



December 19, 2023

NOTICE OF HEARINGS OFFICER FINAL DECISION

Subdivision Case 2023-17

You are receiving this Notice of Decision from the Hearing's Officer because you provided either written or verbal testimony on a proposed subdivision. Attached is a copy of the Hearings Officer's decision Subdivision Case 2023-17 for a 10-lot subdivision located at 1326 Oppek Street NE, Keizer, OR also identified by Marion County Tax Assessor's Map No. 063W23DC Tax Lot 00200.

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 Planning Department on an appeal form provided by the City. A fee of \$440.00 is required for any appeal filed. The appeal form is to be submitted to Keizer Planning Department, 930 Chemawa Road NE, PO Box 21000, Keizer, Oregon 97307-1000. The appeal form and fee must be received by the City by 5:00 pm **January 2, 2024**. Please see the Section 3.207 (Appeal Provisions) in the Keizer Development Code, for more information.

If you any questions, concerns or comments regarding this decision, please contact the Keizer Planning Department at (503) 856-3439 or 856-3442.

All documents for this case can be viewed at:

<https://www.keizer.org/maps/location/Subdivision2023-17>

CITY OF KEIZER HEARINGS OFFICER

In the matter of the Application of Trademark Enterprises, to divide property located at 1326 Oppek Street NE, identified as Township 6 South, Range 3 West, Section 23DC, Tax Lot 00200, into 10 lots for a residential dwelling to be located on each lot.	}	Case No. 2023-17
	}	Subdivision

ORDER

I. Nature of the Application

This matter comes before the City of Keizer Hearings Officer on the application of Trademark Enterprises. The subject property is located at 1326 Oppek Street NE and is identified on Marion County Tax Assessor Maps as Township 6 South; Range 3 West; Section 23DC, Tax Lot 00200.

II. Relevant Criteria

The standards and criteria relevant to this application are found in the City of Keizer’s Development Code (KDC), especially Sections 3.108.06, 2.405 and Section 2.3, as appropriate.

III. Public Hearing

A public hearing was duly held on this application on November 21, 2023. At the hearing, the Planning Division file was made a part of the record, as was 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, Applicant’s Representative
3. Jeremy Granz, architect for Applicant

Opponent:

4. Joe & Kara Youngblutt

Proponents:

5. Jeremy Granz
6. Ryan Bloechel
7. Mark Furrow

General:

8. Jason Taurres
9. Lee Seely
10. Rick Hess
11. Emily & Steven Prine

12. Karisa Patton
13. Rafaela Offield
14. Doug Lovejoy
15. Phyllis Lovejoy
16. Jesse Mecham
17. Anna McKenzie

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 only relevant criteria were those identified in the staff report, that participants should direct their comments to those criteria, and that failure to raise all arguments may result in waiver of arguments at subsequent appeal forums. No objections were raised as to notice, jurisdiction, conflicts of interest, or to evidence or testimony presented at the hearing. Shane Witham explained the nature of the application and recommended approval.

At the conclusion of the public hearing, the record was left open two weeks for the submission of new evidence, testimony, and argument; one additional week for responses to the new evidence, testimony, and argument; and one additional week for the applicant's final legal argument. However, on December 6, 2023, the Applicant notified the staff by email that since no new evidence, testimony, or arguments were received within the two-week period, the Applicant waived any additional time for written responses.

IV. Findings of Fact

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

The subject property is approximately 1.70 acres in area and is located at 1326 Oppek Street NE. The property contains a single-family home and multiple outbuildings. Public facilities are available and are proposed to be extended to serve the development. The property is designated Low Density Residential on the Comprehensive Plan Map and is zoned Urban Transition (UT). Section 2.118.10 of the UT zone provides for the automatic rezoning of land to Single Family Residential (RS) upon approval and recordation of the plat. Properties to the north and west of the subject property are zoned Single Family Residential (RS) and are developed with detached single-family dwellings. The properties to the south and east are zoned UT and are also developed with single family dwellings. The subject property is proposed to be subdivided into 10 lots. The proposal is for a residential dwelling to be located on each lot. The newly proposed lots 1-6 will have frontage and direct access along Oppek Street NE, a public street. Lots 7-10 will be served by a private access easement.

