



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: January 18, 2017

Department: Public Works Agenda Planning Date: Jan. 12, 2017 Time required: 5 Min.

Audio/Visual aids

Contact: Brandon Reich Phone: 503-566-4177

Department Head Signature:

TITLE Public hearing on appeal of hearings officer's decision denying Partition Case 16-014/Kaufman.

Issue, Description & Background The applicants applied for a partition to divide a 9.19 acre parcel in an AR (Acreage Residential) zone into three parcels. The request was approved by the Planning Director, subject to meeting certain conditions. The applicant disagreed with two of the conditions and appealed that decision to the hearings officer. The conditions required right-of-way dedication and improvements of a local access road, Canyon Street SE, serving the proposed parcels. The hearings officer held a public hearing on October 26, 2016, and issued a decision denying the partition request on December 7, 2016. In finding #11 (page 7) the hearings officer discusses the right-of-way width of Canyon Street and concludes that a 60 foot right-of-way already exists and no additional dedication is necessary. In findings 34 and 36 (beginning on page 13) the hearings officer discusses required improvements to the local access road and concludes that there are no local access road development standards and no provisions tying local access road standard to other county road standards. In the denial the hearings officer found that the applicant needed to provide additional information on how the properties will be accessed including if it will be feasible to meet sight distance and slope standards and to manage storm water. Without specific information on the proposed access, it could not be determined that there is adequate access to the parcels. The hearings officer concluded that the applicant did not meet the burden of proving all applicable standards and criteria and denied the request. In the grounds for appeal the applicant identifies three items. First, the hearings officer applied the incorrect standard for review by conducting a de novo hearing and in doing so erred by reversing the tentative partition approval when sole basis for the appeal was a challenge to the constitutionality of two conditions of approval. Secondly, the applicant intends to submit additional evidence regarding access, stormwater, and road grade standards for consideration by the board if the appeal is accepted and a hearing is held. Finally, the applicant agrees with the hearings officer that there is no adequate basis to require the abutting local access road to be developed to "County standards" because no specific standards for a local access have been defined. The applicant's representative intends to provide evidence and argument at the hearing addressing the Hearings Officer's denial.

Financial Impacts: None.



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Impacts to Department & External Agencies

None.

Options for Consideration:

1. Continue the public hearing, requiring an agreement from the applicant to extend the 150 day decision making deadline.
2. Close the hearing and leave the record open.
3. Remand the matter back to the hearings officer requiring an agreement from the applicant to extend the 150 day decision making deadline.
4. Close the public hearing and approve or deny the application or approve a modified proposal.

Recommendation:

None.

List of attachments:

Appeal  
Hearings officer's decision  
Planning director's decision

Presenter:

Brandon Reich

*Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)*

Copies to:

Brandon Reich breich@co.marion.or.us

December 19, 2016

RECEIVED

VIA HAND DELIVERY

16 DEC 19 P4:18



Marion County Board of Commissioners  
c/o Marion County Clerk  
555 Court Street NE, 2<sup>nd</sup> Floor  
Salem, OR 97301

MARION COUNTY CLERK

RE: Appeal of Hearings Officer's Decision (Case No. 16-014)  
Our File No: 00000-27165

Dear Honorable Commissioners:

This office represents Kent and Rebecca Kaufman (collectively "**Property Owner**"), together with Terrence and Ann Kuenzi (collectively "**Applicant**") in their combined request to divide a 9.19 acre parcel located at 6895 Canyon Street Southeast in Salem into three (3) parcels. We submit the following as our appeal of the Hearings Officer's decision dated December 7, 2016 (the "**Decision**") denying the Applicant's partition request (the "**Application**"). This appeal is timely submitted before the deadline of December 19, 2016, at 5:00 pm, as stated in Section VII of the Decision.<sup>1</sup>

Applicant respectfully requests that the Marion County Board of Commissioners (the "**Board**") reverse the Decision in part and affirm the Decision in part. In the alternative, Applicant requests that the Board hold a hearing pursuant to MCC Chapter 17.111. Applicant has three (3) reasons for this appeal, which are as follows:

- 1) The Hearings Officer applied the incorrect standard of review; and therefore, she committed an error of law. MCC 17.172.600-640 governs appeals of partition decisions to the Hearings

Officer. Unlike MCC 6.10 (Dog Control Hearings), MCC 17.122 (Variances), and MCC 17.119 (Conditional Uses), review of partition decisions are not *de novo*. Thus, the Hearings Officer erred as a matter of law when she reversed a tentative partition approval for failure to satisfy certain land division criteria even though the sole basis of the appeal was a challenge to the constitutionality of the conditions of approval. Applicant had no notice that the Hearings Officer

<sup>1</sup> MCC 17.172.640 states: "The hearings officer or board shall render a decision on the appeal in accordance with the provisions of this chapter, after the conclusion of the hearing. Notice of the decision shall be provided to the applicants, appellant, and others requesting notice in writing. The decision of the hearings officer may be appealed to the board no later than 12 days after the decision is rendered. The board may sustain the decision or decide the appeal with or without a further public hearing. If a public hearing is held it shall conform to Chapter 17.111 MCC. If the board exercises its authority pursuant to this section, its decision is final and appealable only to the Oregon Land Use Board of Appeals. [Ord. 1271 § 5, 2008; Ord. 1180 § 4, 2003; Ord. 1169 § 4, 2002. RZ Ord. § 172.64.]"

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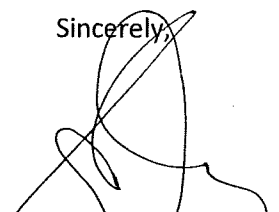
would perform such a review and no notice that additional evidence may be needed to maintain the approval previously granted by the Planning Director.

- 2) Out of an abundance of caution, Applicant intends to submit additional evidence requested in the Decision, including, but not limited to, evidence of compliance with road grade standards, stormwater standards, and adequate access to the parcels. Applicant's engineer will provide written testimony that Applicant can comply with all engineering road standards and stormwater standards prior to final plat approval, and Applicant will revise the site plan pursuant to the comments of the Hearings Officer in the event the appeal is granted and a hearing is deemed necessary.
- 3) Applicant agrees with the Hearings Officer's conclusion of law that there is no adequate basis to require the abutting local access road to be developed to "County standards" under M CCP RSTP Policy 10.3.5(23), or any other policy, standard or code provision, because the County has not defined County standards for local access roads. In the alternative, Applicant renews its arguments in full before the Hearings Officer that the prohibition of the Fifth Amendment of the United States Constitution, against taking owner's property without just compensation, precluded the original conditions of approval, requiring street widening and improvements to Canyon Street SE.

