towards the west until it intersects with Chemawa Road NE. The northern portion of the site drains slightly towards the north and the southern portion of the site drains slightly towards the south. The basin divide is shown on the pre-developed basin delineation exhibit.

The north portion of the development will be conveyed north to the public conveyance line in Lockhaven DR. The public conveyance line is classified as a critical basin. Therefore, area draining north will be required to meet the critical basin detention standards. This includes basins 1, 2, 3, 4.1, 4.2, 4.3, 4.4, 9, 10, and 11.

The south portion of the development will be conveyed south to a public conveyance line in Tomahawk Way. This line is located outside the critical basin; therefore standard detention requirements will be necessary. This includes basins 5, 6, 7, 8, and 12.

South Conveyance Analysis

The capacity of the public conveyance line in Tomahawk Way was analyzed to determine its capacity. City GIS pipe information was used to model the storm line in xpswmm hydraulic software. The pipe size and location are known. The pipe slope is not known and assumed to be the minimum allowed per the Minimum Pipe Grade for 2.5 ft/sec table within the design standards. Contributing basins are shown in the attached exhibit.

Detention Analysis

The critical basin detention standards are to release the post-developed flows rates to their respective pre-developed flow rates for the following storm events 2, 5, 10, 25, 50, and 100-year, 24-hour storm events. The standard basin detention standards are to release the post-developed 10-year, 24-hour storms at the pre-developed 5-year, 24-hour peak flow rate.

Keizer Station Center is proposing the use of underground detention pipe and water quantity ponds to meet the detention requirement listed above. Table 4 and 5 below lists the required detention volume for each basin.

Basin ID	Detention Volume
1	4,356
2	4,285
3	2,199
4.1	3,105
4.2	3,524
4.3	4,182
4.4	20,559
9.0	1,572
10.0	3,711
11.0	4,298

Table 4 – Detention Volumes – North

Basin ID	Detention Volume
5	10,798
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7	8,428
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12	5,900

Table 5 – Detention Volumes - South

Conclusion

This stormwater analysis describes the proposed stormwater management system for the Keizer Station Center. The September 2012 site plan decreases the total amount of impervious area and allows for sufficiently sized stormwater facilities. The design allows for the critical and non-critical basin detention standards to be met with the understanding that a complete downstream analysis of the Tecumseh/Allendale and Lockhaven Drive Drainage Basins will be required.

MEMORANDUM



Shaping the Future

To: Nate Brown, Community Development Director, City of Keizer

From: Atalia Raskin, PE
Water Recourse Project Engineer

Date: September 18, 2012

Project: Keizer Station Center
CardnoWRG#: RPS9109
Re: Detention Analysis

5415 SW Westgate Drive
Suite 100
Portland, Oregon 97221
USA

Phone (503) 419-2500
Fax (503) 419-2600

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The proposed design will meet City of Keizer detention and conveyance standards as provided in *Chapter 4 Storm Drainage Design Standards* and the Conditions of Approval. All stormwater runoff draining to Lockhaven Drive will be detained to the critical basin detention standards. A downstream study will be completed to determine the drainage capacity for the Tecumseh/Allendale Drainage Basin.

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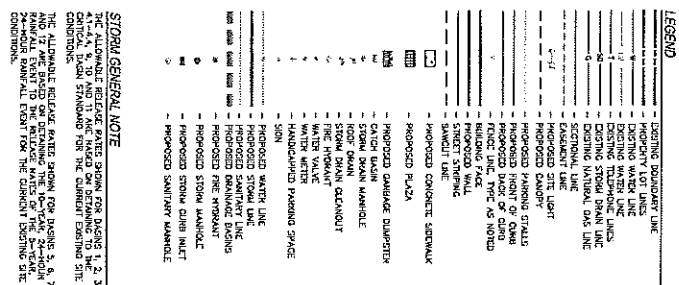
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STORM GENERAL NOTE

THE ALLOWABLE RELEASE RATE SHOWN FOR DESIGN 3, 6, 7, AND 12 ARE BASED ON DESIGN RAINFALL INTENSITY OF 2.4 INCH PER HOUR. THE ALLOWABLE RELEASE RATE FOR THE RELEASE RATES OF THE DESIGN 24-HOUR RAINFALL EVENT FOR THE CURRENT EXISTING SITE CONDITIONS.

OVERALL
STORM PLAN
C4.0

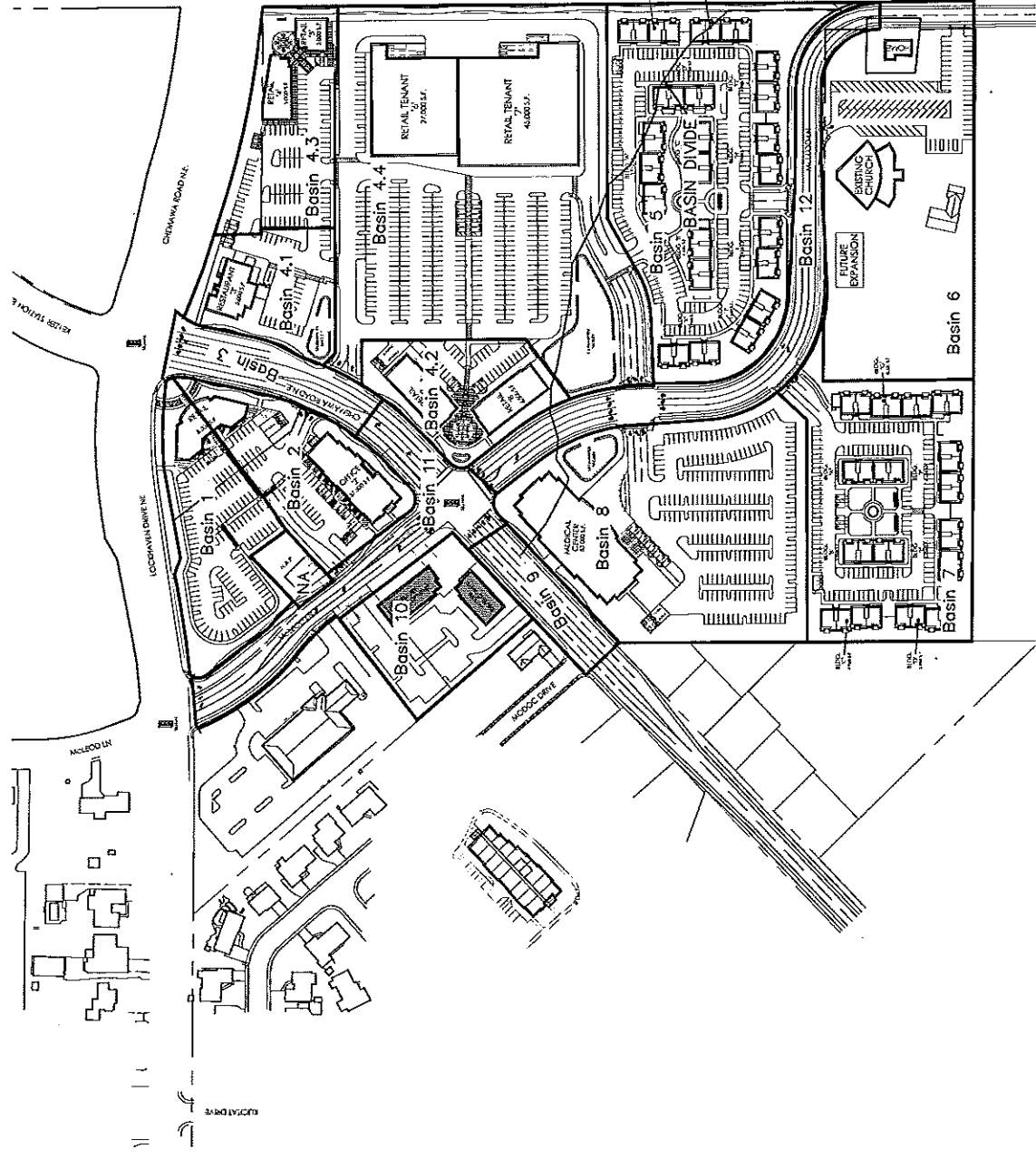
STORMWATER INFRASTRUCTURE / DRAINAGE BASIN MAP
KEIZER STATION CENTER
E VILLAGE LLC
KEIZER, OREGON



BASIN DELINEATION KEIZER STATION CENTER ELLIAGE LLC KEIZER, OREGON

PROJECT NO. RSP9109
 DATE: 09/18/12
 BY: ASR
 SHEET NO. 1

Basin Table	Total		Imp		Per Area, ac
	Area, ac	Area, ac			
North					
1	1.654	1.203		0.451	
2	1.627	1.197		0.43	
3	0.835	0.781		0.054	
4.1	1.179	0.734		0.445	
4.2	1.338	0.974		0.364	
4.3	1.588	1.167		0.421	
4.4	7.806	6.571		1.235	
9	0.597	0.567		0.03	
10	1.409	1.214		0.195	
11	1.632	1.469		0.163	
South					
5	5.009	3.491		1.518	
6	4.241	1.405		2.836	
7	3.47	2.303		1.167	
8	4.483	2.925		1.558	
12	1.906	1.734		0.172	



MEMORANDUM



To: Nate Brown
City of Keizer

From: Michael Cerbone, AICP
Project Manager

Date: September 20, 2012

Project: Keizer Station Area C

Case No: Master Plan Case 2010-16 & Subdivision Case 2010-18

Re: Revised Submittal Addressing Land Use Board of Appeals Remand

5415 SW Westgate Drive
Suite 100
Portland, Oregon 97221
USA

Phone (503) 419-2500
Fax (503) 419-2600

www.cardno.com

Please find our revised submittal that addresses the Oregon Land Use Board of Appeals (LUBA) remand. Please note that specific portions of the master plan and tentative plat submittals have been revised to address issues identified by LUBA. Our materials specifically address the approval criteria that are affected by the modifications to the Master Plan and related tentative plat approval to demonstrate that the development as modified continues to comply with all of the applicable approval criteria. The findings and conditions from the 2011 Approvals related to the unchanged elements of the approved Master Plan and tentative plat remain effective, and are not revisited as part of this remand supplement.

As explained in more detail in the accompanying legal memo, this is not a new application. Instead, the initial proposal remains fundamentally intact, and is revised to respond to the issues raised during previous hearings and by LUBA. The modified proposal will be considered at a public hearing where public testimony and new evidence will be accepted, which provides interested parties substantive rights to fully participate in the process.

The applicant looks forward to working with you and the rest of the City to address the concerns raised by LUBA. Please do not hesitate to contact me at (503) 419-2500 if I can be of further assistance.

Summary of Modifications to Address Issues on Remand:

Concurrency

To ensure that a master plan remains "mixed use," Keizer's code requires a ratio of retail and non-retail/non-single family development. There are two parts of the equation. First, for retail uses over 10,000 sf in a master plan, a certain amount of "non-retail/non-single-family" development is required. For retail uses that are over 80,000 sf in a master plan, a correlating additional amount of vertical mixed use development must be constructed. Both the "non-retail/non-single-family" development and vertical mixed use development must be constructed concurrently with the Larger Format Store. LUBA determined that the condition from the approved Master Plan directed at concurrency did not comply with the code.

To address this concurrency timing issue, the applicant has taken the following measures:

Australia • Belgium • Indonesia • Kenya • New Zealand • Papua New Guinea
United Arab Emirates • United Kingdom • United States • Operations in 60 Countries
85928-0001/LEGAL24701080.2



(1) Reduced the size of the Larger Format Store (LFS) from 116,882 sf to a maximum of 80,000 sf (minimum of 72,000 sf), which eliminates the required vertical mixed use development. The Applicant is proposing flexibility in how the LFS is constructed, specifically the request would be to permit a range of square footage (72,000 to 80,000) and allow for as little as one (1) and as many as three (3) individual tenant spaces. However, 18,000-20,000 sf (depending on the ultimate size of the LFS) of "non-retail/non-single family" development must be constructed concurrently with the LFS. The applicant has modified the Master Plan to reflect the removal of the vertical mixed use development, and made minor changes to the mix of uses, adjusted the location of some of the buildings, and consolidated and relocated some access points. The modifications to the Master Plan are described below. The lot dimensions of the related 9-lot subdivision have also been modified to reflect the updated Master Plan.

(2) The applicant will negotiate a condition of approval related to concurrency that conforms with the completion timing requirement identified by LUBA.

Trip Generation Calculation

The approved Master Plan determined that Area C would generate 1,055 total weekday PM peak hour trips. LUBA determined that the City's findings related to how the trips that were projected to be generated from the 116,882 sf Larger Format Store were calculated were inadequate. The challenge to LUBA and LUBA's decision was limited to the calculation methodology, which relied upon extrapolation because the size of the proposed retail use was smaller than the square footage range in the correlating ITE category. The applicant has resolved this issue on remand by replacing the 116,882 sf Larger Format Store with a mix of uses that squarely fit into the ITE and generates fewer trips than what was previously approved.

It is important to recognize that the appellants did not allege and LUBA did not find that the consequences of the projected 1,055 PM peak trips were not appropriately mitigated through the transportation related conditions of approval, or that the findings did not demonstrate compliance with the approval criteria related to the transportation system. Said differently, the projected traffic impacts of the Master Plan have been adequately mitigated, and the related findings and conditions were not challenged. This is a critical point because on remand the applicant has addressed the methodology of how the projected PM Peak trips are calculated (the error found by LUBA). As demonstrated in the Supplemental Traffic Impact Analysis memo (TIA) at Exhibit B, the ITE-based projection of traffic generated from the site is 1040 PM Peak trips, which is a reduction in trips. The impact of those trips, and the mitigation measures required to address those trips are unchanged and are therefore not subject to review during the remand proceedings.



Modifications to the Master Plan to Respond to Remand on a Sub-Area Basis

Area C-1: Retail 1 (8,000 sf) and Office 2 (37,500 sf)

This portion of the Master Plan has been revised so that the mix of retail and office uses are slightly changed, and pad 1 is reduced in size. The building orientation, public spaces and access to this area is unchanged from the 2011 Approvals.

2011 Approvals	Remand Supplement	Access
"Office 1" 8,298 sf of office use in a single story structure	"Retail 1" 8,000 sf of retail use in a single story structure	Unchanged
"Retail/Offices Building 2" 37,500 sf mixed use in a three story structure ¹	"Office 2" 37,500 sf of office in a three story structure	Unchanged

Area C-2a: Restaurant 3 (5,000 sf) Retail 4 (5,000 sf) Retail 5 (3,000 sf)

This portion of the Master Plan has been revised so that the office use is replaced by retail and restaurant uses, and the buildings' sizes are slightly changed. The building orientation, public spaces and access to this area is unchanged from the 2011 Approvals.

2011 Approvals	Remand Supplement	Access
"Office 4" 4,500 sf of office in a single story structure	"Restaurant 3" a 5,000 sf restaurant use in a single story structure	Unchanged
"Office 5" 5,825 sf of office in a single story structure	"Retail 4" 5,000 sf of retail in a single story structure	Unchanged
"Office 6" 3,425 sf of office in a single story structure	"Retail 5" 3,000 sf of retail in a single story structure	Unchanged

Area C-2b: Retail 8 (6,500 sf) Retail 9 (6,500 sf)

This portion of the Master Plan has been revised slightly so that each of the buildings in the couplet is increased in size by 375 sf, and the office use is eliminated. Building orientation and access from Chemawa Road remains unchanged. The open space area is increased.

