



September 11, 2020

NOTICE OF HEARINGS OFFICER DECISION

Subdivision Case 2020-12

You are receiving this Notice of the Hearings Officer's decision because you provided either written or verbal testimony on a proposed subdivision. Attached is a copy of the Hearings Officer's decision approving Subdivision Case 2020-12 for a 5-lot subdivision located at 250 Sunset Av N, Keizer and identified by Marion County Tax Assessor's Map No. 073W11BB Tax lot 03900.

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 on an appeal form provided by the City. A fee of \$365.00 is required for any appeal filed. The appeal form is to be submitted to Keizer Community Development 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 p.m. September 21, 2020. 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 Community Development Department at (503) 856-3439 or 856-3442.

All attachments can be viewed at
<https://www.keizer.org/maps/Subdivisions>

THE CITY OF KEIZER HEARINGS OFFICER

In the Matter of the Application of) Case No. 2020-12
250 Sunset LLC) Subdivision
(Sunset Subdivision)

ORDER

I. Nature of the Application

This matter comes before the City of Keizer Hearings Officer on the application of Sunset 250 LLC to subdivide .69 acres into 5 lots. The subject property is located at 250 Sunset Avenue North and is identified on Marion County Tax Assessor Maps as T7S, R3W, Section 11BB, Tax Lot 3900.

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 and 2.3.

III. Public Hearing

A public hearing was duly held on this application on August 19, 2020. 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. Gerald Horner Applicant’s Representative
- 3. Jeremy Grenz General Public
- 4. Rosemary Kariakin General Public
- 5. Carolyn Homan General Public

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 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. Gerald Horner, the applicant’s representative, testified in favor of the application. Jeremy Grenz testified that he was in favor of the application, but argued that the exception for

providing road improvements in KDC 2.302.02.E should not apply. A number of neighbors testified questions and concerns about the application. At the conclusion of the public hearing, the record was left open one week 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.

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 .69-acres in size and is located at 250 Sunset Avenue North (Sunset Avenue). The property is designated Low Density Residential on the Comprehensive Plan and is zoned Residential Single Family (RS). The property is also in the River-Cherry Overlay District (RCOD). Properties to the north, east, and west are zoned RS and contain single family residences. Properties to the south are zoned Mixed Use (MU) and contain a multi-family complex and a single family residence. The property currently contains a single family dwelling that would remain and a detached garage that would be removed. The application proposes to subdivide the property into five lots.

The August 12, 2020 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 would be a waste of the City's money and resources to review and repeat all of the unchallenged findings in the staff report. I have reviewed the staff report and agree with those findings. I therefore adopt and incorporate the findings in the staff report in this decision, except as discussed further.

Opponents submitted a number of letters prior to the staff report being prepared. A number of concerns raised by opponents did not concern any applicable approval standards, such as stating that the notice area was not large enough or that approval was already predetermined. The City provided the notice required by state law and City ordinance, and there is an impartial process to determine whether the application meets the applicable approval criteria. Opponents' arguments do not provide a basis to deny the application.

To the extent opponents raise issues regarding applicable approval criteria – such as concerns about traffic, parking, density, and tree removal – the staff report addresses those concerns and explains how those requirements are satisfied. I cannot say it any better than the staff report.

Opponents also expressed concerns about how garbage/recycling pickup would work. According to opponents, it may be difficult to line up all the bins on Sunset Avenue. The applicant explained that it has had discussions with the service provider and the trucks will be able to go down the access easement to pick up garbage/recycling. Although garbage/recycling pickup is not an applicable approval criterion, it does not appear that it would be a problem.

Charlene Ellis testified at the public hearing that she would like a fence installed along her boundary with the subject property. The staff report contains a proposed condition of approval requiring fencing of the subject property. I agree with the staff report that that is an appropriate condition of approval.

