CITY COUNCIL AGENDA PACKET

MONDAY, AUGUST 17th, 1998

- 7:00 P.M. CITY COUNCIL MEETING

Please contact Wally Mull, City Manager if you have any questions or need additional information regarding any of the staff reports or issues contained on the agenda.

CITY OF KEIZER MISSION STATEMENT

KEEP CITY GOVERNMENT COSTS AND SERVICES TO A MINIMUM BY PROVIDING CITY SERVICES TO THE COMMUNITY IN A COORDINATED, EFFICIENT AND LEAST COST FASHION

AGENDA

KEIZER CITY COUNCIL
Monday, August 17, 1998
7:00 p.m.
Robert L. Simon Council Chambers
Keizer City Hall, Keizer, Oregon 97303

1. CALL TO ORDER

2. ROLL CALL

3. PUBLIC TESTIMONY

   This time is provided for citizens to address the Council on matters not scheduled for public hearing or listed on the agenda.

4. COMMITTEE REPORTS

   a. Council Liaison Reports
      - Parks Advisory Board – Councilor Miller
      - Planning Commission – Council President Keller
      - Community Policing Committee – Councilor Whalen
      - Keizer Heritage (Old School) – Council President Keller

5. OTHER BUSINESS

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

   a. New Business

   b. Old Business Report

6. PUBLIC HEARINGS

   a. RESOLUTION – Forming Wittenberg Lane Street Lighting District
      ORDINANCE – Spreading Assessments to Wittenberg Lane Street Lighting District (continued from August 3, 1998)

7. ADMINISTRATIVE ACTION

a. Appeal of Hearings Officer Decision - Partition Case No. 97-22 (Chom Construction
Appeal of Hearings Officer Decision - Partition/Adjustment Case No. 98-03 (Chom Construction)

b. RESOLUTION – Authorizing City Manager to Enter Into Agreement to Purchase Country Glen Park

8. CONSENT CALENDAR

a. RESOLUTION – Initiating Forest Ridge Estates Street Lighting District

b. RESOLUTION – Initiating Wheatland Terrace Street Lighting District

c. RESOLUTION – Authorizing City Manager to Enter Into Agreement for Paving of Keizer Little League Park Southern Parking Lot

d. Approval of August 3, 1998 Special Session Minutes

e. Approval of August 10, 1998 Work Session Minutes

9. WRITTEN COMMUNICATIONS

To inform the Council of significant written communications and petitions.

a. Correspondence from Keizer Bikeways Committee
- Bike Lanes Cummings and Delight Streets

10. AGENDA INPUT

September 8, 1998 (Tuesday)
5:30 p.m. – Executive Session
- ORS 192.660(1)(I) – City Manager Evaluation

7:00 p.m. City Council Meeting
- Certification of Street Lighting Districts
- Certification of Delinquent Sewer Accounts

September 14, 1998
5:30 p.m. City Council Work Session
-

September 21, 1998
7:00 p.m. City Council Meeting
- Sanitary Sewer System Development Charge Amendment Public Hearing

11. ADJOURN

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

City of Keizer, Oregon

August 17, 1998

AGENDA ITEM 4a

COMMUNITY POLICING REPORT

DRAFT

COMMUNITY POLICING STRATEGIC PLAN

MISSION STATEMENT

The Mission of the Keizer Police Department is provide quality police services through community oriented policing.

VALUES

Communication
Communication is the open and honest exchange of information and ideas among the Police Department/City Government and the Community at all levels and is essential to effective community oriented policing.

Partnership
Partnership is the Police Department/City Government and the Community working together to identify and address the community concerns while upholding the law.

Problem Solving
Problem Solving is the investment of time and effort to prevent, eliminate or reduce the fear and incidence of crime

Empowerment
Empowerment gives the Police Department/City Government and the Community the ability to try new and non-traditional approaches to problem solving, in addition to those that are safe, proven, and traditional to address community concerns.

Responsibility
Responsibility is the expectation that the Police Department/City Government and the Community will be devoted to community policing through honest and committed effort in an open process.

GOALS AND STRATEGIES

This Strategic plan is a flexible document. New goals and strategies will be identified by the main committee or will be identified by district committees and forwarded to the main committee for further development. Some goals and strategies may be removed due to completion, or by a determination by the main committee that they are no longer necessary. Recommendations for additional goals and strategies are welcome from any source.

Objectives Completed:
- Prostitution Ordinance
- Renewal of Curfew/Truancy Ordinance
- Review of Staffing Levels
- Landlord Training

- Review of Prioritization of DA Case Load

GOAL: Make Community Policing an Effective Participant in Reducing Crime and Making Keizer a Safer Community

Strategy 1: Development and implementation of Community Policing Strategic Plan

Allows the Main Community Policing Committee to track and evaluate the projects taken on by community policing committees in conjunction with police department

Measurable Outcomes:

- Reduction of levels of crime in Keizer.
- Completion and approval of plan.
- Number of projects completed under the plan.

GOAL: Free sworn officers to engage in proactive policing

Strategy 1: False Alarms (Short Term)

Develop an ordinance that would penalize alarm owners for numerous false alarms. Potential penalties would include increased fines for each false alarm after the second false alarm

Measurable Outcomes:

- Decrease in number of false alarms
- Decrease in accidental alarms
- Decrease in number of faulty alarms

Strategy 2: Telephone Reporting Unit (Short Term)

Project would provide volunteers to handle certain calls for service by taking reports by phone if victim is willing to do so. Otherwise, police would respond on site as is currently done.

Measurable Outcomes:

- Number of calls handled by reporting unit
- Decrease in length of time to clear calls.

Strategy 3: Redundant Paperwork (Long Term)

Duplicative paperwork prevents sworn officers from responding to calls. Effort designed to eliminate or simplify paperwork where possible.

Measurable Outcomes:

- Decrease in % of staff hours for paperwork.

GOAL: Reduce Risk of Harm/Injury to Citizens

Strategy 1: Water Emergency Response (District 3)

Coordinate development of water emergency response plan for Statts Lake, Willamette River and other appropriate water sources. Statts Lake area has recently been developed and guard fences have been removed, making it more easily accessible to children for recreation despite no trespassing policies in place by the homeowners association. Potential long-term solution is the creation of a water rescue team. Efforts will initially target involving the homeowners association to watch the water and warn away children.

Expected Outcomes:

- Adoption of Emergency Response Plan.

Strategy 2: Target Traffic Enforcement in High Speed Areas at Peak Times (District 3 – Long Term)

Certain locations designated by their frequency of speeding will be targeted on a rotating basis to discourage speeding in those areas at peak times.
Purpose

Measurable Outcomes:

- Reduction in complaint calls.
- Reduction in traffic related injuries.
- Increase in number of towed vehicles.
- Lower number of speeding violations at targeted areas.

GOAL: Reduce Juvenile Crime and Juvenile Recidivism

Strategy 1: Peer Court (Long Term)

Purpose: To introduce sanctions for youth upon first offense.

Measurable Outcomes:

- Reduction of repeat juvenile offenders
- Reduction of juvenile crime rate

Strategy 2: Cadet Program (Being Implemented)

Purpose: Familiarize young people with law enforcement as a career choice and to support the police department in limited roles.

Measurable Outcomes:

- Number of community service hours provided
- Number of Cadets in Program
- Impact surveys from program participants, parents, officers

Strategy 3: After School Activities Plan

Develop a Proactive Plan for Juveniles During the Hours of 3pm and 6pm

Measurable Outcomes:

- Development of a plan
- Number of Juveniles who access activities
- Reduction of juvenile crime

Strategy 4: Education for Curfew/Truancy Ordinance (Being Implemented)

Project provides flyer and other informational materials to remind parent and students that curfew and truancy laws continue throughout the year.

Measurable Outcomes:

- Reduction of contacts resulting from curfew violations in comparison to same period of the previous year.

- Reduction of juvenile crime during curfew hours.

GOAL: Reduce Levels of Crime in "Hot Spots" by making it difficult for criminal activities to thrive

Strategy 1: Ordinance affecting chronic calls for service locations (District 1 – Long Term)
Purpose: Make it difficult for high crime areas to continue to foster criminal activity

Measurable Outcomes:
- Reduction in calls for service in areas designated as cronic location
- Reduce overall crime rate in grid where cronic location is present

GOAL: Provide Law Enforcement Tools to make them More Effective

Strategy 1: Curb Painting (District 2 – Short Term)
Project is designed to make addresses clearly visible from the street to allow quick identification of location by law enforcement and emergency response units.

Measurable Outcomes:
- Number of Curbs Painted
- Officer surveys on impact

Strategy 2: House Number Education (Short Term)
Education program to identify difficulty in reading address numbers on houses due to location of numbers, inadequate lighting, and poor paint schemes.

Measurable Outcomes:
- Number of Educational Materials Distributed
- Number of House Signs Changed

Strategy 3: Ordinance regarding open alcohol containers on private parking lots and public streets (District 3 – Long Term)
Currently, it is not illegal to possess an open alcohol container in public. This ordinance would restrict alcohol-related activities both on public streets and in private parking lots where such activities are likely to occur.

Measurable Outcomes:
- Decreased incidences of possession of open containers.
- Decreased incidence of Minors in possession of Alcohol

Strategy 4: Canine Unit (District 3 – Short Term)
Primarily a fundraising effort to fund a Canine unit capable of tracking and drug searches.
Purpose

Measurable Outcomes:
- Acquire Canine
- Train Officer
- Implement Program

Projects in Abeyance:
Citizen Patrols (Continued Review)
Citizen Academy (Continued Review)

City of Keizer, Oregon

August 17, 1998

AGENDA ITEM 6a

WITTENBERG STREET LIGHTING DISTRICT PUBLIC HEARING

COUNCIL MEETING: August 17, 1998

AGENDA ITEM NUMBER: 6a

TO: MAYOR KOHO AND CITY COUNCILOR MEMBERS

THROUGH: WALLY G. MULL
CITY MANAGER

FROM: TRACY L. DAVIS, CMC
CITY RECORDER

SUBJECT: Wittenberg Lane Street Lighting District

BACKGROUND:

On August 3, 1998 a public hearing was opened on the above entitled case and continued at the staff's request. Mr. Wittenberg is working with Peterson Engineering and Portland General Electric to change the design of the street lights. This will reflect the actual costs included in the Ordinance. At the time of the writing of this report, a report on the actual costs had not been received.

RECOMMENDATION:

It is recommended the Council continue the hearing until the September 8th, 1998 City Council meeting.

COUNCIL MEETING: August 3, 1998

AGENDA ITEM NO:_____

TO: **MAYOR KOHO AND CITY COUNCIL**

FROM: **WALLY G. MULL**
CITY MANAGER

THROUGH: **TRACY L. DAVIS, CMC**
CITY RECORDER

SUBJECT: **PUBLIC HEARING - To consider remonstrances or objections to formation of the Wittenberg Lane Street Lighting Local Improvement District and objections to an Ordinance spreading assessments to Wittenberg Lane Street Lighting Local Improvement District**

ISSUE

1. Shall the City Council form the Wittenberg Lane Street Lighting Local Improvement District after conducting a public hearing to receive objections or remonstrances to its formation?

2. Shall the City Council adopt an ordinance spreading assessments in the Wittenberg Lane Street Lighting Local Improvement District after conducting a public hearing to receive written objections to the ordinance spreading those assessments to the district.

BACKGROUND

In March 1994, the Keizer City Council adopted Ordinance 94-278 relating to formation of street lighting local improvement districts within the City of Keizer.

On January 28, 1998, the developer of the Wittenberg Lane filed a petition to form a street lighting local improvement district. In response to this petition, the City Council adopted Resolution R98-1031 on April 20, 1998 to initiate formation of a street lighting local improvement district and directing the City Engineer to make a survey and file a written report with the City Recorder. On July 6, 1998 the City Council approved the City Engineer's report and set a public hearing to consider remonstrances to the project and objections to proposed assessments. On July 17, 1998 notice of the public hearing and intention to form the district and assess for the lighting improvements, as required under Ordinance 94-278, were provided by mail to the property owners.

ANALYSIS

Included within the agenda packet is the proposed resolution forming the Wittenberg Lane Street Lighting Local Improvement District and setting forth the time and manner of installing the street lights within that district. If the Council decides to form the street lighting district, the next step is to proceed with an ordinance spreading assessments.

Included within the agenda packet is the proposed ordinance to spread assessments to the properties benefited by the lighting district. The ordinance provides for first annual assessments and the procedure for determining second and future annual assessments. Following the City Council's adoption of the Ordinance spreading assessments, the City authorizes the appropriate utility company to install the poles and lights. Depending on the type of poles requested by the City, it takes the utility company from two to six months to have the lights on site and operational.

FISCAL IMPACT

The City initially pays the street lighting expense to the utility company as it is billed throughout the year. The operating cost of the lights is then billed to the property owners on an annual basis, thereby recovering the City's costs for bills paid throughout the year. In addition, the bills include the cost of the City Engineer's Report in the first year, and a 8.5% administrative charge in the first and subsequent years to recover the City's cost for administering the lighting districts. All funds are budgeted through the Utility Fund.

RECOMMENDATION

1. Open the public hearing to first consider oral objections and written remonstrances to formation of the Wittenberg Lane Street Lighting Local Improvement District.

2. If valid remonstrances of the owners of two-thirds of the land to be specially assessed for the lighting district are presented to the Council at the public hearing, close the hearing and suspend formation of the district for six months.

3. Consider other objections to the formation of the district. The Council may suspend formation of the district without remonstrance of owners of two-thirds (2/3) of the land if the Council deems that action appropriate.

4. If valid remonstrances of the owners of two-thirds of the land to be specially assessed for the lighting district are not presented to the Council at the public hearing, or other valid objections to formation are not presented, then consider objections to the scope, design or equipment proposed for the district.

5. After consideration of objections of the plans for the district, and if it appears that the Council will form the district, Council should next consider written objections to the proposed assessments which were filed with the City.

6. Close the public hearing.

7. Consider adoption of the resolution officially forming the lighting district.

8. If council forms the district, consider adoption of the proposed assessment ordinance. Council may adopt, correct, modify or revise the assessment against each lot in the district according to special and peculiar benefits accruing to the lot.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R98-_____

FORMING THE WITTENBERG LANE STREET LIGHTING

LOCAL IMPROVEMENT DISTRICT

WHEREAS, the City of Keizer has adopted a Resolution initiating the formation of Wittenberg Lane Street Lighting Local Improvement District; and

WHEREAS, the City Council has adopted a Resolution approving the City Engineer's Report for Wittenberg Lane Street Lighting Local Improvement District; and

WHEREAS, notice of public hearing to consider formation of street lighting district was mailed as required by Ordinance 94-278; and

WHEREAS, the City Council conducted a public hearing to receive objections and remonstrances to the formation of the street lighting district; NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that Wittenberg Lane Street Lighting Local Improvement District is hereby formed, and that the street lights shall be installed within a reasonable time and in the manner set forth in the City Engineer's Report for Wittenberg Lane Street Lighting Local Improvement District.

PASSED this _____ day of _____, 1998.

SIGNED this _____ day of _____, 1998.

_____
Mayor

_____
City Recorder

BILL NO._____ . ORDINANCE NO. 98-_____

A BILL FOR

AN ORDINANCE SPREADING ASSESSMENTS TO WITTENBERG LANE STREET LIGHTING LOCAL IMPROVEMENT DISTRICT

Section 1. FINDINGS. The City Council of the City of Keizer makes the following findings:

a. The City Council did heretofore declare its intention to install street lights to serve an area known as Wittenberg Lane Street Lighting Local Improvement District which is described as follows:

> Wittenberg Lane - Tax Lot 10600 identified on the assessors map 6 3W 35CD in the City of Keizer, County of Marion, State of Oregon;

which includes the installation of seven (7) -200-watt high pressure sodium luminaries mounted on four-foot long mast arms attached to 25-foot aluminum poles, located within the subject local improvement district, all in accordance with the City Engineer's Report for Wittenberg Lane Street Lighting Local Improvement District.

b. The total initial cost of the Wittenberg Lane Street Lighting Local Improvement District is $1809.46.

c. The per space/lot assessment formula was used for this district.

d. The improvements in the district have been or will be constructed as provided in the Engineer's Report.

e. Notice was duly mailed to the benefited property owners on July 17, 1998.

f. A meeting of the City Council was held at the time and place fixed by public notice for the purpose of considering any such written objections to the proposed assessments

g. No written objections to the proposed assessments were filed.

h. The Council has considered the matter and determined that construction of said improvements was and is of material benefit to the City, and all the property to be assessed therefore will be specially benefited by the improvements in the amounts shown on the assessment roll.

NOW, THEREFORE, the City Council of the City of Keizer ordains as follows:

Section 2. ASSESSMENTS.

a. First Annual Assessment. It is hereby determined that the share of the cost of the improvements for the Wittenberg Lane Street Lighting Local Improvement District for each parcel and property benefited thereby for the first annual assessment is the amount set opposite the description of each piece or parcel of land as described in Wittenberg Lane Street Lighting District Assessment Roll as set forth in Exhibit "A" attached, and that each piece or parcel of land benefited by the improvements, to the full extent of the amount so set opposite such piece or parcel and that the respective amounts represent the proportionate benefits of said improvements to said respective parcels of property, and the Council does hereby declare that each of the parcels of property described in Wittenberg Lane Street Lighting District Roll as set forth in Exhibit "A" attached is hereby assessed the first annual assessment amount set opposite each respective description.

i. Summary of first annual assessment costs for formation of the lighting district to serve the area known as "Wittenberg Lane Street Lighting Local Improvement District":

7 - Poles and 200 Watt Luminaries	$1654 80
Engineering Costs	$14.00
Administrative Fee @ 8 5%	$140 66
Total Assessments	$1809 46

ii. The Recorder of the City of Keizer is hereby directed to send a notice of first annual assessment to each owner of assessed property by mail within ten (10) days after this Ordinance levying the first annual installments is passed. The notice shall include information that an application to make installment payments may be filed with the City if the assessment is collected directly from the property owner and not pursuant to ORS 223.866.

b. Second and Subsequent Annual Assessments. After a municipal lighting district has been formed in accordance with City of Keizer Ordinance 94-278, the second and subsequent annual assessments shall be spread by Resolution which may include changes in the mode of collecting the assessment. The method of assessment and notification for subsequent annual assessments shall be determined in accordance with City of Keizer Ordinance 94-278.

c. Mode of Collecting Assessments. Assessments for Wittenberg Lane Street Lighting Local Improvement District shall be collected pursuant to ORS 223.866.

d. Lien on Property. The assessment shall be entered as a lien against the benefited property in the City Lien Docket.

PASSED this _____ day of _____, 1998.

SIGNED this _____ day of _____, 1998.

_____
Mayor

_____
City Recorder

City of Keizer, Oregon

August 17, 1998

AGENDA ITEM 7a

APPEAL OF HEARINGS OFFICER DECISION – CHOM CONSTRUCTION (CASES97-22 AND 98-03)

COUNCIL MEETING: August 17, 1998

AGENDA ITEM NUMBER: 7a

TO: MAYOR KOHO AND CITY COUNCILOR MEMBERS

THROUGH: WALLY G. MULL
CITY MANAGER

FROM: TRACY L. DAVIS, CMC
CITY RECORDER

SUBJECT: Appeal of Hearings Officer Decision
Partition Case No. 97-22 (Chom Construction)
Partition/Adjustment Case No. 98-03 (Chom Construction)

BACKGROUND:

On August 3, 1998 a public hearing was opened on the above entitled cases. Tesimony was presented and the hearing was closed. The Council delayed deliberation on this matter until tonight. Attached is the original staff report included in the August 3rd Council packet.

RECOMMENDATION:

The Council should begin and conclude deliberations on this issue and then direct staff to prepare the appropriate Order for consideration at the September 8, 1998 meeting.

COUNCIL MEETING: August 3, 1998

AGENDA ITEM NUMBER: _____

TO: MAYOR KOHO AND CITY COUNCILOR MEMBERS

THROUGH: WALLY G. MULL
CITY MANAGER

FROM: AMY DROUGHT, AICP
CITY PLANNER

SUBJECT: APPEAL OF PARTITION CASE NO. 97-22
APPEAL OF PARTITION/ADJUSTMENT CASE NO. 98-03

BACKGROUND:

On August 3, 1998, the City Council will conduct a joint public hearing on an appeal of the Hearings Officer decision of Partition Case 97-22 and Partition/Adjustment Case 98-03. For your information, the complete file for both applications are attached. These files contain the applications, staff decisions listing applicable review criteria and findings, letters of appeal and public testimony, and the Hearings Officer decisions. Also attached is a staff report from the City Attorney regarding these appeals. The staff report from the City Attorney provides background information on the procedural issue regarding the concurrent appeals. That issue will not be addressed specifically in this staff report.

1. Partition Case No. 97-22

In November 1997, Chom Construction requested approval to partition a .45 acre parcel into three lots of 4,515 square feet, 7,462 square feet, and 7,482 square feet, respectively. Proposed lot 1 contains an existing residence. Proposed lots 2 and 3 would be accessed via a 24 foot private roadway easement that straddles the eastern boundary of the partitioned parcel and the western boundary of the adjacent parcel to the east. (See attached map and site plan).

The location of the subject property is 1250 Shady Lane NE. The subject property is zoned Single Family Residential (RS), and the surrounding property is also zoned RS. The property is designated Low Density Residential in the City of Keizer Comprehensive Plan.