2011 Approvals	Remand Supplement	Access
"Shops 7/Office 7" a single story 6,125 sf building with retail (5, 125 sf) and office (1,000 sf)	"Retail 8" 6,500 sf of retail in a single story structure	Unchanged
"Shops 8/Office 8" a single story 6,125 sf building with retail (5, 125 sf) and office (1,000 sf)	"Retail 9" 6,500 sf of retail in a single story structure	Unchanged

¹ The original proposal for the Master Plan included a couplet of two three-story retail/office buildings in 10,420 sf structures, labeled as "Shops 2" and "Shops 3." Through the review process, the proposal was modified so that the buildings were consolidated into a single "Retail/Office Building 2", which was re-oriented toward Chemawa Road. Therefore, the 2011 Approvals do not include a "Building 3."



Area C-2c: Retail Tenant 6 (27,000 sf) Retail Tenant 7 (45,000 sf) 92 Units of Multifamily in Several Buildings

This area has been revised so that the 116,882 sf Larger Format Store is replaced with 92 multi-family residential units along the southern portions of the area and between 72,000 and 80,000 square feet of retail use in the northern portion of the area.² Reducing the size of the Larger Format Store to 80,000 square feet or less eliminates the requirement for vertical mixed use development.

The retail building(s) have been shifted north, reoriented to face McLeod Lane and ensure that loading facilities are screened from roadways. Additional area has been allocated within the area to provide for stormwater treatment. The circulation and access has been improved by consolidating access points and relocating new access points to areas that will facilitate safe and efficient access to and from the site.

2011 Approvals	Remand Supplement	Access
Anchor 9" a 116,000 sf Larger Format Store at 115,693 SF	"Retail Tenant 6" 27,000 sf of retail in a single story structure "Retail Tenant 7" 45,000 sf of retail in a single story structure	Improved site distance with net reduction in access points
None	92 Multifamily units in several two story buildings	Improved site distance with net reduction in access points

Area C3: Medical Center (53,000 sf) and 64 Units of Multifamily in Several Buildings

The layout of the proposed multi-family units is slightly modified. The access point has been modified to provide improved site distance, which also allows for a larger stormwater detention area. The medical center is unchanged.

2011 Approvals	Remand Supplement	Access
Medical Center 53,000 sf of medical offices in a story building	Medical Center 53,000 sf of medical offices in a story building	Improved site distance
Multifamily units in several story buildings	64 Multifamily units in several two story buildings	Improved site distance

Utilities and Services:

² The tenants for Retail Tenant 6 and Retail Tenant 7 have not been identified. The single structure is designed to be flexible, and it is possible that the precise allocation of tenant space may be changed (i.e., 3 tenants with smaller spaces, or a single tenant). Regardless of the size of Retail Tenants 6 and 7, the overall trips generated from the Master Plan will not exceed 1,055. For example, if Retail Tenants 6 and 7 are a total of 75,000 sf (which is 3,000 square feet more than is depicted on the site plan), other retail uses will be reduced by 3,000 square feet – i.e., Retail 1 may be reduced from 8,000 sf (as shown on the site plan) to 5,000 sf. This flexibility is needed so that the project can respond to market needs, and is consistent with the code.

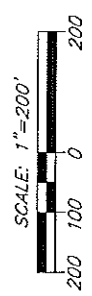
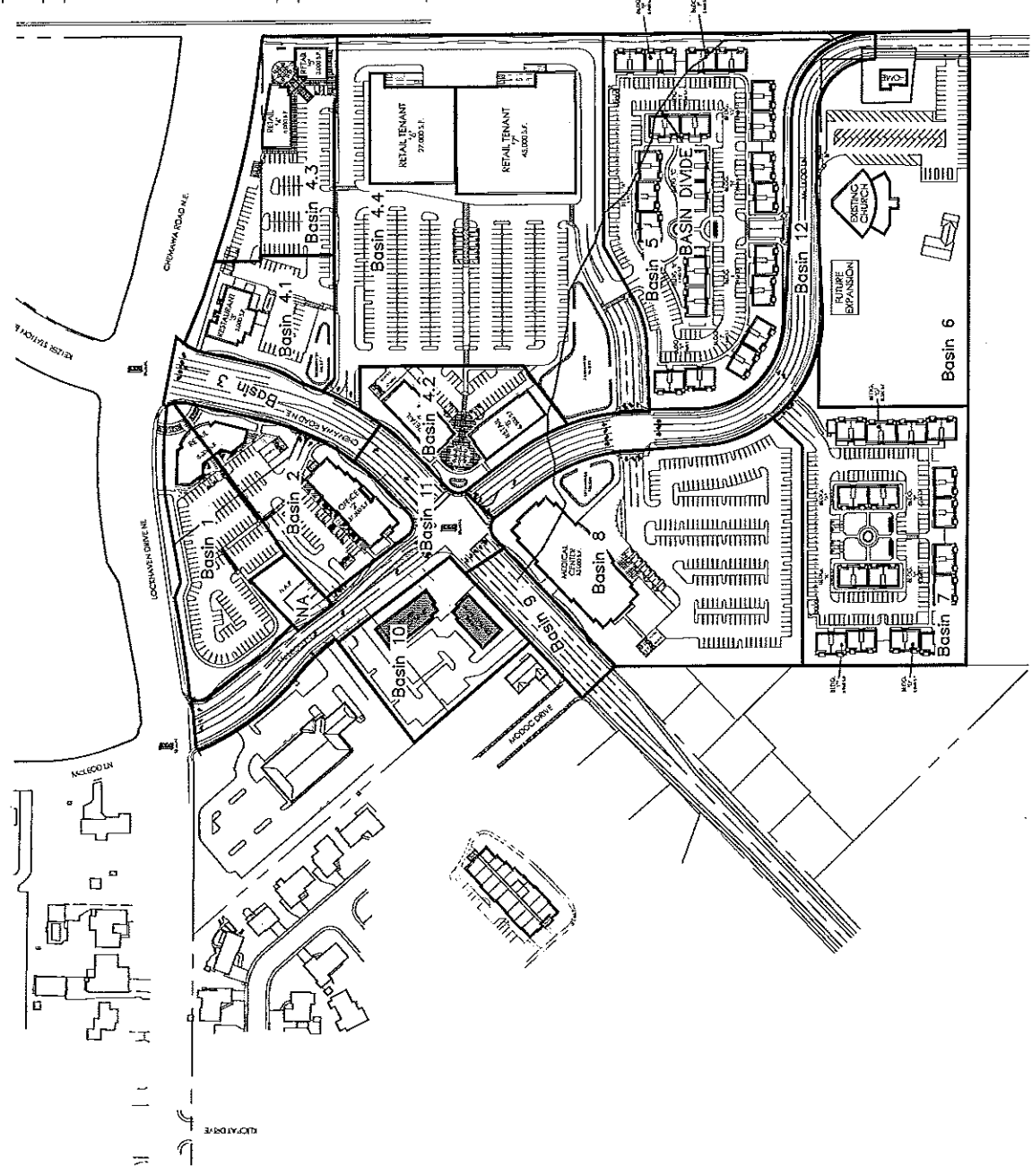


The modifications to the Master Plan are not expected to change the demand or availability of utilities and services, and the enclosed plans demonstrate that it is feasible to connect the proposed buildings to appropriate utilities. Special attention has been paid to the stormwater plans, as summarized in the attached stormwater memo. The findings and conclusions related to the site's drainage basins in the approved Master Plan remain valid, and are the basis for the stormwater analysis.

Tentative Subdivision Plat:

The tentative subdivision plat has been revised to be responsive to the modifications to the Master Plan. The overall lot count is the same, and still consists of nine (9) lot subdivision.

Basin Table	Total		Imp		Per Area, ac	
	Area, ac	Area, ac	Area, ac	Area, ac	Area, ac	Area, ac
North						
1	1.654	1.203	1.203	0.451		
2	1.627	1.197	1.197	0.43		
3	0.835	0.781	0.781	0.054		
4.1	1.179	0.734	0.734	0.445		
4.2	1.338	0.974	0.974	0.364		
4.3	1.588	1.167	1.167	0.421		
4.4	7.806	6.571	6.571	1.235		
9	0.597	0.567	0.567	0.03		
10	1.409	1.214	1.214	0.195		
11	1.632	1.469	1.469	0.163		
South						
5	5.009	3.491	3.491	1.518		
6	4.241	1.405	1.405	2.836		
7	3.47	2.303	2.303	1.167		
8	4.483	2.925	2.925	1.558		
12	1.906	1.734	1.734	0.172		



OCT 24 2012

Dear Keizer Planning Department,

COMMUNITY DEVELOPMENT

I live on 1947 Modoc Dr. Ne in Keizer. I have lived here for approximately seven years and have watched what has happened to our neighborhood since I first heard the name Chuck Sides. All of the owner/renters northeast of Modoc Dr. on Chemawa Rd. have stopped taking care of their properties because I'm sure they know at some point their houses will be torn down. Two of the properties were burnt down by the fire department and one of them hasn't been taken care of since. When I called to complain about it the city came out and cleaned up the side that they own but the property that Chuck Sides owns has never been cleaned up. I was told that he has been asked to clean it up but never has.

Apparently the Keizer Planning Department has not read the paper lately. Keizer has had to seize property from Chuck Sides because of back taxes and he also has foreclosed property. I'm going to add just a few things I've read lately.

Keizer taxpayers borrowed \$26.8 million to build the development's infrastructure. Property owners, including companies controlled by Sides, agreed to make the payments.

While other owners are current, five vacant properties controlled by Sides, accounting for more than \$9 million of the loan, were declared in default.

Keizer was scheduled to foreclose on three of those today.

On Monday, Sides paid \$627,000 to bring two of the properties current:

- Lot 19, a 4.3-acre parcel valued at \$2.7 million; it was \$404,836 in arrears.
- Lot 21, a 2.5-acre parcel valued at \$1.58 million; it was \$222,173 in arrears.

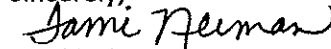
Sides did not make any payments on the third parcel. Two other lots controlled by Sides are \$1.2 million in arrears, but Keizer has not yet chosen to start foreclosure proceedings on them.

Those two properties have a total real market value of \$2.23 million. Keizer needs to recoup \$5.83 million from those properties, plus additional interests and costs.

He doesn't sound like anyone I'd like to do business with or trust. Why would they city planners who are supposed to be looking out for what is best for Keizer want to do business with him or trust him.

I have also seen businesses come and go in the Keizer Station. Many of the sites still sit empty. I'm concerned the same thing will happen with the new development. How much more do the residents of Keizer have to lose to Chuck Sides. He's a dirty scoundrel if you ask me and should not be allowed to take anything else from Keizer residents.

Sincerely,


Tami Neiman



KEIZER FIRE DISTRICT

October 25, 2012

Keizer Community Planning Department
Sam Litke, Senior Planner
P.O. Box 21000
Keizer, Oregon 97307-1000

Re: Master Plan Case 2010-16 & Subdivision Case 2010-18

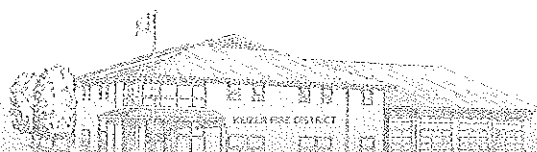
Mr. Litke:

Keizer Fire District submits the following written comments, and request they be entered into the record regarding Master Plan Case 2010-16 & Subdivision Case 2010-18. It should be noted that Keizer Fire District's comments in this letter are intended to provide written criteria on issues such as, but not limited to applicable Oregon Fire Code (OFC) requirements as submitted in the plans.

An overall plan(s) shall be submitted for Fire District review regarding items; such as Fire Hydrant and Fire Department Connection locations, Fire Apparatus Access Roads for Buildings, adequate turn around provisions at dead ends, street signage and premises identification.

Approval of plans submitted to Keizer Fire District is not an approval of omissions or oversights by the fire code official or of noncompliance with any applicable regulations of other codes or local codes that might affect the plan.

The following requirements are cited from the current adopted edition of the 2010 Oregon Fire Code. Additionally, Chapter 14 in the Oregon Fire Code provides requirements for Fire Safety During Construction and Demolition. The provisions of this code section shall be strictly adhered to. ***It should be noted that the currently referenced code is the 2010 OFC based on the 2009 International Fire Code (IFC). The 2014 OFC, based on the 2012 International Fire Code (IFC), is scheduled to go into effect on April 1, 2014.***



Fire Service Features:

Chapter 5, § 503, § 504, § 505, § 507 provide specific requirements for Fire Apparatus Access Roads and Fire Protection Water Supplies. Additionally, Appendices B, C and D are referenced for requirements of Fire-Flow Requirements for Buildings, Fire Hydrant Locations and Distribution, and Fire Apparatus Access Roads.

Access:

All Fire Apparatus Access Roads shall meet the requirements as set forth in § 503 & Appendix D. Specifically, **approved** vehicle access roads for fire fighting shall be provided to all construction or demolition sites.

The set of submitted plans shall meet the requirements of the Fire Code sections noted above and the City of Keizer Street Standards.

Fire Apparatus Access Roads shall have an obstructed width of not less than 20 feet, exclusive of shoulders and an unobstructed vertical clearance of not less than 13 feet 6 inches. Driveway entrances including driveway "pork chops", raised street dividers, landscape medians, and other traffic directors shall meet the requirements as set forth in §503.2 *Specifications*. The required turning radius of a Fire Apparatus Access Road shall be determined by the *fire code official*.

Dead Ends:

Dead-end Fire Apparatus Access Roads in excess of 150 feet in length shall be provided with an *approved* area for the turning around of fire apparatus. § 503.2.4 *"Dead ends."*

Water Supplies:

All Fire Protection Water Supplies and Fire-Flow Requirements for Buildings shall meet the requirements as set forth in § 507 & Appendix B. Specifically, **all** Fire Protection Water Supplies are required to be installed and made serviceable **prior** to and during the time of construction. § 501.4 *"Timing of installation."*

Fire Hydrants shall meet City of Keizer standards to include "Storz"™ type adaptors to be provided on the steamer port. Fire Hydrant Location and Distribution will be according to Table C105.1, or as requested by the fire code official. Fire Flow Requirements for Buildings shall meet the requirements as set forth in Appendix B. Keizer Fire District Deputy Fire Marshal and/or Fire Chief shall approve Fire Flow plan submittals to determine if adequate Fire Flows, Hydrant Locations and spacing have been provided for. Fire Department Connection locations shall be approved by the Deputy Fire Marshal and/or Fire Chief.

Building & Site Plan Review:

A general site plan showing building locations has been submitted. The applicant shall meet the requirements for setbacks, distances to/from property lines, height limitations, separations from other buildings and any other requirements as set forth in the Oregon Structural Specialty Code, and the Oregon Fire Code.

Conclusion:

As additional plans are submitted in the future, Keizer Fire District shall review and provide comments specific to that particular plan. The intent of this document is to provide a general overview of Fire Code requirements based on the preliminary plan documents recently submitted.

Please direct any questions regarding this document to Rod Conway, District Deputy Fire Marshal/Captain, Keizer Fire District.