Finally, Jeremy Grenz (Grenz) testified that although he is not opposed to the application, he does not believe that the application should be entitled to the exception to public improvements under KDC 2.302.02.E. Generally, new development is required to comply with the minimum standards for, among other things, street improvements. Normally, the applicant would be required to make street frontage improvements to Sunset Avenue as it is not fully developed to City standards. The staff report explains, however, that due to the unique circumstances involving development in this area of Sunset Avenue that an exception to providing such improvements under KDC 2.302.02.E is applicable:

“In order to promote and maintain healthy, safe environments and to minimize development impacts upon surrounding properties and neighborhoods the public facilities improvement requirements specified in the table found in Section 2.301.03 are found to be the minimum necessary. In addition, the Public Works Department has submitted comments which have been incorporated into the recommended conditions of approval that outline specific requirements for the installation of public facilities. The Public Works Department is not requiring street frontage improvements to Sunset Av N. It should be noted that this would normally be a development requirement of any subdivision approval, however Sunset Av N is unique, in that it was previously constructed to a modified street improvement design by the City, with input and coordination of the existing neighborhood. Therefore, staff finds the exception language found in Section 2.302.02.E apply to this subdivision request, and no frontage improvements will be required as a result. The applicant will be required to sign a ‘non-remonstrance’ agreement prior to final plat in order to assure that future improvements can be provided. With these items placed as conditions of approval this request can meet this criterion.” Staff Report 5.

Grenz argues that because Sunset Avenue is not fully improved to City standards that the applicant should be required to make additional improvements. KDC 2.302.02.E provides:

“Exceptions. Provisions of this Section [involving street standards] do not apply in existing developed areas of the City. Improvements in these areas shall be based on standards adopted by the Department of Public Works.”

The framework for interpreting ordinances is provided by *PGE v. BOLI*, 317 Or 606, 859 P2d 1143 (1993) (*PGE*) and *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009). Under that framework, the first level of analysis requires examination of the text and context of an ambiguous ordinance, together with any relevant legislative history. If the meaning of the text remains ambiguous, resort to general maxims of statutory construction is permissible. As the Oregon Supreme Court stated in *PGE*, “[i]n interpreting a statute, the court’s task is to

discern the intent of the legislature.” 346 Or at 610.¹ The only text and context provided is KDC 2.302.02.E itself and I am not aware of any legislative history. Therefore, the issue is to determine what was the intent of the Keizer City Council in adopting KDC 2.302.02.E.

While Grenz’s argument is certainly reasonable, I agree with the staff report that the exception in KDC 2.302.02.E is applicable in the present case. In general, the City requires new development to bring frontage roads up to current City standards. As KDC 2.302.02.E provides, however, this “does not apply in existing developed areas.” The presumption is that developed areas would have been required to make improvements when such areas were developed. What is unusual in the present case is that when Sunset Avenue was previously developed the City specifically did not require improvements to be made up to current City standards. At the public hearing Shane Witham explained that the City specifically reduced the required amount of improvements on Sunset Avenue to allay neighborhood concerns.

The intent of KDC 2.302.02.E is to bring street standards up to the levels desired by the City. Generally, the desired level is that dictated by current street standards provisions. In the present case, however, the City has already previously determined that the desired street standards are less than that which would otherwise be required by current street standards. The language of KDC 2.302.02.E appears to allow for exceptions to current street standards when the City and Department of Public Works have determined that other standards are more appropriate in developed areas. As the staff report explains, the Department of Public Works is not seeking additional improvements to Sunset Avenue. It would seem odd that the KDC would specifically require the City to impose additional street frontage requirements in situations where the City already determined that less than full buildout was preferable. While it is not crystal clear, I think the current situation is the type of situation contemplated by KDC 2.302.02.E. Therefore, the exception of KDC 2.302.02.E applies and additional street frontage improvements are not required.

All of the approval criteria are satisfied.

V. Decision of the Hearings Officer

It is hereby found that applicant has met or will meet the burden of proving the applicable standards and criteria for approval of the proposed subdivision upon satisfying the following conditions, which shall be completed, including review and approval by the appropriate department, prior to the time lines outlined below. Compliance with the conditions of approval shall be the sole responsibility of the applicants or property owner.

¹ Local ordinances are interpreted under the same framework as state statutes.