The Zoning Administrator reviewed and approved the partition request. M.J. and Cynthia Wilken filed an appeal of this decision. In his decision on the appeal, the Hearings Officer sustained the appeal. The Hearings Officer concluded that the City's definition of front lot line in Keizer Zoning Ordinance Section 2.228(a) resulted in lot frontage on the private access easement for the two larger lots, as opposed to frontage on Shady Lane. The Hearings Officer therefore concluded that the Applicantion did not comply with the lot depth requirements because the proposed middle and rear lots would have a depth of only 64.5' feet, which is 5.5 feet less than the required 70 feet.

2. Partition/Adjustment Case No. 98-03

In March 1998, Chom Construction submitted an application for a partition, along with a request for concurrent approval of either an "adjustment", or "variance" in order to allow lot "depths" for Parcels 2 and 3 of 64.5 feet instead of the required 70 feet. Adjustments and variances allow relief from a development standard provided specific criteria are met. An adjustment is like a "mini-variance" in that it allows up to a 20% reduction of a quantifiable standard. In this case, with an adjustment, the applicant could reduce the lot depth from 70' to 56'.

The Zoning Administrator reviewed and approved the second partition request along the adjustment. Since the Zoning Administrator determined that the adjustment was sufficient for providing relief from the required lot depth provision, no decision on the variance was issued.

M.J. and Cynthia Wilken appealed this decision as well. In his decision on this second appeal, the Hearings Officer had to determine the location of the front lot line for purposes of measuring lot depth: either the edge of the lot (the property boundary), or the edge of the easement. In this decision, the Hearings Officer interpreted the definition of "front lot line" to be the same for both a street right-of-way and a private access easement. This meant that the front lot line would be the line at the edge of the easement, <u>not</u> the property boundary. This resulted in a lot depth for those two lots of only <u>52.5'</u> instead of <u>64.5'.</u>

Based on this interpretation, the lot "adjustment" exceeded the 20% threshold in KZO 7.30(d). Therefore, the Hearings Officer remanded the application to the Zoning Administrator for purposes of deciding Chom's variance request in conjunction with the proposed partitioning.

ISSUE:

The central issue in both these appeals is whether the applicant has satisfied the lot depth requirement of KZO 23.12(b), which states that all lots must have a minimum width of 40 feet, and a minimum depth of 70 feet. KZO 2.223 defines lot depth as "*the horizontal distance between the front and rear lot lines measured at a point halfway between the side lot line.*" Therefore, in order to determine the depth of a lot, the "front" lot line of the property must first be located. KZO 2.228 defines "front" lot line as:

> *"(a) In the case of an interior lot having only one street or roadway easement frontage, the lot line separating the lot from the street right-of-way or the nearest right-of-way line of a roadway easement.*
>
> *(b) In the case of any lot not covered by (a), the lot line which the architecturally designed front of the building faces."*

When approving Partition Case 97-22, the Zoning Administrator concluded that the proposed lots met the depth requirement because the width and depth of the proposed lots were identified in relation to the nearest public street which is Shady Lane. Therefore Lot 1 had a depth of 70', Lot 2 had a depth of 115.7', and Lot 3 had a depth of 116'. This decision was based on historical precedent established by the Community Development Department. However, the Hearings Officer decision on the first appeal (Partition Case 97-22) appears reasonable since lots 2 and 3 "front" on the easement, and do not "front " on Shady Lane.

In his decision regarding the appeal of Partition/Adjustment Case No. 98-03, the Hearings Officer determined the "lot line" would run to the easement boundary (therefore excluding the easement). As the Hearings Officer also notes in his decision, this interpretation is in conflict with the definition of "lot line" set forth in KZO 2.226 which states that a "*lot line means one of the property lines forming the exterior boundaries of a lot, and included a dwelling unit ownership line where the underlying real property is included in the unit.*" The definition of lot line contained in KZO is also the definition that staff has historically used to determine property boundary location.

The Hearings Officer interpretation also creates a policy dilemma relating to infill development in general in Keizer. By excluding the easement area from being included in the depth calculation, many lots would not meet the depth requirement for partitions. Infill development is a policy that is encouraged in the Comprehensive Plan, and Keizer is currently experiencing, and will continue to experience, extraordinary pressure for infill development.

It is also important to consider the purpose of a lot "depth" requirement. One of the primary reasons for a lot depth requirement is to ensure that property has adequate area and is of a shape to allow it to be developed to its intended use. In this situation, the proposed partitioning creates lots which exceed the minimum lot area requirement of 4000 square feet. The proposed lots are also of a shape that will accommodate single family dwellings and still meet the required setback standards. The applicant has also adequately addressed the required access standard for partitionings. In this regard, the proposed partitioning is no different than other partitionings occurring in the RS zone, and is consistent with the existing and planned uses in the neighborhood.

For these reasons, the Zoning Administrator determined that the applicant had fulfilled the criteria for a partition (in Partition Case 97-22), and, in the case of Partition/Adjustment Case 98-03, the criteria for a partition and an adjustment. Please see the attached **Notice of Decision** for Partition Case 97-22 and Partition/Adjustment Case No. 98-03 for a discussion of the pertinent approval criteria and findings.

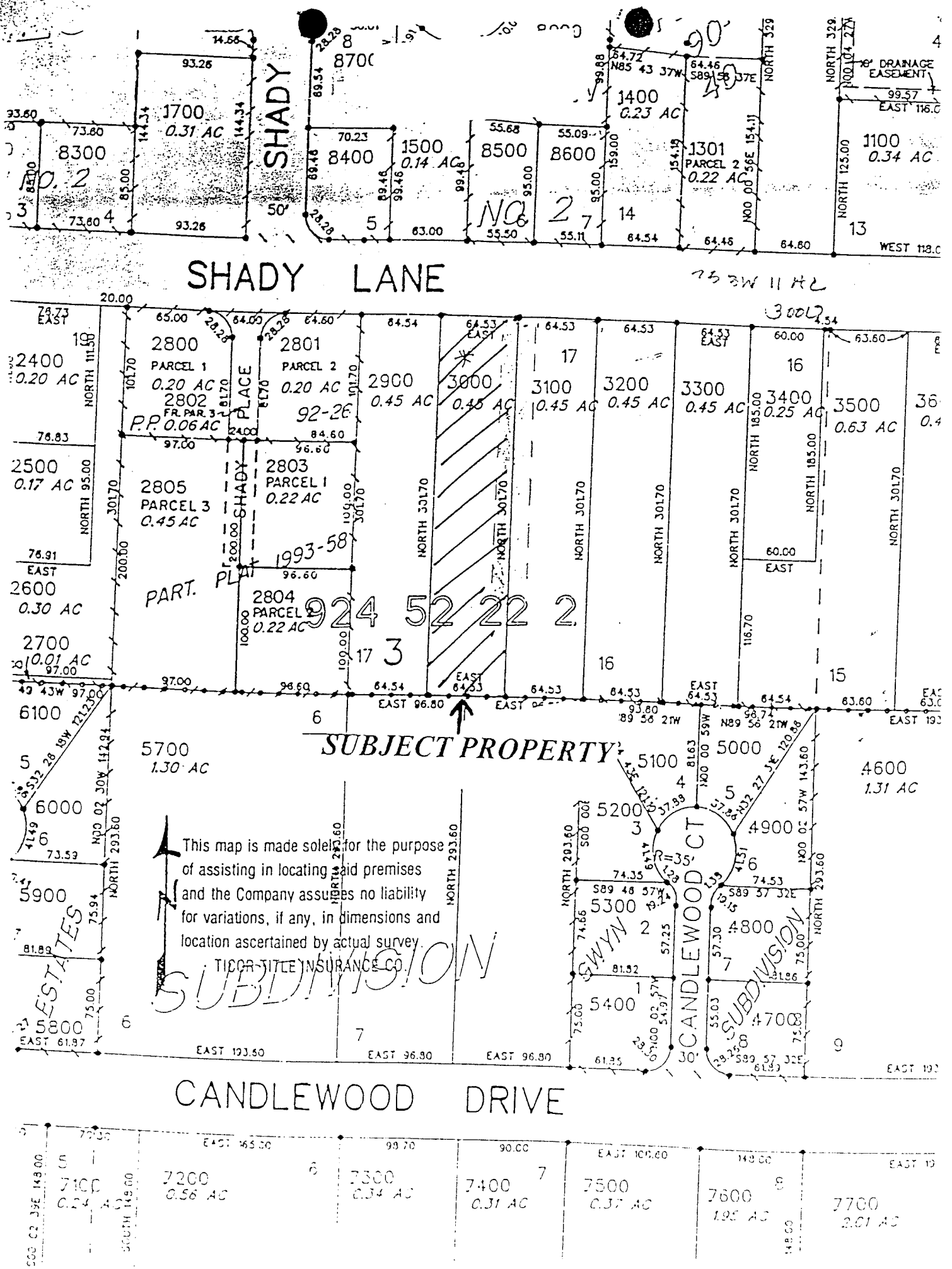
RECOMMENDATION:

1. It is recommended that the City Council first answer the question of Partition Case No. 97-22, which is whether the front lot line for proposed lots 2 and 3 should be measured from the side of the lot which faces the public street, or the side of the lot which faces the access easement. If the Council determines that the Hearings Officer decision should be used, then the motion should be to direct staff to prepare an order denying Partition Case No. 97-22. If the Council feels that the line parallel to the public street right-of-way should be used as the front lot line, then the motion should be to prepare an order granting the partition.

2. It is recommended that the City Council also determine the measuring point for an interior front lot line. Specifically, the City Council should determine whether the actual lot line (property boundary) constitutes the front lot line, or the edge of easement as the Hearings Officer determined in his decision of Partition/Adjustment Case No 98-03.

   If the lot line is used and the other criteria are met, then the partition/adjustment should be granted and the motion should be made accordingly. If the Council determines that the edge of the easement is where the lot depth should be measured from, then the direction would be to have staff prepare an order denying the partition/adjustment.

Please contact me if you have any questions in this regard. Thank you.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This map is made solely for the purpose of assisting in locating said premises and the Company assumes no liability for variations, if any, in dimensions and location ascertained by actual survey.
TICOR TITLE INSURANCE CO.
CANDLEWOOD DRIVE
7100
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7200
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0.31 AC
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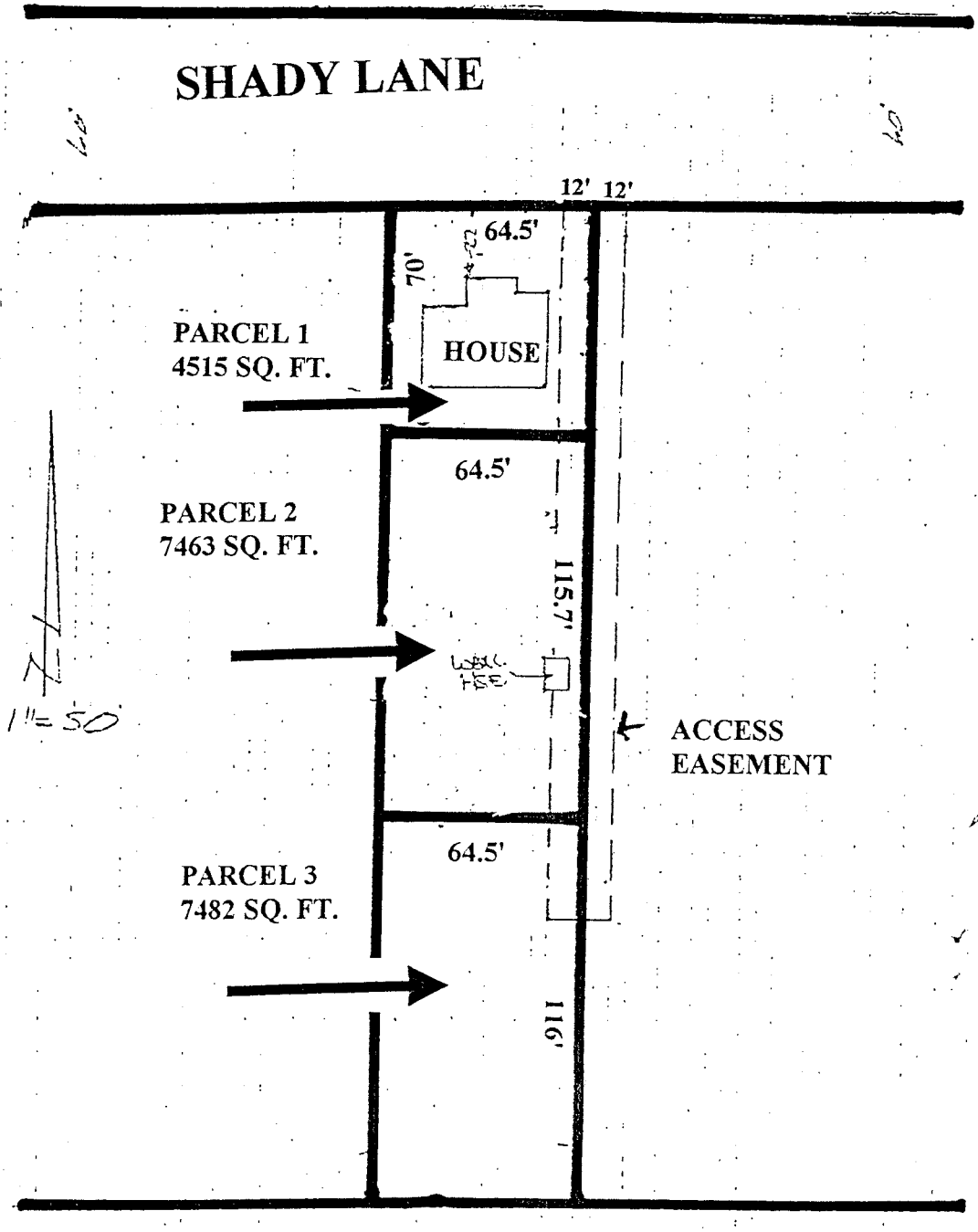
7700
2.01 AC


SHADY LANE
12'
12'
64.5'
70'
HOUSE
PARCEL 1
4515 SQ. FT.
64.5'
PARCEL 2
7463 SQ. FT.
115.7'
1"=50'
ACCESS
EASEMENT
64.5'
PARCEL 3
7482 SQ. FT.
116'

CITY COUNCIL MEETING: August 3, 1998

AGENDA ITEM NUMBER: _____

TO: **MAYOR KOHO AND COUNCIL MEMBERS**

THROUGH: **WALLY MULL, CITY MANAGER**

FROM: **E. SHANNON JOHNSON, CITY ATTORNEY**

SUBJECT: ***APPLICATION OF CHOM CONSTRUCTION***
PARTITION CASE NO. 97-22
PARTITION/ADJUSTMENT CASE NO. 98-03

City Planner Amy Drought has submitted her staff report for these consolidated appeals. I am writing additionally to detail the interpretation questions in this rather complex case. Prior to reading this memorandum, it is important that you read the staff report and Hearings Officer's decisions first, and you particularly need to review the map.

This is really two separate cases. In the first case (Case No. 97-22), Chom Construction requested only a partition of one lot into three. One lot would front on Shady Lane, with two lots in back. The major issue in this case was to determine what side should be the front lot line. This determination is important, because lot depth is measured from the front lot line to the rear lot line. This case is based on the old zoning ordinance which defines front lot line as "the lot line separating the lot from the street right-of-way or the nearest right-of-way line of a roadway easement." Because the two lots in the back did not front on the street, the Hearings Officer made the determination that the lot line should be the boundary parallel to the easement. Because using that line resulted in a lot depth less than the required 70 feet, the Hearings Officer sustained the neighbor's appeal and denied the partition. (See Hearings Officer's decision Case No. 97-22 at page 4.)

The applicant appealed that case to the City Council, but Amy and I suggested that he instead file for a variance and/or an adjustment. Even if the first decision was correct with regard to which side to use as the front lot line, there was still a question that the application would be allowed if it meets the criteria for an adjustment or a variance.

The applicant did not want to drop the appeal in the first case. However, that appeal has been stayed as the applicant wanted to wait for the decision in the second case (Case No. 98-03) regarding a partition/adjustment request. The applicant was afraid that they would lose their right to argue the first question if they did not maintain an appeal in the first case.

Adjustments and variances are basically the same general type of application: a formal request to allow relief from rules in a particular situation. Because it appeared that the partition could be approved with only an adjustment, the zoning administrator did not reach the question of a variance. An adjustment is only allowed up to twenty percent of a quantifiable standard. In this case, that meant that (if allowed) the applicant could reduce the lot depth from 70 feet to 56 feet.

Based on the second application, the zoning administrator granted the partition/adjustment. This was appealed to the Hearings Officer. The Hearings Officer decided in the first case generally where to measure for lot depth; i.e., deciding that the front lot line was the same side as the easement. Now in the second case, it was left to the Hearings Officer to decide exactly where to measure the line: from either the edge of the lot or the edge of the easement. The Hearings Officer's analysis is set forth beginning at page 12 of the Case No. 98-03 decision. The Hearings Officer decided there were two choices:

1. Apply the definition of "lot line" set forth in KZO 2.226 literally, which would mean that the exterior boundary of the lot would be the measuring point.

2. Interpret the definition of "front lot line" to be the same for both a street right-of-way and a private access easement, which would mean that the lot depth would be measured from the edge of the easement.

The Hearings Officer decided the second choice was better as that would be consistent with how lot depth is calculated with lots that front on public right-of-way. However, as the Hearings Officer pointed out (page 14-15), neither choice offers a good answer. That decision meant the application was denied because measuring from the edge of easement resulted in a lot depth of 52.5 feet which was less than 56 feet minimum allowed with an adjustment.

In my opinion, the question about where a front lot line should be (the question in Case No. 97-22), though not without doubt, is somewhat simpler than the second question. The front lot line should be the line which is parallel to the easement based on language of the code. The lot "fronts" on the easement, and does not "front" on the street. Consequently, I believe the interpretation that results in the easement being the front of the lot is more defensible.

The answer to the second question (where exactly to measure from for lot depth) is more difficult. The Hearings Officer points out the difficulties with either interpretation. One countervailing policy question is that with the reduction of the easement, there are less lots that will qualify to be developed for infill. Infill development is encouraged in the comprehensive plan.

Alternatively, as a practical matter the easement area is not available for development. The lot depth logically would not include right-of-way, whether its street right-of-way or easement right-of-way.

Under case law and recent legislation, the Council has wide discretion to interpret its own ordinances. The Council can adopt either interpretation, or another interpretation that is reasonably supported by the language.

RECOMMENDATION:

In addition to any other issues that may arise, the Council should first determine the question in Case No. 97-22; namely is the front lot line the side that faces the street or the side that faces the easement? If the Council determines that the Hearings Officer's decision should be used (the easement side) and other criteria, then the motion should be to direct staff to prepare an order denying the partition in the first case. If the Council feels that the line parallel to the street right-of-way should be used as the front lot line, then the motion should be to prepare an order granting the partition.

///

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Regardless of the decision in the first case, the Council next needs to determine the measuring point (Case No. 98-03); i.e., either the actual lot line (property boundary) or the edge of the easement. If the lot line is used and other criteria are met, then the partition/adjustment should be granted and the motion should be made accordingly. If the Council determines that the edge of the easement is where the lot depth should be measured from, then the direction would be to have staff prepare an order denying the partition/adjustment.

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

ESJ/tmh
enclosure

KEIZER COMMUNITY DEVELOPMENT DEPARTMENT
NOTICE OF DECISION
PARTITION CASE No. 97-22

I. REQUEST

The Keizer Subdivision and Partitioning Ordinance requires certain Partition applications be considered first by the City Zoning Administrator. The following report reviews a land use application to divide one parcel into three lots with the following dimensions: 4,515 square feet, 7,462.65 square feet, and 7,482 square feet.

II. BACKGROUND

A. APPLICANT: Chom Construction

B. PROPERTY LOCATION: The subject property is located at 1250 Shady Lane NE, Keizer. (Township 7S; Range 3W; Section 11AC, Tax Lot #3000.) (See EXHIBIT "A".)

C. PARCEL SIZE: Approximately .45 acres.

D. EXISTING DEVELOPMENT AND PUBLIC FACILITIES: The parcel is the site of an existing dwelling. Access for the existing dwelling is off of Shady Lane.

E. ZONING: The subject property is designated Low Density Residential in the Keizer Comprehensive Plan and is zoned Single Family Residential (RS).

F. ADJACENT ZONING AND LAND USES: Surrounding property is also zoned Single Family Residential and single family homes are the dominant land use.

G. PROPOSAL: The applicant is requesting approval to divide the existing parcel to create three separate lots with the following dimensions: 4,515 square feet, 7,462.65 square feet, and 7,482 square feet. Access for the proposed parcels will be from a proposed 20 foot easement. One half of the access easement will located on the property to the east. (See EXHIBIT "B.")

III. DECISION

Notice is hereby given that the Zoning Administrator for the City of Keizer has **APPROVED** the Partitioning subject to the conditions and requirements noted below. Findings in support of this decision are found in Section VI.

IV. CONDITIONS AND REQUIREMENTS

This decision does not include approval of a building permit.