#### Conclusion

For the reasons stated above, Applicant requests that the Board accept this appeal and reverse the decision in part and affirm it in part as described above. The evidence in the record is adequate to affirm the Planning Director's original approval and correct the initial error of law that required additional right-of-way dedications and street improvements to Canyon Street SE, as further explained in Applicant's initial appeal memorandum. Alternatively, the Applicant requests that the Board hold a hearing on this matter. In the event the Board accepts the appeal, Applicant will extend the one hundred fifty (150) day deadline by thirty (30) days: from December 29, 2016, to January 28, 2017. Applicant was the applicant below and therefore has standing to appeal.

Sincerely,



ALAN M. SOREM  
asorem@sglaw.com  
Voice Message #303

AMS:jsm/npl/hst  
cc: Client, *via email*

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the ) Case No. P 16-014  
Application of: ) Clerk's File No.  
KENT AND REBECCA KAUFMAN ) **Partition**

ORDER

**I. Nature of the Application**

This matter comes before the Marion County Hearings Officer on appeal of the Planning Director's approval of the application of Kent and Rebecca Kaufman to divide a 9.19 acre parcel into three parcels containing 4.18, 3.0 and 2.0 (*sic*) acres in an AR (Acreage Residential) zone at 6895 Canyon Street SE, Salem, Marion County, Oregon (T7S, R2W, 34CA, tax lot 1000).

**II. Relevant Criteria**

Standards and criteria relevant to this application are found in the Marion County Comprehensive Plan (MCCP) and in Marion County Code (MCC), title 17 (Rural Zoning), especially chapters 17.128 and 17.172.

**III. Public Hearing**

A public hearing was held on this application on October 26, 2016. The Planning Division file was inventoried and made part of the record. The following persons appeared:

- |    |                |                                  |
|----|----------------|----------------------------------|
| 1. | Brandon Reich  | Marion County Planning Division  |
| 2. | John Rasmussen | Marion County Public Works       |
| 3. | Alan Sorem     | Attorney for applicant/appellant |
| 4. | Kent Kaufman   | Applicant/appellant              |
| 5. | Rebecca Kunkle | General                          |

No documents were entered into the record as exhibits. No objections were raised to notice, jurisdiction, conflict of interest, evidence or testimony.

**IV. Findings of Fact**

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

1. The subject property is designated Rural Residential in the MCCP and zoned AR. The purpose of the designation and zoning is to allow creation of acreage homesites at a density that maintains the character and environmental quality of rural residential areas.

2. The subject parcel is on the north side of Canyon Street SE about 590' west of the Canyon Street SE-70th Avenue SE intersection. Canyon Street SE is a non-county maintained local access road with a 60' right-of-way. The westernmost portion of the road extending to the subject property's western edge is unimproved. The subject parcel contains a dwelling, accessory structures, well and septic system. The parcel was described by deed recorded in Marion County deed records on September 22, 1972 at volume 736, page 333. The parcel is considered legally created for land use purposes.
3. Properties to the north, east and south are zoned AR and are in residential use. Property to the west is zoned SA (Special Agriculture) and property to the north-northwest is zoned EFU (Exclusive Farm Use). The farm zone properties are in farm use.
4. Applicants propose dividing the subject 9.19 acres into three parcels of 4.18, 3.0, and 2.0 acres. (Applicants' site plan and Assessor's Office records show the subject property acreage is 9.19 acres but applicants' site plan also shows total acreage of resulting parcels as 9.18 acres. Applicants' final partition plat must show accurately measured acreages.)
5. The Planning Director approved applicants' proposal subject to conditions. Applicants contest two Planning Director conditions of approval.
6. The Planning Division requested comments on the proposal from various governmental agencies.

The Public Works Department Land Development and Engineering Permits (LDEP) Section commented:

Approval of the proposed Partition (P) would allow a 9.2-acre parcel located in an AR (Acreage Residential) zone to be divided into three parcels containing 4.2 acres, [3] acres and 2 acres each. The property is currently developed with a dwelling and accessory building. If approved, the proposed development will have the potential to add up to an additional 20 average daily trips on Canyon Street and other county roads. Public Works Engineering Division conditions, requirements and advisories are given below.

ENGINEERING CONDITIONS

Public Works Engineering requests that the following conditions, lettered A and B, are included in the approval of the land use case.

*Condition A - Show sufficient dedicated right-of-way (R/W) on the partition plat to provide the public R/W halfwidth of 30 feet for a rural Local road along the subject property Canyon Street frontage.*

R/W dedication requirements for subdivisions and partitions are in accordance with Section 17.172.240 of the Rural Zone Code of Marion County. The R/W dedication shall be shown as a 30-foot half-width on the plat. All dedications shall be to the public, not Marion County. Nexus for this

Condition is the proposed addition of traffic to a road in need of widening and roadway safety improvements, and sufficient space for utilities.

*Condition B - Prior to plat approval, Applicant shall design, permit and construct Canyon Street widening improvements to meet MCPW Engineering design standards to a modified (reduced width). Local road standard in order to achieve a total paved asphalt surface width of 18 feet flanked by 1-foot wide gravel shoulders on both sides commencing from the intersection with 70th Avenue to a point coincident with either an access easement serving the proposed parcels or to the east property line of the westernmost proposed parcel, whichever is the greater distance.*

Requirements for public road improvements are in accordance with MCC 17.110.780(A), 17.110.800 and 17.172.320. Canyon Street is designated as a Local Access Road, which is not maintained by Marion County. The road is paved to approximately 10 feet in width, equivalent to a narrow driveway that is insufficient to pass vehicles traveling in opposite directions. Although the county Local road standard is a 22-foot width, due to the anticipated very low traffic volume on Canyon Street, a reduced width of 18 feet with narrow gravel shoulders is justifiable. Section 10.3.5, Policy #23 of the Marion County 2005 Rural Transportation System Plan (RTSP) stipulates that a maximum of 4 parcels not having alternate public road frontage may be served by a Local Access Road. The current number of parcels on Canyon Street not having alternate public road frontage is five, not counting the end parcel zoned Special Agriculture currently in farm use only. Widening the road, as described above, would enable PW Engineering to condone deviating from the prescribed 4-lot maximum. The Applicant will need to submit engineering design drawings for review and approval, and obtain a construction permit that would require bonding.

#### ENGINEERING REQUIREMENTS

The following comments lettered C through F, are informational only regarding Public Works Engineering requirements and issues that the applicant must address if the proposal is approved. Please note that the below requirements will be only generally referenced in a forthcoming Planning Division *Notice of Decision*.

- C. In accordance with Marion County Driveway Ordinance #651, driveways must meet sight distance, design, spacing, and safety standards. There is currently one driveway access. The following requirements 1 and 2 pertain to access:
  - 1) Any access easement shared by two lots or more shall have an approach paved in Hot Mix Asphaltic Concrete.
  - 2) At the time of application for building permits, an Access Permit will be required for each buildable lot.
  