VI. Conditions of Approval

General Requirements:

1. 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:

The subject property is located inside the original Keizer Sewer District. Therefore, a sanitary sewer trunk line acreage fee will not be required.

- a.) City of Salem approval for local sewer permits will need to be issued prior to construction. Prior to submitting plans to the City of Salem for approval, the Applicant's engineer shall submit plans to the City of Keizer Public Works Department for review and determination of compliance with the City's Master Sewer Plan for the area.
- b.) Connecting to existing sewers that serve the general area will be the responsibility of the developer of the property. Appropriate easements to the City of Keizer will be required for any public sewer mains located outside of the right of ways. The easements will need to be recorded in a form which meets the City of Salem Design Standards and shown on the subdivision plat.
- c.) It will be the responsibility of the Applicant's engineer to locate any existing wells (including on adjacent property) in the vicinity of the proposed new sanitary sewer lines for the subject property. The Applicant, prior to platting of the proposed subdivision, shall eliminate any conflicts between existing wells and proposed sanitary sewers.

WATER SYSTEM:

- a.) Appropriate easements to the City of Keizer will be required for all public water mains, fire hydrants and services constructed outside of public right of ways. Any system development charges for water system improvements will be those in place at the time of individual service connections.
- b.) Final development plans shall be reviewed by the Keizer Fire District with regard to access and adequate location of fire hydrants prior to any issuance of Public Construction permits by the City of Keizer. All required fire hydrants shall be served by an 8 inch water main. The developer is proposing that the existing fire hydrant be relocated west of its current location due access restriction to proposed lot 2. If the existing fire hydrant is to be relocated as proposed, the hydrant shall be relocated by City Forces and the developer shall pay for all cost associated with the relocation of the fire hydrant.

- c.) Any existing wells on the subject property shall be abandoned in accordance with the Oregon State Water Resources Department requirements. The Applicant shall provide evidence to the Public Works Department that any abandonment of existing wells has been completed in accordance with such requirements.
- d.) Location of all water services to be approved by the Public Works Department.

STREET AND DRAINAGE IMPROVEMENTS:

- a.) Storm water quality and detention improvements will be required in conformance with the City of Keizer Public Works Department Design Standards. The developer's engineer shall conduct on-site infiltration tests, (the location and frequency of tests are to be coordinated with the City of Keizer Public Works Department) to determine the suitability of the soils for the proposed disposal system. The infiltration test and soil analysis shall be performed by a qualified engineer. Storm Water calculations shall be submitted in conjunction with the project design drawings and shall indicate how the development complies with the City of Keizer Public Works Design Standards for the basin. All storm water runoff from the property shall be kept on site. No public storm drain system exists for the development to connect to. The owner will be required to provide evidence that any private storm drain systems meeting the definition of UIC have been reviewed and permitted by the Oregon Department of Environmental Quality.
- b.) A grading and drainage plan shall be developed for the subject property. Details shall include adequate conveyance of storm water from all contributing areas across the subject property and shall include existing elevations and proposed lot corner elevations. The plan shall be submitted to and approved by the Public Works Department prior to the issuance of any Public Construction permits for street or storm drainage for the subject property. Grading and drainage plans shall be in conformance with the City of Keizer Public Works Design Standards. Additional information regarding street grades, site grading, inverts, etc., will be required for review prior to any plan approval.
- c.) Sunset Avenue is a designated Collector Street which requires a right of way width of 68 feet. The current width is 60 feet and an additional width of 4 feet will be required to provide for 34 feet of right of way from the centerline of the existing right of way. No street improvement, other than driveway accesses are required at this time but the applicant will be required to sign a “non remonstrance” agreement prior to final plat approval. Proposed parking spaces shall be located outside of the right of way after dedication for any lots fronting on Sunset Avenue.

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.) Erosion control permits shall be obtained from the City of Keizer prior to the disturbance of any soil on the subject property.
- f.) Developer shall coordinate the location of mailboxes with the U.S. Postal Service.