A. CONDITIONS: The following conditions must be met before recording of the final plat:

1. The applicant shall submit a final partitioning plat prepared by a registered professional surveyor and which conforms with the requirements in ORS Chapter 92. The final plat shall substantially conform with the proposed partition plan. Following plat approval the applicant shall record it with the Marion County Clerk.

2 The applicant shall comply with all other Public Works Department requirements and standards as identified in Exhibit "C".

B. REQUIREMENTS: The Keizer Zoning Ordinance, and the Keizer Subdivision and Partitioning Ordinance, establish specific development and procedural requirements. These requirements are mandatory and in many cases cannot be modified even through the variance or adjustment process. The information on requirements is included in this report for the benefit of the applicant and is not part of the decision on the application.

1. Completion, submittal and recording of the final partitioning plat shall comply with the requirements contained in the Keizer Subdivision and Partitioning Ordinance. After the final Partitioning plat has been recorded, no alteration of property lines shall be permitted without first obtaining approval from the Zoning Administrator.

C. OTHER REQUIREMENTS. The Public Works Department submitted requirements which are contained as Exhibit "C" and attached to this report. A summary of these requirements is listed below:

Sanitary Sewer

1. All new parcels must be provided with sanitary sewer service. The existing public sanitary sewer line in Shady Lane is capable of serving the subject parcels.

2. Unless a restriction is made regarding future partitioning of the subject property and the adjoining parcel on the east, a public sanitary line will be required to provide service to the proposed new parcels.

Water System

1. Access for water service can be gained from the existing water main in Shady Lane. Unless the applicant can provide assurance that future re-division of the adjoining parcel on the east will not occur, a public water main well be required to be extended to the proposed new parcel.

2. Keizer Fire District shall be required to approve any development on the proposed parcels regarding access and fire protection. It may be necessary for the developer of the subject property to install a fire hydrant on an appropriately sized water main to provide fire protection for the proposed new lots.

Street and Drainage Improvements

1. Access for the proposed parcel will be from a 20' private access easement centered along the east property line. It is proposed that one half of the easement will be from the adjacent property. It will be the responsibility of the applicant to provide the necessary easements and reciprocal language to assure that adequate provisions for maintenance is made.

2. The Department of Public Works will require that a storm drainage system be constructed within the proposed new private drive that is capable of disposing the storm waters generated from the new development to an approved underground drainage system or to an approved public storm drain system. It will be necessary for the developer to submit percolation test that indicate the capability of the soils in the area are adequate for the underground disposal of all newly proposed impervious surfaces. It is recommended that a method be developed that will keep storm water within the private drive area for easy access for maintenance. An overflow system will be approved to the existing storm drain line in Shady Lane after the above information is accepted.

3. It will be the responsibility of the applicant to locate any existing obstructions that could be a hindrance to sight distance for the proposed new driveway and make provisions for their removal prior to recording of the partitioning plat.

C. OTHER PERMITS AND RESTRICTIONS: This approval does not remove or affect any covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits from other local, State or Federal agencies. This decision does not take the place of, or relieve the responsibility for obtaining other permits or satisfying any restrictions or conditions thereon.

V. APPEALS

Any interested person, including the applicant, who disagrees with this decision may request that the application be considered by the Keizer Hearings Officer at a public hearing. The appeal is subject to the appellant paying a $150.00 fee. This fee will be refunded if the appeal is successful. In addition, the applicant may request reconsideration of the decision on the basis of new information; provided, the applicant signs a waiver of the 120 day time limit for the review of zoning applications.

Requests for reconsideration, or an appeal request for a hearing in front of the Hearings Officer, must be submitted in writing and be received in the Keizer Community Development Department, 930 Chemawa Road NE, Keizer by 5:00 p.m. on November 20, 1997.

Unless further consideration is requested, or the decision is appealed, this decision becomes final on November 21, 1997.

This approval is valid only when the final partitioning plat is recorded by November 21, 1998. The effective period of an approved application may be extended for an additional year subject to approval of an extension by the Community Development Department.

VI. FINDINGS AND CONCLUSIONS

A. The applicant is requesting approval to divide the existing parcel to create three separate lots with the following dimensions: 4,515 square feet, 7,462.65 square feet, and 7,482 square feet. Access for the proposed parcels will be from a proposed 20 foot easement. One half of the access easement will located on the property to the east.

B. The City Public Works Department and City Engineer submitted comments and conditions of approval which are attached as "Exhibit C" to this report.

C. By definition, this is a partitioning. The approval or denial of a partitioning is based on compliance with decision criteria found in Section III(1) of the Keizer Subdivision and Partitioning Ordinance. This Section requires all partitionings to be consistent with the policies in the Comprehensive Plan, and, parcel size and dimension requirements found in the Zoning Ordinance.

FINDINGS: The purpose and intent of the designation and zone is to provide for single family residences. This proposal will create additional parcels which can be developed with single family homes. This is consistent with the Comprehensive Plan designation on the subject property and the purpose of the RS zone.

D. The lot size and dimension standards for the RS zone are found in Chapter 23 of the Keizer Zoning Ordinance. Parcels must contain at least 4000 square feet of area with a minimum width of 40 feet and an average depth of at least 70 feet.

FINDINGS: The new parcels will meet each of this requirement.

E. Section IV. 7 of the Keizer Subdivision and Partitioning Ordinance requires the dedication of additional right-of-way if the existing dedication is less than the standard width.

FINDINGS: The existing right-of-way is sufficient therefore, no additional dedication is required.

F. Section VII., (6) of the Subdivision and Partitioning Ordinance establishes access standards for easements. The easement must: (a) have a minimum easement width of 20 feet; (b) have a maximum grade of 15 percent; (c) be improved with a paved surface; (d) provide adequate sight distance at intersection with public roadway; and (e) be provided with a road name sign at the public roadway as an identification for emergency vehicles.

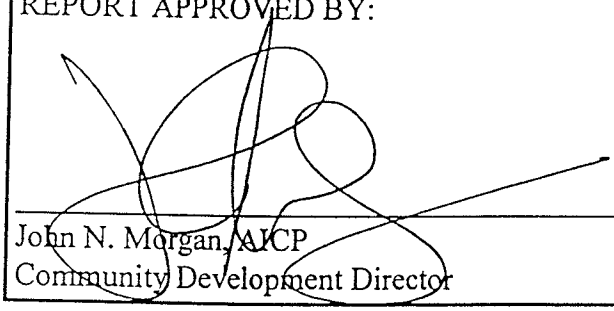
FINDINGS: The proposed parcels will be served by an access easement. As a condition of approval, the applicant will be required to ensure that the easement will have 20' of unobstructed width. The property is generally level and in no case exceeds a 15% grade. Paving is a condition of approval, and must be completed prior to the occupancy of the dwellings using the access easement. The street name is determined when the plat is recorded and placement of a street sign is a development requirement. Finally, adequate sight distances is a development requirement and reviewed upon submittal of the building permit.

G. Staff recognizes the actual partitioning may vary from the proposed partitioning due to reasons of topography, surveying requirements or other factors. Minor variations are permitted provided the final partitioning plat substantially conforms with the proposed partition plan.

If you have any question about this application or the decision please call 390-3700 or visit the Community Development Department at the above address.

REPORT PREPARED BY: Amy C. Drought, City Planner

REPORT APPROVED BY:



John N. Morgan, AICP
Community Development Director

Nov 12, 1997
Date

CITY OF KEIZER
COMMUNITY DEVELOPMENT DEPARTMENT
930 Chemawa Road, N.E.
Post Office Box 21000
Keizer, Oregon 97307 (503) 390-3700

HEARINGS OFFICER DECISION

Appeal in Partition Case No. 97-22

— APPEAL SUSTAINED —

Appeal from the Zoning Administrator's approval of a Partition of a .45-acre parcel in a Single-Family Residential (RS) zoning district in order to create three lots of 4,515 square feet, 7,462.65 square feet, and 7,482 square feet

Location:	1250 Shady Lane
Legal:	T7S, R3W, Section 11AC, Tax Lot 3000
Site Size:	.45 acre
Applicant:	Chom Construction
Property Owner:	- - - - -
Comprehensive Plan:	Low-Density Residential
Zoning:	Single-Family Residential (RS)

HEARINGS OFFICER DECISION:

For the reasons set out below, the Hearings Officer *sustains* one ground of the appeal and overturns the Zoning Administrator's approval.

I. APPEAL SUMMARY

Applicant requested approval to partition a .45-acre parcel into three lots of 4,515 square feet, 7,462.65 square feet, and 7,482 square feet, respectively. The smallest lot would contain the existing residence; the other lots would be accessed via a 24-foot private roadway easement that straddles the eastern boundary of the partitioned parcel and the western boundary of the adjacent parcel to the east.[1]

Section VII(2) of the KEIZER SUBDIVISION AND PARTITIONING ORDINANCE ("KSPO") empowers the City's Zoning Administrator to make the initial decision on applications for partitions. The Zoning Administrator granted the partition in a November 10, 1997, decision (the "APPROVAL") that prescribed various conditions and requirements (*id.* at 2-4) and contained certain findings and conclusions (*id.* at 4-6). Except as may be modified elsewhere in this decision, the Hearings Officer incorporates the APPROVAL's findings and conclusions by reference, and adopts those findings and conclusions as his own.

Two persons ("Appellants") timely filed an appeal on November 19, 1997, pursuant to the appeal provisions in KSPO § VII(8). Although the appeal designated no particular grounds of appeal, the City has typically interpreted the appeal provisions in the KSPO as allowing an appellant or appellants to address particular issues at the subsequent public hearing. Although that procedure might preclude a person opposing the appeal from effectively responding, Applicant in this case raised no objection.

The Hearings Officer conducted a public hearing on December 23, 1997, at which time he heard testimony but kept the record open until 5:00 p.m. on December 30 in order to allow Appellants an opportunity to submit additional evidence with respect to a side yard setback issue, and further kept the record open until 5:00 p.m. on January 6, 1998, in order to allow Applicant to respond to any new evidence submitted by Appellants. The public record closed at 5:00 p.m. on January 6, 1998. Both Appellants and Applicant submitted additional written testimony.

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[1] The record betrays some confusion about the width of the access easement. The APPROVAL describes a 20-foot-wide easement (*id.* at 1), but Staff initially testified at the December 23 hearing that the easement will be 22-foot in width. Exhibit B to the APPROVAL contains an apparent handwritten modification that portrays a 24-foot-wide easement. Testimony at the hearing in response to the Hearings Officer's question on the issue appeared to confirm that the proposed roadway easement will be 24 feet in width.

II. ISSUES ON APPEAL

At the December 23 appeal hearing, Appellants raised four issues:[2]

- *First*, the proposed private access easement yields a "corner lot" for the property already fronting on Shady Lane, thereby leaving that proposed lot in noncompliance with the lot width requirement for corner lots specified in KSPO § V(5).

- *Second*, because the two larger lots would have lot frontage on the proposed access easement, the lot "depth" for each of those lots would be in noncompliance with the lot depth requirement in Section 23.12(b) of the KEIZER ZONING ORDINANCE ("KZO").

- *Third*, the location and width of the proposed access easement would yield a substandard side yard setback for the existing house on the small lot fronting on Shady Lane, with respect to which Applicant has not sought a concurrent variance.

- *Fourth*, the proposed partitioning would result in decreased property value for Appellants' adjoining property to the west.

A. A PARTITIONING DOES NOT YIELD "CORNER" LOTS

KSPO § V(5) recites that "[a]ll *corner lots* shall be at least 70 feet wide adjacent to each street." (Emphasis added.) KSPO § II(15) defines "corner lot" as "[a] lot or portion thereof situated at the intersection of two or more *streets*." (Emphasis added.)

However, although the general definition of "street" in KSPO § II(32) would appear to include a "private" access easement, the more specific — and thus controlling — partitioning procedures in KSPO § VII(6)(f) declare that "[a]ccess easements [created in connection with a proposed partition] shall *not* be considered streets creating corner lots." (Emphasis added.)

Thus, the Hearings Officer *rejects* Appellants' first argument.

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[2] Two other neighbors (Williams) submitted a December 23 letter in which they urged a rejection of the underlying partition because of (1) concerns about the development of larger parcels in the area, and (2) concerns whether that the owners of the proposed partitioned lots would comply with certain development conditions said to exist in certain covenants applicable to Shady Lane properties. However, neither of those areas of concern has any bearing on this appeal. It remains undisputed that the sizes of the proposed lots comply with the lot size requirements applicable to the RS zoning district, and the Hearings Officer's jurisdiction on appeal from a partition approval does not encompass the property owners' compliance with applicable development covenants

B. EACH OF THE LARGER LOTS HAS FRONTAGE ONLY WITH RELATIONSHIP TO THE PROPOSED PRIVATE ACCESS EASEMENT, AND THUS EACH CONTAINS A SUBSTANDARD LOT "DEPTH"

KZO § 23.12(b) prescribes a minimum lot "width" of 40 feet and an average lot "depth" of 70 feet. The APPROVAL recites that Applicant's proposed amendment fulfills those particular development requirements (*id.* at 5). Appellants, on the other hand, maintain that the two larger lots will have a depth of only 64.5 feet.

Staff reported at the December 23 hearing that it identifies a lot's "width" and "depth" in relation to the nearest public street, whether or not the lot actually abuts the street. In this case, that interpretation would result in the two larger lots having a lot "depth" determined by those lots' relationship to Shady Lane — which they do not abut — as opposed to the proposed private access easement depicted on Exhibit B to the APPROVAL. Appellants dispute Staff's interpretation; Appellants maintain that the lot "depths" of the larger lots should be determined by the lots' relationship to the proposed private access easement, an argument that, if correct, would yield lots with substandard lot depth (*i.e.*, a depth of only 64.5 feet — 5.5 feet less than the prescribed 70 feet).

KZO § 2.223 defines "lot depth" as "the horizontal distance *between the front and rear lot lines* measured at a point halfway between the side lot lines." (Emphasis added.) Thus, "lot depth" cannot be determined without a prior determination of the location of the "front" and "rear" lot lines.

KZO § 2.228 defines "lot line, front" as

> "(a) In the case of an *interior* lot having *only one street or roadway easement frontage*, the lot line separating the lot from the street right-of-way *or* the nearest right-of-way line of a roadway easement.
>
> "(b) In the case of any lot not covered by (a), the lot line which the architecturally designed front of the building faces." (Emphasis added.)

The Hearings Officer reads the last clause in KZO § 2.228(a) as if it read "the lot line separating the lot from the [*abutting*] street right-of-way or the nearest right-of-way line of a[n] [*abutting*] roadway easement." It would make little sense if the term "abutting" were not implicit.

KZO § 2.230 defines "lot line, rear" as

> "(a) In the case of any lot having a rear lot line designated on a subdivision plat[,] the lot line so designated.

"(b) In the case of any other lot, the lot line opposite, and most distant from[,] the front lot line. . . ."

The Hearings Officer concludes that each of the proposed larger lots fulfills the first clause in the definition of "lot line, front" in KZO § 2.228(a). Each lot comprises an "interior lot" having only one "easement frontage," as "frontage" has been defined in KZO § 2.152:

> "FRONTAGE means that portion of a lot which *abuts* a public street, whether or not access to the property is accorded thereby, and *whether or not a building or structure faces the street frontage.* In context, coupled with the term 'alley' or 'easement' *'frontage' has the same meaning with respect to an abutting* alley or *easement.*" (Emphasis added.)

Thus, according to the definition in KZO § 2.228(a), the front lot line for both of the proposed larger lots would be the lot line that separates each lot from an abutting street right-of-way (if any) *or*, in the event each lot does not abut a public street, the nearest right-of-way line of an abutting roadway easement. In this instance, because there exists no abutting street right-of-way, the front lot line for those larger lots would be the private access easement alone.

However, during the December 23 hearing Staff testified that it interprets the language in KZO § 2.228(a) to mean that the nearest public street right-of-way shall always control, such that a "front" lot line will always be determined in relationship to the nearest street, even if the lot does not abut a street. But that interpretation conflicts with the language in KZO § 2.228(a) itself; the language — "the street right-of-way *or* the nearest right-of-way line of a roadway easement" — plainly contains an alternative reference point.

Because Staff's interpretation of KZO § 2.228(a) fails to acknowledge the existence of alternative reference points, the Hearings Officer interprets KZO § 2.228(a) to mean nothing less than what it says: in the case of "an interior lot having *only one* street or roadway easement frontage" (emphasis added), lot "depth" shall be determined *either* by reference to an *abutting* public street right-of-way, *or*, for lots that do not abut a public street, the nearest right-of-way line of an *abutting* private access easement.

In this case, that interpretation would mean that the proposed larger lots have "front" lot lines parallel to the right-of-way of the proposed access easement. In turn, the "rear" lot lines would be determined in accordance with KZO § 2.230(b): "the lot line opposite, and most distant from[,] the front lot line."[3] Thus, each of the proposed larger lots will have a minimum lot depth — pursuant to the definition in KZO § 2.223 — of only 64.5 feet, in contravention of the 70-foot lot depth requirement in KZO § 23.12(b).

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[3] Ignoring the fact that the proposed partition does not involve a "subdivision" (the only pertinent term used in KZO § 2.230), the proposed partition (Exhibit B to the APPROVAL) bears no lot line designations and subsection (a) of KZO § 2.230 could not therefore apply.

Applicant advocates yet a different interpretation. Without citing any authority, it maintains that the determination of lot "front" can only be determined by the manner in which the house would have to be constructed, and that the fronts of the homes to be built on the new lots would have to face north. Applicant faces two problems with that argument. *First*, the definition of "frontage" in KZO § 2.152 (quoted earlier) determines "frontage" *irrespective* of "whether or not a building or structure *faces* the street frontage." *Second*, although the definition of front lot line in KZO § 2.228(b) may appear to allow the determination to be made in the manner suggested by Applicant, subsection (b) only becomes applicable in the event that subsection (a) does *not* apply ("[i]n the case of any lot ***not covered by (a)***"), and, since each of the new lots plainly fits within the description of KZO § 2.228(a), subsection (b) could not apply in any event. Thus, the Hearings Officer rejects Applicant's argument as contrary to the language in both KZO §§ 2.152 and 2.228.

Applicant has not sought a variance from the lot depth requirement in KZO § 23.12(b). Therefore, the Hearings Officer *sustains* Appellants' second argument.

C. A Private Roadway Does Not Diminish Side Yard Setbacks

Appellants maintain that the location and width of the proposed roadway (or private access easement) will yield a substandard side yard setback for the lot that contains the existing home fronting on Shady Lane.

KZO § 23.14(a) prescribes a minimum 5-foot side yard setback, with an exception not pertinent here. Typically, a setback bears a relationship to a lot line regardless of whether the lot line abuts another lot or a street right-of-way. In this case, however, 12 feet of the proposed 24-foot private access easement will lie between the easterly lot line of proposed Parcel 1 and the existing residence on Shady Lane. Appellants' December 28, 1997, letter indicates that the distance between the easterly lot line and the house is currently 13.5 feet. The proposed private access easement will extend 12 feet into that setback, leaving only 1.5 feet between the westerly edge of the access easement and the existing house.

Appellants maintain that the required side yard setback for proposed Parcel 1 must be measured from the westerly edge of the proposed access easement as opposed to the easterly lot line of the existing lot, in effect treating the access easement as a public street. Applicant and Staff, on the other hand, maintain that the setback must be measured from the lot line regardless of the existence of a private access easement.

Nothing in KZO Chapter 23 appears to answer the question or resolve the dispute, and none of the hearing participants cited any authority. However, KZO § 17.11 — which applies to all development in all zoning districts (*see* KZO § 17.00) — provides:

> "A 'required yard' is the minimum required setback area between a *structure* . . . and a lot line, whether or not additional open space is actually provided between the structure and the lot line. Every required yard or setback area shall be open and unobstructed by *buildings or structures from the ground to the sky*[,] except for those exceptions permitted in this Chapter." (Emphasis added.)

For purposes of KZO § 17.11, the paving associated with the private access easement does not encompass a "building" as defined in KZO § 2.050 nor a "structure" as defined in KZO § 2.354.

No one has cited any other controlling provision in either the KEIZER ZONING ORDINANCE or the KEIZER SUBDIVISION AND PARTITIONING ORDINANCE, and the Hearings Officer has been unable to locate any provision more pertinent than KZO § 17.11. The Hearings Officer concludes, based upon KZO § 17.11, that Applicant's private access easement has no effect on the width of the existing east side yard on proposed Parcel 1, and therefore does not diminish the existing side yard setback. The fact that the westerly edge of the proposed access easement will be located approximately 1.5 feet from the east side of the existing residence remains insignificant under KZO § 17.11.

The Hearings Officer therefore *rejects* Appellants' third argument.

D. THE RECORD CONTAINS NO EVIDENCE OF PROPERTY VALUES

Appellants' maintain that the proposed partitioning will reduce the value of Appellants' adjacent property. However, the record contains no evidence of either the existing value of that property or any reduction that might result from a partitioning. Moreover, even if the record did contain such evidence, and even assuming solely for purposes of argument that Appellants might be correct, a proposed partitioning's impact on surrounding property values has nothing to do with the pertinent approval criteria and does not itself constitute a basis upon which the Hearings Officer can overturn the Zoning Administrator's approval.

The Hearings Officer therefore *rejects* Appellants' fourth argument.

III. CONCLUSION

Based on the above discussion, the Hearings Officer (1) *rejects* Appellants' first, third, and fourth arguments, and (2) *sustains* Appellants' second argument.