Respectfully submitted,


Rod Conway
Deputy Fire Marshal/Captain
Keizer Fire District

Enclosures (3)

cc: Jeff Cowan, Fire Chief, Keizer Fire District
Nate Brown, Community Development Director
Jim Trussell, Marion County Building Department



emailed
to chief
+ Rod

October 15, 2012

10/15/12

TO: Keizer Fire District

FROM: Sam Litke, Senior Planner

CASE: Master Plan Case 2010-16 & Subdivision Case 2010-18

RESPONSE DATE: **October 25, 2012**

APPLICATION: Chuck Sides of E Village, LLC submitted an application for a Master Plan and a Subdivision application of Area "C" of the Keizer Station that was approved by the City Council on April 18, 2011. The Council's decision was appealed to the Land Use Board of Appeals (LUBA) which remanded it back to the city for additional review and modification citing clarification pertaining to the traffic engineer's analysis, and a timing of a condition of approval which required concurrency of a large format store and a vertical mixed use building.

The revised site plan eliminates the 116,000 square foot large format store and replaces it with a building of 72,000 square feet containing two retail spaces. The plan also includes approximately 83 additional units of multi-family development, primarily in the area which had originally been proposed for development with a large format store.

APPLICANT: E Village LLC

The Community Development Department is soliciting comments from affected agencies on the above referenced land use application. These comments will be considered as part of the staff report. Please return your comments to our office by **October 25, 2010** in order that we may process the application in a timely manner. Phone calls are acceptable if it is not possible to respond in writing by this date. If we receive no response, we will assume your agency has no concerns. You may use this response form, or, attach a separate letter. Please return your written responses to the Keizer Community Development Department, P.O. Box 21000, Keizer, Oregon 97307-1000. Questions regarding the application may be directed to Shane Witham, Associate Planner, at (503) 856-3439. Thank you for your assistance.

PLEASE CHECK THE APPROPRIATE ITEMS:

- ☐ Our agency reviewed the proposal and determined we have no comment.
- ☒ Our agency would like to receive a copy of the staff decision/report and notice of any public hearings in this case.
- ☒ Our comments are in the attached letter.
- ☐ Our Agency's comments are: _____

Response Date: 10/25/12

Person commenting: Rod J. Cory, Keizer FD

ATTACHMENTS

- Keizer Station Center Site Plan
- Public Notice

Applicant's statement, proposal, and all submitted documents can be viewed on the City's web site www.keizer.org. Choose from the menu on the left "City Departments"- "Community Development" - "Planning & Zoning" and lastly "Current Land Use Actions".



RECEIVED OCT 19 2012

October 15, 2012

TO: Qwest
FROM: Sam Litke, Senior Planner
CASE: Master Plan Case 2010-16 & Subdivision Case 2010-18
RESPONSE DATE: **October 25, 2012**

APPLICATION: Chuck Sides of E Village, LLC submitted an application for a Master Plan and a Subdivision application of Area "C" of the Keizer Station that was approved by the City Council on April 18, 2011. The Council's decision was appealed to the Land Use Board of Appeals (LUBA) which remanded it back to the city for additional review and modification citing clarification pertaining to the traffic engineer's analysis, and a timing of a condition of approval which required concurrency of a large format store and a vertical mixed use building.

The revised site plan eliminates the 116,000 square foot large format store and replaces it with a building of 72,000 square feet containing two retail spaces. The plan also includes approximately 83 additional units of multi-family development, primarily in the area which had originally been proposed for development with a large format store.

APPLICANT: E Village LLC

The Community Development Department is soliciting comments from affected agencies on the above referenced land use application. These comments will be considered as part of the staff report. Please return your comments to our office by **October 25, 2010** in order that we may process the application in a timely manner. Phone calls are acceptable if it is not possible to respond in writing by this date. If we receive no response, we will assume your agency has no concerns. You may use this response form, or, attach a separate letter. Please return your written responses to the Keizer Community Development Department, P.O. Box 21000, Keizer, Oregon 97307-1000. Questions regarding the application may be directed to Shane Witham, Associate Planner, at (503) 856-3439. Thank you for your assistance.

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☐ Our comments are in the attached letter.
☐ Our Agency's comments are: _____



CenturyLink™

Michael Ditlefsen
Engineer III

740 State St, Rm 407
Salem, OR 97301
Tel: 503.399.4931
Fax: 503.399.4428
Cell: 503.399.4428

Response Date: _____ Person commenting: _____

ATTACHMENTS

- Keizer Station Center Site Plan
- Public Notice

Appli docu Michael.Ditlefsen@centurylink.com

www.keizer.org. Choose from the menu on the left "City Departments"- "Community Development" - "Planning & Zoning" and lastly "Current Land Use Actions".



October 15, 2012

TO: Salem/Keizer School District
FROM: Sam Litke, Senior Planner
CASE: Master Plan Case 2010-16 & Subdivision Case 2010-18
RESPONSE DATE: **October 25, 2012**

APPLICATION: Chuck Sides of E Village, LLC submitted an application for a Master Plan and a Subdivision application of Area "C" of the Keizer Station that was approved by the City Council on April 18, 2011. The Council's decision was appealed to the Land Use Board of Appeals (LUBA) which remanded it back to the city for additional review and modification citing clarification pertaining to the traffic engineer's analysis, and a timing of a condition of approval which required concurrency of a large format store and a vertical mixed use building.

The revised site plan eliminates the 116,000 square foot large format store and replaces it with a building of 72,000 square feet containing two retail spaces. The plan also includes approximately 83 additional units of multi-family development, primarily in the area which had originally been proposed for development with a large format store.

APPLICANT: E Village LLC

The Community Development Department is soliciting comments from affected agencies on the above referenced land use application. These comments will be considered as part of the staff report. Please return your comments to our office by **October 25, 2010** in order that we may process the application in a timely manner. Phone calls are acceptable if it is not possible to respond in writing by this date. If we receive no response, we will assume your agency has no concerns. You may use this response form, or, attach a separate letter. Please return your written responses to the Keizer Community Development Department, P.O. Box 21000, Keizer, Oregon 97307-1000. Questions regarding the application may be directed to Shane Witham, Associate Planner, at (503) 856-3439. Thank you for your assistance.

PLEASE CHECK THE APPROPRIATE ITEMS:

- ☒ Our agency reviewed the proposal and determined we have ^{additional} no comments.
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- ☐ Our comments are in the attached letter.
- ☐ Our Agency's comments are: _____

see comments dated 2-1-11

Salem-Keizer Public Schools
Planning & Property Services
3630 State St., Salem OR 97301
David Fridenmaker-Manager *DF*
PH: 503-399-3335

Response Date: 10.24.12

Person commenting: _____

ATTACHMENTS

- Keizer Station Center Site Plan
- Public Notice

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October 15, 2012

TO: Chief Adams
FROM: Sam Litke, Senior Planner
CASE: Master Plan Case 2010-16 & Subdivision Case 2010-18
RESPONSE DATE: **October 25, 2012**

APPLICATION: Chuck Sides of E Village, LLC submitted an application for a Master Plan and a Subdivision application of Area "C" of the Keizer Station that was approved by the City Council on April 18, 2011. The Council's decision was appealed to the Land Use Board of Appeals (LUBA) which remanded it back to the city for additional review and modification citing clarification pertaining to the traffic engineer's analysis, and a timing of a condition of approval which required concurrency of a large format store and a vertical mixed use building.

The revised site plan eliminates the 116,000 square foot large format store and replaces it with a building of 72,000 square feet containing two retail spaces. The plan also includes approximately 83 additional units of multi-family development, primarily in the area which had originally been proposed for development with a large format store.

APPLICANT: E Village LLC

The Community Development Department is soliciting comments from affected agencies on the above referenced land use application. These comments will be considered as part of the staff report. Please return your comments to our office by **October 25, 2012** in order that we may process the application in a timely manner. Phone calls are acceptable if it is not possible to respond in writing by this date. If we receive no response, we will assume your agency has no concerns. You may use this response form, or, attach a separate letter. Please return your written responses to the Keizer Community Development Department, P.O. Box 21000, Keizer, Oregon 97307-1000. Questions regarding the application may be directed to Shane Witham, Associate Planner, at (503) 856-3439. Thank you for your assistance.

PLEASE CHECK THE APPROPRIATE ITEMS:

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- ☐ Our comments are in the attached letter.
- ☐ Our Agency's comments are: _____
- _____
- _____

Response Date: 10/22/12

Person commenting: [Signature]

ATTACHMENTS

- Keizer Station Center Site Plan
- Public Notice

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RECEIVED

OCT 16 2012

October 15, 2012

TO: City of Salem Community Development
 FROM: Sam Litke, Senior Planner
 CASE: Master Plan Case 2010-16 & Subdivision Case 2010-18
 RESPONSE DATE: **October 25, 2012**

APPLICATION:

Chuck Sides of E Village, LLC submitted an application for a Master Plan and a Subdivision application of Area "C" of the Keizer Station that was approved by the City Council on April 18, 2011. The Council's decision was appealed to the Land Use Board of Appeals (LUBA) which remanded it back to the city for additional review and modification citing clarification pertaining to the traffic engineer's analysis, and a timing of a condition of approval which required concurrency of a large format store and a vertical mixed use building.

The revised site plan eliminates the 116,000 square foot large format store and replaces it with a building of 72,000 square feet containing two retail spaces. The plan also includes approximately 83 additional units of multi-family development, primarily in the area which had originally been proposed for development with a large format store.

APPLICANT: E Village LLC

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- ☒ Our agency reviewed the proposal and determined we have no comment.
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- ☐ Our comments are in the attached letter.
- ☐ Our Agency's comments are: _____

Response Date: 10/18/12Person commenting: Shane Witham

ATTACHMENTS

- Keizer Station Center Site Plan
- Public Notice

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CITY COUNCIL MEETING: November 5, 2012

AGENDA ITEM NUMBER:_____

TO: MAYOR CHRISTOPHER AND COUNCIL MEMBERS

THROUGH: CHRISTOPHER C. EPPLEY, CITY MANAGER

FROM: E. SHANNON JOHNSON, CITY ATTORNEY

**SUBJECT: PARK MANAGEMENT AGREEMENT WITH KEIZER YOUTH
SPORTS ASSOCIATION AND KEIZER LITTLE LEAGUE**

At its last meeting, the Council tabled this matter until November 5, 2012 to allow KYSA and KLL to meet with their respective boards and obtain authorization to sign the proposed Park Management Agreement. KLL has received authorization from its board and has signed the proposed Agreement. As of the packet deadline, we have not received the signed Agreement from KYSA, but the KYSA president assured me it would be signed.

By way of background, the City and Keizer Youth Sports Association (KYSA) entered into a Park Management Agreement in 2008. The contract terminated on July 31, 2012.

A Request for Proposal was produced and distributed. Both Keizer Youth Sports Association (KYSA) and Keizer Little League (KLL) provided proposals. Prior to the deadline outlined in the Request for Proposal, the City was approached by both Keizer Youth Sports Association and Keizer Little League regarding jointly managing, operating and maintaining Keizer Little League Park. Chris Eppley has met with both entities several times and negotiated the terms of a one-year management agreement which is attached to the enclosed Resolution for your review.

I have added a new section (Section 3) to indicate that although KYSA and KLL are independent entities, when acting jointly as the Manager of the fields they are required to maintain an independent and neutral view and if any if any issue arises in which they cannot agree then the matter must be determined by the City Manager. I have also added a similar phrase with regard to the obligation of the Director on Duty to act neutrally without regard to their affiliation with a particular group (Section 4(D)).

This one-year management agreement allows both KYSA and KLL to jointly manage, operate, and maintain Keizer Little League Park. During this period of time, the City, KYSA and KLL will evaluate the effectiveness of this joint arrangement and will continue to

evaluate resources available to the entities for the upkeep of Keizer Little League Park. Some issues that may be in future agreements and budget discussions are outlined in Section 11 of the Agreement.

There have been two changes to the agreement since the last Council meeting. The first change is to the opening paragraph of the Maintenance Standard that the Manager has to perform on the fields (Section 6). The change to the opening paragraph of this section is indicated below:

Manager agrees to perform all maintenance of the premises including all improvements, ~~at its own cost~~ throughout the calendar year during the term of this Agreement in a cost efficient manner agreeable to KLL and KYSA. Such maintenance shall include the following:

* * * * *

The second change is in Section 6(G) regarding the time period for maintenance of toilets. The ending date was changed from July 31 to October 31.

RECOMMENDATION:

Adopt the attached Resolution authorizing the City Manager to enter into the Park Management Agreement with KYSA and KLL.

Please contact me if you have any questions in this regard. Thank you.

ESJ/tmh

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2012-_____

AUTHORIZING CITY MANAGER TO EXECUTE PARK
MANAGEMENT AGREEMENT WITH KEIZER YOUTH SPORTS
ASSOCIATION (KYSA) AND KEIZER LITTLE LEAGUE (KLL)

WHEREAS, the City and Keizer Youth Sports Association (KYSA) entered into a
Park Management Agreement effective November 1, 2008;

WHEREAS, the Park Management Agreement with KYSA terminated July 31,
2012;

WHEREAS, Keizer Youth Sports Association and Keizer Little League desire to
manage, operate and maintain the Keizer Little League Park jointly as a public resource;

WHEREAS, the parties have negotiated the terms of an agreement and desire to
enter into such Agreement for a one year period;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that the City
Manager is authorized to execute the Park Management Agreement with Keizer Youth
Sports Association and Keizer Little League, a copy of which is attached as Exhibit "A"
and by this reference incorporated herein..

PASSED this _____ day of _____, 2012.

SIGNED this _____ day of _____, 2012.

Mayor

City Recorder

PARK MANAGEMENT AGREEMENT

PARTIES:

CITY OF KEIZER, an Oregon
municipal corporation (hereinafter "City")

KEIZER LITTLE LEAGUE, an Oregon
non-profit corporation and ("KLL")
KEIZER YOUTH SPORTS ASSOCIATION,
an Oregon non-profit corporation ("KYSA") (hereinafter "Manager")

RECITALS:

A. City owns real property and improvements located at 5245 Ridge Drive, Keizer, Marion County, Oregon consisting of approximately 21.4 acres and known as Keizer Little League City Park (hereinafter "Park").

B. City has need of services to manage, operate and maintain the Park.

C. KLL and KYSA desire to manage, operate and maintain the Park as a public resource, subject to KLL's and KYSA's use of the facilities as set forth herein.

D. This Agreement is intended to grant no property interest or lease rights to KLL, KYSA, or any third party that may result in the loss of property tax exempt status of the Park.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties do mutually agree as follows:

AGREEMENT:

1. Term. Unless terminated as set forth herein, the term of this Agreement shall be from November 1, 2012 to October 31, 2013.

2. Improvements. Manager agrees that all improvements on the premises are the property of City and are considered to be part of the premises that is the subject of this Agreement. Manager further agrees that all permanent improvements made upon the premises by Manager or any other person or entity after the date of this Agreement become part of the premises and the property of City. City shall not be liable for any costs, or materials and/or labor associated with the initial construction work or improvements made to the premises or personal property included in the premises or for any future improvements made to the premises except as expressly agreed to in writing by City. Manager shall not cause or permit any change in Park layout, any addition or deletion of

any permanent improvements, or any action on the part of Manager or permitted by Manager that affects the Park without the prior written consent of City. City reserves the right to make changes, additions and deletions with regard to any present or future improvements on the premises. If City chooses to make changes, additions or deletions with regard to the improvements, it shall give Manager one hundred and eighty (180) days notice prior to the proposed change. The parties may, by mutual consent, waive that one hundred and eighty (180) day period.