- D. The subject property is within the unincorporated area of Marion County and will be assessed Transportation & Parks System Development

Charges (SDCs) upon application for building permits per Marion County Ordinances #00-10R and #98-40R, respectively.

- E. Any excavation work within the public right-of-way for utilities requires permits from MCPW Engineering.
- F. Applicant shall provide evidence of a recorded Declaration of Covenants for Road Maintenance Agreement (RMA) regarding Canyon Street; a non-county maintained Local Access Road. PW Engineering is able to prepare the document at no cost to the Applicant, aside from County Clerk recording fees.

#### ENGINEERING ADVISORY

The Applicant should be aware of the following advisory, lettered C:

- G. The local fire district has authority to require, as a condition for issuance of building permits, that driveways and private easements either meet fire district standards for access, have a fire sprinkler suppression system installed on certain proposed structures, or be approved by waiver of the local fire marshal. The *Marion County Fire Code Applications Guide* stipulates fire apparatus access roads (access in excess of 150 feet in length) must have an unobstructed 20-foot width and 13.5 feet of vertical clearance. The *Guide* also specifies a suitable turnaround area for emergency vehicles at 400-foot intervals for longer accesses.

The Marion County Surveyor commented: Parcels ten acres and less must be surveyed. Per ORS 92.050, plat must be submitted for review. Checking fee, second mylar fee, and recording fee required. 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 Marion County Building Inspection Division commented: Building permits may be required. If a new dwelling is constructed and the local fire official determines that there is inadequate apparatus access or water supply, then one or more of the uniform alternate construction standards in Oregon Administrative Rule 918-480-0125 must be met as determined by the building official.

The Marion County Tax Office provided information regarding taxes on the subject property: Real property taxes for 2015-16 are paid. 2016-17 property taxes become a lien on July 1, 2016, and will be due November 15, 2016. According to ORS 92.095, all delinquent taxes and interest as well as taxes which have become a lien during the tax year must be paid before a partition shall be recorded. A potential additional tax liability may exist which may need to be paid before the subject property can be divided and/or a dwelling placed on the property.

Other contacted agencies had no comment or did not object to the proposal.



## V. Additional Findings of Fact and Conclusions of Law

1. Applicants have the burden of proving all applicable standards and criteria are met but submitted no narrative addressing standards and criteria with the application.
2. MCC 17.110.680 provides that the Planning Director shall handle matters pertaining to land divisions. The notice of public hearing in this case also identifies MCC chapter 17.128 (acreage residential zone) and MCC chapter 172 (subdivisions and partitions) as land use decision criteria related to this case. MCC 17.172.050 provides that the Planning Director has the power to decide applications for partitions and impose conditions consistent with title 17. The Planning Director could decide this matter.
3. Under MCC 17.172.600, interested persons may appeal the Planning Director's final decision no later than fifteen days after the decision is rendered. The Planning Director's decision is dated September 7, 2016. Applicants, interested persons, filed a September 22, 2016 appeal. Appeal was timely.
4. Under MCC 17.172.620, if the Planning Director's decision is appealed, the hearings officer shall conduct a public hearing. Under MCC 17.172.640, the hearings officer shall render a decision on the appeal after the conclusion of the hearing. The hearings officer may hear and decide this matter.
5. Under MCC 17.172.510, a partition application may be filed by owners of the property subject to the application. A statutory warranty deed filed in Marion County deed records at reel 3768, page 84 shows the subject property was conveyed to Kent and Rebecca Kaufman in December 2015. Kent and Rebecca Kaufman could file the subject application. MCC 17.172.510 is met.
6. Under MCC 17.172.520, applications must include signatures of all owners of a subject property. A statutory warranty deed filed in Marion County deed records at reel 3768, page 84 shows the subject property was conveyed to Kent and Rebecca Kaufman in December 2015. Kent and Rebecca Kaufman signed the subject application July 18, 2016. MCC 17.172.520 is met.
7. Under MCC 17.172.040, when considering a partitioning plan, the hearings officer shall consider whether it is in accord with adopted Marion County ordinances, comprehensive plans, and land development policies. In reviewing an application, the hearings officer may prescribe conditions or make changes or modifications to the partitioning plan to bring it into compliance with applicable ordinances or regulations. The Planning Director considered only MCC 17.128.050 (special siting standards) and MCC 17.128.070 (minimum parcel size) in evaluating this application. The hearings officer also evaluates MCC chapter 172 and applicable MCCP policies.

8. Applicants challenge two conditions in the Planning Director's approval, but the hearings officer must consider the whole application fresh and is not bound by the Planning Director's findings and conclusions.
9. Under MCC 17.172.200, the property line radius at street intersections shall be to Marion County public works department standards. The subject property does not border an intersection but the Planning Director included a condition requiring Canyon Street SE improvements from the subject property to the 70<sup>th</sup> Avenue SE intersection. The street improvement condition is discussed below and is not imposed. MCC 17.172.200 is not applicable.
10. Under MCC 17.172.220, no street grade shall be in excess of 12 percent unless the commission or hearings officer finds that, because of topographic conditions, a steeper grade is necessary. The commission or hearings officer shall require a written statement from the director of public works indicating approval of any street grade that exceeds 12 percent.

Under the MCC's general definition section at MCC 17.110.550, street means a way of travel more than 20 feet wide that has been dedicated or deeded to the public for public use. Under this definition MCC 17.172.220 applies only to public ways. But, under MCC 17.172.020, the general definitions section of the subdivision and partitioning chapter, street or road means a public or private way that is or has been created to provide ingress or egress for persons to one or more lots, parcels, areas, or tracts of land, excluding a private way created to provide ingress or egress for resource use only. Under the more specific MCC 17.172.020, MCC 17.172.220 applies to public and private roads. Access criteria are difficult to evaluate here because applicants have not illustrated, described or stated how new parcels will be accessed (public road, private road, easement, via Canyon Street or alternate approach) even though access and access improvements are the major issue in this case.

Assuming approach via Canyon Street because all proposed parcels have right-of-way frontage on Canyon Street SE, the hearings officer notes that that a large portion of the right-of-way fronting the subject property is undeveloped and slopes downward to the west. Applicants' property also slopes downward to the west so whether access is by public or private road, access will likely be built at a downward grade. Applicants' site plan does not show where resulting parcels will be accessed. Slope percentages for Canyon Street or alternate access are not provided in the application materials but the site plan shows 10' topographic contour lines for the subject property and the Canyon Street right-of-way. The hearings officer will not estimate slope percentages, but it is clear the property is not flat where access to the two westernmost parcels may be taken.