The Hearings Officer concludes that Appellants have demonstrated that Applicant cannot comply with the lot depth requirement in KZO § 23.12(b) because the two larger lots will have a lot depth of only 64.5 feet — 5.5 feet less than the prescribed 70 feet. The Hearings Officer concludes that the City's definition of "front" lot line in KZO § 2.228(a) results in lot frontage on the private access easement for the two larger lots, as opposed to frontage on Shady Lane.

The Hearings Officer therefore *sustains* the appeal based upon Appellants' second argument and overturns the Zoning Administrator's Approval.

IV. APPEAL RIGHTS

Any interested person, including the applicant, who disagrees with this decision may appeal the decision to the City Council. Any such appeal must be filed with the Keizer Community Development Department, 930 Chemawa Road, N.E., Keizer, Oregon 97303, by 5:00 p.m. on or before the tenth day following the date of mailing of this decision, and accompanied by any necessary filing fee. The date of mailing may or may not be the signature date below.

The appeal must:

- be in writing,
- request that the Council hold a hearing on the application, and
- *either* explain why the appellant believes the decision to be factually or legally incorrect or based on incomplete facts, *or* present new facts material to the decision, the omission of which resulted in a factually or legally incorrect decision, *or* offer modifications to the decision that will conform the proposal to the requirements of the pertinent criteria governing the application.

This decision shall be effective and final after the tenth day following the date of mailing, unless appealed. The date of mailing may or may not be the signature date below.

DATED this 8th day of January, 1998.

BARRY ADAMSON, Hearings Officer

[Submitted: January 8, 1998]

KEIZER COMMUNITY DEVELOPMENT DEPARTMENT

NOTICE OF DECISION

PARTITION/ADJUSTMENT CASE No. 98-02

I. REQUEST

The Keizer Subdivision and Partitioning Ordinance requires certain land use applications to be considered first by the City Zoning Administrator. The following report reviews a land use application to divide one parcel into three lots with the following dimensions: 4,515 square feet, 7,462.65 square feet, and 7,482 square feet.

The following report also reviews an Adjustment from Section 23.12(b) of the Keizer Zoning Ordinance for the partitioning to allow lots with depths of 64.5' instead of the required 70'.

II. BACKGROUND

A. APPLICANT: Chom Construction, Inc.

B. PROPERTY LOCATION: The subject property is located at 1250 Shady Lane NE, Keizer. (Township 7S; Range 3W; Section 11AC, Tax Lot #3000.) (See EXHIBIT "A".)

C. PARCEL SIZE: Approximately .45 acres.

D. EXISTING DEVELOPMENT AND PUBLIC FACILITIES: The parcel is the site of an existing dwelling. Access for the existing dwelling is off of Shady Lane. The proposed lots can be served with public sewer and water.

E. ZONING: The subject property is designated Low Density Residential in the Keizer Comprehensive Plan and is zoned Single Family Residential (RS).

F. ADJACENT ZONING AND LAND USES: Surrounding property is also zoned Single Family Residential and single family homes are the dominant land use.

G. PROPOSAL: In 1997, the applicant submitted an identical application (Partition Case No 97-22) which was approved by the Keizer Zoning Administrator. This application was appealed to the Hearings Officer. The Hearings Officer concluded that the City's definition of "front" lot line in KZO Section 2.228(a) resulted in lot frontage on the private access easement for the two larger lots, as opposed to

frontage on Shady Lane. The Hearings Officer concluded that the Applicant could not comply with the lot depth requirement in KZO Section 23.12(b) because the proposed middle and rear lots would have had a lot depth of only 64.5 feet which is less than the required 70 feet. Therefore, the applicant has resubmitted the identical partition request, along with an Adjustment to allow the partitioning to create 2 lots with depths of 64.5'. (See EXHIBIT "B.")

III. DECISION

Notice is hereby given that the Zoning Administrator for the City of Keizer has **APPROVED** the Partitioning and the Adjustment subject to the conditions and requirements noted below. Findings in support of this decision are found in Section VI and Section VII of this Notice of Decision.

IV. CONDITIONS AND REQUIREMENTS

This decision does not include approval of a building permit.

A. CONDITIONS: The following conditions must be met before recording of the final plat:

1. The applicant shall submit a final partitioning plat prepared by a registered professional surveyor and which conforms with the requirements in ORS Chapter 92. The final plat shall substantially conform with the proposed partition plan. Following plat approval the applicant shall record it with the Marion County Clerk.

2 The applicant shall comply with all other Public Works Department requirements and standards as identified in Exhibit "C".

B. REQUIREMENTS: The Keizer Zoning Ordinance, and the Keizer Subdivision and Partitioning Ordinance, establish specific development and procedural requirements. These requirements are mandatory and in many cases cannot be modified even through the variance or adjustment process. The information on requirements is included in this report for the benefit of the applicant and is not part of the decision on the application.

1. Completion, submittal and recording of the final partitioning plat shall comply with the requirements contained in the Keizer Subdivision and Partitioning Ordinance. After the final Partitioning plat has been recorded, no alteration of property lines shall be permitted without first obtaining approval from the Zoning Administrator.

C. OTHER REQUIREMENTS. The Public Works Department submitted requirements which are contained as Exhibit "C" and attached to this report.

D. OTHER PERMITS AND RESTRICTIONS: This approval does not remove or affect any covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits from other local, State or Federal agencies. This decision does not take the place of, or relieve the responsibility for obtaining other permits or satisfying any restrictions or conditions thereon.

V. APPEALS

Any interested person, including the applicant, who disagrees with this decision may request that the application be considered by the Keizer Hearings Officer at a public hearing. The appeal is subject to the appellant paying a $150.00 fee. This fee will be refunded if the appeal is successful. In addition, the applicant may request reconsideration of the decision on the basis of new information; provided, the applicant signs a waiver of the 120 day time limit for the review of zoning applications.

Requests for reconsideration, or an appeal request for a hearing in front of the Hearings Officer, must be submitted in writing and be received in the Keizer Community Development Department, 930 Chemawa Road NE, Keizer by 5:00 p.m. on May 4, 1998.

Unless further consideration is requested, or the decision is appealed, this decision becomes final on May 5, 1998.

This approval is valid only when the final partitioning plat is recorded by May 5, 1998. The effective period of an approved application may be extended for an additional year subject to approval of an extension by the Community Development Department.

VI. FINDINGS - PARTITIONING

A. The applicant is requesting approval to divide the existing parcel to create three separate lots with the following dimensions: 4,515 square feet, 7,462.65 square feet, and 7,482 square feet. Access for the proposed parcels will be from a proposed 24 foot easement. One half of the access easement will located on the property to the east.

B. By definition, this is a partitioning. The approval or denial of a partitioning is based on compliance with decision criteria found in Section III(1) of the Keizer Subdivision and Partitioning Ordinance. This Section requires all partitionings to be consistent with the policies in the Comprehensive Plan, and, parcel size and dimension requirements found in the Zoning Ordinance.

FINDINGS: The purpose and intent of the designation and zone is to provide for single family residences. This proposal will create additional parcels which can be developed with single family homes. This is consistent with the Comprehensive Plan designation on the subject property and the purpose of the RS zone.

D. The lot size and dimension standards for the RS zone are found in Chapter 23 of the Keizer Zoning Ordinance. Parcels must contain at least 4000 square feet of area with a minimum width of 40 feet and an average depth of at least 70 feet.

FINDINGS: Each of the proposed parcels exceed the required minimum area requirement of 4000 square feet. Each of the proposed parcels also exceed the 40' minimum width requirement. However, the new lots will have a depth of 64.5' which is less than the minimum required. The applicant has requested an Adjustment from this standard which is addressed in Section VII.

E. Section IV. 7 of the Keizer Subdivision and Partitioning Ordinance requires the dedication of additional right-of-way if the existing dedication is less than the standard width.

FINDINGS: The existing right-of-way is sufficient therefore, no additional dedication is required.

F. Section VII., (6) of the Subdivision and Partitioning Ordinance establishes access standards for easements. The easement must: (a) have a minimum easement width of 20 feet; (b) have a maximum grade of 15 percent; (c) be improved with a paved surface; (d) provide adequate sight distance at intersection with public roadway; and (e) be provided with a road name sign at the public roadway as an identification for emergency vehicles.

FINDINGS: The proposed parcels will be served by an access easement. As a condition of approval, the applicant will be required to ensure that the easement will have 20' of unobstructed width. The property is generally level and in no case exceeds a 15% grade. Paving is a condition of approval, and must be completed prior to the occupancy of the dwellings using the access easement. The street name, if required is determined when the plat is recorded and placement of a street sign is a development requirement. Finally, adequate sight

distances is a development requirement and reviewed upon submittal of the building permit.

VII. FINDINGS - ADJUSTMENT

A. As mentioned above, the partitioning of the subject property will result in the creation of 2 lots with depths of 64.5'. Section 23.12(b) of the Keizer Zoning Ordinance states that all lots in the RS zone must have an average depth of 70'. The applicant is requesting an Adjustment from this standard. Adjustment criteria are listed in Section 7.30 of the Keizer Zoning Ordinance. The criteria and staff's findings are listed below.

1. The intent and purpose behind the specific provision sought to be adjusted is either clearly inapplicable under the circumstances of the particularly proposed; or the particular development as proposed otherwise clearly satisfies the intent and purpose for the provision sought to be adjusted.

FINDING: The development as proposed satisfies the intent and purpose for the provision sought to be adjusted. The purpose of the minimum lot width and depth requirements is to ensure that property has adequate area and is of a shape to allow it to be developed to its intended use. The proposed partitioning creates lots which still exceed the required minimum lot area requirement of 4000 square feet and are also of a shape that will accommodate single family residences and enable the dwellings to obtain the required setbacks.

2. The proposed development will not unreasonably impact adjacent existing or planned uses in development.

FINDING: As noted above, the proposed parcels exceed the required minimum lot area for single family residences, and the proposed lots are of a shape that will accommodate dwellings and still meet the required setback standards. The applicant has also adequately addressed the required access standard. In this regard, the proposed partitioning is no different that other partitionings in the RS zone, and is consistent with the existing and planned uses in the neighborhood.

3. The adjustment does not expand or reduce a quantifiable standard by more than 20% and is the minimum necessary to achieve the purpose of the adjustment.

FINDING: The requested adjustment reduces the qualified standard by less than the 20% required by the Keizer Zoning Ordinance.

4. There has not been a previous land use action on the basis that the adjustment would not be allowed.

FINDING: There has not been a previous land use action on the basis that the requested adjustment would not be allowed.

B Staff recognizes the actual partitioning may vary from the proposed partitioning due to reasons of topography, surveying requirements or other factors. Minor variations are permitted provided the final partitioning plat substantially conforms with the proposed partition plan.

If you have any question about this application or the decision please call 390-3700 or visit the Community Development Department at the above address.

REPORT PREPARED BY: Amy C. Drought, City Planner

Amy C Drought 4/22/98

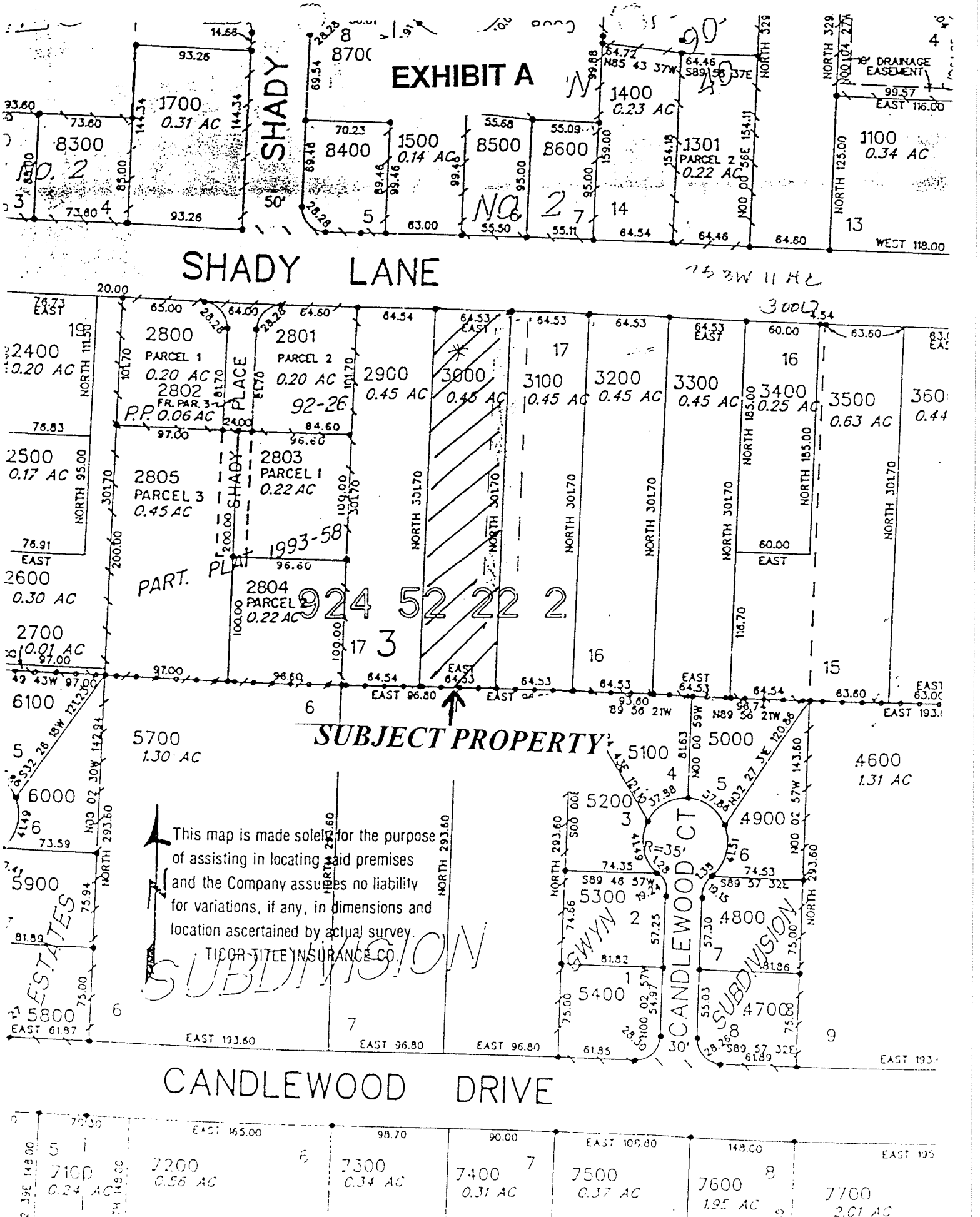
EXHIBIT A
SHADY LANE
SHADY PLACE
CANDLEWOOD CT
CANDLEWOOD DRIVE
SUBJECT PROPERTY
This map is made solely for the purpose of assisting in locating said premises and the Company assumes no liability for variations, if any, in dimensions and location ascertained by actual survey.
TICOR TITLE INSURANCE CO.
SUBDIVISION
ESTATES
SWYN
PART. PLAT 1993-58
924 52 22 2
8300
1700 0.31 AC
8400
1500 0.14 AC
8500
8600
1400 0.23 AC
1301 PARCEL 2 0.22 AC
1100 0.34 AC
2400 0.20 AC
2500 0.17 AC
2600 0.30 AC
2700 0.01 AC
2800 PARCEL 1 0.20 AC
2801 PARCEL 2 0.20 AC
2802 FR. PAR. 3 0.06 AC
2803 PARCEL 1 0.22 AC
2804 PARCEL 2 0.22 AC
2805 PARCEL 3 0.45 AC
2900 0.45 AC
3000 0.45 AC
3100 0.45 AC
3200 0.45 AC
3300 0.45 AC
3400 0.25 AC
3500 0.63 AC
6100
5700 1.30 AC
6000
5900
5800
5100
5000
4600 1.31 AC
5200
4900
5300
4800
5400
4700
7100 0.24 AC
7200 0.56 AC
7300 0.34 AC
7400 0.31 AC
7500 0.37 AC
7600 1.95 AC
7700 2.01 AC
R=35'
16' DRAINAGE EASEMENT
NORTH 329
NORTH 125.00
WEST 118.00
EAST 116.00
NORTH 111.50
NORTH 95.00
NORTH 301.70
NORTH 185.00
NORTH 293.60
EAST 96.80
EAST 193.60
EAST 61.87
EAST 165.00
EAST 108.80
SOUTH 148.00

EXHIBIT B

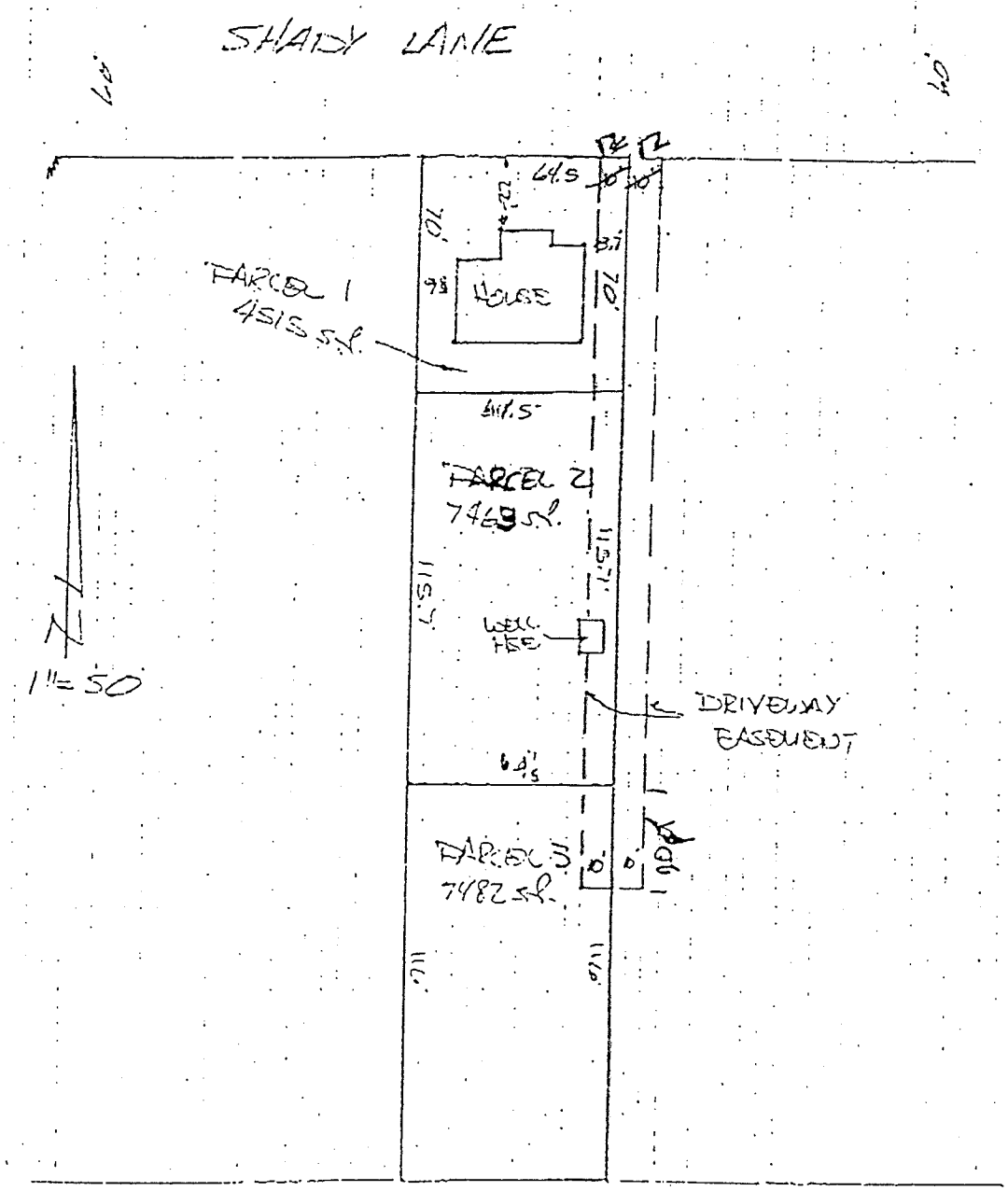
SHADY LANE
PARCEL 1
4515 s.f.
HOUSE
PARCEL 2
7463 s.f.
WELL HSE
DRIVEWAY EASEMENT
PARCEL 3
7482 s.f.
1" = 50'

EXHIBIT C

City of Keizer
930 Chemawa Rd. N.E.
P.O. Box 21000
Keizer, Oregon 97307-1000

DATE: APRIL 15, 1998

TO: CITY OF KEIZER
PLANNING DEPARTMENT

SUBJECT: PARTITION CASE / ADJUSTMENT APP. 98-03
1250 SHADY LANE
TAX LOT NUMBER 3000
CHOM CONSTRUCTION

PUBLIC WORKS DEPARTMENT COMMENTS

It is the understanding of the Public Works Department that the property under consideration for development located in property currently zoned appropriate for the proposed partitioning. The proposed partitioning will create 3 parcels where one parcel currently exists. The lot fronting Shady Lane will be 4515 square feet, the adjoining parcel will be 7463 square feet and the rear parcel will be 7482 square feet. The proposal is to provide access to the two rear parcels with a private drive with a portion of the private drive on the adjoining property. It is understood that a reciprocal easement is being provided along the east line of the subject property. It is not known at this time whether additional parcels on the adjoining property will be created that will add to the number of units using the private drive. The current code of the City of Keizer limits the number of dwellings that can share a private drive to 4.