3. Manager Acts Neutrally. Manager consists of both KYSA and KLL, but Manager shall operate independently, neutrally, and objectively with regard to Manager's role in oversight and management of the Park without favoritism, bias, or prejudice to any particular individuals or user group. Should any issue or decision arise in which KYSA and KLL cannot agree, the matter shall be determined by the City Manager and the City Manager's decision shall be final, subject to the right of Manager to seek City Council ratification or approval pursuant to Section 4(ending).

4. Use and Conditions. Subject to the terms and conditions set forth herein, Manager agrees to manage the Park in its entirety for the term of the Agreement as follows:

- A. Authorized representatives of Manager and City will meet at least twice a year to review the overall management of the Park. The City of Keizer Public Works Director or designee shall be a "Liaison" of the City to the KLL Board and KYSA Board and shall be informed of all scheduled meetings of the Boards.
- B. Manager will maintain all Park scheduling oversight year-round and retain all rental revenue from outside use of the facility to offset a portion of the costs in maintaining the facility. Field usage will be shared on an equitable basis by Keizer-based youth organizations in accordance with the Outside Use Facility Reservation Policy. The Policy that shall apply for the 2013 season is attached as Exhibit "A". Such Policy (except for field usage rates) shall not be changed without the written consent of the Public Works Director/designee. KLL and KYSA shall provide a budget each year for City Council approval. All field usage rates shall be approved by Council on an annual basis. Keizer Youth Sports Association and Keizer Little League shall not pay individual field usage rates, but instead, shall pay a proportionate share of expenses pursuant to the approved budgets.

Notwithstanding any of the above provisions, any individuals not affiliated with groups or organized teams may use the Park or individual fields at any time the Park is open if such use does not interfere with the priority or reserved use, cause safety concerns, or cause undue wear and tear in Manager's reasonable discretion.

- C. Keizer Little League Park may be open after sunset where fields are appropriately lighted from February 1 to October 31 Monday through Saturday. The Park will close and the lights will be off at 11:00 p.m. Other than the lighted fields, the Park shall close as specified in Keizer Park Regulations. No power equipment shall be operated at the Park between 10:00 p.m. and 7:00 a.m. Compliance with this condition does not exempt such activity from application of the Keizer Noise Ordinance.
- D. In order to provide better lines of communication for day-to-day concerns during the Manager season, Manager shall provide City a written list of the schedule with the names and contact phone numbers for the "Director on Duty" as well as the alternate. Any updates or amendments to such list shall be promptly given in writing by Manager to City. Manager shall also provide a current roster of all officers and personnel along with appropriate contact information. The Director on Duty shall have authority to represent Manager and to speak directly to City personnel and address problems raised by City personnel or others that require timely resolution. The Director on Duty shall at all time act neutrally, fairly, and objectively without regard for the Director's affiliation with any organization. The Director's duty shall be for safe and fair management of the Park. City shall contact the KYSA and KLL presidents on matters that do not require immediate resolution. KYSA and KLL presidents shall have authority to bind Manager on any and all issues, except those issues which would require an amendment of this Agreement.
- E. KYSA and KLL shall provide to the City a list of contact people from their organizations annually, as well as, upon any significant change, including but not limited to the President, Vice President, Secretary, Treasurer and two other individuals who may or may not be a current board member but who are active within the organization. The list should include names, phone numbers, mailing address, and the authority of the individual within the organization. Each organization will also provide the City with an annual activity schedule by April 1 each year. The City shall be informed in writing of all updates or changes to the schedule as they occur.
- F. Manager shall develop volunteer opportunities for individuals and groups. All volunteers must be qualified for the particular volunteer project and may be required to undergo a criminal background check. Though not a requirement, one of the goals of volunteer labor is to reduce the cash outlay for field maintenance expenses, thereby reducing future field usage rates. In addition, Manager will use its best efforts to create opportunities for group users to provide labor, materials and/or services in exchange for credits against future field use fees.

Complaints from either members of the public, users of the Park or others shall be first submitted in writing to Manager. Complaints shall not be submitted to the City.

Manager shall have a reasonable period of time to remedy or otherwise respond depending on the nature of the complaint. If the remedy or response is not satisfactory to the complainant, the complainant may request the City Manager or designee to review the matter.

In the event of a dispute, the decision of the City concerning the use, operation or management of the Park shall be final and binding. The City reserves the right to make final determination on all policies and procedures relative to the operation and management of the Park, but specifically excluding any management or operation of the KLL program and KYSA program. Manager shall have no right, without prior written approval of the City, to use or authorize the use of the Park for any other purposes other than baseball, softball, soccer, football or other sporting events.

The City, acting through the City Manager, reserves the right, in its sole discretion, to cancel, terminate or interrupt any event, and cause one or more patrons to be dismissed during any event, if necessary to protect the public or property. However, no action shall occur without consultation with the Director on Duty. City shall not be liable to Manager or any third parties for any loss or damages by any such determination or action by the City Manager, or his/her designee taken in good faith for the benefit or protection of the City and the public generally, or the protection of the Park.

Manager may request ratification by the City Council of any actions by the City Manager, and may require any continuing actions by the City Manager to be approved formally by the City Council.

5. Maintenance. Manager shall, throughout the term of this Agreement, at its own cost and without any expense to City, keep and maintain the entire premises, including all improvements thereto, in good, sanitary and neat order, condition and repair throughout the entire year. Manager covenants and warrants that Manager will leave the premises in good, sanitary and neat order, to the satisfaction of City upon termination of this Agreement. City shall not be obligated to make any repairs or in any way maintain the premises at any time throughout the term of this Agreement. Notwithstanding the above, in the event a repair, maintenance or improvement is required by law only because the subject property is a City park and said repair, maintenance or improvement would not have been required if the property were owned by Manager, then the cost of such repair, maintenance or improvement shall be the sole responsibility of City.

The City shall endeavor to identify and fund capital improvement projects at the Park using Parks Systems Development Charges and other sources of funding. Nothing contained herein shall obligate or bind the City to any specific project or funding.

All net revenue earned by Manager and generated directly from the use of the facilities shall only be used for field maintenance expenses and capital improvements. No other use of the facility-generated revenue shall be permitted. Such revenue shall

include, but not be limited to outside use payments, net tournament income, net field-related sponsor income, and net concession income.

6. Maintenance Standard. Manager agrees to perform all maintenance of the premises including all improvements, throughout the calendar year during the term of this Agreement in a cost efficient manner agreeable to KLL and KYSA. Such maintenance shall include the following:

- A. Supervision - Manager shall direct and guide the efforts and use of all maintenance workers, equipment and materials to manage the ball field complex and to maintain it in proper order and form.
- B. Vandalism - Manager shall monitor and repair any and all vandalism to turf, water systems, and "dugout" structures. The City shall repair vandalism to all other buildings, fencing, and other structures or facilities.
- C. Turf Maintenance - Manager shall maintain the turf in good husband-like manner and shall do at least the following
 - 1. Conduct weed and grass control around fences, backstops, buildings, parking lots, skinned infields, foul lines, etc.
 - 2. Mow, fertilize and control weeds in all turf areas as necessary. All chemicals and fertilizers shall be applied by a State of Oregon Licensed Applicator. The City shall be advised in writing at least 48 hours in advance of all applications as to the type and time of application.
- D. Water Systems - Manager shall maintain and repair the water system and irrigate as necessary. Potable water samples will be taken at required intervals by the City of Keizer Water Department at the expense of the City.
- E. Structural - Manager shall maintain, repair and paint as necessary all backstops, bleachers, dugouts, score keeping stands, fences, barriers, signs, parking lots, and other property and improvements.
- F. Ball Field Maintenance - Manager shall provide maintenance to all ball fields:
 - 1. Drag and scarify field.
 - 2. Add soil or sand to the infield as needed.

3. Provide all the necessary material and equipment to provide this service during the playing season.

- G. Restroom/Portable Toilets – Manager shall maintain, repair and clean the permanent restroom facilities from April 1 through October 31 each year. City shall provide sufficient chemical toilets during this same period for use by the public. City shall be responsible for servicing the chemical toilets on a regular basis.
- H. General Housekeeping - Manager shall remove and dispose of all litter and garbage and keep the area in a clean and safe condition. In addition to the above, Manager shall at all times, during the term of the Agreement, maintain the premises, and all property and equipment brought onto the premises by Manager or used by Manager on the premises, in a safe condition. If at any time during the term of this Agreement it appears to City that any maintenance or repairs as outlined above are needed on the premises, City shall notify Manager in writing. City shall give Manager thirty (30) days to perform the requested maintenance or repair. If Manager fails to perform as required by City, City may do the necessary repairs or maintenance and any reasonable costs incurred by City shall be paid by Manager within thirty (30) days after written demand for payment has been delivered to Manager. Election by City hereunder to do the necessary repairs or maintenance and charge the cost to Manager shall not prohibit City from electing to declare Manager in default pursuant to the provisions of this Agreement. Nothing contained on this paragraph shall be construed to relieve Manager of its responsibility for diligence and maintenance.
- I. Damage. Manager shall immediately give notice to City of any and all damage or potentially dangerous situation, however caused. Such notice shall be given both by phone calls and emails as follows:

Bill Lawyer 503-856-3555 – LawyerB@Keizer.org
Tracy Davis 503-856-3412 – DavisT@Keizer.org

For after hour notifications, notice shall be given as outlined above, as well as phone call to 503-393-1608.

7. Concessions. Manager shall have the exclusive right to operate concession stands located on the premises subject to the following policies:

- A. Manager may, at its sole cost and expense, develop, operate, and maintain a food and drink concession stand on the premises available to the general public. Manager shall not sell any alcoholic beverages on the premises.

- B. Manager shall not assign or subcontract its concession rights or any interest therein without the written consent of the City, and any such assignment or subcontract without written consent shall be void and shall at the option of the City, terminate this Agreement. Manager may contract for the operation of concession stands without City's consent, provided however, Manager shall set all charges and hours of operation.
- C. Manager shall at all times conduct its operations and assure that the operations of all subcontractors and employees are conducted in full compliance with all applicable laws, ordinances and administrative regulations of federal government, the State of Oregon, Marion County, the City of Keizer, and the agencies of any and all of them. Any license or certificate required by such authorities as the Marion County Health Department and others, must be obtained and posted at all times.
- D. All foods, drinks, beverages, confections, refreshments, etc., sold or kept for sale by Manager shall conform to all applicable food laws, ordinances, and regulations in all respects. No adulterated, misbranded, deceptively labeled, or impure articles shall be sold or kept for sale by Manager. All merchandise kept on hand shall be stored and handled with due regard for freshness and sanitation.
- E. The City shall have the right, at any time during period of concession operation, to enter any part of any structure or mobile facility, and conduct whatever inspection City deems necessary to insure compliance with this Agreement.

8. Licenses and Taxes. Manager shall obtain and pay for all licenses and permits required for operation on the Park; shall pay all ad valorem real and personal property and excise taxes, if any or any tax that might be levied upon the Park as a result of this Agreement or for any other reason resulting from operation of the Park; and shall pay all royalties arising from the sale of patented, copyrighted material or trademarks in its operation. Manager shall indemnify City and hold City harmless from any and all costs or damages of any kind under this section.

9. Utilities. City shall provide water and sewer services to the Park without charge to Manager. Manager shall pay all charges for garbage collection (including provision for garbage cans and dumpsters), and other utilities on the premises. Manager shall pay all charges for temporary and permanent utility hookups, connections, or installations. City shall pay all charges for electricity, with the exception of the share of electricity due to lighting of the fields, which shall be reimbursed to City by Manager on a monthly basis.

Manager shall be responsible for all maintenance, refurbishment, and repair for all of the permanent infrastructure and improvements as set forth in the Physical Assets list attached as Exhibit "B" and by this reference incorporated herein.

10. Security. It will be the responsibility of Manager to maintain adequate security on the premises. The City will furnish no more than the normal and routine police protection as provided in any park, subject to demands for police throughout the City from time to time. Manager will furnish the City with the appropriate keys or combinations to enter all areas of property which may be secured. All keys will be registered and can only be duplicated by either of two individuals. One individual as designated by Manager, the other will be the Public Works Director. A complete list of all individuals having keys to the premises shall be provided to City.

11. Subsequent Agreements. Without binding any party in any way, the City and Manager anticipate there will be subsequent agreements between the parties or a successor entity of Manager beginning November 2013. It is generally anticipated that the following will be the basis for such subsequent agreements:

- A. City implements weekly mowing schedule. The City will maintain the grass surfaces consistent with maintenance of other parks.
- B. City takes responsibility for maintenance of buildings and other assets and puts them into maintenance schedule.
- C. City takes over restroom maintenance and cleaning.
- D. City pays for all utilities, except that the parties shall share the electricity due to lighting of the fields, which shall be reimbursed to City on a monthly basis.
- E. KYSA/KLL co-manage baseball program.
- F. KYSA/KLL maintains fields at a higher level if they desire at their own expense.
- G. KYSA/KLL stripe fields, rake base paths, infields, etc.
- H. KYSA/KLL allows City to utilize their mower and City helps maintain mower based on prorata hourly usage.

12. Naming. Manager may propose the naming of any existing or future monuments, statues, buildings, structures and fields. Final approval of such proposed names shall be in the sole discretion of the Keizer City Council, following recommendation by the Parks and Recreation Advisory Board.

13. Discipline and Control. Subject to prior approval as required elsewhere herein, selection, compensation, direction, discipline, and control of Manager's employees, agents, volunteers and subcontractors shall be the sole responsibility of Manager. Manager shall be responsible for removing from the premises any employee, agent, volunteer or subcontractor who is disorderly, dishonest, dangerously careless, or any person violating any law, ordinance, or regulation.

The Director on Duty has authority to eject such persons as authorized representative of Manager.

14. Insurance. City will insure all buildings and improvements on the property against loss or damage by fire or other hazard. The City will not insure or replace building contents or personal property owned by Manager, KYSA or KLL.

KYSA and KLL shall maintain in effect throughout the term of this Agreement for all KYSA and KLL activities, personal injury and property damage liability insurance of at least two million dollars covering the premises. Such insurance shall specifically insure KYSA and KLL against all liability assumed by it thereunder, as well as liability imposed by law. City, its officers, agents, contractors, and employees shall be named as an additional insured on any such policy of insurance procured by KYSA and KLL as required under this Agreement. City, KYSA, and KLL will require personal injury liability insurance of at least one million dollars naming the City, its officers, agents, contractors, employees, and Manager as additional insured for other groups using the Keizer Little League City Park for any organized event. Standard certificates of insurance shall be provided to the City by March 1 each year this Agreement is in force.

15. Indemnification and Hold Harmless. Manager shall be responsible for and shall pay and discharge any and all claims of any nature whatsoever under this Agreement or Manager's use or management of the Park. Manager shall indemnify, defend, and save harmless the City and its officers, agents, and employees for and against any and all loss damage, injuries, action, causes of action, or liability of any kind whatsoever resulting from or arising out of the condition of the premises, products sold, and all operations, activities, or undertakings of Manager or any of Manager's employees, agents, volunteers or independent contractors. Notwithstanding the above, if City directly authorizes an activity by any party other than Manager during the period of this Agreement, this paragraph shall not apply to claims arising out of that activity.