Hearings officials often find criteria can be met with conditions, like requiring new parcel access to have no more than 12% slope, but applicants must show it is feasible to meet the condition. It *may* be feasible here to

meet such a condition, but with no definite slope information, the hearings officer cannot say that meeting the 12% slope requirement *is* feasible, or whether a steeper grade is required. **With more information, applicants may show this criterion can be met. On this record, the hearings officer cannot determine that MCC 17.172.220 is or can be met.**

11. Under MCC 17.172.240, if land to be partitioned will cause the termination of a roadway or borders a roadway right-of-way of less than standard width, the applicant shall dedicate sufficient land to provide for a cul-de-sac or to increase the half (or halves) of right-of-way bordering the subject parcel to one-half of the standard width. Unless otherwise specified for an individual street in the zoning ordinance, standard right-of-way widths are subject to Marion County Department of Public Works standards.

The Canyon Street SE right-of-way currently terminates at the southwest corner of the subject property. This application will not cause the right-of-way's termination. No cul de sac dedication is required. Marion County Public Works LDEP identified Canyon Street SE as a non-county maintained local access road and asked the Planning Director to require a 30' half-width dedication along applicants' Canyon Street frontage. The hearings officer could find no right-of-way width requirements specific to local access roads, though 60' is the requirement for county local roads, and DPW's 30' half-width request indicates the right-of-way standard for a local access road is 60'. Marion County Assessor's map 072W34CA depicts Canyon Street SE as a 60' right-of-way, and applicants provided copies of deeds dedicating the abutting 60' rights-of-way that make up Canyon Street SE. Applicants oppose the Planning Director's 30' half-width dedication condition as unnecessary and unconstitutional. Applicants' constitutional argument is not addressed because the hearings officer agrees that a 60' right-of-way already exists and no right-of-way dedication is necessary and none will be required. MCC 17.172.240 does not apply.

12. Under MCC 17.172.260, where topographical requirements necessitate either cuts or fills for the proper grading of streets, additional right-of-way may be required to be dedicated to allow all cut and fill slopes to be within the right-of-way.

It is not clear how access will be provided, but Marion County LDEP did not suggest a need for additional Canyon Street SE right-of-way dedication beyond its current 60' width to accommodate cut and fill. MCC 17.172.260 does not apply.

13. Under MCC 17.172.320, all street or road improvements including pavement, curbs, sidewalks, signage, and surface drainage shall be in accordance with the specifications and standards prescribed by the Director of Public Works. Subdivision plats shall not have final approval until such time as the Director of Public Works, or his/her designee, is satisfied that the street improvements will be completed in accordance with the specifications and standards set forth by the DPW Works.

No building permits within a subdivision or partition shall be issued until the director of public works, or his/her designee, approves that the improvements have been completed or sufficient improvement agreements and financial guarantees have been recorded.

The portion of this provision relating solely to subdivision requirements is not applicable. This provision does not address what specific roadway improvements are required but, when improvements are required, they must, under this provision, be to MCPW standards. The portion of the provision relating to timing of improvement completion prior to issuing building permits applies. If street improvements are required, completion prior to permitting will be made a condition of approval. As conditioned MCC 17.172.320 would be met.

14. Under MCC 17.172.400, all lots or parcels shall be served by an authorized sewage disposal system. Subsurface sewage disposal for individual parcels shall meet the requirements of the Department of Environmental Quality (DEQ) and the Marion County Building Inspection Division. Those subsurface sewage systems that are used by a community, sanitary district, industry, or incorporated area must be authorized by DEQ via the Marion County Building Inspection Division. Installation and maintenance shall be in accordance with DEQ regulations and requirements. The hearings officer may require connection to an existing sewage collection and treatment system regardless of lot suitability for subsurface disposal if the hearings officer deems it necessary and provided the connection is available.

Proposed parcels have no access to community sewer systems and will rely on subsurface sewage disposal. DEQ sewage disposal requirements are overseen by Marion County DPW. At two, three and four acres, the proposed parcels are large enough to feasibly accommodate subsurface sewage disposal. DPW subsurface sewage disposal permits will be made a condition of approval. As conditioned, MCC 17.172.400 will be met.

15. Under MCC 17.172.420, all lots or parcels shall be served by an authorized public or private water supply system or by individual private wells.
  - (a) Public or Private Systems: Public or private systems shall meet the requirements of the Oregon State Health Division with reference to chemical and bacteriological quality. In addition, such systems must meet the quantity, storage, and distribution system requirements of the State Health Division and the Marion County Department of Public Works.
  - (b) Individual Private Wells: Individual private wells must meet the construction requirements of the Oregon State Water Resources Department and be located in accordance with requirements of the State Health Division in relation to public or private sewage disposal systems. The bacteriological quality of this water may be determined through the Marion County Health Department. Upon receiving the recommendations from the State Health Division or

Marion County Health Department, the Hearings Officer or Commission may require the use of an engineered public or private water system in any proposed subdivision. Other criteria to be considered in making this determination are the recommendations contained in the Marion County Water Quality Management Plan, Marion County Comprehensive Plan, and Chapter 181 of the Marion County Rural Zoning Ordinance.

Individual private wells are the norm in rural Marion County and are assumed here. The subject property is not within a sensitive groundwater overlay zone so no special provisions apply, but wells must be set back at least 100' from any sanitary disposal system. At two, three and four acres, proposed parcels are large enough to accommodate well setbacks. With a condition requiring wells to be setback 100' from any sanitary disposal system, MCC 17.172.420 will be satisfied.

16. Under MCC 17.172.430, the impact of proposed subdivisions and partitions on stormwater runoff shall be evaluated and potential adverse impacts shall be mitigated. Where evidence indicates stormwater runoff will have an adverse impact on a drainage system or natural drainage network, the developer shall demonstrate that proposed stormwater management on the subject property will compensate for the proposed change per county standards. Compliance with this requirement shall be demonstrated by compliance with department of public works engineering standards.

Applicants did not address stormwater in application materials. Given the slopes on the subject property and lack of information on soil types and characteristics, it is not clear how stormwater can be managed. **MCC 17.172.430 is not satisfied.**

17. Under MCC 17.172.540, unless a variance is granted, partitions shall conform to applicable regulations in MCC 17.172.460 through 17.172.660. The director shall determine if annexation to a fire, sewer or water district is required. If the director determines that annexation is required, annexation or a non-remonstrance agreement must be filed with the appropriate agency.

MCC 17.172.460 through 17.172.660 and other provisions of 17.172 specifically referring to partitioning requirements are examined in this order. No water or sewer service districts serve this area, nor are any close by. The Planning Director did not require annexation, nor will the hearings officer. Water and septic services will be provided on-site. The subject property is already in the Marion County Fire District 1 (MCFD1) service area. A condition of any approval will require applicants to provide proof from MCFD1 that applicants' site plan meets fire access and property identification or alternate requirements.