The developer of the proposed partitioning shall furnish a letter of understanding with the adjoining property owner that not more than four parcels will be allowed to use the private drive.

The following comments are being provided to assist in the overall evaluation of the proposal:

SANITARY SEWERS:

a.) The partitioning will result in two parcels. It is important that all new created parcels are provided with sanitary sewer service. The existing public sanitary sewer line in Shady Lane is capable of serving the subject parcels. The Department of Public Works will require a pre-design meeting with the City of Keizer prior to submittal of the sewer service plans to the City of Salem for approval. The City of Salem Department of Public Works will require that sewer plans be submitted to the Permit Application Center (PAC) for review by the City of Salem. Unless a restriction is made regarding future partitioning of the subject property and the adjoining parcel on the east, a public sanitary line will be required to provide service to the proposed new parcel/parcels.

Administration
Public Works
Community Development
Municipal Court
Phone 503 390 3700
Fax 503 393 9437
Police (business only)
Phone 503 390 3713
Fax 503 390 8295

Incorporated 1982
Pride, Spirit, Volunteerism

b.) No sanitary sewer construction shall begin on this property without prior notification being given to the City of Keizer Department of Public Works.

c.) A street opening permit is required from the Department of Public Works prior to any construction within public right of ways.

d.) The subject property is within the original Keizer Sewer District and is therefore not subject to an acreage assessment

WATER SYSTEM:

a.) Access for water service can be gained from the existing water main in Shady Lane. Unless the applicant can provide assurance that future redivision of the adjoining parcel on the east will not occur, a public water main will be required to be extended to the proposed new parcel.

b.) Keizer Fire District shall be required to approve any development on the proposed parcels regarding access and fire protection. It may be necessary for the developer of the subject property to install a fire hydrant on an appropriately sized water main to provide fire protection for the proposed new lot.

c) Location of all proposed meters to be determined by the Department of Public Works.

d) To eliminate the possibility of any cross connections and assure that adequate separation between wells and sanitary sewer lines exist, any wells on the property to be abandoned by a licensed and bonded well driller to the standards of the Oregon State Department of Water Resources and the City of Keizer.

STREET AND DRAINAGE IMPROVEMENTS:

a.) Access for the proposed parcels will be from a proposed private drive within a 20 foot wide clear easement centered along the east property line. It is proposed that one half of the easement will be from the adjacent property. It will be the responsibility of the applicant to provide the necessary easements and reciprocal language to assure that adequate provisions for maintenance is made. The Department of Public Works will require that a storm drainage system be constructed within the proposed new private drive that is capable of disposing the storm waters generated from the new development to an approved underground

drainage system or to an approved public storm drain system. It will be necessary for the developer to submit percolation tests that indicate the capability of the soils in the area are adequate for the underground disposal of all newly proposed impervious surfaces (roofs, concrete driveways, walkways, roadways, etc.). It is recommended that a method be developed that will keep storm water within the private drive area for ease access for maintenance. An overflow system will be approved to the existing storm drain line in Shady Lane after the above information is accepted.

It will be the responsibility of the applicant to locate any existing obstructions that could be a hindrance to sight distance for the proposed new driveway and make provisions have them removed prior to recording of the partitioning plat.

b.) The partitioning plat shall provide adequate easements for proposed public and private utilities.

c.) An engineered method of providing storm water detention shall be submitted to the Department of Public Works for approval prior to final approval of the partitioning plan.

d.) A site grading plan shall be submitted to the Department of Public Works prior to any grading operations on the site.

e.) Construction permits are required by the Department of Public Works prior to any public facility construction.

f.) A Pre-design meeting will be required prior to the Developer's Engineer submitting plans to the city for review.

A Pre-construction conference shall be required prior to commencement of any construction under permits issued by the city.

BEFORE THE LAND USE HEARINGS OFFICER
FOR THE CITY OF KEIZER

Regarding an appeal M. J. Wilken and Cynthia Wilken of the Zoning Administrator's approval of a partitioning and accompanying adjustment of the prescribed lot depth for two new lots	))))	FINAL ORDER Partition/Adjustment Case No. 98-03 (Chom Construction, Inc.)

APPEAL OF PARTITION AND LOT "ADJUSTMENT": *Sustained*, and remanded to the City for consideration of the requested variance

(because, according to the various definition enacted by the City, the "front" lot line for purposes of proposed Parcels 2 and 3 would be that line that separates the proposed lots from the westernmost boundary of the private access easement — which means that the "lot depth" for each of those two lots would be only 52.5 feet instead of 64.5 feet — which means that the lot "adjustment" exceeds the 20% threshold in KZO § 7.30(d))

A. SUMMARY OF PERTINENT FACTS

Appellants M. J. Wilken and Cynthia Wilken (hereafter collectively "Appellant") seek Hearings Officer review of the Zoning Administrator's decision in Partition/Adjustment Case No. 98-03, pursuant to KEIZER SUBDIVISION AND PARTITIONING ORDINANCE (hereafter "KSPO") § VII(8) (partition appeals) and KEIZER ZONING ORDINANCE (hereafter "KZO") § 5.08 (appeals from Zoning Administrator decisions).

The underlying applicant, Chom Construction, Inc. (hereafter "Chom"), proposes to create three lots comprising 4,515 square feet, 7,463 square feet, and 7,482 square feet — proposed Parcels 1, 2, and 3, respectively — within a .45-acre parcel addressed as 1250 Shady Lane, N.E. (hereafter the "subject property"), as portraryed on Exhibit B to the decision from which this appeal has been taken. The subject property lies within a Single-Family Residential (RS) zoning district in an area designated Low Density Residential in the City's Comprehensive Plan.

In March, 1998, Chom submitted a request for partition approval for the subject property, coupled with a request for approval of *either* a concurrent "lot adjustment" pursuant to KZO § 7.30 *or* a lot depth variance pursuant to KZO § 6.30 in order to allow lot "depths" for Parcels 2 and 3 of 64.5 feet instead of the 70 feet otherwise prescribed by KZO § 23.12(b) for lots in the RS zoning district. In an April 22, 1998, decision, the Zoning Administrator approved both the partition and the lot adjustment (hereafter the "APPROVAL"). Because the lot adjust-

ment provided effective relief from the lot depth provision in KZO § 23.12(b), the Zoning Administrator rendered no decision on the concurrent variance request.[1]

Appellants timely appealed the APPROVAL.

B. HEARING AND RECORD

The Hearings Officer heard testimony and argument on the appeal on May 28, 1998. The Hearings Officer had no *ex parte* contacts, bias, or conflicts of interest to disclose. Pursuant to ORS 197.763(5), the Hearings Officer declared to those in attendance at the hearing that: (1) the partition and "lot adjustment" approval criteria in KSPO § VII and KZO § 7.30, respectively, would control the appeal; (2) all testimony and documentary evidence must be directed to the prescribed approval criteria, or to other identified approval criteria in the City's SUBDIVISION AND PARTITIONING ORDINANCE ZONING ORDINANCE, Comprehensive Plan, or other identified source; and (3) the failure to raise any factual or legal issue with specificity and clarity sufficient to allow the Hearings Officer or any participant to address and respond to such issue may preclude any further appeal based upon the Hearings Officer's resolution of such issue.

City Planner Amy Drought summarized the application and the APPROVAL, following which the Hearings Officer took testimony, argument, and other comments. Marcie Wilken appeared and argued on behalf of Appellant; Norm Hill appeared and argued on behalf of Chom. The Hearings Officer then closed the public record. All exhibits and records of testimony have been filed with the Keizer Community Development Department.

At the May 28, 1998, public hearing the Hearings Officer left the record open for two purposes: (1) to allow the City, Appellant, and Chom until 5:00 p.m. on June 4 to address the question whether this proceeding ought to proceed in light of a pending appeal in a related matter, and (2) to allow Chom and Appellant opportunities to provide further written input concerning the issues discussed at the public hearing; the Hearings Officer granted Chom a week — until 5:00 p.m. on June 4 — within which to submit additional arguments or information concerning the arguments raised on appeal, and he granted Appellant a week — until 5:00 p.m. on June 11 — within which to respond to Chom's submittal. At 4:56 p.m. on Thursday, June 4, Chom submitted to the City a written document entitled "Response To Issues Brought Forth By Appellant." At 12:04 p.m. on Monday, June 8, Appellant submitted to the City a written request for additional time — from Thursday, June 11, to Monday, June 15 — within which to respond to Chom's June 4 submittal, asserting that the City had not

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[1] KZO § 6.20 provides that "[a]ny deviation to the development standards in the applicable zone or deviation from the requirements in Chapters 12 to 20 *beyond that provided under the adjustment process* may be authorized by a variance." The Hearings Officer construes the emphasis language from KZO § 6.20 to mean that the approval of a lot adjustment pursuant to KZO § 7.30 renders a concurrent variance request moot.

provided Chom's submittal as of the morning of June 8. The Hearings Officer granted Appellant's request for additional time, and allowed Appellant until 5:00 p.m. on June 15 within which to submit a response to Chom's June 4 submittal.

C. APPROVAL / REVIEW CRITERIA

KSPO § VII(8) authorizes appeals to the Hearings Officer from the Zoning Administrator's partition decisions rendered pursuant to the KEIZER SUBDIVISION AND PARTITIONING ORDINANCE. KZO § 5.08 separately authorizes appeals to the Hearings Officer from the Zoning Administrator's decisions that apply ZONING ORDINANCE provisions.

The Hearings Officer reviews appeals from Zoning Administrator decisions *de novo*, applying the same approval criteria as the Zoning Administrator.

1. PARTITIONS
(KSPO § VII)

The City's partitioning approval criteria appear in KSPO § VII, and require:

- (1) the submittal of certain information (*see* KSPO § VII(3));
- (2) a demonstration that the requested partition will comply with the regulations and standards in KSPO §§ IV (Roads, Streets, and Easements), V (Blocks and Lots), and VI (Sewage, Water, and Utilities) (*see* KSPO § VII(5); and
- (3) compliance with certain prescribed access standards (*see* KSPO § VII(6).

2. "LOT ADJUSTMENTS"
(KZO § 7.30)

KZO Chapter implements procedures for obtaining adjustments of certain development standards. KZO § 7.10 provides, in part, that "[f]or lands or uses with unique characteristics the intent and purpose of the development standards may be maintained while allowing for limited adjustments to quantifiable requirements." KZO § 7.20 further provides that "[a]djustments to the quantifiable requirements in the applicable zone or Chapters 12 to 20 may be approved if the procedures in Chapter 5 are followed and it is found that the criteria for adjustments in Section 7.30 are met."

The City's "lot adjustment" approval criteria appear in KZO § 7.30, and require a showing that:

> "(a). The intent and purpose behind the specific provision sought to be adjusted is either clearly inapplicable under the circumstances of the particularly proposed development; *or*
>
> "(b). The particular development as proposed otherwise clearly satisfies the intent and purpose for the provision sought to be adjusted; *and*
>
> "(c). The proposed development will not unreasonably impact adjacent existing or planned uses and development; *and*
>
> "(d). The adjustment does not expand or reduce a quantifiable standard by more than 20 percent and is the minimum necessary to achieve the purpose of the adjustment; *and*
>
> "(e). There has not been a previous land use action approved on the basis that an adjustment would not be allowed."

D. DISCUSSION AND FINDINGS

At the May 28 hearing, Appellant orally urged a number of reasons in support of the appeal. The Hearings Officer has identified those reasons as nine distinct grounds, and discusses them sequentially below.

During the time the record remain opened for further written comment, Chom timely submitted a "*Response To Issues Brought Forth By Appellant*" (hereafter "CHOM'S RESPONSE"). Appellant also timely submitted a letter dated June 14, 1998, that further addresses in narrative form only issue (hereafter "APPELLANT'S REPLY").[2]

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[2] APPELLANT'S REPLY objects to the consideration of CHOM'S RESPONSE because the latter bears a reference to Case No. "98-02." At the May 28 hearing, the Hearings Officer mentioned that the record contained conflicting references to Case No. "98-02" and "98-03." The Zoning Administrator's APPROVAL in this case actually the number "98-02," however, the Hearings Officer has already decided an unrelated matter for the City that bore that number "98-02." Moreover, Exhibit C in the record in this matter refers to "98-03" as does Appellant's appeal. Staff corrected the number of this matter as "98-03" at the May 28 hearing.

The Hearings Officer overrules Appellant's objection. The confusion in the numbering originated with the City, and it would seem logical that Chom would continue to apply the same number that actually appears on the underlying decision — even if that number proves to be incorrect. The misnumbering also constitutes an utterly inconsequential miscue here.

1. EFFECT OF CONCURRENT PROCEEDINGS

At the May 28 hearing, Appellant urged that this entire proceeding should be treated as a nullity because Chom has a pending appeal in a separate-but-related matter that challenges the Hearings Officer's prior interpretation of the lot "depth" provision in KZO § 23.12(b). APPELLANT'S REPLY reiterates this argument.

Chom had earlier sought to partition the subject property in Partition Case No. 97-22 (hereafter "CHOM I"), but, upon appeal to the Hearings Officer from the Zoning Administrator's decision to grant the partition in that case, the Hearings Officer concluded that the proposed partitioning would result in the creation of two lots that lacked sufficient lot "depth" for purposes of KEIZER ZONING ORDINANCE (hereafter "KZO") § 23.12(b). The Hearings Officer sustained the appeal via a final order rendered in January, 1998, that refused to allow the creation of substandard lots.

Chom apparently appealed that decision to the Keizer City Council — where it has apparently sat without further action having been taken (notwithstanding the 120-day deadline mandated by prescribed by 1997 Or Laws, Ch. 414, § 1 and 2).[3] If the Hearings Officer's interpretation of the lot "depth" provision in CHOM I stands, then Chom's *present* application would make sense because it necessarily acquiesces in (or presumes the correctness of) that interpretation. If, on the other hand, the City Council reverses the Hearings Officer's prior interpretation in CHOM I, then this entire proceeding will have been for naught — and entirely unnecessary as anything other than an attempt to obtain an advisory opinion of sorts.

At the May 28 hearing, Chom offered no good explanation of either the basis for or the necessity of concurrent proceedings involving that same fundamental issues. Apparently, Chom received some guidance or advice from the City that concurrent proceedings could occur and that the City Council would simply "sit" on the appeal in CHOM I until the current matter had been finally resolved; if Chom prevailed in this matter, then the appeal in CHOM I would (presumably) be dismissed, while if Chom did not prevail in this matter, then the appeal in CHOM I would (presumably) go forward.

The Hearings Officer instructed Staff to seek advice from the City Attorney with respect to the Hearings Officer's ability to proceed with *this* matter under those circumstances. In a June 4, 1998, memo, the City Attorney confirmed that the CHOM I appeal has remained "pending" at the City Council level since Chom filed the appeal in January, 1998. That memo further recites, in pertinent part:

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[3] The 1997 legislature created a temporary, two-year revision to the former "120-day" decision period. (*See* 1997 Or Laws, Ch. 414, §§ 1 and 2.) For land within an urban growth boundary, the temporary law creates no change from the 120-day deadline in ORS 215.428.

". . . After I discussed the matter with the City Planner, we reached the conclusion that the applicant could submit a new application combining the partition request with an adjustment or variance request to reduce the lot depth requirement. . . .

"Mr. Hill was interested in pursuing that avenue, but was concerned about waiving his right to argue the lot depth interpretation question. Though I felt he could still argue that point in the new application . . ., the applicant was still concerned over that issue. Mr. Hill then asked if he could maintain the appeal in [CHOM I], waive the 120-day deadline, and if a second decision (combined partition/adjustment request) was appealed, have both appeals heard before the City Council in one hearing.

"Though I did not thing it was necessary to maintain the first appeal to reach his goal, I agreed as City Attorney that he could take that route. Therefore, the council hearing in [CHOM I] has not been set.

". . . With the benefit of further review and hindsight, I would agree that it is not appropriate for the Hearings Officer to rule in [the present matter] until there has been a final resolution of [CHOM I].

"It is my understanding that the applicant does not believe that the first appeal has to be finalized for [the present matter] to move forward. However, the applicant apparently will allow the first appeal to be withdrawn should the Hearings Officer determine that step is necessary to proceed with [the present matter]."

If local land use proceedings paralleled judicial proceedings, then obviously Chom would need to either (1) dismiss the appeal in CHOM I in order to pursue the present matter, or (2) pursue the appeal in CHOM I and dismiss the present matter. The judicial system functions to determine only one contested matter at a time; duplicate-and-contemporaneous matters result in the *verboten* "advisory opinions" that run afoul of the courts' "case-or-controversy" limitation on the exercise of judicial authority.

The Hearings Officer's initial instincts urged that he follow that route here as well, since it seemed to make sense that only one contested matter could be pursued at one time. However, upon reflection the Hearings Officer can think of no reason why a local government could not, if it so chose, allow the very situation that has occurred here — *viz*, allow an applicant who already has a pending appeal in another proceeding to begin anew with a non-binding application whose existence necessarily assumes an unsatisfactory outcome in the pending appeal. Although it unnecessarily duplicates effort and fosters the prospect of conflicting and ambiguous results, in the final analysis those sorts of problems would be borne only by the City, the applicant, and other participants (such as Appellant here).

Thus, although the Hearings Officer's decision in *this* matter would amount to a wasted and pointless effort in the event that Chom successfully pursues the appeal in CHOM I, and

although Chom runs the risk of damaging its pending appeal by having asserted in *this* matter a position utterly contrary to that asserted in the pending appeal (*viz*, that the lot "depth" provision in KZO § 23.12(b) prescribes 70 feet), if the City nevertheless interprets its application procedures to accommodate the procurement of advisory opinions from the Hearings Officer, then so be it. Nothing in the City's ZONING ORDINANCE appears to preclude the present situation, although the current situation serves no discernable or beneficial purpose within the administration of the land use process.[4]

The Hearings Officer thus (reluctantly) **rejects** Appellant's first argument.

2. EXISTENCE OF, AND EFFECT OF, AN "INACCURATE" APPLICATION

At the May 28 hearing, Appellant urged that Chom's application contained inaccurate information concerning the size of one of the proposed partition parcels — thus running afoul of KZO § 5.02(g), which provides:

> "Inclusion of demonstrably inaccurate factual information in an application shall be sufficient grounds to deny the application."

Normally, the local government determines the sufficiency of the information provided in a land use application. Once the matter proceeds to a hearing on the merits — which only happens when the local government deems the application "complete" — the sufficiency or completeness of the *application* becomes a moot point; the hearing focuses on the substantive approval criteria.

KZO § 5.02(g), however, actually appears to give the Hearings Officer the authority to "deny" an application on the merits if it contains "demonstrably inaccurate" information. Because KZO § 5.02 conspicuously differentiates between the term "*deny*" in subsection(g) and the term "*reject*" in subsection (c), and because it further differentiates between the terms "*incomplete*" and "*demonstrably inaccurate*" within those same subsections, the Hearings Officer must presume that those terms mean different things and implicate different results. That being so, it does in fact appear that Appellant correctly invokes KZO § 5.02(g) as a ground for denying the underlying application on its merits — *if* it contains "demonstrably inaccurate" information.

Appellant maintains that Chom has misidentified the size of proposed Parcel 1; Appellant argues that instead of encompassing 4,515 square feet as represented in Chom's application

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[4] The ZONING ORDINANCE *does*, however, preclude this type of situation under circumstances that involve conditional uses, variance, or adjustments; KZO § 5.30 provides that "[i]f a *conditional use*, *variance*, or *adjustment* application is denied on the merits, such denial shall be a bar to refiling the same or substantially similar application for a period of six months from the date of the final decision [with exceptions not pertinent]." That prohibition has no application here; CHOM I involved a *partition*.

it only encompasses 3,675 square feet. Chom has measured proposed Parcel 1 as having a lot width of 64.5 feet and a lot depth of 70 feet, or 4,515 square feet. Appellant, on the other hand, maintains that the 12-foot portion of the proposed 24-foot access easement located along the east side of the subject property must be subtracted from the lot width, yielding a lot width of only 52.5 feet — which, in conjunction with the lot depth of 70 feet, yields a lot of only 3,675 square feet.

The question becomes the correct manner in which "lot" size can be determined. If Chom can include the area of the proposed access easement, then there exists no inaccuracy.

KZO § 2.219 defines "*lot area*" as

> ". . . the area in square feet . . . of a horizontal plane bounded by the vertical extensions of *lot lines*." (Emphasis added.)

Thus, "lot lines" determine "lot area." KZO § 2.226 defines "*lot line*" as

> ". . . one of the property lines forming the *exterior boundaries* of a lot . . .[.]" (Emphasis added.)[5]

Why not just say "boundaries"? Not only does the ZONING ORDINANCE fail to define or explain the term "exterior boundaries" in any meaningful context, but the term itself proves a bit odd; assuming each of the two words in the phrase "exterior boundaries" to have meaning, the phrase necessarily suggests that it differentiates between something else, such as "exterior" and "interior" boundaries — thus yielding a differentiation that makes no sense because of the incomprehensible quality of the term "interior boundaries" as applied to a "lot."