16. Assignment and Subcontracting. Manager shall not assign or transfer this Agreement, or any interest thereon. Any such assignment shall be void, and shall, at the option of the City, terminate this Agreement. Manager shall not subcontract any of its responsibilities hereunder without the express written consent of the City.

17. Default. Upon failure by Manager to perform any term, condition, or covenant of this Agreement within thirty (30) days after written notice from City has been sent by regular mail, addressed to both:

Keizer Youth Sports Association Inc.
P.O. Box 20033
Keizer, Oregon 97307

Keizer Little League
PO Box 20572
Keizer, Oregon 97307

and also to the Representatives provided to the City as required in section 3(E) of this Agreement, specifying the nature of the failure with reasonable particularity, City shall

have the option to declare Manager to be in material breach and default hereunder and shall enable City to pursue its legal remedies including but not limited to those referred to in this Agreement. If the failure is of such a nature that it cannot be completely remedied within the said thirty (30) day period, the failure will not be a default if Manager begins correction of the failure within the thirty (30) day period and thereafter proceeds with reasonable diligence and in good faith to correct the failure as soon as possible.

18. Remedies. Upon default, and after the notice period described above, City may elect to terminate this Agreement and bring an action to recover any damages suffered by City as a result of Manager's actions or as a result of any breach by Manager of any term, covenant or condition of this Agreement.

19. Audit. The City, at its' sole expense, may audit any and all Manager records. Manager shall cooperate in all respects. Should such audit disclose material discrepancies, the City may terminate this Agreement at its' option.

20. Attorney Fees. If suit or action is instituted to enforce or interpret this Agreement or in conjunction with any claim or controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sum as the Court may adjudge reasonable as attorney fees at trial and on appeal of the suit or action.

21. Amendments. Amendments to this Agreement shall be recognized only if reduced to writing and executed by formal action of the Board of Directors of both Keizer Youth Sports Association and Keizer Little League, and by formal action of the City Council of the City of Keizer.

22. Relationship of the Parties. The City and Manager have entered into this Agreement for the purpose of establishing an independent contractor relationship between the City and Manager. This Agreement is not, nor should it be construed as, a lease or an agreement in the nature of a lease. No covenant of quiet enjoyment shall be implied in this Agreement. It is further understood and agreed by and between the parties that nothing herein shall constitute or be construed to be an employment, partnership, joint venture, or joint employer relationship between the City, its successors or assigns on the one part, and Manager, its successors or assigns on the other part.

Manager has no property interest or possessory interest in the Park. Manager shall have the right to use the Park pursuant to the terms in this Agreement.

23. Non-Discrimination. Manager agrees not to discriminate against any employee or applicant for employment because of race, creed, ancestry, sexual orientation, disability, color, sex, marital status, age, religion or national origin, and further agrees not to discriminate for the same aforementioned reasons against any person or persons in connection with admission, services, or privileges offered to or enjoyed by the general public.

24. Agreement. This Agreement is the entire, final and complete agreement of the parties and supersedes and replaces all written and oral agreements heretofore made or existing by and between the parties or their representatives.

IN WITNESS WHEREOF, the parties hereto have executed this document as of the date first above written.

CITY:

CITY OF KEIZER

By: _____
City Manager

KYSA:

KEIZER YOUTH SPORTS
ASSOCIATION

By: _____
President

By: _____
Secretary

KLL:

KEIZER LITTLE LEAGUE

By: _____
President

By: _____
Secretary

2013 Outside Use Facility Reservation Policy Keizer Little League Park

Keizer Youth Sports Association (KYSA) and Keizer Little League (KLL) have been designated by the City of Keizer as the Manager of Keizer Little League Park. KYSA and KLL jointly manage all facets of the facility including the allocation of all field space. “Manager” means KLL and KYSA acting jointly. All games and organized practices at Keizer Little League Park by participants of any organization or team **require** a confirmed field use slot **prior** to use.

Field use slot requests fall under various allocation processes, depending on the dates requested and when the request and all required supporting requirements are provided.

Initial Allocation of Field Use Slots for Use between 3/1/13 to 8/30/13 (Requested 3/1/13 or earlier)

1. A request for specific field use slots must be received by **3/1/13** to be considered in the initial allocation of field use slots for this period. The request should specify the number of slots being requested for each field and the range of dates the field use is desired. More specific requests (specific dates and times) will be considered but not guaranteed.
2. A deposit of 50% of the amount due for the requested field use slots must accompany the request.
3. Proof of General Liability Insurance in the amount of at least \$1 million for the period of anticipated use and listing Keizer Youth Sports Association, Keizer Little League and the City of Keizer as additional insureds must be received along with the initial request for field slots.
4. Intended and actual use of individual fields must be in accordance with the designated use of the specific field unless specifically authorized in advance by Manager (i.e. softball use only on fields 2, 4 and 10).
5. Initial field use slot allocation will be determined after consideration of tournaments and then allocated equitably. Allocation will be determined using each of the following criteria : 1) the overall capacity of the facility for the type and size of field(s) requested, 2) the range of dates selected, 3) the number of verified Keizer based participants in your organization specific to each individual field use request in comparison to the number of verified Keizer based participants of other organizations requesting the same field usage including KYSA and KLL participants, and 4) youth participant organizations will take precedence over adult participant organizations. Manager may schedule up to three (3) tournaments for each level of play between April 1 and June 30 that will take precedence over all initial field use slot allocations.
6. Every effort will be made to accommodate all initial field use slot requests subject to the facility’s overall capacity. At the discretion of Manager, fields comparable to the fields requested may alternatively be scheduled or alternative dates/times may be provided to accommodate the overall scheduling of the facility.
7. Confirmed initial field slots including the specific field, date and time will be provided by **3/21/13** along with notice of the balance due for the confirmed

scheduled field use slots. The balance due must be received by **4/3/13** to maintain the reserved field use slots.

8. Unless formally withdrawn **at least 30 days prior** to the scheduled use, slots are considered “used” and the full rental fee considered “earned”, whether or not each field slot is actually used. There are no exceptions other than when Manager unilaterally cancels the opportunity for field use as outlined below in the “Cancellation of Field Use Activity” section of this Policy. Field use requests withdrawn at least 30 days prior will be entitled to a full refund less 10% of the rental expense for the requested field use slots to compensate for rebooking efforts and administrative expenses.

Supplemental Allocation of Field Use Slots for Use between 3/1/13 to 8/30/13 (Requested After 3/1/13)

1. Requests for field slots received **after 3/1/13, or** that do not include the required amount of deposit by 3/1/13 will be deemed a “supplemental field slot request” and considered strictly on the criteria noted in paragraph #5 below as of the date the request is received. Supplemental field slot requests are not guaranteed to be filled.
2. A deposit of 50% of the amount due for the requested field use slots must accompany the request.
3. Proof of General Liability Insurance in the amount of at least \$1 million for the period of anticipated use and listing Keizer Youth Sports Association, Keizer Little League and the City of Keizer as additional insureds must be received, if not already provided as part of an initial field slot allocation request.
4. Intended and actual use of individual fields must be in accordance with the designated use of the specific field (i.e. softball use only on fields 2, 4 and 10) unless specifically authorized in advance by Manager.
5. Supplemental field use slot allocation will be determined solely on the basis of each of the following criteria: 1) the overall capacity of the facility for the type and size of fields requested, 2) the dates requested, 3) date which request and all supporting materials are received with priority given to earlier requests, and 4) remaining availability for the type and size of field(s) requested.
6. Fields comparable to the fields requested may be scheduled at the discretion of Manager as an alternative to accommodate the overall scheduling of the facility.
7. Confirmed initial field slots including the specific field, date and time will be provided within 10 days of the request along with notice of the balance due for the scheduled field use.
8. Payment for the balance due of the confirmed field slots fees must be received prior to the date of the first scheduled use to maintain the reserved field use slots.
9. Unless formally withdrawn **at least 30 days prior** to the scheduled use, slots are considered “used” and the rental fee “earned”, whether or not each field slot is actually used. There are no exceptions other than when Manager unilaterally cancels the opportunity for field use as outlined below in the “Cancellation of Field Use Activity” section of this Policy.

Allocation of Field Use Slots for Use between 8/31/13 to 12/31/13

1. A request for specific field use slots must be received by **8/7/13** to be considered in the initial allocation of field use slots for this period. The request should specify the number of slots being requested for each field and the range of dates the field use is

desired. More specific requests (specific dates and times) will be considered but not guaranteed. Requests received after 8/7/13 and/or that do not include the required deposit will be considered only after the initial allocation of field use slots is completed and are not guaranteed to be filled.

2. A deposit of 50% of the amount due for the requested field use slots must accompany the request.
3. Proof of General Liability Insurance in the amount of at least \$1 million for the period of anticipated use and listing Keizer Youth Sports Association, Keizer Little League and the City of Keizer as additional insureds must be received along with the initial request for field slots.
4. Intended and actual use of individual fields must be in accordance with the designated use of the specific field unless specifically authorized in advance by Manager (i.e. softball use only on fields 2, 4 and 10).
5. Initial field use slot allocation will be determined after consideration of tournaments. Allocation will be determined using each of the following criteria: 1) the overall capacity of the facility for the type and size of field(s) requested, 2) the range of dates selected, 3) the number of verified Keizer based participants in your organization specific to each individual field use request in comparison to the number of verified Keizer based participants of other organizations requesting the same field usage including KYSA and KLL participants, and 4) youth participant organizations will take precedence over adult participant organizations.
6. Every effort will be made to accommodate all field use slot requests subject to the facility's overall capacity. At the discretion of Manager, fields comparable to the fields requested may alternatively be scheduled or alternative dates/times may be provided to accommodate the overall scheduling of the facility.
7. Confirmed initial field slots including the specific field, date and time will be provided by **8/21/13** along with notice of the balance due for the confirmed scheduled field use slots. The balance due must be received by **8/31/13** to maintain the reserved field use slots.
8. Unless formally withdrawn **at least 30 days prior** to the scheduled use, slots are considered "used" and the full rental fee considered "earned", whether or not each field slot is actually used. There are no exceptions other than when Manager unilaterally cancels the opportunity for field use as outlined below in the "Cancellation of Field Use Activity" section of this Policy. Field use requests withdrawn at least 30 days prior will be entitled to a full refund less 10% of the rental expense for the requested field use slots to compensate for rebooking efforts and administrative expenses.

Field Usage Rates (all seasons)

Fields 1, 9 and 12 \$30

Rates are per field, per slot and for a 120 minute period.

Fields 2, 3, 4, 5, 7, 8, 10 and 11 \$40

Rates are per field, per slot and for a 150 minute period.

Field 6 (without any use of field lights) \$50

Field 6 (with use of lights) \$135

Rates are per field, per slot and for a 180 minute period.

Field usage rates take into account the exclusive use of the field for the designated period, the amount of wear and tear and the materials and resources needed to accommodate desired use. Rates apply to all games or practices except practices conducted prior to 3/28/13 which are at no charge.

What is Included with Field Usage?

Field use pricing includes: undivided access to the reserved field for the time allotted and access to bathroom facilities and field preparation materials including field chalk (for games only), rakes and brooms. All items should be returned and secured following each use.

Field use pricing does NOT include: oversight or umpiring of the activity, playing equipment including balls, pre game or post game field preparation or clean-up of the dugouts and bleachers.

To assure a quality experience for all, please be courteous to teams using the field following your scheduled use by only occupying the field for your designated time and leaving the dugouts and bleachers in the appropriate condition. Failure to leave the bleachers and dugouts in the appropriate condition may result in suspension or revocation of future use of the facility. Any field preparation tools or other items such as bases, pitching rubbers or storage container locks included with the field use that are not returned or are broken will be billed for replacement accordingly.

See the Satellite View of the facility on KYSA's web site (www.keizeryouthsports.org) to view the configuration of the fields. Note, Field 10 is now "skinned" and configured for softball.

Cancellation of Field Use Activity

Manager reserves the right to cancel all activity on any or all fields at the facility due to adverse weather or unsafe playing conditions. Replacement field use slots will not be provided when cancellations occur however the rental fee for the field use slots cancelled solely by Manager will be credited in full to your organization. Any net credit will be paid at the conclusion of the renting organization's 2013 facility use. **It is suggested anticipated game "make up" slots are requested as part of initial or supplemental field slot requests in anticipation of "rain-outs" or poor field conditions to assure field availability.**

Facility and Field Maintenance Equipment Access

No participants of any organization may access any portions of the Fieldhouse, Concession Stand or other permanent structures (other than unlocked bathrooms) or use Manager field maintenance or preparation equipment or tools (other than those designated for specific fields) without the explicit advance permission of Manager.

Requesting a Field Use Slot

All field use slot requests should include at a minimum: 1) a signed copy of this

Policy, 2) which field(s) are being requested, 3) how many slots are being requested for each field, 4) what specific activity will be conducted (include sport and level) and 5) what date or date range is requested. Initial field slot requests should also include sufficient information to satisfy the field use allocation requirements under #5 of the Initial Field Use Slot section.

Inquiries or requests for field use slot can be emailed to: scheduling@keizeryouthsports.org however field use slot requests will not be considered as “received” for purposes of this Policy until the appropriate deposit is received. Deposits and completed hard copies of this Policy should be mailed to:

KYSA
PO Box 20033
Keizer, Oregon 97307

I acknowledge receipt of this Policy (5 pages), and that I have reviewed, understand and agree to abide by its terms on behalf of the organization noted below that I represent. I further acknowledge as a condition to use, that repeated failure to follow the terms of this Policy will cause forfeiture of our organization's rights to field use for the rest of the 2013 season.

Requesting Organization

Responsible Party for Requesting Organization _____

Title of Responsible Party in Organization _____

Date Signed _____

Exhibit "B"

Little League Park Fixed Assets

FIELDS	ASSETS		
1	Backstop Bleachers (2) Dugouts (2) Scoring Stand Field Fencing (890')	7	Backstop Bleachers (3) Dugouts (2) Scoring Stand Field Fencing (736') Scoreboard
2	Backstop Bleachers (2) Dugouts (2) Scoring Stand Field Fencing (860') Scoreboard	8	Backstop Bleachers (5) Dugouts (2) Scoring Stand Field Fencing (667') Scoreboard
3	Backstop Bleachers (3) Dugouts (2) Scoring Stand Field Fencing (730')	9	Backstop Bleachers (1) Field Fencing (520')
4	Backstop Bleachers (4) Dugouts (2) Scoring Stand Field Fencing (789') Scoreboard Concrete Retaining Wall (189')	10	Backstop Bleachers (2) Dugouts (2) Field Fencing (760')
5	Backstop Bleachers (4) Dugouts (2) Scoring Stand Field Fencing (744') Scoreboard	11	Backstop Bleachers (1) Field Fencing (580')
6	Backstop Bleachers (2) Dugouts (2) Scoring Stand Field Fencing (1305') Scoreboard Concrete Retaining Wall (394') Utility Shed Field Lighting 6 Poles	12	Backstop Bleachers (1) Field Fencing (740')
		Misc	Fieldhouse and Storage Concession Stand Bathroom Facility Pump House Covered Structure by #1/#3 Bike Rack Flag Pole (2)

CITY COUNCIL MEETING: November 5, 2012

AGENDA ITEM NUMBER: _____

TO: MAYOR CHRISTOPHER AND CITY COUNCIL MEMBERS

**THROUGH: CHRIS EPPLEY
CITY MANAGER**

**FROM: BILL LAWYER, PUBLIC WORKS DIRECTOR
AND
SUSAN GAHLSDORF, FINANCE DIRECTOR**

SUBJECT: CHERRY AVENUE PUMP STATION PROPERTY PURCHASE

DATE: October 18, 2012

BACKGROUND:

The Water Section of the Public Works Department has been leasing property for the Cherry Avenue Pump Station from the Keizer Lions Club since 1982. The leased property is a 50' x 50'p parcel (2,500 sq. ft.) where the existing pump station is constructed. The current lease with the Lion's Club expires in October of 2012.