Prior to Preliminary Plat Approval:

- 3. 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 Statue 92.090.
 - b. Must be surveyed and platted per Oregon Revised Statue 92.050.
 - c. Subdivision plat must be submitted for review.
 - d. Checking fee and recording fees required.
 - e. Per Oregon Revised Statue 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 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 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 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 right of ways) 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 right of ways.
- k. All lots must conform to the lot dimension standards within the RS zone and RCOD. The final plat must show both gross and net area calculations.
- l. Include all dedication as required by Public Works.
- m. Access Easement and turn-around areas shall be shown on the plat and shall comply with City and Keizer Fire District standards. Access easement name to be shown on plat.
- n. Include on the plat, language indicating that a maintenance agreement for the shared access easement will be recorded along with the final plat. The following language is acceptable language to the City:
A Maintenance agreement for the shared access easement has been recorded on this ____ day of _____, 202_ in reel ___ page _____ of the Marion County Oregon Deed of Records

- 4. With the preliminary plat a copy of the proposed CC&R's, Owners Agreements, Articles and By-Laws shall be submitted to the Community Development 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. The number of replacement and streetscape trees required for each lot.
 - b. Information regarding the access easement maintenance, no parking signs, and fencing along access easement.
 - c. Fence requirements.
 - d. Parking requirements.

Prior to Final Plat approval:

- 5. Upon approval of the preliminary agreement, a final copy of any CC&R's, Homeowner Agreements, or other instrument shall be submitted to the Community Development Department which conforms to the agreements submitted during preliminary plat approval.
- 6. The construction and paving of the access easement and turn around area, installation of the street addressing signage, required no parking signage, and fencing for screening the access easement 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 Keizer Development Code. Improvement agreements may be obtained from the Community Development Department.

7. The maintenance and replacement of the access easement, “no parking” signage, and address display signage shall be provided in the form of a maintenance agreement, homeowners association, or other instrument acceptable to the City and shall be recorded with the Marion County Clerk. A copy of the agreement shall be submitted to the Community Development Department for review and approval. The agreement shall also include language stipulating that the agreement cannot be extinguished without written approval of the City of Keizer.
8. The applicant shall submit a modified Tree Replacement Plan providing the following number of trees on each lot for a total of 21 trees being provided on-site, along with 21 trees off-site for a total of 42 trees as follows:
 - Lot 1 – 2 streetscape trees along Sunset + 2 streetscape trees along access easement = 4 trees
 - Lot 2 – 1 streetscape tree along Sunset + 2 replacement trees = 3 trees
 - Lot 3 – 1 streetscape tree along easement + 3 replacement trees = 4 trees
 - Lot 4 – 1 streetscape tree along easement + 3 replacement trees = 4 trees
 - Lot 5 – 6 replacement trees
 - 21 trees to be provided off-site

In lieu of this, an alternate plan may be submitted to and approved by the Community Development department providing for off-site tree planting, or specimen tree planting, consistent with Section 2.309 of the Keizer Development Code.

9. The detached garage/accessory building must be removed or relocated to comply with the setback provisions of the RS zone. If the building is modified or relocated, a site plan prepared by a licensed surveyor or engineer must be provided certifying the building complies with the setback requirements for lot 1.
10. 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.
11. The final plat for the subdivision shall be recorded within 1 year from the date of final decision on this application. A one year extension may be approved by the Community Development 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):

12. 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.

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

13. The residential address requirements found in the Oregon Uniform Fire Code shall be completed as approved by Keizer Fire District and Community Development Department. Access easement sign shall be provided and placed by the applicants in accordance with city standards.
14. Trees outlined in the modified Tree Replacement Plan (referenced in condition # 8) must be planted within the subdivision for each individual lot as shown on the Tree Replacement Plan. This includes streetscape trees required for each lot.
15. Three (3) on-site parking spaces shall be provided for all lots within the subdivision.
16. A six foot tall sight obscuring fence must be provided for the perimeter of the subdivision. Fencing must be provided along the east line of Lot 2, 3, and 4. Fencing must be provided along the east, south and west line of Lot 5.
17. Applicant or any contractors building on lots shall comply with all applicable city regulations regarding noise, dust, times of construction, etc.

DATED: September 11, 2020



Fred Wilson
City of Keizer Hearings Officer