In any event, the Hearings Officer concludes that, within the above definitions, "lot" means the area within the property boundaries. In this case, the property boundaries of proposed Parcel 1 *includes* the access easement. The Hearings Officer has not located any other portion of the ZONING ORDINANCE that prescribes the result advocated by Appellant. (An application of the definitions of "lot depth," "lot line, front," "lot line, rear," "lot line, side," and "lot width" in KZO §§ 2.223, 2.228, 2.230, 2.232, and 2.234 arrives at the same logical result; nothing purports to exclude access easements from a "lot" boundary.) CHOM'S RESPONSE advocates the same conclusion. (*Id.* at 2-3.)

Appellant cites KZO § 17.05(a) as necessitating the exclusion of that portion of a lot devoted to an access easement. Not only can the Hearings Officer find nothing in that language that would lead to that conclusion, but the only portion of KZO § 17.05(a) that even remotely implicates the issue applies to "a planned development."

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[5] The definitions prove to be circular — a not uncommon predicament. To determine "lot area" one needs to know the "lot lines"; yet to determine "lot lines" one needs to know the boundaries of the "lot." The Hearings Officer has to overlook that circularity, else nothing could be resolved.

Thus, the Hearings Officer rejects Appellant's second argument.

3. Existence Of, And Effect Of, An "Incomplete" Application

At the May 28 hearing, Appellant urged that Chom's application failed to provide all of the information prescribed by KZO § 5.03(m), which provides:

> "A complete application shall include the following:
>
> "* * * * *
>
> "(m) A plot plan, drawn to scale, that shows the boundaries of the property, location, and general configuration of existing and proposed structures and other improvements proposed as part of the application."

Appellant urges that Exhibit B attached the APPROVAL does not qualify as the requisite "plot plan."

First, unlike KZO § 5.02(g), discussed in the preceding topic, the Hearings Officer does not construe KZO § 5.03 as authorizing a *denial* of the application *on the merits*; rather, KZO § 5.03 merely prescribes items that an applicant needs to provide in order for the City to determine whether the application can be deemed "complete" for purposes of KZO § 5.02(b), (c), and (d). Once the City schedules a public hearing before the Hearings Officer, only those details that pertain to the approval criteria have any significance — and a "plot plan" does not fall within any of the pertinent approval criteria in this instance.

Second, the Hearings Officer has compared Exhibit B attached to the APPROVAL to the requirements of the "plot plan" set forth in KZO § 5.03(m) and finds that it has a scale (1" = 50'), it indicates the property boundaries of both the subject property and the proposed partitioned lots, and the "general configuration" of *existing* structures. It does not show any *proposed* structures, but it would only need to do so if "proposed" structures formed any part of the underlying application — and in this case they do not.

Thus, the Hearings Officer rejects Appellant's third argument.

4. INSUFFICIENT DESCRIPTION OF SURROUNDING AREA

At the May 28 hearing, Appellant argued that the APPROVAL contains insufficient information in part II, paragraph F, which reads contains a summary of the surrounding zoning and land uses and reads (in full):

> "F. ADJACENT ZONING AND LAND USES: Surrounding property is also zoned Single Family Residential and single family homes are the dominant use." (APPROVAL at 1.)

Appellant argues that the description quoted from the APPROVAL fails to accurately describe the large-lot character of the surrounding area.

The Hearings Officer does not know of any portion of either the SUBDIVISION AND PARTITIONING ORDINANCE or the ZONING ORDINANCE that requires something beyond that which appears in the APPROVAL, and Appellant has not cited any pertinent authority. Moreover, the description in the APPROVAL has nothing to do with Chom's fulfillment of the substantive approval criteria for either the partition or the lot adjustment.

Thus, the Hearings Officer rejects Appellant's fourth argument.

5. RELEVANCE OF "VARIANCE" CRITERIA — PART 1

At the May 28 hearing, Appellant argued that KZO § 6.30(b) disallows *variance* approval under the circumstances; it provides (in pertinent part):

> "The following criteria shall be used to review and decide variance applications:
>
> "* * * * *
>
> "(b) There has not been a previous land use action approved on the basis that variances would not be allowed[.]"

The APPROVAL, however, neither decides nor approves any *variance*; although Chom asked for a variance, the Zoning Administrator's approval of the *lot adjustment* rendered the variance request moot. KZO § 6.30(b) simply does not apply.

Thus, the Hearings Officer rejects Appellant's fifth argument.

6. Relevance Of "Variance" Criteria — Part 2

At the May 28 hearing, Appellant argued that KZO § 6.30(c) disallows *variance* approval under the circumstances; it provides (in pertinent part):

> "The following criteria shall be used to review and decide variance applications:
>
> "* * * * *
>
> "(c) The variance will not be unreasonably detrimental to property or improvements in the neighborhood of the subject property."

The Approval, however, neither decides nor approves any *variance*; although Chom asked for a variance, the Zoning Administrator's approval of the *lot adjustment* rendered the variance request moot. KZO § 6.30(c) simply does not apply.

Thus, the Hearings Officer rejects Appellant's sixth argument.

7. Substandard Side Yard Setback On Proposed Parcel 1

At the May 28 hearing, Appellant urged that the proposed partition would leave proposed Parcel 1 with a substandard side yard setback on the east.

Using the dimensions portrayed on Exhibit B, Appellant maintains that proposed Parcel 1 — the lot fronting the street — would be left with an east side yard setback of only 1.7 feet after the proposed partition. Appellant obtains that dimension by subtracting the 12-foot half of the shared 24-foot access easement from the 13.7-foot distance between the existing house and the east property boundary. The question becomes whether the access easement must necessarily be subtracted in order to determine the side yard setback; if Appellant proves correct on that point, then the resulting east side yard setback after the partition would indeed run afoul of the 5-foot minimum setback prescribed by KZO § 23.14(a) for the RS zoning district.

KZO § 23.14(a) does not actually use the term "setback"; rather, it prescribes a minimum 5-foot "side yard" width.[6] KZO § 2.416 defines "yard, side" as (in pertinent part)

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[6] In a completely separate provision, KZO § 17.11 defines "required yard" as the "minimum required *setback area* between a structure . . . and a lot line[.]" It all means the same thing, but the RS side yard requirement can be determined simply by using the definitions of the terms used in KZO § 23.14(a).

". . . a yard, between a primary building and the side lot line, extending from the front yard . . . to the rear yard . . . ; *the width of the required side yard shall be measured horizontally from [1] the nearest point of the side lot line toward [2] the nearest point of the foundation of a primary building.*" (Emphasis and enumeration added.)

Thus, the determination of the "side yard" width requires an antecedent determination of the "side lot line." KZO § 2.232 defines "lot line, side" as

". . . any lot line which is not a front or rear *lot line*." (Emphasis added.)

The Hearings Officer has already concluded earlier in this decision that the City's definition of "lot line" in KZO § 2.226 — "exterior boundaries of a lot" — does *not* require the exclusion of any access easement. Thus, in this instance the "side lot line" means the property boundary, which, in turn, means that the east side yard setback of proposed Parcel 1 after the partition would be 13.7 feet, not 1.7 feet. CHOM'S RESPONSE advocates the same result. (*Id.* at 3.)

Thus, the Hearings Officer rejects Appellant's seventh argument.

8. SUBSTANDARD LOT DEPTHS OF PROPOSED PARCELS 2 AND 3

At the May 28 hearing, Appellant argued that the partition would result in substandard lot depths for proposed Parcels 2 and 3 of 52.5 feet, instead of 64.5 feet identified by Chom in its lot adjustment request. If Appellant proves correct, then the dimensional difference between the prescribed 70-foot lot depth in KZO § 23.12(b) and the resulting 52.5-foot lot depth would exceed the 20% "adjustment" otherwise allowed by KZO § 7.30(d) — *viz*, 14 feet, or a lot depth not less than 56 feet.

In his January, 1998, decision in CHOM I (Partition Case No. 97-22), the Hearings Officer concluded that the "lot depth" for each of proposed Parcels 2 and 3 would be determined as follows:

"Thus, according to the definition in KZO § 2.228(a), the front lot line for both of the proposed larger lots would be the lot line that separates each lot from an abutting street right-of-way (if any) *or*, in the event each lot does not abut a public street, the nearest right-of-way line of an abutting roadway easement. In this instance, because there exists no abutting street right-of-way, the front lot line for those larger lots would be the private access easement alone.

"* * * * *

". . . [T]he Hearings Officer interprets KZO § 2.228(a) to mean nothing less than what it says: in the case of "an interior lot having ***only one*** street or roadway easement frontage" (emphasis added), lot "depth" shall be determined *either* by reference to an *abutting* public street right-of-way, *or*, for lots that do not abut a public street, the nearest right-of-way line of an *abutting* private access easement.

"In this case, that interpretation would mean that the proposed larger lots have "front" lot lines parallel to the right-of-way of the proposed access easement. In turn, the "rear" lot lines would be determined in accordance with KZO § 2.230(b): "the lot line opposite, and most distant from[,] the front lot line." Thus, each of the proposed larger lots will have a minimum lot depth — pursuant to the definition in KZO § 2.223 — of only 64.5 feet, in contravention of the 70-foot lot depth requirement in KZO § 23.12(b)." (*Id.* at 5.)

In CHOM I, the issue concerned the *location* or *identification* of the "front" and "rear" lot lines for proposed Parcels 2 and 3. Chom advocated "front" and "rear" lot lines for those proposed lots that paralleled the *street*, but the decision in CHOM I concluded that the definitions within the City's ZONING ORDINANCE required the "front" and "rear" lot lines in this case be parallel to the *proposed access easement*. Unfortunately, within that decision the Hearings Officer did add that the lot "depth" for each of proposed Parcels 2 and 3 would be "64.5 feet." However, the precise question now raised by Appellant had not been the central point of that decision, and the decision's reference to "64.5 feet" served (or had been intended to serve) only as a directional differentiation between the north/south lot "depth" dimension urged by Chom and the east/west lot "depth" dimension determined by the Hearings Officer's decision.

CHOM'S RESPONSE understandably urges that "[t]he Hearings Officer has already concluded in Partition No. 97-22 that the lot depth on this type of application would be 64.50 feet." (*Id.* at 4.) The Hearings Officer's decision in that matter indeed *said* as much, but that decision *did not involve* the resolution of that particular issue and the statement therein did not *intend* to anticipatorily resolve it. In other words, CHOM I only determined *which* of the lot lines constituted the "front" and "rear" lot lines for purposes of ascertaining the *directional* configuration of "lot depth" — *viz*, did the lot "depth" run from north-to-south or from east-to-west? The actual *dimension* of the "lot depth" had no relevance or significance whatsoever in CHOM I.

Appellant now again points to the definition of "lot line, front" in KZO § 2.228 to emphasize a point never raised in CHOM I: whether the reference to "roadway" in KZO § 2.228 has a determinative impact on the actual dimension of "lot depth" in this instance. "Lot line, front" means

"(a) In the case of an *interior lot* having only one street or *roadway easement frontage*, the lot line separating the lot from the street right-of-way or *the nearest right-of-way line of a roadway easement*.

"(b) In the case of any lot not covered by (a), the lot line which the architecturally designed front of the building faces." (Emphasis added.)

KZO § 2.228(b) has no application here (or in CHOM I either).

Each of proposed Parcels 2 and 3 constitutes an "*interior lot*" as defined in KZO § 2.224 — "any lot other than a corner lot." At the May 28 hearing, Appellant for the first time cited the definition of "*roadway*" in KZO § 2.314 as encompassing or describing the proposed access easement on the eastern boundary of the subject property:

> "ROADWAY means a *right-of-way* across *private property* granted by the property owner to owners of one or more lots and allowing vehicles access from a street or roadway to those lots. . . . " (Emphasis added.)

The Hearings Officer agrees with Appellant that the definition of "roadway" in KZO § 2.314 describes the proposed access easement that will run along the eastern boundary of the subject property. Thus, each of proposed Parcels 2 and 3 also has only one "roadway easement frontage" for purposes of the definition of "front" lot line in KZO § 2.228(a). Therefore, the "front" lot line for each of proposed Parcels 2 and 3 will be the "lot line separating the lot from . . . the nearest right-of-way line of a roadway easement," as that phrase appears in the definition in KZO § 2.228(a) (above).

Appellant's argument necessarily implies that the "front" lot line for each of proposed Parcels 2 and 3 would be the *westernmost* edge of the access easement, which would effectively reduce the "lot depth" of each of the front yards by the 12-foot portion of that easement that runs the length of the subject property's east boundary. However, the definition in KZO § 2.228(a) does not *expressly* make it clear that Appellant's interpretation of the City's various definitions can be the only correct placement of the "front" lot line in this instance; the definition merely refers to "the lot line separating the lot from . . . the nearest right-of-way line of a roadway easement." What does "separating" mean?

On one hand, a "lot line" as defined by the City — which has already construed in this decision as meaning the actual property boundary *inclusive* of any easement — literally does not "separate" either of proposed Parcels 2 and 3 from the access easement; the easement lies *within* the "lot line." Yet that result would mean that the definition would literally have no meaning or purpose in the case of, as here, an access easement. On the other hand, a *street right-of-way* — the other part of the definition in KZO § 2.228(a) — does *not* form part of any abutting lot (*viz*, must necessarily lie *outside* of any "lot line"), which suggests that KZO § 2.228(a) ought to result in the same interpretation for "roadway easement" as it does for "street right-of-way." Yet that result would mean that the definition would conflict with the City's definition of "lot line" in KZO § 2.226 — as CHOM'S RESPONSE also observes (*id.* at 4.).

Stated more directly, the choices appear to be these:

- Apply the City's definition of "lot line" in KZO § 2.226 literally, in which case there could be no such thing as a "lot line separating the lot from . . . the nearest right-of-way line of a roadway easement" for purposes of the definition of "lot line, front" in KZO § 2.228(a) because the City's definition of "lot line" (as interpreted earlier in this decision) necessarily *includes* the easement, or

- Interpret the definition of "lot line, front" in KZO § 2.228(a) to yield the same results for *both* a street right-of-way *and* a private access easement, in which case the "lot line" would only run to the easement boundary (*viz*, necessarily *excluding* the easement).

The first choice adheres to the City's definition of "lot line" in KZO § 2.226 but results in part of the definition of "lot line, front" in KZO § 2.228(a) having no meaning. The second choice gives effect to all of the definition of "lot line, front" and treats public rights-of-way and private access easements the same way, but necessarily contravenes the definition of "lot line" (as interpreted earlier). In other words, either choice offers no good answer, and merely incorporates some problem that renders any answer flawed.

Moreover, the City's definition of "lot area, net" in KZO § 2.222 compounds the definitional quagmire; it separately defines that term to mean ". . . the lot area minus any area within a street right-of-way, roadway easement, or driveway strip." That term, which describes the result of some other undefined or unidentified determination, actually defines the *area* that would result if the Hearings Officer accepted Appellant's argument. However, the Hearings Officer has no idea of the intended *purpose* of the term "lot area, net"; he has been unable to locate the use of that term within any pertinent provision of the ZONING ORDINANCE and neither participant has cited any.

Ordinarily, a result that gives effect to one of the City's specific definitions would be the correct result. Indeed, the Hearings Officer's prior decision in CHOM I resulted from an application of the various definitions. However, in this case a literal application of the definition of "lot line" (as interpreted in this decision) results in an absurdity of sorts: an inexplicable — and very probably unintended — differentiation between "lot line, front" for purposes of frontage on a *public street right-of-way* and for purposes of frontage on a *private access (or "roadway") easement*. Therefore, the Hearings Officer interprets the definition of "lot line, front" in KZO § 2.228(a) to yield the same results for *both* a street right-of-way *and* a private access easement, in which case the "lot line" would only run to the easement boundary (*viz*, necessarily *excluding* the easement).

In this instance, the front lot line for purposes of proposed Parcels 2 and 3 would be that line that separates the proposed lots from the westernmost boundary of the private access easement — which, in turn, means that the "lot depth for each of those two lots would be only 52.5 feet instead of 64.5 feet — which, in turn, means that the lot "adjustment" exceeds the 20% threshold in KZO § 7.30(d).

Thus, the Hearings Officer sustains Appellant's eighth argument.

9. Does Chom Propose A "Subdivision"?

At the May 28 hearing, Appellant argued that the fact that the proposed 24-foot access easement straddles the boundary between the subject property and the abutting property to the east necessitates the inclusion of the abutting property to the east as part of the proposed partitioning, which would then transform the proposed partitioning into a proposed *subdivision* (*viz*, dividing land into four or more lots [KSPO §§ II(34) and II(35)]).

Nothing about the fact that half of the proposed access easement lies on adjacent property results in any division of property, nor does it result in the creation of any additional lots. Appellant cited no authority for the argument, and the Hearings Officer knows of none.

Thus, the Hearings Officer rejects Appellant's ninth argument.

10. Does Proposed Parcel 1 Become A "Corner Lot"?

At the May 28 hearing, Appellant argued that after the proposed partitioning the existing lot (proposed Parcel 1) would become a "corner lot" and would thereafter have insufficient setbacks. Chom's Response (at 4) correctly observes that the partitioning provisions preclude that result: "Access easements shall not be considered streets creating corner lots." (KSPO § VII(6)(f).)

Thus, the Hearings Officer rejects Appellant's tenth argument.

E. Conclusion

Based upon the above discussion, the Hearings Officer concludes that the the definition of "lot line, front" in KZO § 2.228(a) ought to yield the same results for *both* a street right-of-way *and* a private access easement, in which case the "lot line" would only run to the easement boundary (*viz*, necessarily *excluding* the easement).

In this instance, the front lot line for purposes of proposed Parcels 2 and 3 would be that line that separates the proposed lots from the westernmost boundary of the private access easement — which, in turn, means that the "lot depth for each of those two lots would be only 52.5 feet instead of 64.5 feet — which, in turn, means that the lot "adjustment" exceeds the 20% threshold in KZO § 7.30(d).

The Hearings Officer thus **sustains** Appellant's eighth argument, but **rejects** all other arguments.

F. DECISION

Because Chom concurrently applied for a variance, but because the Zoning Administrator's approval of the lot "adjustment" obviated the need for a decision on the variance (and otherwise rendered the variance request moot), the Hearings Officer will remand this matter to the Zoning Administrator for purposes of deciding Chom's variance request in conjunction with the proposed partitioning.

Although in at least one other matter, the Hearings Officer undertook to decide the variance issues on appeal in order to finally and efficiently resolve the matter, the record here simply does not allow for that; Appellant has challenged certain variance issues on appeal and, although those issues lacked relevance within this *appeal* those issues need to be developed further.

G. APPEAL RIGHTS

Any interested person, including the applicant, who disagrees with this decision may appeal the decision to the City Council. Any such appeal must be filed with the Keizer Community Development Department, 930 Chemawa Road, N.E., Keizer, Oregon 97303, by 5:00 p.m. on or before the tenth day following the date of mailing of this decision, and accompanied by any necessary filing fee.

The appeal must:

- be in writing,
- request that the Council hold a hearing on the application, and
- *either* explain why the appellant believes the decision to be factually or legally incorrect or based on incomplete facts, *or* present new facts material to the decision, the omission of which resulted in a factually or legally incorrect decision, *or* offer modifications to the decision that will conform the proposal to the requirements of the pertinent criteria governing the application.

This decision shall be effective and final after the tenth day following the date of mailing, unless appealed.

DATED this 29th day of June, 1998.

BARRY ADAMSON, Hearings Officer

[Submitted to the City via fax and by mail postmarked: June 29, 1998]

City of Keizer, Oregon

AGENDA ITEM 7b

August 17, 1998

RESOLUTION – AUTHORIZING CITY MANAGER TO ENTER AGREEMENT TO PURCHASE COUNTRY GLEN PARK

COUNCIL MEETING: August 17, 1998

AGENDA ITEM NUMBER: 7b

TO: MAYOR KOHO AND CITY COUNCILOR MEMBERS

FROM: WALLY G. MULL
CITY MANAGER

SUBJECT: PURCHASE OF PROPERTY FOR COUNTRY GLEN PARK

BACKGROUND:

Country Glen Subdivision was approved in 1993. As part of the approval, the Hearings Officer required the developer, Larry Epping to dedicate 5.6 acres of land for the purpose of a neighborhood park. Staff has been negotiating a purchase price during this time.

FISCAL IMPACT:

Parks System Development fees totaling $59,000 have been collected by the City to date. There are additional undeveloped lots in this phase that will bring in an additional $8,100 for a total of $67,100.

An additional 33.07 acres designated Mixed Use (MU), as yet undeveloped, is designed to accommodate a mixture of commercial and high density residential. This land could generate as much as an additional $60,000 in Parks System Development Fees.

Staff has negotiated a purchase price of $87,000 for the 5.6 acres. This would make the cost per acre $15,353. Recent cost for park land has been in the $20,000 - $60,000 range.

Funding for this purchase has been budgeted in the Parks Improvement Fund.

RECOMMENDATION:

It is recommended Council adopt the attached Resolution authorizing the City Manager to enter into an agreement with Larry Epping – Trans Co to purchase 5.6 acres of land in the County Glen Subdivision at a price of $87,000.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R98-_____

AUTHORIZING CITY MANAGER TO ENTER INTO AN AGREEMENT WITH TRAN CO. TO PURCHASE REAL PROPERTY FOR A PARK IN THE COUNTRY GLEN SUBDIVISION

WHEREAS, the City of Keizer has identified the general area for a public park in or near the Country Glen Subdivision;

WHEREAS, the Country Glen subdivision approval contemplated the conveyance of land to the City of Keizer for park purposes;

WHEREAS, a preliminary agreement has been reached with the owner of such property;

NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that the City Manager is authorized to enter into the Sale Agreement and Receipt for Earnest Money with Tran Co., an Oregon corporation, a copy of which is attached hereto and by this reference incorporated herein.