Since it made sense to purchase the parcel, staff suggested moving forward in that manner. After receiving verbal agreement with the club, the Legal Department prepared a sale agreement. Staff has received the sale agreement signed by the Lion's for the purchase of this property (see attached Resolution). This purchase is contingent upon the approval of a partition to create the parcel we are proposing to purchase and the ratification of the purchase by the City Council. The City will also pay for the costs associated with the partition including the necessary survey work and recording fees to create the parcel we are purchasing.

FISCAL IMPACT:

The purchase price of the property (\$25,000) plus costs associated with partitioning the property, and surveying and closing costs totals \$31,500. \$3,200 of appropriation is available in the Well Property Lease line item and \$28,300 is available from contingency in the Water Fund to pay for this purchase.

RECOMMENDATION:

Staff recommends the City Council adopt the attached Resolutions in the following order:

1. Resolution Authorization for Supplemental Budget;
2. Resolution Authorizing the City Manager to Enter into a Sale Agreement and Receipt for Earnest Money to Purchase a Portion of Property Located at 4100 Cherry Avenue Northeast, Keizer, Marion County, Oregon (Keizer Lion's Club).

Please contact us with any questions or concerns.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R2012-_____

**AUTHORIZATION FOR SUPPLEMENTAL BUDGET
CHERRY AVENUE PUMP STATION**

WHEREAS ORS 294 provides that a supplemental budget may be adopted when an occurrence or condition which had not been ascertained at the time of the preparation of a budget for the current year which requires a change in financial planning.

WHEREAS the City has a signed agreement with the Lion's Club for the purchase of property for the Cherry Avenue Pump Station.

WHEREAS purchasing this property, as opposed to perpetually leasing, is cost effective to the City in the long run.

WHEREAS sufficient unused appropriation in the Property Lease line item and contingency within the Water Fund is available for this purchase.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Keizer, that the following appropriations be made for fiscal year ending June 30, 2013:

	Adopted/ Amended Budget	Adjustment		Revised Budget
		Increase	Decrease	
Water Fund				
Capital Outlay	100,800	31,500		132,300
Materials & Services	1,039,200		(3,200)	1,036,000
Contingency	107,400		(28,300)	79,100

PASSED this _____ day of _____, 2012

SIGNED this _____ day of _____, 2012

Mayor

City Recorder

1 CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

2
3 Resolution R2012-____

4
5 AUTHORIZING THE CITY MANAGER TO ENTER INTO A SALE
6 AGREEMENT AND RECEIPT FOR EARNEST MONEY TO
7 PURCHASE A PORTION OF PROPERTY LOCATED AT 4100
8 CHERRY AVENUE NORTHEAST, KEIZER, MARION COUNTY,
9 OREGON (KEIZER LIONS CLUB, INC.)

10
11 WHEREAS, the City has been leasing a portion of property located at 4100

12 Cherry Avenue Northeast, Keizer, Marion County, Oregon for use as a public water well
13 site;

14 WHEREAS, the lease was close to expiration and staff raised the issue of
15 purchasing the property and the Keizer Lions Club, Inc. has agreed to sell the property to
16 the City;

17 WHEREAS, it is appropriate and necessary for the City to acquire the real
18 property for its continued use as a public water well site;

19 WHEREAS, the City wishes to move forward with such purchase;

20 NOW, THEREFORE,

21 BE IT RESOLVED by the City Council of the City of Keizer that the City
22 Manager is hereby authorized to enter into that certain Sale Agreement and Receipt for
23 Earnest Money, a copy of which is attached hereto and by this reference incorporated
24 herein.

1 BE IT FURTHER RESOLVED that the purchase price and expenses of the
2 transaction shall be paid from the Water Fund.

3 BE IT FURTHER RESOLVED that the City Manager is hereby authorized to take
4 all actions necessary and appropriate to consummate the transaction as contemplated
5 therein.

6 PASSED this _____ day of _____, 2012.

7

8 SIGNED this _____ day of _____, 2012.

9

10

11

Mayor

12

13

14

City Recorder

**SALE AGREEMENT AND
RECEIPT FOR EARNEST MONEY**

DATE: _____, 2012 (Effective Date)

SELLER: KEIZER LIONS CLUB, INC.,
an Oregon non-profit corporation
who acquired title as Keizer
Auditorium, Inc., an Oregon
corporation
6197 Lakeshore Ct N
Keizer, OR 97303

BUYER: CITY OF KEIZER, an Oregon
Municipal Corporation
930 Chemawa Road NE
PO Box 21000
Keizer, OR 97307

RECITAL:

Seller desires to sell to Buyer and Buyer desires to purchase from Seller certain real property currently used for well/pump house purposes by Buyer and located in Keizer, Marion County, Oregon, having the following legal description (the "Property"):

[A portion of property approximately 2500 square feet in area, located at 4100 Cherry Avenue NE, Keizer, Oregon together with a nonexclusive access easement for the purposes of ingress and egress only (exact legal to follow). **APPROXIMATE LOCATIONS AS SHOWN ON ATTACHED EXHIBIT "A" AND "B".**]

AGREEMENT:

Now, therefore, for valuable consideration, the parties agree as follows:

1. **Sale and Purchase.** Buyer agrees to purchase the Property from Seller and Seller agrees to sell the Property to Buyer for the sum of \$25,000.00 (the "Purchase Price").
2. **Earnest Money.** Buyer shall pay the sum of \$1,000.00 as earnest money within ten (10) days of Buyer's execution of this Agreement. The earnest money shall be deposited with escrow and shall be applied to the Purchase Price on the Closing Date, as that term is defined below.
3. **Payment of Purchase Price.** The Purchase Price shall be paid as follows:

3.1 At closing, the earnest money shall be credited to the Purchase Price.

3.2 At closing, Buyer shall pay the balance of the purchase price in cash.

4. **Closing.** Closing shall take place on or before March 27, 2013 (the "Closing Date"), at the offices of Fidelity National Title Company of Oregon (the "Title Company").

5. **Preliminary Title Report.** Within ten (10) days of deposit of the earnest money with escrow, Buyer will order a preliminary title report showing the condition of title to the Property, together with copies of all exceptions listed therein (the "Title Report"). Buyer will have ten (10) days from receipt of the Title Report to review the Title Report and to notify Seller, in writing, of Buyer's disapproval of any special exceptions shown in the Title Report. Buyer shall not be required to notify Seller with regard to any trust deed or mortgage or other monetary lien which will be presumed disapproved. Those exceptions the Buyer does not object to are referred to below as the "Permitted Exceptions." Zoning ordinances, building restrictions, taxes that are not yet paid for the current tax year, and reservations in federal patents and state deeds will be deemed Permitted Exceptions. If Buyer notifies Seller in writing of disapproval of any exceptions, Seller will have ten (10) days after receiving the disapproval notice to either remove the exceptions or provide Buyer with reasonable assurances of the manner in which the exceptions will be removed before the transaction closes (the "Seller Assurance Period"). If Seller does not remove the exceptions or provide Buyer with such assurances, Buyer may terminate this Agreement by written notice to Seller given within ten (10) days after expiration of the Seller Assurance Period, in which event the earnest money will be refunded to Buyer and, when applicable, this Agreement will be of no further binding effect.

6. **Buyer's Conditions:**

6.1 Buyer's obligation to purchase the Property is contingent on satisfaction of each of the following conditions:

6.1.1 Buyer's approval of the preliminary title report pursuant to Section 5.

6.1.2 Buyer's acceptance of any adverse conditions noted in any inspections, studies, surveys or tests conducted on the Property. Buyer shall have the right, at its expense, to conduct any such inspections, studies, surveys and tests, and Seller agrees to reasonably accommodate such inspectors. Buyer shall be deemed to have accepted any and all adverse conditions if Buyer fails to notify Seller in writing on or before twenty (20) days from the Effective Date.

6.1.3 Adoption of a Resolution by the Keizer City Council ratifying this Sale Agreement and Receipt for Earnest Money on or before November 6, 2012.

6.1.4 Final approval of the partition process to create a legal lot.

6.1.5 Seller's execution of an access easement granted or reserved to Buyer.

The foregoing conditions are for the benefit of Buyer and may be waived, in whole or in part, by Buyer only. Any waiver must be in writing. Unless waived, if any condition is not satisfied by the date specified, this Agreement may be terminated, at the option of Buyer, by written notice, in which event the earnest money shall be refunded to Buyer.

7. Buyer's Covenants. Buyer covenants that, not later than November 16, 2012, Buyer will initiate the process for a partition of the Property. Buyer shall pay for the fees required to begin the partition process. Seller agrees to reasonably cooperate with Buyer, at no expense to Seller, in the partition process, including, but not limited to signing the application and other required documents.

8. Granting of Partition. Seller understands and agrees that Buyer, as a governmental body, cannot and should not commit in advance to the granting of a partition, as there is a separate process to make such decisions, and it is inappropriate for Buyer herein to agree in advance to such granting of the partition.

9. Survey. Buyer will obtain the necessary surveys required for the partition process including acquiring the legal description for the Property. Buyer shall pay the costs involved in obtaining the surveys.

10. Marketable Title; Deed. On the Closing Date, Seller will convey marketable title to the Property by statutory warranty deed, free and clear of all liens of record, excepting property taxes that are not yet payable, zoning ordinances, building and use restrictions, reservations in federal patents, and the Permitted Exceptions.

11. Title Insurance. Within fifteen (15) days after closing, the Title Company shall furnish Buyer with an owner's policy of title insurance in the amount of the purchase price, insuring Buyer as the owner of the Property subject only to the usual printed exceptions and the Permitted Exceptions.

12. Costs and Expenses. Buyer shall pay all premiums for the title insurance policy, all escrow fees and costs, all document recording charges, and Buyer's share of prorations. Seller shall pay for Seller's share of prorations. Seller and Buyer shall each pay their own legal and professional fees respectfully. All other costs and expenses shall be allocated between Seller and Buyer in accordance with the customary practice in Marion County, Oregon.

13. Taxes; Prorates. Real property taxes for the current tax year and other usual items must be prorated as of the Closing Date.

14. Possession. Buyer will be entitled to possession and continued use of the Property upon full execution of this Agreement. Should the transaction not close as scheduled, Buyer shall continue to be entitled to possession for three (3) months following the Closing Date or any extension thereof, without waiver of any and all rights Buyer may have.

15. Property Included. A pump house, well, equipment and piping have been constructed on the subject Property by the City of Keizer as the tenant under the current lease and shall remain the property of Buyer upon full execution of this Agreement. No other fixtures or other property is included as part of the Property being sold to Buyer.

16. Personal Property. No personal property is included as part of the Property being sold to Buyer.

17. Seller's Representations. Seller represents and warrants to Buyer as follows:

(1) Seller has received no written notice of any liens to be assessed against the Property.

(2) Seller has received no written notice from any governmental agency of any violation of any statute, law, ordinance, or deed restriction, rule, or regulation with respect to the Property.

(3) Seller is not a *foreign person* as that term is defined in IRC §1445(f)(3). On the Closing Date, Seller will execute and deliver to Buyer a certification of nonforeign status on a form required by the IRS.

(4) The Property has never been used for the storage or disposal of any hazardous material or waste. No environmentally hazardous materials or wastes are contained on or under the Property and the Property has not been identified by any governmental agency as a site on which environmentally hazardous materials or wastes have been or may have been located or deposited.

(5) The property is not a wetland.

All representations and warranties contained in this Agreement will survive closing and the conveyance of the Property to Buyer. All representations are made as to the best of Seller's actual knowledge only.

Pursuant to ORS 105.465(1)(a), Buyer hereby indicates to the Seller, and such indication is conclusive, that the real property will be used for purposes other than a residence for the Buyer or the Buyer's spouse, parent or child and the property is unimproved. Therefore, a statutory seller's disclosure or disclaimer form is not required.

18. Buyer Held Harmless as Municipal Government. Seller agrees and understands that Buyer's responsibility and obligations under this Agreement do not and cannot bind Buyer as to its duties as municipal government which are necessarily separate and apart from its obligations hereunder. To that end, with regard to any actions that may affect Seller's operation of the Property in any manner whatsoever, Seller agrees that enforcement in good faith of any lawful ordinances or regulations or any other acts Buyer may take with regard to the adoption of appropriate and necessary laws and ordinances, or any other acts Buyer may take in

its role as municipal government shall not be restricted by the fact that Buyer entered into this Agreement. However, nothing in this Section shall be interpreted to permit Buyer to act or fail to act in any way inconsistent with any common law, constitutional or statutory rights of Seller or the established duties and obligations of Buyer as a municipal body. This provision shall survive closing and shall not merge with the deed.

19. Binding Effect/Assignment Restricted. This Agreement is binding on and will inure to the benefit of Seller, Buyer, and their respective heirs, legal representatives, successors, and assigns.

20. Remedies. TIME IS OF THE ESSENCE REGARDING THIS AGREEMENT. If the conditions described in Section 6 above are satisfied or waived by Buyer and the transaction does not thereafter close, through no fault of Seller, before the close of business on the Closing Date, Buyer shall forfeit the earnest money deposit to Seller as liquidated damages, and this Agreement shall be of no further effect, it being the intention of the parties that Buyer may forfeit the earnest money and be free of any further obligations under this Agreement. If Seller fails to deliver the deed described in Section 10 above on the Closing Date or otherwise fails to consummate this transaction through no fault of Buyer, all earnest money must be refunded to Buyer, but acceptance by Buyer of the refund will not constitute a waiver of the right to pursue any other remedy available to it at law or equity, including the specific performance of this Agreement.

21. Attorney Fees. If an action is instituted to enforce or interpret any term of this Agreement, the prevailing party will recover from the losing party reasonable attorney fees incurred in the action as set by the trial court or arbitrators, as the case may be, and, in the event of appeal, as set by the appellate courts.

22. Notices. All notices and communications in connection with this Agreement must be given in writing and will be delivered personally or transmitted by certified or registered mail, return receipt requested, to the appropriate party at the address first set forth above. Any notice so transmitted will be deemed effective on the date delivered personally or it is placed in the United States mail, postage prepaid. Either party may, by written notice, designate a different address for purposes of this Agreement.

23. Entire Agreement. This Agreement sets forth the entire understanding of the parties with respect to the purchase and sale of the Property. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties. This Agreement may not be modified or amended except by a written agreement executed by both parties.

24. Applicable Law. This Agreement will be construed, applied, and enforced in accordance with the laws of the state of Oregon.

