

CITY OF KEIZER HEARINGS OFFICER

In the matter of the Application of Backus Investments LLC, to divide an existing 4.38-acre property located at 1141 Chemawa Road into two separate parcels and to recommend approval of a Comprehensive Plan Map Amendment and a Zone Change for one of the new parcels. ) Case No. 2023-16

**ORDER**

**I. Nature of the Application**

This consolidated application for a Comprehensive Plan Map Amendment, Zone Change and Partition comes before the City of Keizer Hearings Officer on the application of Backus Investments LLC. The subject property is located at 1141 Chemawa Rd. and is identified on Marion County Tax Assessor Maps as Township 7 South; Range 3 West; Section 03BA; Tax Lot 02100.

**II. Relevant Criteria**

The standards and criteria relevant to this application are found in the City of Keizer’s Development Code (KDC), especially Sections 3.109, 3.110, and 3.107, and are set out in detail in the staff memorandum dated October 31, 2023.

**III. Public Hearing**

A public hearing was duly held on this application on November 7, 2023. At the hearing, the Hearings Officer entered into the record the staff memorandum dated October 31, 2023, the Planning Division file containing the application materials, and the audio recording of the hearing.

The following persons appeared at the hearing and provided testimony on the application:

- 1. Shane Witham, Senior Planner, City of Keizer
- 2. Brandie Dalton, Multi-Tech Engineering, Applicant’s Representative
- 3. Mike DeBlasi

At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any ex parte contacts, bias, or conflicts of interest. The Hearings Officer stated that the relevant criteria were those identified in the notice and staff memorandum, and that participants should direct their comments to those criteria. The Hearings Officer stated that failure to raise an issue accompanied by statements or evidence sufficient to afford the City or other parties the opportunities to respond to the

issue precludes appeals to the State Land Use Board of Appeals based on that issue. The Hearings Officer informed the applicant that failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the local government or its designee to respond to the issue precludes an action for damages in Circuit Court, and that failure to raise all arguments may result in waiver of arguments at subsequent appeal forums. No objections were raised as to notice, justifications, conflicts of interest, or to evidence or testimony presented at the hearing.

Shane Witham explained the nature of the application and recommended approval. The applicant's representative, Brandie Dalton of Multi-Tech Engineering, testified in favor of the application. Mike DeBlasi provided neutral testimony; however, while Mr. DeBlasi's testimony related to the final design of the project, his testimony did not directly address the application under review, or the relevant review criteria or standards.

#### **IV. Proposal**

The Applicant has applied to divide an existing 4.38-acre property into two separate parcels comprised of approximately one acre and approximately 3.38 acres in area. The resulting southern 3.38-acre parcel is developed with an existing commercial sanitation service provider and will continue to obtain its access from Chemawa Rd N. The resulting northern one-acre parcel is proposed to obtain access from Willow Lake Rd, and the applicant is proposing a Comprehensive Plan Map Amendment and Zone Change to the one-acre parcel to allow it to be developed in the future with a 20-unit, multi-family development. For the consolidated application to be approved, the application for the Partition would be contingent upon the City Council approving the Zone Change, which, in turn, would be contingent upon the City Council approving the Comprehensive Plan Map Amendment.

#### **V. Findings of Fact**

The Hearings Officer, after careful consideration of the testimony and evidence in the record, makes the following findings of fact and conclusions:

The Hearings Officer notes that the subject property is located at 1141 Chemawa Rd N and is also identified as being located within Township 7 South; Range 3 West; Section 03BA; Tax Lot 02100. The subject property is 4.38 acres in area and is developed with a commercial business and storage area for a sanitation service company, and it also contains a wireless telecommunications facility. The property is served by public water and sewer.

The Hearings Officer further notes that the property is currently designated Commercial (C) on the Comprehensive Plan and is zoned CG (Commercial General). Properties to the north, south and west are designated Low Density Residential on the Comprehensive Plan Land Use Map, are zoned Single Family Residential (RS), and are developed with single-family homes. Properties to the east (adjacent to the area proposed to remain Commercial (C)) are currently zoned CG (Commercial General), are designated as Commercial (C), and contain a mix of business uses. Properties to the east and northeast (adjacent to the area

proposed to be changed to Medium and High Density Residential (MHDR) and zoned RM (Medium Density Residential) are designated Medium and High Density Residential (MHDR), are zoned RM (Medium Density Residential), and are developed with multi-family dwellings.