PASSED this _____ day of _____, 1998.

SIGNED this _____ day of _____, 1998.

_____
Mayor

_____
City Recorder

Lien & Johnson
Attorneys at Law
4855 River Road N.
Keizer, Oregon 97303
(503) 390-1635

SALE AGREEMENT AND RECEIPT FOR EARNEST MONEY

DATE: _____, 1998

PARTIES: TRAN CO. ~~XXXXXXXXXXXXXX~~., an Oregon corporation - SELLER

THE CITY OF KEIZER, an Oregon municipal corporation - BUYER

RECITAL:

A. Seller is the owner of certain real property, hereinafter referred to as the "Property," in the City of Keizer, County of Marion, State of Oregon and more particularly described as:

Lot 62, Country Glen Estates.

B. Buyer desires to purchase the property from Seller, and Seller desires to sell the property to Buyer.

AGREEMENT:

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 $87,000.00.

2. **EARNEST MONEY.** Upon acceptance of this Agreement by Buyer, Buyer shall pay $500.00 as earnest money.

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 additional sum of $86,500.00.

4. **CLOSING.** This Agreement shall be closed on or before August 19, 1998, at First American Title. Each party will pay one half of the closing fee.

5. **PRELIMINARY TITLE REPORT.** Within fourteen (14) days after the date of this Agreement, Seller will furnish to Buyer a preliminary title report showing the condition of title to the property.

6. **CONDITIONS.** The closing of this Agreement is conditioned upon the following:

6.1 Buyer's written approval of the preliminary title report within five (5) business days after the same has been furnished to Buyer.

6.2 Buyer's written acceptance of any adverse conditions noted on any inspection reports, such reports to be acquired at Buyer's option and expense only.

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. **DEED.** At closing, Seller shall execute and deliver to Buyer a statutory warranty deed, conveying the property in fee simple to Buyer, free and clear of all encumbrances except easements, conditions and restrictions of record, if any.

8. **TITLE INSURANCE.** Within fifteen (15) days after closing, Seller shall furnish Buyer with an owner's policy of title insurance, insuring Buyer against loss or damage sustained by them by reason of the unmarketability of their title, or encumbrances thereon, other than the usual printed exceptions contained in such policies, and easements, conditions and restrictions of record, if any.

9. **COSTS AND EXPENSES.** Seller shall pay for all premiums for the title insurance policy, all document recording charges, one-half of all escrow fees and costs, and Seller's share of prorations. Buyer shall pay for one-half of all escrow fees and costs and Buyer's share of prorations. Buyer and Seller shall each pay their own legal and professional fees respectively. All other costs and expenses shall be allocated between Buyer and Seller in accordance with the customary practice in Marion County, Oregon.

10. **PRORATIONS.** Real property taxes for the current tax year and all other items to be prorated shall be prorated as of closing.

11. **POSSESSION.** Buyer shall be entitled to possession immediately upon closing.

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12. **REQUIRED 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, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. 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 APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES."

13. **PROPERTY INCLUDED.** All fixtures are part of the property and shall be left on the premises by Seller.

14. **PERSONAL PROPERTY.** No personal property is included as part of the property being sold to Buyer.

15. **SELLER'S REPRESENTATIONS.** Seller warrants and represents as follows:

15.1 That Seller has no notice of any liens to be assessed against the Property except for tax liens; and

15.2 That Seller has no notice from any governmental agency of any violation of law relating to the property; and

15.3 Environmental Matters:

A. To the best of Seller's knowledge, no real property constituting part of the property contains, and has not previously contained, any hazardous underground storage tanks.

B. To the best of Seller's knowledge, all real property constituting part of the property is in compliance with applicable state and federal environmental standards and requirements affecting it.

C. Seller has not received any notices of violation or advisory action by regulatory agencies regarding environmental control matters or permit compliance with respect to any of the real property constituting part of the property.

D. To the best of Seller's knowledge, hazardous waste has not been transferred from any of the real property constituting part of the property to another location which is not in compliance with applicable environmental laws, regulations, or permit requirements.

E. With respect to any of the real property constituting part of the property, there are no proceedings, governmental administrative actions, or judicial proceedings pending or, to the best of Seller's knowledge, contemplated under any federal, state, or local laws regulating the discharge of hazardous or toxic materials or substances into the environment.

F. Seller has no actual knowledge of the storage, production or disposal of any hazardous waste on the property by Seller or by a tenant during Seller's ownership of the property. Seller has not received actual notice that any prior owner or tenant has stored, produced, or disposed of any hazardous waste on the property.

15.4 Seller is not a "foreign person" as that term is defined in IRC Section 1445. On the closing date, Seller will execute and deliver to Buyer a certification of non-foreign status on a form required by the IRS.

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. Therefore, a statutory seller's disclosure or disclaimer form is not required.

16. **BINDING EFFECT/ASSIGNMENT.** This Agreement is binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives and assigns. Buyer may not assign its rights under this Agreement without Seller's prior written consent.

17. **REMEDIES.** Time is of the essence of this Agreement. If this Agreement does not close, through no fault of Seller, prior to the close of business on the closing date specified above, Buyer shall forfeit the earnest money to Seller as liquidated damages, and such forfeiture shall be Seller's sole remedy. If Seller cannot furnish marketable title at closing or otherwise fails to consummate this transaction, the earnest money shall be refunded to Buyer, but acceptance by Buyer of such refund shall not constitute a waiver of other remedies.

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18. **ATTORNEY FEES.** In the event action is instituted to enforce any term of this Agreement, the prevailing party shall recover from the losing party reasonable attorney fees incurred in such action as set by the trial court and, in the event of an appeal, as set by the appellate courts.

BUYER:

DATED: _____

City of Keizer, an
Oregon municipal corporation

By: _____
Wally Mull,
City Manager

SELLER:

DATED: _____

TRAN CO.
~~EXAXWXSX~~, an Oregon corporation

By: Lawrence T. Epping
Lawrence T. Epping,
President

4536COK.002

City of Keizer, Oregon

August 17, 1998

AGENDA ITEM 8a

RESOLUTION – INITIATING FORREST RIDGE ESTATES STREET LIGHTING DISTRICT

COUNCIL MEETING: August 17, 1998

AGENDA ITEM NUMBER: 8a

TO: **MAYOR KOHO AND CITY COUNCIL**

THROUGH: **WALLY G. MULL**
CITY MANAGER

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

SUBJECT: **INITIATING FORREST RIDGE ESTATES LIGHTING LOCAL IMPROVEMENT DISTRICT**

ISSUE:

Shall the City Council initiate the Forrest Ridge Estates Street Lighting Local Improvement District?

DISCUSSION:

A petition was filed on August 4, 1998 by the developer of Forrest Ridge Estates subdivision to form a local improvement district for street lights in this area of Keizer. The petition contained the required signatures of the property owner as outlined by City of Keizer Ordinance 94-278.

RECOMMENDATION:

It is recommended that the City Council approve the Resolution initiating Forrest Ridge Estates Street Lighting Local Improvement District and direct the City Engineer to prepare a survey of the area.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R98-_____

DECLARING THE CITY'S INTENT TO INITIATE A STREET LIGHTING LOCAL IMPROVEMENT DISTRICT (FORREST RIDGE ESTATES) AND DIRECTING THE CITY ENGINEER TO MAKE A SURVEY AND FILE A WRITTEN REPORT WITH THE CITY RECORDER

WHEREAS, the City Council of the City of Keizer has received a petition from the residents to initiate a street lighting district in the Forrest Ridge Estates area in the City of Keizer, Oregon; and

WHEREAS, pursuant to City of Keizer Ordinance 94-278, the necessary signatures of land owner comprising two-thirds of the property to be included within Forrest Ridge Estates Street Lighting District have requested the formation of the district; NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that:

1. The City Council declares its intent to initiate the Forrest Ridge Estates Street Lighting Local Improvement District;

2. The map attached hereto, marked Exhibit "A", and by this reference incorporated herein sets forth the proposed boundaries of the district;

3. The City Engineer is hereby directed to make a survey of the District;

4. The City Engineer shall file a written report with the City Recorder to be considered by the City Council on September 8, 1998.

PASSED this ____ day of _____, 1998.

SIGNED this ____ day of _____, 1998.

_____
Mayor

_____
City Recorder

LCU 8498

PETITION TO FORM LOCAL IMPROVEMENT DISTRICT FOR STREET LIGHTING

To the City Council for the City of Keizer:

The undersigned being the owner or contract purchaser of the described property hereinafter set opposite my or its name, hereby petition the Keizer City Council to form a STREET LIGHTING LOCAL IMPROVEMENT DISTRICT for:

FOREST RIDGE ESTATES PHASE 1

within the City of Keizer.

The legal description of the proposed district is:

SE 1/4 SEC 23, T6S, R3W LOTS 1-55

PLEASE ATTACH A MAP OF THE AREA

This petition to form this district is in conformity with the charter, ordinances and regulations of the City of Keizer.

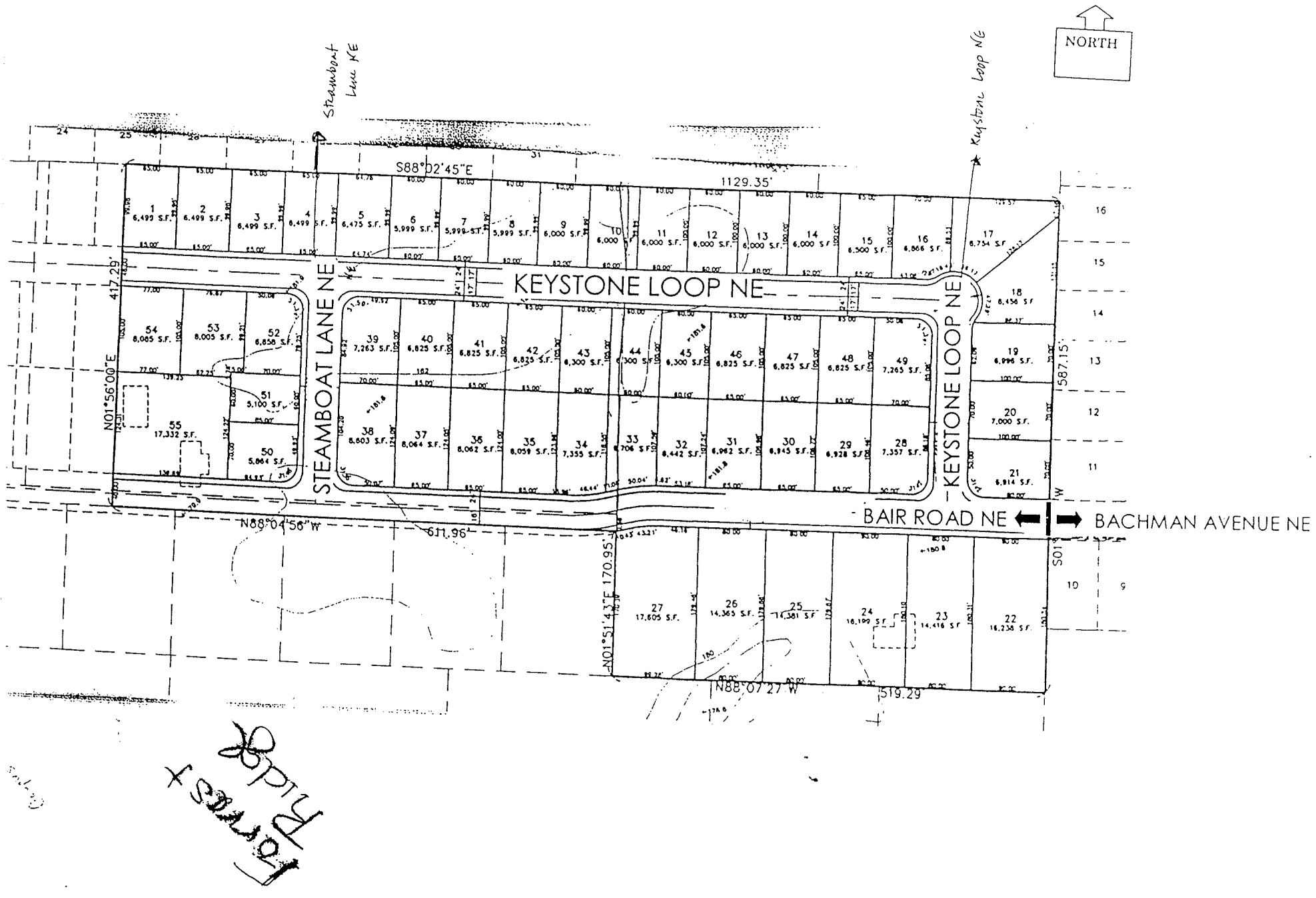
PETITION SUBMITTED BY:

NAME: Spyglass Development LLC

ADDRESS: P.O BOX 21209 Keizer, OR 97307-1209

PHONE NUMBER: (503) 390-2900

DATE	DEED HOLDER/CONTRACT BUYER	SIGNATURE	ADDRESS OF PROPERTY (IF VACANT - LOT NUMBER/SECTION)
8/4/98	Spyglass Development LLC		LOTS 1-55


NORTH
Steamboat Lane NE
Keystone Loop NE
S88°02'45"E
1129.35'
KEYSTONE LOOP NE
STEAMBOAT LANE NE
KEYSTONE LOOP NE
N01°56'00"E
417.29'
587.15'
BAIR ROAD NE
BACHMAN AVENUE NE
N88°04'56"W
611.96'
N01°51'43"E 170.95'
N88°07'27"W
519.29'

City of Keizer, Oregon

AGENDA ITEM 8b

August 17, 1998

RESOLUTION – INITIATING WHEATLAND TERRACE STREET LIGHTING DISTRICT

COUNCIL MEETING: August 17, 1998

AGENDA ITEM NUMBER: 8b

TO: **MAYOR KOHO AND CITY COUNCIL**

THROUGH: **WALLY G. MULL**
CITY MANAGER

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

SUBJECT: **INITIATING WHEATLAND TERRACE LIGHTING LOCAL IMPROVEMENT DISTRICT**

ISSUE:

Shall the City Council initiate the Wheatland Terrace Street Lighting Local Improvement District?

DISCUSSION:

A petition was filed on August 6, 1998 by the developer of Wheatland Terrace subdivision to form a local improvement district for street lights in this area of Keizer. The petition contained the required signatures of the property owner as outlined by City of Keizer Ordinance 94-278.

RECOMMENDATION:

It is recommended that the City Council approve the Resolution initiating Wheatland Terrace Street Lighting Local Improvement District and direct the City Engineer to prepare a survey of the area.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R98-_____

DECLARING THE CITY'S INTENT TO INITIATE A STREET LIGHTING LOCAL IMPROVEMENT DISTRICT (WHEATLAND TERRACE) AND DIRECTING THE CITY ENGINEER TO MAKE A SURVEY AND FILE A WRITTEN REPORT WITH THE CITY RECORDER

WHEREAS, the City Council of the City of Keizer has received a petition from the residents to initiate a street lighting district in the Wheatland Terrace area in the City of Keizer, Oregon; and

WHEREAS, pursuant to City of Keizer Ordinance 94-278, the necessary signatures of land owner comprising two-thirds of the property to be included within Wheatland Terrace Street Lighting District have requested the formation of the district; NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that:

1. The City Council declares its intent to initiate the Wheatland Terrace Street Lighting Local Improvement District;
2. The map attached hereto, marked Exhibit "A", and by this reference incorporated herein sets forth the proposed boundaries of the district;
3. The City Engineer is hereby directed to make a survey of the District;
4. The City Engineer shall file a written report with the City Recorder to be considered by the City Council on September 8, 1998.

PASSED this ____ day of _____, 1998.

SIGNED this ____ day of _____, 1998.

_____
Mayor

_____
City Recorder

08/03/98 12:42 ☎503 364 6397 MULTI-TECH ENGINEERING P.01/01
AUG-03-1998 10:50 1 503 364 1260

PETITION TO FORM LOCAL IMPROVEMENT DISTRICT FOR STREET LIGHTING

To the City Council for the City of Keizer:

The undersigned being the owner or contract purchaser of the described property hereinafter set opposite my or its name, hereby petition the Keizer City Council to form a STREET LIGHTING LOCAL IMPROVEMENT DISTRICT for:

WHEATLAND TERRACE

within the City of Keizer.

The legal description of the proposed district is:

SEC 26 T6S R3W WM

PLEASE ATTACH A MAP OF THE AREA

This petition to form this district is in conformity with the charter, ordinances and regulations of the City of Keizer.

PETITION SUBMITTED BY:

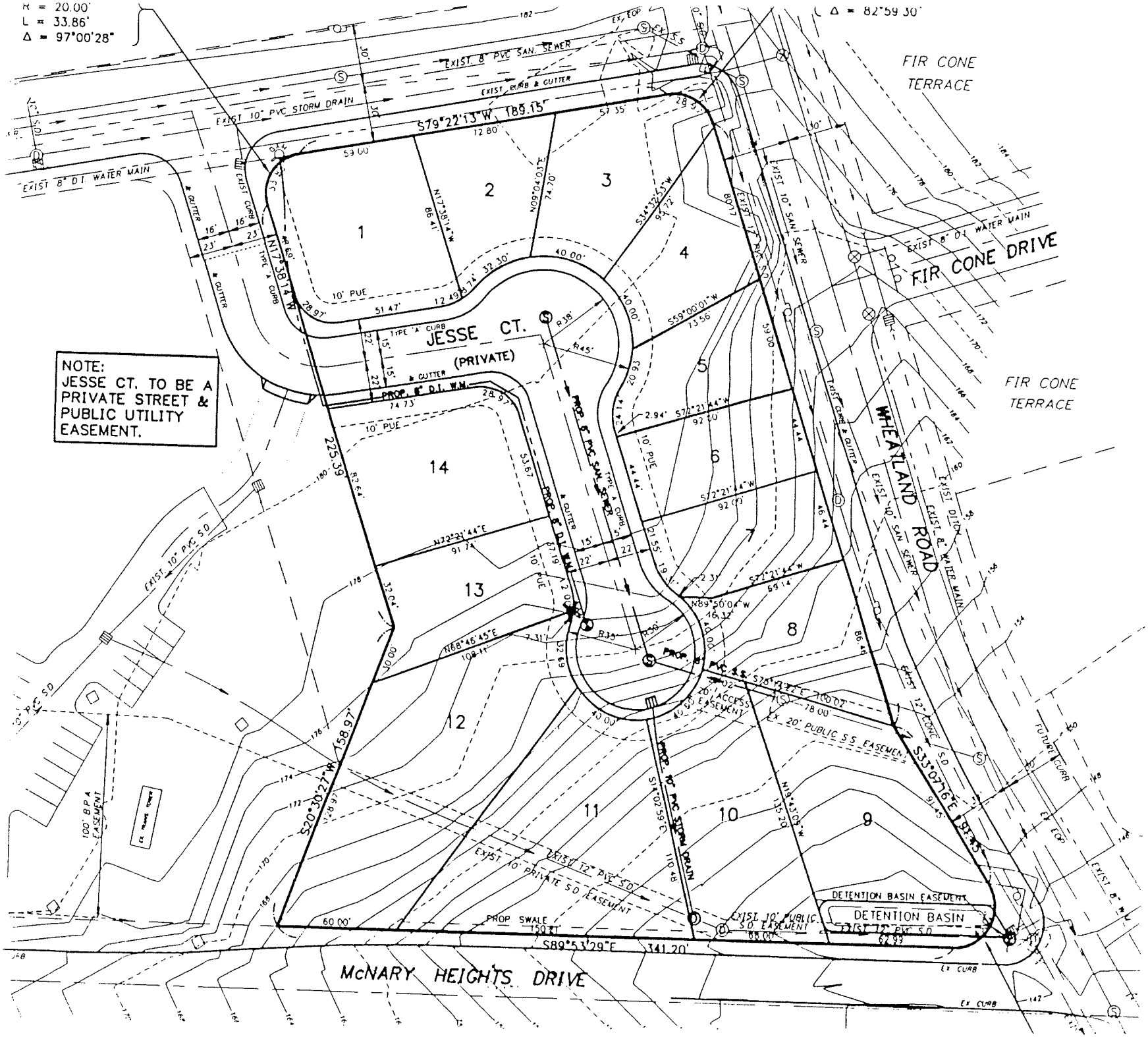
NAME: TOM KAY

ADDRESS: 590 COTTAGE ST. N.E. SALEM 97301

PHONE NUMBER: (503) 540-0447

DATE	DEED HOLDER/CONTRACT BUYER	SIGNATURE	ADDRESS OF PROPERTY (IF VACANT - LOT NUMBER/SECTION)
8/3/98	The Thomas Kay Co.	Thomas B. Kay Jr	

TOTAL P.01


R = 20.00'
L = 33.86'
Δ = 97°00'28"
Δ = 82°59'30"
FIR CONE TERRACE
FIR CONE DRIVE
FIR CONE TERRACE
WHEATLAND ROAD
McNARY HEIGHTS DRIVE
JESSE CT.
(PRIVATE)
NOTE:
JESSE CT. TO BE A PRIVATE STREET & PUBLIC UTILITY EASEMENT.
S79°22'13"W 189.15'
S20°30'27"W 158.97'
S33°07'16"E 93.45'
S89°53'29"E 341.20'
DETENTION BASIN
DETENTION BASIN EASEMENT
EXIST. 8" PVC SAN. SEWER
EXIST. 10" PVC STORM DRAIN
EXIST. 8" D.I. WATER MAIN
EXIST. 10" SAN. SEWER
EXIST. 12" PVC S.D.
EXIST. 10" PRIVATE S.D. EASEMENT
EXIST. 10" PUBLIC S.D. EASEMENT
EX. 20' PUBLIC S.S. EASEMENT
20' ACCESS EASEMENT
100' B.P.A. EASEMENT
PROP. 8" D.I. W.M.
PROP. 8" PVC SAN. SEWER
PROP. 10" PVC STORM DRAIN
PROP. SWALE
FUTURE CURB
EX. CURB
1
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3
4
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6
7
8
9
10
11
12
13
14

City of Keizer, Oregon

August 17, 1998

AGENDA ITEM 8c

RESOLUTION – AUTHORIZING CITY MANAGER TO ENTER AGREEMENT FOR PAVING OF KEIZER LITTLE LEAGUE SOUTH PARKING AREA

City of Keizer

Phone: 390-3700 • Fax: 393-9347
930 Chemawa Rd. N.E. • P.O. Box 21000 • Keizer, Oregon 97307-1000

Administration • Public Works • Community Development • Municipal Court • Police (business only) Phone 503.390.3713 Fax 503.390.8295

August 12, 1998

TO: Rob Kissler
Public Works Director

FROM: Preston Van Meter PVM
Project Manager

THROUGH: Bill Peterson, City Engineer

RE: Keizer Little League Parking Lot (JO 0500)
Recommendation of Award

Bids were received and opened at 10 a.m. local time on Wednesday, July 29, 1998, in the City Hall Library for paving of the Keizer Little League Southerly Parking Lot.