25. **Acceptance.** This Agreement shall be null and void unless accepted by Seller, by Seller's execution of it, on or before October 10, 2012. Buyer may not revoke this offer prior to such date.

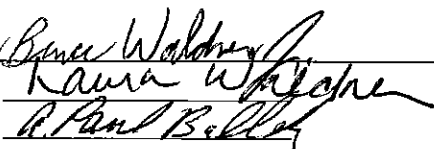
26. **Statutory Warning.** THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

27. **Agreement Preparation.** Seller understands that E. Shannon Johnson, Keizer City Attorney, prepared this Agreement on behalf of the Buyer and in no way represents the Seller. Seller is advised to seek independent legal counsel.

SELLER:

KEIZER LIONS CLUB, INC.

By:

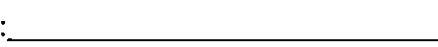


Dated: Oct. 16, 2012

BUYER:

CITY OF KEIZER

By:


Christopher C. Eppley
City Manager

Dated: _____, 2012

JOHN FORCE DLC

1514.00'
S12°53'E

20.50'
N89°45'E

REEL 1499
PAGE 303

S42°07'E
124.92'

658.67
N89°45'00"E

REEL 517 PAGE 242

50.00'
S12°53'E

50.00'
S77°07'W

50.00'
N12°53'W

50.00'
N77°07'E

CHERRY AVE. N.E.

OLD ROW LINE

C.O.S. 20' SEWER & WATER
EASEMENT

691.70
S55°25'00"W



SCALE 1"=50'

Exhibit "A"

1514.00'
S12°53'E
JOHN FORCE DLC

20.50'
N89°45'E

REEL 1499
PAGE 303

658.67
N89°45'00"E

REEL 517 PAGE 242

CHERRY AVE. N.E.

OLD ROW LINE

30.00'
S12°53'E

44.81'
N77°07'E

50.00'
N77°07'E

30.00'
N12°53'W

S42°07'E
124.92'
S77°07'W
94.81'

C.O.S. 20' SEWER & WATER
EASEMENT

691.70
S55°25'00"W



SCALE 1"=50'
Exhibit "B"

CITY COUNCIL MEETING: November 5, 2012.

AGENDA ITEM NUMBER: _____

TO: MAYOR CHRISTOPHER AND CITY COUNCIL MEMBERS

**THROUGH: CHRIS EPPLEY
CITY MANAGER**

**FROM: BILL LAWYER
PUBLIC WORKS DIRECTOR**

SUBJECT: NAMING OF COMMUNITY GARDEN

DATE: October 18, 2012

BACKGROUND:

In 2011 staff was contacted by a resident, in cooperation with the Marion and Polk Food Share (MPFS), regarding establishing a community garden in the unimproved right of way known as Brandon Avenue. After researching the appropriateness of this use of the right of way and receiving comments from the neighbors near this site staff proposed locating a community garden at Chalmers Jones Park next to the Carlson Skate Park parking lot. This proposal was well received and MPFS developed a site plan which was approved by staff. During the summer months of 2012 MPFS installed raised planting beds, chips for surfacing the area around the beds, and an arbor on the site.

At the October 9, 2012 Parks Advisory Board meeting, Ian Dixon-McDonald with MPFS presented a request to name this community garden the Rickman Community Garden. The Parks Board unanimously passed a motion recommending the City Council approve the naming of the community garden as requested. This recommendation from the Parks Advisory Board is consistent with the criteria for naming rights outlined in Resolution R2009-1917.

MPFS will provide and install a 3' by 3' sign with the City of Keizer logo, the MPFS logo and provide space to recognize other major contributors to the garden.

FISCAL IMPACT:

There is no fiscal impact to the City as all materials and labor are being donated.

RECOMMENDATION:

Staff recommends City Council adopt the attached resolution naming the community garden located at Chalmers Jones Park the “Rickman Community Garden.”

Please contact me with any questions or concerns.

1 CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

2
3 Resolution R2012-_____

4
5 NAMING THE COMMUNITY GARDEN LOCATED AT
6 CHALMERS JONES PARK THE "RICKMAN COMMUNITY
7 GARDEN"

8
9 WHEREAS, one of the most visible forms of acknowledgement is the naming of

10 a facility within a park;

11 WHEREAS, Resolution No. R2009-1917 provides a process to recognize and

12 acknowledge donations;

13 WHEREAS, a request was made to the Keizer Parks Advisory Board to name the

14 community garden located at Chalmers Jones Park the "Rickman Community Garden";

15 WHEREAS, the Keizer Parks Advisory Board solicited public input, discussed

16 the suggested naming, and voted to recommend the City Council name the community

17 garden located at Chalmers Jones Park the "Rickman Community Garden";

18 NOW, THEREFORE,

19 BE IT RESOLVED by the City Council of the City of Keizer that the community

20 garden located at Chalmers Jones Park is hereby named "Rickman Community Garden."

21 ///

22 ///

23 ///

1 BE IT FURTHER RESOLVED that the City Manager is authorized to take any
2 and all action necessary to place signage and map designations to recognize the
3 “Rickman Community Garden”, without expenditure of any City funds.

4 PASSED this _____ day of _____, 2012.

5
6 SIGNED this _____ day of _____, 2012.

7

8

9

Mayor

10

11

12

City Recorder

CITY COUNCIL MEETING: November 5, 2012

AGENDA ITEM NUMBER:_____

TO: MAYOR CHRISTOPHER AND COUNCIL MEMBERS

THROUGH: CHRISTOPHER C. EPPLEY, CITY MANAGER

FROM: E. SHANNON JOHNSON, CITY ATTORNEY

**SUBJECT: KEIZER CHAMBER OF COMMERCE AGREEMENT FOR
EXHIBITION OF CITY-OWNED PROPERTY**

The Keizer Chamber of Commerce appeared before the City Council at its October 1, 2012 meeting requesting that the City loan property known as “Wallace House plaque” and “Thomas Dove Keizur on a Morgan Horse Maquette” to the Chamber for its interpretative center. The Chamber would be responsible for transportation and installation of the property. In addition, the Chamber would be responsible for providing insurance for the property.

Staff has contacted the Keizer Parks Foundation as directed by the City Council and it has indicated that the Wallace House plaque was gifted to the City and the City may take any action it deems appropriate. Therefore, I have drafted an Agreement for the exhibition of the City-owned property. The term is for two years with an automatic two year renewal unless written notice is delivered to the other party. Such agreement is attached to the enclosed Resolution for your review.

RECOMMENDATION:

Adopt the attached Resolution authorizing the City Manager to enter into the Agreement for Exhibition of City-Owned Property.

Please contact me if you have any questions in this regard. Thank you.

ESJ/tmh

1 CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

2
3 Resolution R2012-_____

4
5 AUTHORIZING THE CITY MANAGER TO ENTER INTO
6 AGREEMENT FOR EXHIBITION OF CITY-OWNED PROPERTY
7 WITH KEIZER CHAMBER OF COMMERCE
8

9 WHEREAS, the Keizer Chamber of Commerce is developing an interpretive
10 center at 6075 Ulali Drive NE, Suite 102, Keizer, Oregon;

11 WHEREAS, the interpretive center will promote awareness and community
12 education relating to Keizer's history;

13 WHEREAS, the Keizer Chamber of Commerce desires to display City-owned
14 property known as "Wallace House plaque" and "Thomas Dove Keizur on a Morgan
15 Horse Maquette";

16 WHEREAS, the City Council wishes to loan such City-owned property to the
17 Keizer Chamber of Commerce to display in its interpretive center;

18 NOW, THEREFORE,

19 ///

20 ///

21 ///

22 ///

23 ///

1 BE IT RESOLVED by the City Council of the City of Keizer that the City
2 Manager is authorized to enter into the Agreement for Exhibition of City-Owned
3 Property with the Keizer Chamber of Commerce, a copy of which is attached hereto and
4 by this reference incorporated herein.

5 PASSED this _____ day of _____, 2012.

6

7 SIGNED this _____ day of _____, 2012.

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9

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Mayor

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13

City Recorder

AGREEMENT FOR EXHIBITION OF CITY-OWNED PROPERTY
CITY OF KEIZER, OREGON

This agreement, made and entered into the 29 day of 10-2012, 2012, by and between the City of Keizer, an Oregon municipal corporation (referred to herein as "the City") and the Keizer Chamber of Commerce, an Oregon corporation (referred to herein as "the Chamber").

WHEREAS, the Chamber wishes to display City's property known as "Wallace House plaque" and "Thomas Dove Keizer on a Morgan horse Maquette" (collectively together entitled "City's property") at its interpretative center located at 6075 Ulali Drive NE, Suite 102, Keizer, Oregon, and the City is willing to loan City's property and authorize such public display in accordance with the agreements set forth herein;

THE PARTIES AGREE AS FOLLOWS:

1. Immediately following execution of this Agreement by the City, the Chamber is authorized to display for the public those items set forth in Exhibit "A" attached hereto and by this reference incorporated herein.
2. The location selected for the public display of City's property is 6075 Ulali Drive NE, Suite 102, Keizer, Oregon ("Site").
3. The Chamber agrees to transport and install City's Property at no expense of the City. Except as provided in paragraph 8 below, City's property shall remain the property of the City. However, by virtue of this Agreement, the Chamber is entitled to possession of the City's property, and the City agrees to relinquish possession of City's property, from the date of this agreement until the end of the Exhibition Period described in paragraph 7 below.
4. At the end of the Exhibition Period, the Chamber agrees to remove City's property from the Site and return it to the City in the same condition as existed prior to removal of City's property.
5. Transportation of City's property to and from the Site, proper installation, and all associated costs and expenses, shall be the responsibility of the Chamber.
6. During the Exhibition Period, the Chamber shall be responsible for all cleaning, maintenance and upkeep of City's property.

7. The "Exhibition Period" means a period beginning with the date of this Agreement and ending November 5, 2013, subject to renewal as set forth herein. The Exhibition Period may be shortened by thirty (30) days written notice. This Agreement will automatically extend for an additional two (2) year period unless written notice is delivered to the other party thirty (30) days prior to the termination date.

8. The City may sell City's property at any time during the Exhibition Period and, if so sold, may assign its right under this Agreement to remove City's property at the end of the Exhibition Period. Under no circumstances shall sale of City's property terminate this Agreement or adversely affect the party's rights hereunder, including, but not limited to the Chamber's right of possession during the Exhibition Period. Nevertheless, the parties may mutually agree in writing that the City may remove a sold City's property prior to the expiration of the Exhibition Period. The City agrees to promptly provide the Chamber written notice of any sale of City's property, including designation of the party to whom City's property should be released upon expiration or other termination of the Exhibition Period.

9. The City hereby grants the Chamber, in perpetuity, the right to photograph, film, videotape, or otherwise to record or depict City's property at any time during the Exhibition Period and to use such photographs, films, videotapes, records or depictions at any time thereafter for the purpose of promotion of the Interpretative Center or of the Chamber, provided that the Chamber gives artistic credit to the Artist concurrently with such use.

10. The Chamber shall insure City's property against damage or loss for no less than \$4,200.00, which amount the parties agree is the fair market value of City's property. Certificates evidencing such coverage shall be delivered to the City prior to transportation of City's property to the Site and immediately upon renewal of each term of such coverage. The Chamber's obligation to provide insurance is solely for the duration of the Exhibition Period and only when City's property is located at the Site and during any transportation of City's property. The City shall have no liability for damage or destruction that may occur during transportation to or from the Site, during installation, during display, or during removal.

11. The Chamber agrees to indemnify and hold the City harmless from any and all claims, losses, damages, injuries and/or liabilities of any kind whatsoever, including reasonable attorney fees and costs, arising out of or related to the transportation, installation or removal of City's property, or arising out of or related to any defects of City's property, faulty workmanship of the Artist or any acts of negligence by the City, the City's agents or employees.

12. This Agreement may be terminated at any time by mutual written consent of the parties.

13. Except for assignment to a purchaser of the right to remove City's property after the Exhibition Period as provided in paragraph 8 above, this Agreement is not assignable by the Chamber, either in whole or in part, without the prior written consent of the City. The City and the Chamber are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any enforceable benefit or right, whether directly, indirectly, or otherwise, to third persons.

14. The failure of the City to enforce any provision of this Agreement shall not constitute a waiver by the City of that or any other provision.

15. This Agreement represents the entire and integrated Agreement between the City and the Chamber, and supersedes all prior negotiations, representations or agreements, either written or oral relating to City's property. This Agreement may be amended only by written instrument signed by both the Chamber and the City.

KEIZER CHAMBER OF COMMERCE,
An Oregon corporation

By: _____

Rob Miller,
President

DATED: 10-28-12

6075 Ulali Drive NE, Suite 102
Keizer, OR 97303

503-393-9111

CITY OF KEIZER, an Oregon
Municipal corporation

By: _____

Christopher C. Eppley,
City Manager

DATED: _____

PO Box 21000
Keizer, OR 97307

503-390-3700

APPROVED AS TO FORM:

City Attorney

EXHIBIT "A"

1. Title of City's property: Wallace House Plaque
2. Medium of City's property (provide additional detail as needed for public safety):
Historical Marker enclosed in hard clear plastic
3. Approximate dimensions of City's property (height, width, depth, and estimated weigh): 36" ht. 48" wd. 1/8" dpt. 5 lbs.
4. Market value of City's property at time of this Agreement: \$2,000.00.
5. Suggested maintenance procedures, including any special materials to be used and the process: damp cloth – no cleaners

Dated: 10-29-2012

EXHIBIT "A"

1. Title of City's property: Thomas Dove Keizur on a Morgan horse Maquette
2. Medium of City's property (provide additional detail as needed for public safety):
Bronze
3. Approximate dimensions of City's property (height, width, depth, and estimated weigh): 26" ht. 24" wd. 10" dpt. Approximately 100 lbs.
4. Market value of City's property at time of this Agreement: \$2,200.00.
5. Suggested maintenance procedures, including any special materials to be used and the process: Dry Cloth Only

Dated: 10-29-2012



MINUTES
KEIZER CITY COUNCIL/PARKS ADVISORY BOARD
WORK SESSION
Tuesday, September 11, 2012
Keizer Civic Center
Keizer, Oregon

CALL TO ORDER The Work Session was called to order at 5:45 in Room A of the Civic Center. The following were present:

Councilors:

Lore Christopher, Mayor
Cathy Clark, Councilor
Brandon Smith, Councilor
David McKane, Councilor
Mark Caillier, Councilor
Jim Taylor, Councilor

Absent:

Joe Egli, Councilor

Parks Advisory Board:

Jeanne Bond-Esser
Clint Holland
Rick Day
Jason Bruster
Richard Walsh
James Parent
Robert Jones
David Loudon

Absent:

Danny Boyd

Also Attending:

Marlene Quinn
Ken LeDuc
Matt Chappell
J.T. Hager
Kurt Barker

Staff:

Bill Lawyer, Public Works
Terry Witham, Parks
Robert Johnson, Parks
Debbie Lockhart, Dep. City Rcdr.

Participants carpooled from the Keizer Civic Center.