The proposal under review is to divide the existing 4.38 acres into two separate parcels, comprised of one new parcel of approximately one acre and one new parcel that is approximately 3.38 acres in area. The southern 3.38-acre parcel is developed with an existing commercial sanitation service provider and will continue to obtain its access from Chemawa Rd N. The northern one-acre parcel is proposed to obtain access from Willow Lake Rd, and the applicant is proposing a Comprehensive Plan Map Amendment and a Zone Change that would allow the new one-acre parcel to be developed in the future with a 20-unit, multi-family development.

The October 31, 2023 staff recommendation does an excellent and thorough job of explaining how the application satisfies all of the applicable approval criteria for each of the components of the application. The findings in the staff recommendation were not challenged by any opponents, so there is no evidence in the record to dispute the facts or the staff's analysis. Similarly, the conditions recommended by staff were not challenged by the applicant, nor did any opponent explain why the proposed conditions of approval do not ensure that the proposed Partition will comply with the relevant criteria from the Keizer Development Code. Rather than set out and repeat all of the unchallenged findings from the staff report, the Hearings Officer adopts and incorporates the analysis and findings set out in the staff report as part of the recommendation to the City Council regarding the proposed Comprehensive Plan Map Amendment and the proposed Zone Change. The Hearings Officer is compelled to explain that repeating or making specific findings relying on the staff recommendation and the proposed conditions of approval should not be seen as altering or removing other conditions of approval that are only incorporated from the staff recommendation by reference. Express inclusion of information that is already in the staff recommendation is largely a matter of calling attention to evidence already in the record. The Hearings Officer is also compelled to explain that the City Council must make the final decision regarding the Comprehensive Plan Map Amendment and the Zone Change, and the Hearings Officer is only making a recommendation to the City Council on those portions of this application. Accordingly, this decision by the Hearings Officer approving the proposed Partition must be contingent upon the City Council's approval of the portions of the application for the Comprehensive Plan Map Amendment and the Zone Change.

To supplement and support the analysis and findings from the staff report, the Hearings Officer does want to specifically note that in addressing the Comprehensive Plan Map Amendment, the information in the staff memo and application materials demonstrates that this is a close matter. The record shows that the City has a deficit of land available for commercial purposes, but it also shows that there is a deficit of Medium and High Density Residential (MHDR) designated land. While the Hearings Officer understands that this could be a situation where the proposed Comprehensive Plan Map Amendment just makes the deficit of available commercial land worse, while making a small incremental

improvement to the Medium and High Density Residential (MHDR) supply, the Hearings Officer is persuaded that an acre-for-acre change and comparison is not the best way to view and evaluate the goals and policies implicated in this situation. The Hearings Officer is persuaded that in balance, efficient development will likely be encouraged by development of this one acre for Medium and High Density Residential (MHDR) allowed uses. In balancing competing goals and policies, the Hearings Officer is persuaded that the proposed Medium and High Density Residential (MHDR) Comprehensive Plan Map designation and RM (Medium Density Residential) zone will make the best use of the subject property and will have an overall benefit to the community. Accordingly, the Hearings Officer recommends that the City Council approve the proposed Comprehensive Plan Map Amendment, changing the designation on the one-acre subject site from Commercial (C) to Medium and High Density Residential (MHDR). If the Council approves the Comprehensive Plan Map Amendment for the reasons set out in the staff memo, then the Hearings Officer also finds that the relevant criteria are satisfied for the corresponding Zone Change, and recommends that the City Council approve that proposed Zone Change from CG (Commercial General) to RM (Medium Density Residential), as it is the most appropriate zone to implement the new Comprehensive Plan Map designation.

The Hearings Officer also notes that the testimony provided by Mr. DeBlasi did not directly address the relevant review criteria or standards. Rather, Mr. DeBlasi spoke to the possibilities that the proposed partitioned Medium and High Density Residential property could be developed in smarter, better, more efficient and sustainable ways, with particular attention paid to the design and location of the buildings, removing off-street parking, and otherwise incorporating pedestrian-friendly design standards to differ from less aesthetically pleasing developments. The Hearings Officer notes that the final site and building design are not part of the review, and thus the Hearings Officer has no authority to comment or make a decision based on this testimony.