18. MCC 17.172.460 deals with pre-application conferences, and contains no substantive criteria.

19. MCC 17.172.480 deals with partitioning procedure in zones other than the AR zone and is not applicable.
20. MCC 17.172.500 deals with application form requirements and contains no substantive criteria.
21. MCC 17.172.510 and 17.172.520 were addressed above and are met.
22. MCC 17.172.530 deals with governmental agency coordination. Requests for comment were sent to affected governmental agencies. MCC 17.172.520 procedures were followed.
23. MCC 17.172.540 deals with regulation conformance. This application is being examined against applicable regulations.
24. Under MCC 17.172.560, all lots must have a minimum of 20 feet of frontage on a public right-of-way, or, when an access easement is proposed to serve one or more lots in any partitioning, the location and improvement of the roadway access shall conform to the following standards which are necessary for adequate access for emergency vehicles. Evidence that the access has been improved to these standards shall be provided prior to the issuance of building permits on the parcels served by the access easement.
  - A. Have a minimum easement width of 20 feet;
  - B. Have a maximum grade of 12%;
  - C. Be improved with an all-weather surface with a minimum width of 12 feet;
  - D. Provide adequate sight-distance at intersections with public roadways;
  - E. Be provided with a road name sign at the public roadway as identification for emergency vehicles in accordance with the Marion County Address and Street Name Ordinance.

All proposed parcels have more than 20' of right-of-way frontage on Canyon Street SE but applicants have not shown definitively how proposed parcels will be accessed. The proposed development will add an estimated 20 traffic trips to the road per day, and whether access is taken directly from the right-of-way or via easement, access ways will have to be built, and if access is by easement, this provision must be met.

At two, three and four acres, the proposed parcels can, more likely than not, accommodate a 20' wide easement, so the application can be conditioned on meeting this standard. Road naming and signage requirements do not require a special feasibility showing based on unique property characteristics and can be required as a condition of approval. Because the subject property can feasibly accommodate a 20' easement, that easement

could likely accommodate a 12' wide all weather roadway surface. The 12% road grade standard and sight distance issues require a more site-specific examination. As noted above, applicants have not provided definitive information on slope percentage, so slope and its impact on sight distance need to be addressed more thoroughly. Applicants must demonstrate that slope and sight distance standards can feasibly be met. **With more information, applicants may show this criterion can be met, but on this record, the hearings officer finds MCC 17.172.560 is not met.**

25. MCC 17.172.580 through 17.172.640 deal with notification, appeal of the Planning Director's and hearings officer's decisions, hearing requirements, and contain no substantive criteria.
26. Under MCC 17.172.660, within two years of approval of the partitioning application, the applicant shall submit for approval by the Director, a partitioning plat in the appropriate form that shall reflect the final decision. When approved, the plat shall be recorded with the Marion County Clerk. Until the plat is approved and recorded, no building permits for any of the divided parcels shall be issued. If applicants do not record a partitioning plat within two years, approval will be deemed null and void. One extension may be approved by the Planning Director on submission of written justification prior to the expiration of the two-year time limit. Recordation requirements can be made a condition of approval.
27. Under MCC 17.128.050, the following special siting standards apply to dwellings near resource zones:
  - A. Any new dwelling in an AR zone shall be required to maintain a special setback from any parcel in the EFU, SA, FT, or TC zones. A 100-foot setback is the standard adjacent to farm use and 200 feet is the standard adjacent to forest uses. These setbacks may be reduced if it is determined, concurrently with any land use application or as provided in Chapter 17.116 MCC, that a lesser setback will meet the following review criteria for alternative home sites:
    1. The location of the home site will have the least impact on nearby or adjoining forest or agricultural lands.
    2. The location of the home site ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized.
    3. The amount of agricultural and forestlands used to site access roads, service corridors, the dwelling and structures is minimized.
    4. The risks associated with wildfire are minimized.

- B. The owner of a proposed dwelling to be located within 500 feet of the EFU, SA, FT, or TC zones shall be required to concur in the filing of the declaratory statement prescribed in the respective resource zone.
  - C. The owner of a proposed dwelling located on a parcel adjacent to the FT or TC zone shall, as a condition of approval, be required to provide for fire hazard management in accordance with Chapter 3 of "Fire Safety Considerations for Developments in Forested Areas, 1978" and any revisions thereto.
  - D. The special setback in subsection (A) of this section shall not be applied in a manner that prohibits dwellings approved pursuant to ORS 195.300 through 195.336 nor should the special setback in subsection (A) of this section prohibit a claimant's application for homesites under ORS 195.300 through 195.336.
28. Proposed parcel 1 contains the existing dwelling. Proposed parcels 1 and 2 will border only AR zoned properties. No special setbacks are required for proposed parcels 1 and 2. Proposed parcel 3 will be the largest of the three parcels at 4.19 acres and is bordered by AR zoned properties on its southern, eastern and most of its northern border. A small section of the northern property line will border EFU zoned property. The western edge of the property borders SA zoned land. The Planning Director determined that neighboring farm zoned properties are in farm use. There is no countervailing evidence and the Planning Director's finding is adopted here. No forest use is alleged. At over four acres, proposed parcel 3 will have sufficient area to accommodate 100' setbacks from farm zoned properties. With a 100' special setback condition for proposed parcel 3, MCC 17.128.050(A) will be met without need to examine MCC 17.128.050(A) (1) through (4).
29. Proposed parcels 2 and 3 will be within 500 feet of EFU or SA zoned property and will require filing a farm/forest declaratory statement acknowledging and accepting farm practices on nearby resource zoned lands. Parcel 1 may or may not be within 500' of resource zoned land depending on its final dimensions, and a farm/forest declaratory statement may also be required for proposed parcel 1. Each resulting parcel within 500 feet of EFU or SA zoned property and will be required to file a farm/forest declaratory statement. As conditioned, MCC 17.128.050(B) will be met.
30. The subject property is not adjacent to FT or TC zoned property. MCC 17.128.050(C) is not applicable.
31. Resulting parcels are not subject to dwelling approval under ORS 195.300 through 195.336. MCC 17.128.050(D) is not applicable.
32. MCC 17.128.060 contains height and setback standards. At two, three and four acres, the resulting parcels are large enough to accommodate setback standards and height standards that will be applied at time of development.



33. Under MCCP 17.128.070, the minimum lot size for subdivisions and partitioning is two acres. When a numerical suffix has been applied to the AR zone, the minimum lot size shall conform to the numerical designation. No numerical designation is assigned to the subject property. The subject property is just over nine acres and will accommodate a two-acre minimum parcel size for the three proposed parcels. A condition will require all parcels to meet the two-acre minimum lot size standard. As conditioned, MCC 17.128.070 will be met.
34. Under MCC 17.110.780(A), all street rights-of-way, pavement widths, shoulder widths and other design features shall meet Marion County engineering standards.