**KEIZER LITTLE
LEAGUE
PARK**

Kurt Barker pointed out that the retaining wall between fields 6 and 7 needed repair. The fences are leaning out and the old power/phone poles are deteriorating and pushing out at an angle so that the upper fences cannot stand upright. Options for repair were discussed including using blocks similar to those at the water tower and amphitheater and using demo concrete to make a riprap wall. David Loudon volunteered to do a survey for the retaining wall repair. Mr. Barker noted that the fence should be 8 feet tall so that the shorter field can qualify for tournaments. After the wall between fields 6 and 7 is repaired, all the retaining walls would need to be repaired starting with the one by the driveway/parking lot. Also in need of repair is the small pump. Currently only the large pump is operational. Discussion took place regarding the cost to hook into City water versus repairing the pump, using the fields for adult leagues, allowing the sale of alcohol at adult games to generate more income, and serving as an overflow for tournaments at Wallace Marine Park.

The following actions were planned:

- Rick Day, Clint Holland, Councilor Clark and Kurt Barker will work together to determine what free or low cost materials can be obtained and what labor costs will be necessary to repair and/or replace the retaining wall.
- Mr. Lawyer will work with City staff to determine the cost and best method

of providing water to KLL Park (abandoning the pump house and well). The water would be provided to the park at no cost.

- Mr. Lawyer will contact the consultant who prepared the last system development charges (SDC) methodology report to determine what steps and costs are necessary to amend the SDC methodology to include the Little League Park. This could free up some additional annual funding.

KEIZER RAPIDS PARK

Disc Golf Course: Jason Bruster led the group to one of the poured-in-place tee pads noting that the next step will be to get signage for each of the 18 holes but that cannot be done until a survey is done. David Loudon volunteered to do the survey. Mr. Bruster added that safety signs and parking signs are also needed. Mayor Christopher encouraged Mr. Bruster to make an itemized list of the signs needed before approaching Council for funding. Discussion then took place regarding using goats to clean out the brush. Jason thanked Rick Day and Advantage PreCast for providing the tee pads.

Boat Ramp: Bill Lawyer explained that the upper part of the boat ramp was not under water in the 1996 flood; this boat ramp will provide access to the river when Wallace Marine Park is under water and will be open year round. He provided an update on the construction process, noted that it is a single-lane ramp similar to that at Rogers Landing and explained how the floats and pilings work. He added that the hope is for construction of the boat ramp and parking and roadway paving to be complete by the end of November.

Mr. Walsh directed attention to the area set aside for the playground.

WALLACE HOUSE PARK

Participants took the new river trail made by Schaffer Jones for his Eagle Scout project. Terry Witham noted that Schaffer was the “best Eagle Scout ever” and “presidential material”. Mr. Walsh added that thanks to Schaffer the City now has a new 10-acre riverfront park. Mayor Christopher suggested that perhaps pieces of land could be purchased from owners to make the park contiguous.

On the upper level, it was noted that the osprey has moved its nest so perhaps the snag should be removed before it falls.

ADJOURNMENT Meeting concluded at Wallace House Park at 7:30 p.m.

ADJOURN Meeting adjourned 7:10

APPROVED:

MAYOR:

Lore Christopher

Debbie Lockhart, Deputy City Recorder

COUNCIL MEMBERS

Councilor #1 – David McKane

Councilor #4 – Cathy Clark

~ Absent ~

Councilor #2 – Brandon Smith

Councilor #5 – Joe Egli

Councilor #3 – Mark Caillier

Councilor #6 – James Taylor

Minutes approved:



MINUTES
KEIZER CITY COUNCIL
Monday, October 15, 2012
Keizer Civic Center, Council Chambers
Keizer, Oregon

CALL TO ORDER

Mayor Christopher called the meeting to order at 7:00 p.m. Roll call was taken as follows:

Present:

Lore Christopher, Mayor
Cathy Clark, Council President
Brandon Smith, Councilor
David McKane, Councilor
Jim Taylor, Councilor
Joe Egli, Councilor
Mark Caillier, Councilor

Staff:

Chris Eppley, City Manager
Shannon Johnson, City Attorney
Nate Brown, Community Development
Bill Lawyer, Public Works Director
Captain Jeff Kuhns, Police
Tracy Davis, City Recorder

FLAG SALUTE

Mayor Christopher led the pledge of allegiance.

**PUBLIC
TESTIMONY**

Stephanie Bojorquez, Keizer, representing the Keizer Little League, requested that the agenda item relating to the Park Management Agreement with Keizer Youth Sports and Keizer Little League be postponed until the KLL Board could review it at their October 21 Board meeting. She confirmed that the terms of the agreement would not change significantly.

Greg Rands, Keizer, provided the Planning Commission report noting that the Commission recommended Council approval of the vision clearance text amendment. He provided detailed information about the amendment and exemptions.

Brad Coy, Keizer, Vice President of the Gubser Neighborhood Association, invited everyone to the upcoming candidate fair sponsored by the Association. He also announced that the neighborhood had just kicked off "Next Door Gubser" which is an online community website and a great tool for every neighborhood. Captain Kuhns provided additional information about the program noting that it is a social networking page for specific neighborhoods.

Richard Walsh, Keizer, provided the Parks Board report regarding: a request for access to Northridge Park which is reportedly blocked by auxiliary buildings belonging to nearby homes; progress on the

Willamette Manor play structure; a grant application for a play area at Keizer Rapids Park; funding for improvements at the Keizer Little League Park; and naming of the community garden on Rickman. He concluded his report noting that movie night was a success with about 350 attending.

PUBLIC HEARING None

ADMINISTRATIVE ACTION

a. RESOLUTION – Authorizing the City Manager to Execute Park Management Agreement

Councilor Clark moved that the Keizer City Council postpone to November 5, 2012 the Resolution Authorizing the City Manager to Execute Park Management Agreement with Keizer Youth Sports (KYSA) and Keizer Little League (KLL). Councilor McKane seconded. Motion passed unanimously as follows:

AYES: Christopher, Egli, Smith, McKane, Caillier, Taylor and Clark (7)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

b. RESOLUTION – Supporting Re-Routing Willamette Valley Scenic Bikeway through the City of Keizer (Amending Ordinance 94-286)

City Attorney Shannon Johnson reminded Council of the request from Eamon Bishop and Doug Parrow regarding rerouting a portion of the Willamette Valley Scenic Bikeway. Following review staff felt it was appropriate to come back with a formal resolution. The State designates the route, but the resolution is an endorsement of that rerouting.

Councilor Clark moved that the Keizer City Council adopt a Resolution Supporting Re-Routing Willamette Valley Scenic Bikeway through the City of Keizer (Amending Ordinance 94-286). Councilor Taylor seconded. Motion passed unanimously as follows:

AYES: Christopher, Egli, Smith, McKane, Caillier, Taylor and Clark (7)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

c. RESOLUTION – Supporting Plans for Placement of Plaque Commemorating Anna Maria Pittman on Property Owned by the City of Keizer

Mr. Johnson reminded Council that Michael Hickman from the Keizer Points of Interest Committee had recommended Council approval of a plaque commemorating Anna Maria Pittman to be placed on the Keizer Heritage leased ground. Staff felt it was appropriate to put this in a resolution. Keizer Heritage has indicated that they welcome this addition.

Councilor Clark moved that the Keizer City Council adopt a Resolution Supporting Plans for Placement of Plaque Commemorating Anna Maria Pittman on Property Owned by the City of Keizer. Councilor Taylor seconded. Motion passed unanimously as follows:

AYES: Christopher, Egli, Smith, McKane, Caillier, Taylor and Clark (7)

NAYS: None (0)

ABSTENTIONS: None (0)

ABSENT: None (0)

CONSENT CALENDAR

- A. RESOLUTION – Authorizing the City Manager to Enter Into Lease Agreement with Ricoh USA Inc., formerly IKON Office Solutions, for Police Department
- B. RESOLUTION – Appointing Keizer Hearings Officer Pro Tem
- C. RESOLUTION – Authorization for Expenditure of Sewer Acreage Fees
- D. Approval of September 10, 2012 Work Session Minutes
- E. Approval of September 11, 2012 Work Session Minutes
- F. Approval of September 17, 2012 Regular Session Minutes
- G. Approval of October 1, 2012 Regular Session Minutes

Items d, e, f and g were pulled.

Councilor Clark moved for approval of Items A, B and C of the Consent Calendar. Councilor Taylor seconded. Motion passed unanimously as follows:

AYES: Christopher, Egli, Smith, McKane, Caillier, Taylor and Clark (7)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

Councilor Clark moved for approval of Item D (9/10/12 Minutes) of the Consent Calendar. Councilor Smith seconded. Motion passed as follows:

AYES: Christopher, Egli, Smith, McKane, Caillier and Clark (6)
NAYS: None (0)
ABSTENTIONS: Taylor (1)
ABSENT: None (0)

Corrections were made to Item E (9/11/12 Minutes) of the Consent Calendar. These Minutes will be offered for approval at the next meeting.

Councilor Clark moved for approval of Item F (9/17/12 Minutes) of the Consent Calendar. Councilor Taylor seconded. Motion passed as follows:

AYES: Taylor, Egli, Smith, McKane, Caillier and Clark (6)
NAYS: None (0)
ABSTENTIONS: Christopher (1)
ABSENT: None (0)

Councilor Clark moved for approval of Item G (10/1/12 Minutes) of the Consent Calendar. Councilor Taylor seconded. Motion passed as follows:

AYES: Christopher, Egli, Smith, McKane, Taylor and Clark (6)
NAYS: None (0)
ABSTENTIONS: Caillier (1)
ABSENT: None (0)

COMMITTEE REPORTS

a. PROCLAMATION – United Way Day

Taken out of Order. Mayor Christopher read the proclamation declaring October 4 as United Way Day.

Mike DeRochier, Salem, Executive Director of United Way reviewed the history of the United Way organization, focused on a recent event which honored those who have supported the organization through difficult times, recognized various individuals, and explained some of the first happenings. He added that if one walked through the 75 year history of the organization, there are individuals, agencies and businesses that have been faithful throughout that time and \$60 million has been raised over 75 years.

OTHER COMMITTEE REPORTS

Councilor Egli reported that he had attended the Keizer Fire Department lunch with Councilor Clark. He added that 125 Lake Point Community Church Serve-Fest volunteers gave away approximately 8,000 articles of clothing, repaired 75 bicycles, gave 200 haircuts, manicured 2,000 fingernails, gave away 500 books, took 200 family photos and served over 2,000 meals.

Councilor Clark reported that she had attended the Mid-Willamette Area Commission on Transportation (MWACT) meeting and the Keizer Fire event for Fire Prevention Week where she talked with people from Keizer Library and Chemeketa Community Regional Library System (CCRLS) who were working together to promote literacy. She announced upcoming meetings including the Council of Governments Open House, the 4th Annual Re-entry Initiative Breakfast, and the Keizer Festivals and Events Services Team (K-FEST).

Councilor Taylor suggested that the Keizer Little League Park Task Force meet to review the new agreement and provide a recommendation. He also commended everyone responsible for the annual Serve-Fest.

Councilor Smith noted that the Parks Board report had already been given. He added that he had attended the recent Storm Water Advisory Committee meeting and a recommendation will be given to Council in November. He also noted the Economic Opportunities Analysis Task Force meeting date and time.

OTHER BUSINESS

City Recorder Tracy Davis announced that there are several volunteer openings in committees. She urged interested citizens to check the website for details.

Captain Kuhns recognized Officer Babcock for creating “Kixle” the City’s public alert system and Sergeant Lance Inman for his efforts in the Community Services Unit. He then reviewed various features available on the Keizer Police Department website, and invited everyone to the retirement party for Police K-9, Axel.

Councilor Smith noted that the extended barricade on Chemawa has succeeded in pushing the u-turns further down the road and questioned if

there was another remedy. Mr. Lawyer explained that the benefit of the barricades makes it safer for traffic coming off of Lockhaven but it is still a problem. Captain Kuhns explained that until Area C is fully developed and reconfiguration is permanent, the department will have to deal with this.

Community Development Director Nate Brown invited everyone to the ribbon cutting ceremony at the Keizer Rapids Boat Ramp. Mayor Christopher added that a boater who has floated the Willamette River for 20 years told her that the Keizer Rapids Boat Ramp is the best and safest ramp on the river and the ramp opens up two miles of river for everyone to enjoy. Mr. Brown and Mr. Lawyer then fielded questions regarding the floats and replacing the loose gravel in the area with riprap.

Mr. Brown continued his report noting that notices for the LUBA Remand on Area C on November 5 have been mailed out. This is the hearing to revise the Council decision on the Area C that was remanded to the City from the Land Use Board of Appeals. Included in the mailing was anyone who participated in the original hearing as well as all neighbors. It will be in the newspaper as well. He explained that the remand carries its own timeline so staff has been working on the issues and refining it; basically the process needs to be complete by December 10. Mr. Johnson added that Council will have two meetings in November to deal with this issue; the direction to prepare a resolution would be given at the second meeting in November and the resolution voted upon at the first meeting in December. He cautioned Council that this is a public hearing process so particulars should not be discussed prior to the hearing. Mr. Brown added that interested parties could view the plan in the office or on line. The hearing for the master plan is to deal with issues of the remand and is not a new decision. Only very specific issues will be considered.

Mr. Johnson urged everyone to provide their comments on the Keizer Little League Park Management Agreement to him right away since respective Boards will be reviewing it as well.

WRITTEN COMMUNICATIONS

None

AGENDA INPUT

November 5, 2012

7:00 p.m. – City Council Meeting

- Public Hearing – Keizer Station Area C Master Plan Remand

November 13, 2012 (Tuesday)

5:45 p.m. – City Council Work Session

- Stormwater Fee

November 19, 2012

7:00 p.m. – City Council Meeting

ADJOURNMENT With no further business, the meeting adjourned at 8:06 p.m.

APPROVED:

MAYOR:

Lore Christopher

Debbie Lockhart, Deputy City Recorder

COUNCIL MEMBERS

Councilor #1 – David McKane

Councilor #4 – Cathy Clark

Councilor #2 – Brandon Smith

Councilor #5 – Joe Egli

Councilor #3 – Mark Caillier

Councilor #6 – James Taylor

Minutes approved:

CITY COUNCIL MEETING: November 5, 2012

AGENDA ITEM NUMBER: _____

TO: MAYOR CHRISTOPHER AND CITY COUNCIL MEMBERS

**THROUGH: CHRIS EPPLEY
CITY MANAGER**

**FROM: TRACY L. DAVIS, MMC
CITY RECORDER**

SUBJECT: Storm Water Advisory Committee

ISSUE:

In December 2011, Dave Bauer resigned his position (#7) on the Storm Water Advisory Committee. Additionally, one position (#9) remained open as a result of the City Council revising the Keizer Storm Water Advisory Committee Resolution adding two citizen-at-large positions. A media release was distributed and one volunteer application was received from Michael DeBlasi.

At the October 18, 2012, meeting of the Volunteer Coordinating Committee, Mr. DeBlasi was interviewed and his application reviewed. The Volunteer Coordinating Committee recommends Michael DeBlasi for position #7 to serve the remaining portion of a three-year term, expiring December, 2014. Recruitment to fill the remaining position will continue.

RECOMMENDATION:

It is recommended the City Council accept the recommendation of the Volunteer Coordinating Committee and appoint Michael DeBlasi to fill position #7 on the Storm Water Advisory Committee to serve the remainder of the three-year term, expiring December, 2014.