PROJECT DESCRIPTION

Grading and paving of approximately 1.50 acres of existing gravel parking in areas surrounding the newly installed City Water Reservoir. Project includes a leveling rock course, asphalt paving, extruded curbs, and catch basins.

All bids were received on time, and appear to be balanced. The low bid of $79,716.00 was received from D&D Paving . The average of the three lowest bids was $82,485.54.

The Engineer's Estimate for this project was $73,821.70.

Based upon the above information, we recommend that the project be awarded to D&D Paving for the contractual amount of $79,716.00 based upon unit prices and lump sums.

CITY COUNCIL, CITY OF KEIZER, STATE OF OREGON

Resolution R98-_____

AUTHORIZING THE CITY MANAGER TO ENTER AN AGREEMENT

WITH D&D PAVING FOR KEIZER LITTLE LEAGUE PARK PAVING PROJECT

WHEREAS, in July, 1998 the City of Keizer published an invitation to bid to pave the southerly parking lot at Keizer Little League Park. This project includes the grading and paving of approximately 1.50 acres of existing gravel parking in areas surrounding the newly installed water reservoir; and

WHEREAS, on July 29, 1998 five bids were received and opened. The low bid of $79,716.00 was submitted by D & D Paving; NOW, THEREFORE,

BE IT RESOLVED by the City Council of the City of Keizer that the City Manager is hereby authorized to enter an agreement with D & D Paving for grading and paving of the southern parking area near the water reservoir.

PASSED this _____ day of _____, 1998.

SIGNED this _____ day of _____, 1998.

_____
Mayor

_____
City Recorder

City of Keizer, Oregon

AGENDA ITEM 8d

August 17, 1998

APPROVAL OF AUGUST 3, 1998 SPECIAL SESSION MINUTES

MINUTES
KEIZER CITY COUNCIL
Special Session
Monday, August 3, 1998
Conference Room
Keizer City Hall, Keizer, Oregon

CALL TO ORDER

Mayor Koho called the special session to order at 6:01 p.m. Roll call was taken as follows:

Present:
Dennis Koho, Mayor
Carl Beach, Councilor
Jim Keller, Council President
Jerry McGee, Councilor
Al Miller, Councilor
Garry Whalen, Councilor

Staff:
Wally Mull, City Manager
H. Marc Adams, Chief of Police
Dianne Hunt, Human Resources Officer
Rob Kissler, Public Works Director
Amy Drought, City Planner
Shannon Johnson, City Attorney
Tracy L. Davis, City Recorder

ADMINISTRATIVE ACTION

RESOLUTION – APPOINTMENT TO FILL COUNCIL POSITION NUMBER TWO

Mayor Koho explained the process that will be used to determine the appointment to Council Position Number Two. The first vote will narrow the field from three candidates to two. Then a vote would be taken on these two. Mayor Koho pointed out the three candidates, Lore Christopher, Ken Gierloff, and Jacque Moir were present and each would be very capable of fulfilling this role.

In a hand vote to narrow the candidate field from three to two, the following results occurred.

Christopher – Beach and Miller (2)
Gierloff – Koho (1)
Moir – Keller, McGee and Whalen (3)

Mayor Koho announced the top two candidates were Lore Chrisstopher and Jacque Moir.

Voting by hand on the top two candidates, the following votes were tallied:

Christopher – Beach, Koho, and Miller (3)
Moir – Keller, McGee, and Whalen (3)

A written ballot was distributed for another vote, which obtained the following results:

Christopher – Beach, Koho, and Miller (3)
Moir – Keller, McGee, and Whalen (3)

The Council recessed at 6:05 p.m.

The Council reconvened at 6:25 p.m.

Mayor Koho announced another vote would be taken.

A written ballot was distributed and the following vote was taken. The results were as follows:

Christopher – Beach, Koho, and Miller (3)
Moir – Keller, McGee, and Whalen (3)

Councilor McGee pointed out the City Charter includes a provision for determining tie votes during an election. It states the successor will be determined by a public drawing of lots in a manner prescribed by the Council. He suggested a coin toss or a drawing of a name from a hat.

Shannon Johnson, City Attorney noted Chapter VII – Section 30 of the Charter states any vacant office shall be filled by a majority vote of the remaining members of the Council. He did not see a

conflict in using the process outlined in the Charter for election ties. Mr. Johnson felt it was an unusual method, however there was nothing to prevent it.

Mayor Koho announced one more written vote would be taken and if a tie resulted, a method to determine the successor would be chosen.

The fifth vote of the evening was taken by ballot with the following results:

Christopher – Beach, Koho, and Miller (3)
Moir – Keller, McGee, and Whalen (3)

In response to an inquiry by Mayor Koho, Ms. Christopher and Ms. Moir indicated they would not oppose the drawing of a name to determine the successful candidate.

The Council agreed by consensus to place two names in a hat and the name drawn would be the successful candidate.

Mayor Koho placed the name of Lore Christopher and Jacque Moir in a bucket (no hat available) and requested H. Marc Adams, Chief of Police to draw the name out. The name drawn will fill the vacant Council position seat.

H. Chief Marc Adams drew the name of Lore Christopher.

Council President Jim Keller moved a Resolution Appointing Lore Christopher to fill the Vacancy In Council Position Number Two. Al Miller seconded the Motion.

The Motion passed unanimously as follows:

AYES: Beach, Keller, Koho, McGee, Miller, and Whalen (6)
NAYS: None (0)
ABSTENTIONS: None (0)
ABSENT: None (0)

ADJOURNMENT The meeting was adjourned at 6:34 p.m.

Tracy L. Davis, CMC
City Recorder

APPROVED:

Dennis Koho-Mayor

COUNCIL MEMBERS:

Councilor #1 - Garry Whalen

Councilor #4 - Carl Beach

(vacant)
Councilor #2 -

Councilor #5 - Al Miller

Council President - Jim Keller

Councilor #6 - Jerry McGee

Minutes approved:

City of Keizer, Oregon

August 17, 1998

AGENDA ITEM 8e

APPROVAL OF AUGUST 10, 1998 WORK SESSION MINUTES

MINUTES
KEIZER CITY COUNCIL
Work Session
Monday, August 10, 1998
Robert L. Simon Council Chambers
Keizer City Hall, Keizer, Oregon

CALL TO ORDER

Mayor Koho called the work session to order at 6:25 p.m. Roll call was taken as follows:

Present:
Dennis Koho, Mayor
Carl Beach, Councilor
Lore Christopher, Councilor
Jim Keller, Council President
Jerry McGee, Councilor
Al Miller, Councilor
Garry Whalen, Councilor

Parks Advisory Board:
Joe VanMeter
Ed Bartlett
Amy Ellison
Gary Steiner

Staff:
Wally Mull, City Manager
H. Marc Adams, Chief of Police
Dianne Hunt, Human Resources Officer
Rob Kissler, Public Works Director
Amy Drought, City Planner
Terry Witham, Parks Director
Tracy L. Davis, City Recorder

ADMINISTRATIVE ACTION

Mayor Koho announced the Council would depart City Hall for the annual Parks tour. He noted the tour would focus primarily on the undeveloped parks sites.

ANNUAL PARKS TOUR

The Council departed City Hall at 6:27 p.m. with the first stop at Claggett Creek Park for a barbecue dinner sponsored by the Parks Advisory Board. Dinner was served under the new covered picnic area.

The Council, Parks Advisory Board, and Staff then left as a caravan and toured the following parks:

Keizer Little League Park – Water Reservoir Site
The Meadows Park
Clear Lake Park
Bair Park
Palma Ciea Park
Sunset Park

ADJOURNMENT **The tour concluded at Sunset Park and was adjourned at 7:26 p.m.**

_____
Tracy L. Davis, CMC
City Recorder

APPROVED:

_____
Dennis Koho-Mayor

COUNCIL MEMBERS:

_____
Councilor #1 - Garry Whalen

_____
Councilor #2 – Lore Christopher

_____
Council President - Jim Keller

_____
Councilor #4 - Carl Beach

_____
Councilor #5 - Al Miller

_____
Councilor #6 - Jerry McGee

City of Keizer, Oregon

August 17, 1998

AGENDA ITEM 9a

WRITTEN COMMUNICATIONS – BIKEWAYS COMMITTEE
BIKEPATHS ON DELIGHT AND CUMMINGS

August 12, 1998

Rob Kissler
City of Keizer Public Works Director
930 Chemawa Rd. N.E.
Keizer, OR 97307

RE: City of Keizer Bikeways Committee
Delight & Cummings Bike Lanes

Rob,

The City of Keizer Bikeways Committee recommends that the City adopt an ordinance designating Delight St. and Cummings Lane for bicycle lanes. These streets serve two area schools, and are currently inadequate to serve the high after school concentration of pedestrian, bicycle, and vehicular traffic.

The City of Keizer Bikeways Committee would like to see the Public Works Department apply for grants through the Oregon Department of Transportation Bicycle Program. A consideration in the disbursement of those grant funds is facility adoption by a local authority. While these facilities are being recommended by the Bikeways Committee, they were not designated within the Salem-Keizer Area Transportation Study (SKATS) Bicycle Facilities Plan.

The SKATS plan was more regionally based, focusing on major bicycle facilities for arterial and collector streets within the Salem, Keizer, and Marion County. The City of Keizer Bikeways Committee uses the SKATS plan as a framework for making local recommendations that will enhance the bicycle facilities for the residents of the City of Keizer.

The City of Keizer recommends that an ordinance be adopted by City Council resolution designating Cummings Lane between North River Road and Shoreline Drive, and Delight Street between Cummings Lane and Chemawa Rd. for bike lanes meeting requirements established in the Oregon Bicycle Plan.

Sincerely,

Hersch Sangster
Chair - City of Keizer Bikeways Committee

cc Keizer Bikeways Committee Members
Wally Mull, City Manager

Written testimony submitted 8-17-98

SENATE SPECIAL COMMITTEE ON PRISON SITING

453 STATE CAPITOL
SALEM, OREGON 97310
(503) 986-1496
FAX (503) 986-1814

SENATOR QUTUB, CHAIR
SENATOR GEORGE
SENATOR TARNO
SENATOR FISHER
SENATOR DUKES
SENATOR GORDLY

August 3, 1998

Mayor Dennis Koho
PO BOX 21000
Keizer, OR 97307

RE: Opportunity to Participate in Siting Process for Women's Facility and Intake Center

Dear Mayor Koho:

The purpose of this letter is to formally invite all Oregon counties and cities to participate in a Senate initiated prison-siting process. I have sent this letter to all county commissioners, mayors, and city managers. I ask that mayors and city managers please share this letter with their city councilors.

Senate President Brady Adams has formed the Senate Special Committee on Prison Siting to study whether the Women's Facility and Intake Center should be built in the Wilsonville area or somewhere else. As a part of the study, officials from Oregon cities and counties are being provided with another opportunity to identify potential alternative sites for a Women's Facility and Intake Center.

Prior efforts by the Department of Corrections and a five-person Facility Siting Authority to find a location for a Women's Facility and Intake Center were limited to 200-300 acre sites. Changes in the facility design as well as elimination of the need to co-locate a central warehouse facility have significantly reduced the state's land need. An alternative site in the Wilsonville area that is currently being considered encompasses only 108 acres. **In support of the Senate's efforts to consider further public input on this alternative site and identify the best available site for this correctional**

facility, cities and counties are being provided with the opportunity to identify other potential sites that are 105-200 acres in size. The actual acreage requirement will ultimately depend on specific site characteristics and buffering needs.

The Senate Special Committee on Prison Siting plans to review additional potential sites in areas where the elected public officials are willing to adopt a resolution of interest. **In order for a city or county identified site to be considered, a description of the property and a formally adopted RESOLUTION OF INTEREST must be submitted to me at the above address by September 15, 1998.** After receipt and review of nominated sites, the Senate Special Committee on Prison Siting plans to hold additional public hearings so those affected can provide comments and ask questions. For your information, we are also considering the inventory of state-owned land for siting possibilities.

With the exception of the 200-300 acreage requirement, the Senate Committee plans to apply the same mandatory and desirable criteria that were used by the Department of Corrections and the Facility Siting Authority when all other correctional facility sites were nominated. A copy of these rules (OAR 291-073) is attached for your review.

I look forward to working with the cities and counties and am hopeful that this process will result in the Women's Prison and Intake Facility being constructed in the best available location.

Sincerely,

Senator Eileen Qutub, Chair

Attachments

CC: President Brady Adams, Senate President
Senator Gene Derfler, Senate Majority Leader
Senator Cliff Trow, Senate Minority Leader

STATE OF OREGON Department of Corrections	Subject: MANDATORY AND DESIRABLE CRITERIA FOR SITING OREGON CORRECTIONAL FACILITIES
Related ACA Standards:	OAR 291-073-0010 through OAR 291-073-0040 Rule #073 (Tab #54)
	Functional Unit(s) Affected: Planning & Budget
Procedure Requirement (Yes X No ___)	
Approved: David S. Cook, Director	Effective Date: 10/1/96 (Supersedes document dated: 7/8/96)

AUTHORITY AND PURPOSE

291-073-0010 (1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 421.614, 423.020, 423.030 and 423.075.

(2) Purpose: The purpose of this rule is to establish mandatory and desirable criteria to be used in the nomination of sites for the construction and operation of Oregon correctional facilities.

MANDATORY CRITERIA FOR ALL SITES

291-073-0020 The mandatory criteria for all sites (including medium security and minimum work camps) are listed below. They are not in any order of preference.

(1) A proposed site must be available by purchase, condemnation, exchange or otherwise.

(2) A proposed site must be of sufficient size and shape to accommodate the planned facility and its operation.

(3) A proposed site must not be located in a 100-year flood plain as defined by a current FEMA map.

(4) A proposed site must not be in a designated tsunami inundation zone.

(5) A proposed site must have infrastructure available either on-site or such that

they can be provided and maintained cost effectively. This infrastructure includes:

(a) Water for domestic use, fire protection, and irrigation;

(b) Sanitary sewer collection and treatment;

(c) Surface drainage and storm water collection and disposal; and

(d) Electricity, natural gas and/or oil or propane and telecommunications.

(6) A proposed site must be served by road or highway system capable of supporting the planned facility. New roadway construction or roadway improvements (if required) must be able to be constructed at a reasonable cost and be ready at the time the facility is scheduled to be opened.

DESIRABLE CRITERIA FOR MEDIUM SECURITY SITES

291-073-0030 The desirable criteria for medium security sites are listed below. They are not in any order of preference. An alternate means of meeting the intent of a criterion may be considered.

(1) A proposed site which is available at little or no cost.

(2) A proposed site which has 200-300 acres with 300 acres the preferred size.

(3) A proposed site which is square or nearly so.

(4) A proposed site which is relatively flat to minimize earthwork, foundation, construction costs and surface/subsurface drainage construction costs.

(5) A proposed site which has natural buffers from surrounding land uses such as lakes, rivers, or ridges.

(6) A proposed site which is not adjacent to a school, unless the parcel is buffered.

(7) A proposed site which is not adjacent to a developed single-family or multi-family residential area, unless the parcel is buffered.

(8) A proposed site in which the soils shall not be unduly prone to liquefaction due to seismic activity.

(9) A proposed site with existing buildings that can be remodeled for utilization in new construction.

(10) A proposed site not subject to flooding from adjacent bodies of water, natural surface drainage or subsurface high water table.

(11) A proposed site not having an environmental, ecological, cultural or historic feature or condition which cannot be mitigated with remediation and/or health risk assessment prior to the beginning of site development. These conditions include, but may not be limited to, wetlands, historic or culturally significant sites, habitat for federally designated threatened and endangered species.

(12) A proposed site that maximizes the use of present Department of Corrections facilities and considers such institution management issues as warehousing, inmate transportation, inmate management, etc.

(13) A proposed site which has judicial, emergency and support services availability:

(a) Fifteen minutes or less to local and/or state police, full service fire department, and emergency medical transport/care;

(b) Sixty minutes or less to a National Guard unit;

(c) Forty-five minutes or less response time from licensed full service in-patient care hospital that accepts OMAP payment;

(d) Forty-five minutes or less to educational institutions to provide GED, vo-tech programs for inmates;

(e) Ninety minutes or less to higher education opportunities for staff development;

(f) Adequate providers of support services to inmates, including counseling, religious, job training and education; and

(g) Reasonable access to court facilities.

(14) A proposed site that can demonstrate eminent opportunity for inmate work by either the public or private sector. Sites that have Oregon Enterprise Zone designations that may be of assistance in attracting a private partner using inmate labor.

(15) A proposed site which is in close proximity to a population area from which a large number of inmates originate.

(16) A proposed site in which the facility is perceived as beneficial by local jurisdiction and community.

(17) A proposed site which is served by interstate and/or major arterial roadway.

Paved (providing year around service, two lanes, maintained by state, city or county) interstate access is preferable.

(18) A proposed site with convenient access by public transportation, including commercial airport and surface transportation and public accommodations, such as hotel/motel facilities.

(19) A proposed site with a community of 30,000 population or greater within a 60-mile radius with:

(a) Substantiation of an adequate workforce;

(b) Demonstration of the ability of the community to provide for or develop adequate housing and other community services, including primary and secondary schools;

(c) Range of physical specialty services; and

(d) Community ability to cost effectively provide food, fuel, equipment, spare parts, and maintenance to the facility.

DESIRABLE CRITERIA FOR MINIMUM SECURITY WORK CAMP SITES

291-073-0040 The desirable criteria for medium security work camps sites are listed below. They are not in any order of preference. An alternate means of meeting the intent of a criterion may be considered.

(1) A proposed site which is available at little or no cost.

(2) A proposed site which has 25 acres with 30 acres the preferred size.

(3) A proposed site which is square or nearly so.

(4) A proposed site in which the topography will minimize earthwork, foundation, construction costs and surface/subsurface drainage construction costs.

(5) A proposed site which has natural buffers from surrounding land uses such as lakes, rivers, or ridges.

(6) A proposed site which is rural, isolated locations are appropriate.

(7) A proposed site in which the soils shall not be unduly prone to liquefaction due to seismic activity.

(8) A proposed site which has appropriate soil percolation capacity to use septic tank and drain field, if one is proposed for the site.

(9) A proposed site with existing buildings that can be remodeled for utilization ew construction.

(10) A proposed site not subject to flooding from adjacent bodies of water, ural surface drainage or subsurface high water table.

( ) A proposed site not having an environmental, ecological, cultural or historic ture condition which cannot be mitigated with remediation and/or health risk ess prior to the beginning of site development. These conditions include, but y n limited to wetlands, historic or culturally significant sites, habitat for ieral signated threatened and endangered species.

(12) A proposed site that maximizes the use of present Department of orrec facilities and considers such institution management issues as aref g, inmate transportation, inmate management, etc.

( ) A proposed site which has judicial, emergency and support services vaila

( ) Thirty minutes or less to local and/or state police, full service fire depa t, and emergency medical transport/care; and

(b) Sixty minutes or less response time from licensed full service in-patient care hosp tal hat accepts OMAP payment.

( ) A proposed site which can identify inmate work opportunities by either the pub c private sector.

(15) A proposed site in which the facility is perceived as beneficial by local juri diction and community.

(16) A community able to cost effectively provide:

(a) Food, fuel, equipment, spare parts, and maintenance to the facility; and

(b) Support services to inmates, including counseling, religious, job training and ed cation.