The hearings officer searched all Marion County codes, the MCCP, including the RSTP and Marion County Department of Public Works Engineering Standards, April 11, 1990 looking for standards specifically applicable to local access roads and could find none. A local access road is by definition a different animal than a local county road under the 1990 DPW engineering standards document:

Local Road or Street - A roadway serving short distance, intra-neighborhood and residential needs. They are characterized by minimal access limitations, lowest traffic movement preference at intersections with collectors and arterials, and minimum widths. These factors lead to minimum traffic carrying capacity, but provide maximum access to adjacent property.

Local Access Road (NCR) - A public road that is not a county road, as defined herein, and is also not a state or federal highway or road. The roadway is maintained by the abutting property owners rather than by a public agency.<sup>1</sup>

The hearings officer could find no provisions tying local access road standards to local road standards. While it seems counterintuitive to have jurisdiction over a category of roadway but no development standards for

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<sup>1</sup> ORS 368.001(3) defines local access road as a public road that is not a county road, state highway or federal road. Under ORS 368.031, a local access road outside a city is subject to the exercise of jurisdiction by a county governing body in the same manner as a county road except:

- (1) A county and its officers, employees or agents are not liable for failure to improve the local access road or keep it in repair.
- (2) A county governing body shall spend county moneys on the local access road only if it determines that the work is an emergency or if:
  - (a) The county road official recommends the expenditure;
  - (b) The public use of the road justifies the expenditure proposed; and
  - (c) The county governing body enacts an order or resolution authorizing the work and designating the work to be either a single project or a continuing program.

that category of roadway, that appears to be the case here. As such, the hearings officer cannot apply standards that are not clearly set out.

35. Under M CCP Rural Development Residential Policy 9:

*When approving rural subdivisions and partitionings each parcel shall be approved as a dwelling site only if it is determined that the site: 1) has the capacity to dispose of wastewater; 2) is free from natural hazards or the hazard can be adequately corrected; 3) there is no significant evidence of inability to obtain a suitable domestic water supply; and 4) there is adequate access to the parcel. (Emphasis added.)*

Rural Development Residential Policy 9 is written in mandatory language and applicants have the burden of proving this criterion, including adequate access, is met. Number 1 was addressed above and can be met with a condition requiring subsurface disposal permitting. Number 2 was not addressed above, but the subject property is not located in a geological hazard or floodplain overlay zone area. Number 2 is met. Number 3 was addressed above where it was found that the subject property is not within a sensitive groundwater overlay zone area, and with a condition requiring a 100' well setback from sanitary disposal systems the water system criterion could be met. Number 4 is more challenging because the subject property is currently accessed by a non-county maintained local access road, and applicants' site plan shows no access points. **Without specific information on proposed access, the hearings officer cannot determine that M CCP Rural Development Residential Policy 9 is met.**

36. M CCP RSTP policy 10.3.5(23) is also written in mandatory language and applies here:

*On a Local Access Road with four or more existing parcels (not counting parcels with frontage on County roadways), no new parcels shall be created that would have access to the road unless the road is improved to County standards.*

The problem with evaluating this criterion is the same problem as evaluating MCC 17.110.780(A); the hearings officer could find no local access road development standards, and no provisions tying local access road standards to local county road standards. The hearings officer cannot require improvements to standards when it is not clear what standards apply.

37. Applicants have not provided an access plan or a basic evaluation of applicable criteria. The county has not shown what roadway development standards apply. **On this record, the hearings officer will neither impose the Planning Director's roadway conditions, nor approve the application as presented because applicants have not met their burden of proving all applicable standards and criteria are met or can feasibly be conditionally met.**

38. The hearings officer is neither imposing the Planning Director's contested conditions of approval nor denying this application based on those conditions of approval. Applicants' constitutional arguments are not reached.

#### VI. Order

It is hereby found that applicants have not met the burden of proving applicable standards and criteria for approval of a partition for residential use have been met. Therefore, the partitioning application is **DENIED**.

#### VII. Appeal Rights

An appeal of this decision may be taken by anyone aggrieved or affected by this order. An appeal must be filed with the Marion County Clerk (555 Court Street NE, Salem) by 5:00 p.m. on the 19th day of December 2016. The appeal must be in writing, must be filed in duplicate, must be accompanied by a payment of \$500, and must state wherein this order fails to conform to the provisions of the applicable ordinance. If the Board denies the appeal, \$300 of the appeal fee will be refunded.

DATED at Salem, Oregon, this 7<sup>th</sup> day of December 2016.



Ann Gasser  
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Kent & Rebecca Kaufman  
6895 Canyon St. SE  
Salem, OR 97317  
(via US Postal Service)

Alan Sorem (via US Postal Service)  
250 Church St. SE, Ste. 200  
Salem, OR 97317

Rebecca Kunkel (via US Postal Service)  
6885 Canyon St. SE  
Salem, OR 97317

Mark Shipman (via email)  
mshipman@sglaw.com

Hannah Stevenson (via email)  
hstevenson@sglaw.com

Agencies Notified

Planning Division (via email)  
gfennimore@co.marion.or.us  
breich@co.marion.or.us

Building Inspection (via email)  
twheeler@co.marion.or.us

Public Works Engineering (via email)  
jasmussen@co.marion.or.us

Neighborhood Assoc.: ESSNA (via email)  
publicworksessnasalem.org  
chair@essnasalem.org

Assessor (via email)  
assessor@co.marion.or.us

Tax (via email)  
ageck@co.marion.or.us

by mailing or emailing copies thereof, as specified above. I further certify that said mailed copies were placed in sealed envelopes, addressed as noted above, and deposited with the United States Postal Service at Salem, Oregon, on the 7th day of December 2016, and that the postage thereon was prepaid.

  
Christi Klug  
Secretary to Hearings Officer



**Marion County**  
OREGON

**APPEAL OF PLANNING  
DIVISION DECISION**

**RECEIVED**

Marion County Planning Division  
5155 Silverton Rd. NE  
Salem, Oregon 97305  
(503) 588-5038

SEP 22 2016  
Marion County  
Planning

**Fee: \$250**

NAME(S): Mark D. Shipman, on behalf of Kent & Rebecca Kaufman; and Terrence & Ann Kuenzi	ADDRESS, CITY, STATE, ZIP PO Box 470, Salem, OR 97308
DATE SUBMITTED: 09-22-16	APPLICATION CASE NO: Partition 16-014

**Notice of Appeal: Every notice of appeal should contain:**

1. How the decision is factually or legally incorrect; or
2. Present new facts material to the decision; or
3. The specific reasons for the appeal.

I/we are filing this appeal because (attach additional pages if needed): See the attached letter.