### **DECISION**

The Hearings Officer recommends that the City Council approve the proposed Comprehensive Plan Map Amendment from Commercial (C) to Medium and High Density Residential (MHDR), and recommends that the City Council approve the Zone Change from CG (Commercial General) to RM (Medium Density Residential), contingent upon the Council's approval of the Comprehensive Plan Map Amendment, all for the reasons set out in the staff report as supplemented by the additional finding in this decision. Should the Council not approve the proposed Comprehensive Plan Map Amendment, then the Council should also deny the Zone Change, as the proposed RM (Medium Density Residential) zone would not be consistent with the current Comprehensive Plan Map designation and therefore could not satisfy the criteria set forth in the Keizer Development Code. The proposed Partition is a final decision by the Hearings Officer unless it is appealed, but it is conditioned upon the City Council approving the proposed Comprehensive Plan Map Amendment and Zone Change.

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**General:**

1. Approval of the partition tentative plat is contingent upon City Council approval of the proposed Comprehensive Plan Map Amendment and City Council approval of the proposed Zone Change.
2. The Keizer Development Code requires the developer to connect to public utility services. The Development Code also requires all utility services to be placed below ground. These requirements apply to this request. Further, the developer is responsible for all utility connection costs. The City's System Development Charges for park development, water system improvements and transportation improvements will be the fees in place at the time of building permit applications. These Development Charges, as well as those involving the extension of sewer, water, and storm drainage, will apply to this request.
3. The Comprehensive Plan Map Amendment and Zone Change will be effective upon recordation of the partition plat.
4. The development of the property must comply with all applicable requirements of the Keizer Development Code, other applicable City regulations, and the building requirements of the Marion County Building Inspection Division.
5. The proposed multi-family development on Parcel 1 will be limited to twenty units, as proposed, and the building and site design (including landscaping) must comply with all provisions of the Keizer Development Code.

**Prior to Preliminary Plat Approval:**

6. A detailed preliminary plat must be submitted to the Marion County Surveyor's Office for review. The Marion County Surveyor's Office will then submit the preliminary plat to the City of Keizer for review. The Preliminary Plat must be submitted for review prior to submittal of a final plat.
  - a. Parcels ten acres and less must be surveyed.
  - b. Per ORS 92.050, the plat must be submitted for review.
  - c. Checking fees and recording fees are required.
  - d. A current or updated title report must be submitted at the time of review. Title reports must be no less than 15 days old at the time of approval of the plat by the Surveyor's Office, which may require additional, updated reports.

The detailed preliminary plat must include the following provisions:

- e. The preliminary plat must substantially conform to the proposed partition request.
- f. Lots must comply with all area and dimension requirements for the proposed underlying zone.
- g. All engineering elements as required by the Department of Public Works' requirements must be included.
- h. A signature line for the City Engineer must be included.

**Prior to Final Plat approval (Mylar):**

- 7. The applicant must submit a Final Partition Plat, prepared by a registered professional surveyor, which conforms to the approved preliminary plat. Following plat approval, the final plat and title transfer instruments accomplishing the property adjustments will be recorded with the Marion County Clerk within two years of the date of the final decision. The plat must include all engineering elements as required by the Department of Public Works.
- 8. The following applicable requirements/conditions of the Public Works Department must be met as outlined below:

GENERAL CONDITIONS

Access to the property currently is from Chemawa Road N. and Willow Lake Road N. After the partition is platted, access to the northerly area, proposed Parcel 1, will be from Willow Lake Road N., and access to the southerly area, proposed Parcel 2, will be from Chemawa Road N.

SANITARY SEWERS:

It is the developer's responsibility to connect the proposed development to the appropriate master plan sewer lines designed to serve the area.

- a. City of Salem approval for local sewer permits will need to be issued prior to construction. Street opening permits will be required for any construction within a public street.
- b. Connecting to existing sewers that serve the general area will be the responsibility of the developer of the property. Each parcel will be required to have its own sanitary sewer service and will be required to connect to an approved public sanitary sewer line. Plans for connection to the sanitary sewer system must be submitted to the City of Keizer

and the City of Salem for both parcels and be permitted by the City of Salem prior to approval of the proposed partition plat.