The November 14, 2023, staff report does a thorough job of explaining that the application satisfies all of the applicable approval criteria. Most of the findings in the staff report are not challenged by any opponents. Therefore, it is not productive to review and repeat all the unchallenged findings in the staff report. The Hearings Officer has reviewed the staff report and agrees with those findings. The Hearings Officer therefore adopts and incorporates the findings (including the recommended conditions of approval) as set out in the staff report

as part of this decision and provides the following additional analysis and findings:

The Applicant referred to the requirement under state law for a residential housing development to be approved under clear and objective standards. The Hearings Officer agrees, as this is a residential development, and Oregon law permits the City to only apply clear and objective standards in place at the time the application was deemed complete. Further, under former House Bill 2021, the legislature has enacted a law that requires cities to allow duplexes and other smaller multi-family units on low-density residential property zoned for single family homes. Any balancing of privacy, density, traffic, or similar concerns against providing more opportunities for housing is no longer a matter that local governments can resolve.

Opponents submitted letters prior to the staff report being prepared, and also provided testimony at the hearing. Opponents raised issues regarding livability or privacy or the cumulative impact of development on traffic and drainage. No participant provided a citation or reference to a criterion that would authorize City staff, the Hearings Officer, or any other decision maker to address these concerns based on a clear and objective standard. The Hearings Officer understands the concerns that community members have because of the transition from lower density, somewhat rural, residential-style development, to denser, more urban development forms that are largely dictated by state law. The Hearings Officer notes that many people testifying commented on their knowledge that the subject site would be developed at some point, and their concern was less with development and more with the possible density or number of residents if the largest number of dwelling units allowed on each lot were constructed. The Hearings Officer must base decisions regarding residential development on the clear and objective standards in place at the time the application was deemed complete, and can only encourage people to participate in the public processes used to develop the objective standards in the Development Code, as those standards are reviewed and updated from time to time— and, of course, to communicate with state legislators and commissions regarding local concerns that the State has not considered.

The Hearings Officer understands the concerns about the existing sequoia trees (and wildlife habitat) on the subject site and the emotional reaction of neighbors who feel they are losing the trees and wildlife, or the privacy or other benefits gained from the trees located on this property. The Hearings Officer notes that neighbors benefited from the trees on this property, but just as the property owner of the subject site cannot expect that neighboring properties will provide shade or privacy for the development of the subject site (beyond the screening requirements expressly set out in the code and staff report), it would be unreasonable to expect a property owner to continue to provide this additional benefit without some express regulatory basis. As the City's regulations require replacement of significant trees on the site, but do not prohibit the removal of these trees, the Hearings Officer cannot require the applicant to do more than the code requires. The Hearings Officer finds that the application as conditioned satisfies the relevant criteria.

Similarly, some people who testified raised privacy concerns regarding the possible height of neighboring structures. If two-story residences were constructed as part of the future development of this property, second story neighbors could easily look into back yards that are currently private. Again, while the Hearings Officer understands that people become accustomed to the benefits of living near undeveloped property, it is unreasonable to expect that the

development pattern on neighboring private property will not change, or that new development must be tailored to continue to provide a benefit to neighboring properties, without a specific regulatory basis putting everyone on notice. Beyond the setback, screening and buffering requirements of the code, the Hearings Officer is not aware of a regulation or criterion that addresses this issue. Accordingly, the Hearings Office cannot require the applicant to address this issue. The Hearings Officer finds that the proposal, as conditioned, meets the applicable criteria.

A number of concerns were raised in the hearing regarding drainage, with the current, very flat grades in the area resulting in storm water moving very slowly if at all, and neighboring property experiencing ponding. As site plans and development of the property occur, City standards require specific drainage and erosion control plans prior to construction of any facility on the subject property. As set out in the staff report, the subdivision will be designed to keep all storm water runoff onsite and to meet the City's overall facility standards. The Hearings Officer notes that the proposal is for a relatively small, ten lot subdivision, and keeping the stormwater generated by this property onsite should not be expected to significantly change drainage issues resulting from stormwater that is not generated on this site. The Hearings Officer finds that the proposal, as conditioned, satisfies the relevant criteria and standards for stormwater and erosion.