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**FOR OFFICE USE ONLY:**

Appeal accepted by: PD Date: 9/22/16  
 Case Number: P.16-014  
 Filing fee  
 File attached

September 22, 2016

**VIA HAND DELIVERY:**



Warren Jackson, Director  
Marion County Planning Division  
5155 Silverton Rd NE  
Salem, OR 97305

RE: Appeal of Partition Case No. 16-014  
Our File No: 00000-27165

Dear Warren:

This office represents Kent & Rebecca Kaufman, (the "**Property Owner**"), together with Terrence and Ann Kuenzi (collectively the "**Applicant**") in their combined request to divide a 9.19 Acre parcel into three (3) parcels at 6895 Canyon Street Southeast in Salem. This letter and the attached application form and filing fee is submitted as our appeal of the Planning Director's (the "**Director**") decision dated September 7<sup>th</sup>, 2016 (the "**Decision**") approving the Applicant's partition request. This appeal is timely submitted within the fifteen (15) days of the Decision as set forth in Marion County Code 16.37.080.

The Applicant contends that the Public Works Department in requiring Condition 3 (b) imposed a requirement that is not supported by law. First, the cost estimate that we received in order to improve the road as required by the Public Works Department under this Condition will exceed Two Hundred Thousand (\$200,000.00) Dollars. This includes, but is not limited, to road excavation, culvert installation, ditch line grading, base rock grading, existing driveway transitions, new landscaping and/or amended landscaping at those existing driveway locations, shoulder rock, paving, utility trenching, survey staking, compaction testing, rock excavation, permit fees, final grading, landscaping, seeding, bonding, dewatering, private line location and/or repair, and potentially even a prevailing wage rate.

This cost to improve approximately Eleven Hundred Fifty Feet (1,150 ft.) of public road for two (2) residential dwellings that would generate approximately nineteen (19) vehicle trips per day total is excessive and an unconstitutional condition pursuant to the takings clause of the Fifth (5<sup>th</sup>) Amendment of the United States Constitution and/or Article 1, Section 18, of the Oregon Constitution. Specifically the monetary contributions needed to construct Canyon Street as required by the Public Works Department are disproportionate to the expected impacts and would not comply with the United States Supreme Court's rulings in *Nollan v. California Coastal Commission*, 483 S Ct 825 (1987) or in *Koontz v. St. Johns River Water Management District*, 133 S Ct 2586 (2013).

Park Place, Suite 200  
250 Church Street SE  
Salem, Oregon 97301  
  
Post Office Box 470  
Salem, Oregon 97308  
  
tel 503.399.1070  
fax 503.371.2927

September 22, 2016  
Warren Jackson, Director  
Page 2

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Had the Public Works Department conducted an individualized determination as to the proportionate share of the expected expenses to the estimated impacts and arrived at a proportionate share contribution by the applicant as a Condition of Approval, such a proportionate share contribution could be required and would be appropriate.

However, requiring the Property Owner and Applicant to complete the road as conditioned is inappropriate and we respectfully request that this matter be set for a hearing with the hearings officer.

If you have any questions or comments please don't hesitate to contact me.

Sincerely,



MARK D. SHIPMAN  
mshipman@sglaw.com  
Voice Message #310

MDS:hst  
Enclosures  
cc: Client

**Attention Property Owner:** A land use proposal has been submitted for property near where you live or property you own elsewhere. State law requires that the county notify property owners within a certain distance from this property. The proposal and address of the property is described in the "Application" section below. The decision in this case does not directly affect the zoning or use of your property. If you object to the decision, refer to the "Appeal" section. If you have questions, contact the staff person listed at the end of this report.

**NOTICE OF DECISION  
PARTITION CASE NO. 16-014**

**APPLICATION:** Application of Kent and Rebecca Kaufman to divide a 9.19 acre parcel into three parcels containing 4.18 acres, 2.0 acres, and 2.0 acres each on property in an AR (Acreage Residential) zone located at 6895 Canyon St SE, Salem. (T7S; R2W; Section 34CA; tax lot 01000).

**DECISION:** The Planning Director for Marion County has **APPROVED** the above-described Partition application subject to certain conditions.

**EXPIRATION DATE:** This approval is valid only when the final partition plat is recorded by **Septemer 22, 2018**. The effective period may be extended for an additional year subject to approval of an extension (form available from the Planning Division). **Additional extensions may not be granted if the regulations under which this decision was granted have changed since the original approval.**

**WARNING:** A decision approving the proposed division is for land use purposes only. Due to septic, well, and drain field replacement areas, these parcels may not be able to support a dwelling. To be sure the subject property can accommodate the proposed use the applicant should contact the Building Inspection Division, (503) 588-5147.

**This decision does not include approval of a building permit.**

**CONDITIONS:** The following conditions must be met before a building permit can be obtained or the approved use established:

**Prior to recording the final plat:**

1. The applicant shall submit a final partition plat to the County Surveyor's Office (5155 Silverton Road NE; (503) 588-5036). Following plat approval it shall be recorded with the Marion County Clerk (plat instructions enclosed).
2. Prior to submitting the final partition plat, the applicant shall obtain an approved septic site evaluation from the Marion County Building Inspection Division on all undeveloped parcels. **The applicant is strongly encouraged to contact Building Inspection, (503) 588-5147, regarding septic sites before having the property surveyed. Septic site requirements may affect the proposed property line or lot locations.**
3. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following conditions have been satisfied:

*Condition A – Show sufficient dedicated right-of-way (R/W) on the partition plat to provide the public R/W half-width of 30 feet for a rural Local road along the subject property Canyon Street frontage.*

*Condition B – Prior to plat approval, Applicant shall design, permit and construct Canyon Street widening improvements to meet MCPW Engineering design standards to a modified (reduced width) Local road standard in order to achieve a total paved asphalt surface width of 18 feet flanked by 1-foot wide gravel shoulders on both sides commencing from the intersection with 70<sup>th</sup> Avenue to a point coincident with either an access easement serving the proposed parcels or to the east property line of the westernmost proposed parcel, whichever is the greater distance.*

4. The applicant is advised that a Partition Plant Service Report from a title company will be required upon submission of the final mylar to the County Surveyor.



**Prior to issuance of building permits on the resulting parcels:**

5. The partition plat shall be recorded.
6. The applicant shall sign and submit a Farm/Forest Declaratory Statement (enclosed) to the Planning Division. This statement shall be recorded by the applicant with the Marion County Clerk after it has been reviewed and signed by the Planning Director.
7. A special dwelling setback of 100 feet shall be maintained from the west property line of the most westerly proposed parcel.

**ADDITIONAL CONDITIONS:** Once the approved use is established the following conditions must be continually satisfied:

8. The resulting parcels shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director. All parcels shall be a minimum two acres in size, prior to any right-of-way dedication.
9. After the final Partition plat has been recorded no alteration of property lines shall be permitted without first obtaining approval from the Planning Director.