- c. Appropriate easements will be required for any public sewer mains located within the subject property if located outside platted rights of way. Easements will be required for all private sewer lines that cross private properties.
- d. The subject property is 4.306 acres and is located outside the original sanitary sewer district; therefore, the property is subject to a sanitary sewer acreage fee of \$7,460 per acre unless the applicant can show that the acreage fee has been paid. The total sanitary sewer assessment fee of \$32,107.84 for the subject property must be paid prior to the recording of the proposed partition plat.

WATER SYSTEM:

- a) An overall plan indicating how water service will be provided to the proposed new parcels must be submitted to the Public Works Department. The plan will indicate where fire hydrant service is currently located and where any new fire hydrants will be located. Any new, required fire hydrants must be located within adequate public easements dedicated to the City of Keizer. The applicant will be required to submit their development plan to the Keizer Fire District where fire hydrants are required. The District's decision will be forwarded to the Public Works Department for final review.
- b) Each parcel must have its own water service. Provisions for connecting any future or existing structures to an approved public main will be a requirement prior to the approval of the proposed partition plat. Location of water meters must be submitted for approval to the Public Works Department.

STREET AND DRAINAGE IMPROVEMENTS:

- a) Public street improvements will be required for Willow Lake Road.
- b) The Keizer Development Code requires standards for private access easements. It will be the responsibility of the applicant to provide for adequate maintenance agreements for any existing or proposed access easements.
- c) The applicant has submitted a Traffic Analysis for the subject application, and a review from DKS Associates was attached to the staff report.

- d) A storm drainage plan must be designed for the on-site improvements meeting the current design standards. No storm water runoff from the new development will be directed to Chemawa Road or Willow Lake Road. When the storm water system is designed, the required improvement between the new sidewalk and pavement will be determined by the City. Plans for on-site drainage must be submitted to the Public Works Department for approval of the method of disposal of the storm water. Any UIC for the storm water proposal will have to be registered with the State of Oregon.

OTHER

- a) Construction permits are required by the Public Works Department prior to any public facility construction.
- b) A Pre-Design meeting with the City of Keizer Public Works Department will be required prior to the Developer's Engineer submitting plans to either the City of Keizer or the City of Salem for review.
- c) Street opening permits are required for any work within the City Right of Way that is not covered by a Construction Permit.
- d) A Pre-Construction conference will be required prior to commencement of any construction under permits issued by the City.
- e) The Partition Plat must include a signature line for the City Engineer.
- f) Any existing wells on the subject property will be abandoned in accordance with the Oregon State Water Resources Department.

**Prior To Obtaining Building Permit(s):**

- 9. All required public utility services will be completed to the satisfaction of the Department of Public Works.
- 10. A landscaping plan must be submitted for review and approval, demonstrating compliance with landscaping provisions and parking lot landscaping. The plan must show streetscape trees along Willow Lake Road.
- 11. Parking space functionality must be confirmed to the satisfaction of the City Engineer for the parking lot layout. AutoTurn templates should be submitted to the City, confirming that proposed parking stalls are functional.

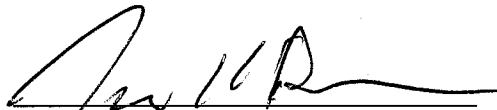
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**Prior to Obtaining Building Permit Final for the dwelling on Parcel 1:**

12. Sight distance must be verified, documented, and stamped by a registered, professional Civil Engineer licensed in the State of Oregon, to assure that buildings, signs, and landscaping do not restrict sight distance.
13. The residential address requirements found in the Oregon Uniform Fire Code must be completed as approved by the Keizer Fire District and the City of Keizer Planning Department.
14. Landscaping should be provided as required by the approved landscaping plan, including street trees, parking lot landscaping, and screening and buffering to adjacent uses.
15. Applicant or any contractor building on the parcel must comply with all applicable city regulations regarding noise, dust, times of construction, etc.

DATED: November 16, 2023.



James K. Brewer, Hearings Officer