Considerable testimony addressed traffic concerns, as the planned extension of Oppek will change the traffic pattern for residents in the existing development along Camden. Camden is narrow, and pedestrians and children playing near travel lanes contribute to the concerns that the proposed alignment will make safety - and the ability to park, receive deliveries and for emergency vehicles to serve the current residents - worse. Related to these concerns is a possible increase in traffic should people use Camden and Oppek as a cut-through to O'Neil. The Hearings Officer notes that even with the maximum number of residential units permitted on each of the proposed lots, the maximum number of vehicle trips assumed under standard engineering manuals would still not warrant a traffic impact analysis or traffic study. The Hearings Officer also notes that the City has policies encouraging and requiring the extension of public streets, in part to allow more than one route for emergency vehicles to serve the public. The proposal complies with the standards in the code, and at least the new portion of Oppek will be improved to City standards. Because the traffic impact is not sufficient to warrant further analysis, this application would bear a disproportionate burden of cost and delay if the development were required to provide additional public infrastructure beyond what is necessary to satisfy the code and serve the needs created by the additional increment of demand caused by the development itself. The Hearings Officer finds that the application, as conditioned in the staff report, satisfies the criteria and standards.

DECISION

The Hearings Officer approves Subdivision 2023-17, 1326 Oppek Street NE, subject to the following requirements and conditions of approval:

General Requirements:

1. The applicant must complete all the requirements set out in these conditions, including review and approval by the appropriate City department, prior to the

due dates and timelines. Compliance with the Conditions of Approval is the sole responsibility of the applicants or the property owner.

2. The KDC 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 shall be the fees in place at the time of building-permit application. These Development charges, as well as those involving the extension of sewer, water, and/or storm drainage, will apply to this request.
3. The following requirements are regulated and must be met to the satisfaction of the Public Works Department regarding sanitary sewers, water systems, street and drainage improvements, and other requirements:

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 shall be submitted to the City of Keizer and the City of Salem prior to approval of the proposed subdivision 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 property is located outside of the original Keizer Sewer District and is therefore subject to an acreage fee for sanitary sewers.

WATER SYSTEM:

- a) The application does not indicate where services are to be located. All new services shall be connected to an existing water main. The Fire District serving the area shall determine where new hydrants are required to serve the proposed development. An overall plan indicating how water service will be provided to the proposed new parcels shall be submitted to the Public Works Department for approval. An 8-inch water main shall be constructed from the subject property easterly to the existing water main in O'Neil Road for fire flow requirements.
- b) Each parcel shall have its own water service. Location of water meters shall be submitted for approval to the Public Works Department.

STREET AND DRAINAGE IMPROVEMENTS:

- a) The application indicates widening of the access to the East of the proposed subdivision. No development of the subject property will be allowed until adequate access from both the west and east is approved by the Public Works Department. At a minimum, Oppek Street must be paved from the subject property a minimum of 24 feet in width and 3 inches in depth to O'Neil Road. The pavement must be centered within the existing right-of-way. The intersection at O'Neil Road must meet City of Keizer Street Design Standards. Access easements are required to be 20 feet in width with a 5-foot setback from existing dwellings. A plan providing adequate turning movements shall be submitted for review and approval by the Public Works Department prior to approval of the subdivision plat.
- 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) All impervious surfaces on the site, including the proposed access easement area, shall be designed to keep all storm water runoff on-site. No storm water runoff from the new development shall be directed offsite. The plans for storm water quality and detention shall be submitted to the City of Keizer Public Works Department for review and approval prior to approval of the subdivision plat.

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 shall be required prior to commencement of any construction under permits issued by the City.
- e) The Subdivision Plat shall include a signature line for the City Engineer.
- f) Any existing wells on the subject property shall be abandoned in accordance with the Oregon State Water Resources Department requirements.
- g) Any existing septic systems shall be abandoned with an appropriate permit from Marion County.
- h) A lighting district shall be formed as a condition of the proposed subdivision.

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Prior to Preliminary Plat Approval:

4. A detailed preliminary subdivision plat shall be submitted to the Marion County Surveyor's office for review. Marion County Surveyor's office will then submit the plat to Keizer for review and approval. The Preliminary Plat must be submitted for review prior to submittal of a final plat.
 - a) Subdivision name must be approved per Oregon Revised Statute 92.090.
 - b) Must be surveyed and platted per Oregon Revised Statute 92.050.
 - c) Subdivision plat must be submitted for review.
 - d) Checking fee and recording fees required.
 - e) Per Oregon Revised Statute 92.065, remaining monumentation bond may be required if some of the plat monuments have not been set and/or the installation of street and utility improvements has not been completed, or if other conditions or circumstances cause the delay (or resetting) of monumentation.
 - f) A current or updated title report must be submitted at the time of review. Title reports shall be no more 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 shall include the following provisions:

- g) The preliminary plat shall substantially conform to the proposed subdivision request.
- h) Include all engineering elements as required by the Department of Public Works.
- i) For all public water mains, fire hydrants and any public sewer mains located within the subject property (if located outside platted rights-of-way), easements will be required and will need to be recorded. These easements shall meet the City of Keizer or City of Salem (where applicable) Design Standards and shall be shown on the subdivision plat.
- j) 10-foot-wide public utility easements (PUE) shall be shown along all dedicated rights-of-way.
- k) All lots must conform to the lot dimension standards within the RS zone. The final plat must include gross and net area calculations (excluding access easement and turn-around).
- l) Access easement and turn-around areas shall be shown on the plat and shall comply with City standards. Access easement name to be shown on the plat.
- m) Include all dedication as required by Public Works.
- n) Include a signature line for both the City Engineer and the City Manager.

5. With the Preliminary plat, if proposed, a copy of any proposed CC&R's, Owners Agreements, Articles and By-Laws shall be submitted to the Planning Department for review by the City Attorney as outlined in Section 3.108.07 of the Keizer Development Code. The following information should be included within the instrument(s):
 - a. Information regarding streetscape and replacement trees requirements for each lot.
 - b. Information regarding the maintenance of the access easement, address display signage, and no parking signs along the access easement.
6. A street naming application shall be submitted to the City for naming the private access easement.

Prior to Final Plat approval:

7. Upon approval of the detailed preliminary plat and engineering plans, a final plat for the subdivision, which conforms to the preliminary plat approval, must be submitted for review to Marion County Surveyor's Office.
8. Upon approval of the preliminary agreement, a final copy of any CC&R's, Homeowner Agreements, or other instrument which conforms to the agreements submitted during preliminary plat approval, shall be submitted to the Planning Department.
9. A maintenance agreement, homeowners association, or other instrument acceptable to the City shall be reviewed by the City before the plat is recorded, and such instrument must be recorded with Marion County immediately following the recording of the Plat. The agreement shall provide provisions for the maintenance of the access easement, address display signage and "no parking" signs.
10. The existing dwelling, and outbuildings must be removed prior to recording the final plat.
11. A final Tree Removal and Replacement Plan must be submitted to the Planning department for review and approval to confirm the total number of trees removed and required to be planted on-site. The plan shall include the number of trees to be paid for through off-site mitigation. The plan shall also show the approximate location of required streetscape trees for each lot, which can count toward the overall replacement requirements. Significant trees must be replaced at a 2:1 ratio. Staff encourages the applicant to consult an arborist to determine if some of the desirable trees can be retained in order to reduce the number of replacement trees required. If no trees are able to be retained, a total of 100 replacement trees is required.
12. The construction and paving of the access easement and turn-around area, installation of the street addressing signage, and required no parking signage shall be completed prior to approval of the final plat. In lieu of this, the applicant may obtain a performance bond, improvement agreement or other instrument acceptable to the City, as outlined in Section 2.310.06.P of the KDC. Improvement agreements may be obtained from the Planning Department.

13. The final plat for the subdivision shall be recorded within 2 years from the date of final decision on this application. A one-year extension may be approved by the Planning Director. Requests for extensions must be received in writing at least thirty days prior to the one-year time period.

Prior To Obtaining Building Permit(s):

- 14. No building permits shall be issued until the plat is recorded and all conditions of any construction permits are completed to the satisfaction of the Department of Public Works.
- 15. The property owner must submit documentation that the recording has taken place with Marion County for the maintenance of the access easement, address display signage and “no parking” signs before a building permit will be issued.

Prior to Obtaining Building Permit Final for each dwelling within the Subdivision:

- 16. The residential address requirements found in the Oregon Uniform Fire Code shall be completed as approved by Marion County Fire District #1 and the City of Keizer Planning Department.
- 17. Replacement and streetscape trees identified in the “final” tree Removal and Replacement Plan referenced in condition #13 above must be planted on each lot within the subdivision prior to obtaining final building permit approval or Certificate of Occupancy. Trees are to be a minimum of 2” caliper when planted.
- 18. Parking spaces shall be provided for each dwelling unit within the subdivision in accordance with KDC Section 2.303. Parking spaces must be a minimum of 9’ wide and 18’ long.
- 19. Applicant or any contractor building on lots shall comply with all applicable city regulations regarding noise, dust, times of construction, etc.

DATED: December 18, 2023.



James K. Brewer, Hearings Officer