**OTHER PERMITS, FEES, AND RESTRICTIONS:** This approval does not remove or affect covenants or restrictions imposed on the subject property by deed or other instrument. The proposed use may require permits and/or fees 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 restrictions or conditions. It is recommended that the agencies mentioned in Finding #5 be contacted to identify restrictions or necessary permits. The applicant is advised of the following:

10. Prior to recording the plat all taxes due must be paid to the Marion County Tax Department (contact the Marion County Tax Department at 503-588-5215 for verification of payments).
11. The applicants should contact Marion County Fire District #1 to obtain a copy of the District's Recommended Building Access, water supply and Premise Identification regulations and the Marion County Fire Code Applications Guide. Fire District access standards may be more restrictive than County standards. Contact Paula Smith at MCFD#1 at (503) 588-6513 for more information.
12. If a new dwelling is constructed and the local fire official determines that there is inadequate apparatus access or water supply, then one or more of the uniform alternate construction standards in Oregon Administrative Rule 918-480-0125 must be met as determined by the Marion County Building Official.

**APPEAL PROCEDURE:** The Marion Zone Code provides that certain applications be considered first by the County Planning Director. If there is any doubt that the application conforms with adopted land use policies and regulations the Director must condition or deny the application. Anyone who disagrees with the Director's decision may request that the application be considered by a Marion County hearings officer after a public hearing. The applicant may also request reconsideration (one time only and a fee of \$200) on the basis of new information subject to signing an extension of the 150 day time limit for review of zoning applications.

A public hearing is held on appeals subject to the appellant paying a \$250.00 fee. Requests for reconsideration, or consideration by a hearings officer, must be in writing (form available from the Planning Division) and received, together with the appeal fee, in the Marion County Planning Division, 5155 Silverton Rd. NE, Salem, by 5:00 p.m. on **September 22, 2016**. If you have questions about this decision contact the Planning Division at (503) 588-5038 or at the office. This decision is effective **September 23, 2016** unless further consideration is requested.

**FINDINGS AND CONCLUSIONS:** Findings and conclusions on which the decision was based are noted below.

1. The property is designated Rural Residential in the Marion County Comprehensive Plan. The purpose of this designation and the corresponding AR (Acreage Residential) zone is to allow creation of acreage homesites at a density that maintains the character and environmental quality of rural residential areas.
2. The subject parcel is located on the north side of Canyon St SE approximately 590 feet west of its intersection with 70<sup>th</sup> Av SE. The 9.19 acre parcel identified as tax lot 1000 contains an existing dwelling, accessory structures, well and septic system. The subject parcel was described by deed (Volume 736, page 333) recorded on September 22, 1972, and is considered a legally created parcel for land use purposes.
3. Surrounding properties to the north, east and south are zoned AR and in residential use. Property to the west is zoned SA (Special Agriculture) and property to the northwest is zoned EFU (Exclusive Farm Use) and both are in farm use.
4. The applicant proposes to divide a 9.19 acre parcel into three parcels containing 4.18 acres, 2.0 acres, and 2.0 acres each.
5. Public Works Land Development and Engineering Permits requested that Conditions A and B be included in the land use decision. LDEP also commented on requirements that are not part of the land use decision and available for review in the planning file. LDEP will not approve the final use until the following condition has been met:

*“Condition A – Show sufficient dedicated right-of-way (R/W) on the partition plat to provide the public R/W half-width of 30 feet for a rural Local road along the subject property Canyon Street frontage.*

R/W dedication requirements for subdivisions and partitions are in accordance with Section 17.172.240 of the Rural Zone Code of Marion County. The R/W dedication shall be shown as a 30-foot half-width on the plat. All dedications shall be to the public, not Marion County. Nexus for this Condition is the proposed addition of traffic to a road in need of widening and roadway safety improvements, and sufficient space for utilities.

*Condition B – Prior to plat approval, Applicant shall design, permit and construct Canyon Street widening improvements to meet MCPW Engineering design standards to a modified (reduced width) Local road standard in order to achieve a total paved asphalt surface width of 18 feet flanked by 1-foot wide gravel shoulders on both sides commencing from the intersection with 70<sup>th</sup> Avenue to a point coincident with either an access easement serving the proposed parcels or to the east property line of the westernmost proposed parcel, whichever is the greater distance.*

Requirements for public road improvements are in accordance with MCC 17.110.780(A), 17.110.800 and 17.172.320. Canyon Street is designated as a Local Access Road, which is not maintained by Marion County. The road is paved to approximately 10 feet in width, equivalent to a narrow driveway that is insufficient to pass vehicles traveling in opposite directions. Although the county Local road standard is a 22-foot width, due to the anticipated very low traffic volume on Canyon Street, a reduced width of 18 feet with narrow gravel shoulders is justifiable. Section 10.3.5, Policy #23 of the Marion County 2005 Rural Transportation System Plan (RTSP) stipulates that a maximum of 4 parcels not having alternate public road frontage may be served by a Local Access Road. The current number of parcels on Canyon Street not having alternate public road frontage is five, not counting the end parcel zoned Special Agriculture currently in farm use only. Widening the road, as described above, would enable PW Engineering to condone deviating from the prescribed 4-lot maximum. The Applicant will need to submit engineering design drawings for review and approval, and obtain a construction permit that would require bonding.”

Marion County Surveyor commented: “Parcels ten acres and less must be surveyed. Per ORS 92.050, plat must be submitted for review. Checking fee, second mylar fee, and recording fee required. 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.”

Marion County Building Inspection commented that permits are required for new construction or placement of a manufactured home. If a new dwelling is constructed and the local fire official determines that there is inadequate

apparatus access or water supply, then one or more of the uniform alternate construction standards in Oregon Administrative Rule 918-480-0125 must be met as determined by the Marion County Building Official.

Marion County Tax Assessor provided information regarding taxes on the subject properties.

All other contacted agencies either failed to respond or stated no objections to the proposal at time this decision was written.

6. There are no specific approval criteria for partitions in the AR zone. MCC 17.128.070 requires a minimum lot size of two acres and the new parcels are consistent with this standard. In addition, the resulting undeveloped parcels, if they can obtain septic approval, are of sufficient size and shape to meet the development standards in the AR zone.
7. Staff recognizes the final partitioning may vary from the proposed plan due to topography or surveying. Minor variations are permitted; however, each resulting parcel shall be a minimum 2.0 acres prior to any required right-of-way dedication.
8. MCC 17.128.050 establishes special siting standards for dwellings near resource zones:
  - (a) *Any new dwelling in an AR zone shall be required to maintain a special setback from any parcel in the EFU, SA, FT, or TC zones when necessary to minimize potential conflicts with farm or forest uses. A 100-foot setback is the standard adjacent to farm use and 200 feet is the standard adjacent to forest uses.*
  - (b) *The owner of a proposed dwelling to be located within 500 feet of the EFU, SA, FT, TC zones shall be required to concur in the filing of the Declaratory Statement prescribed in the respective resource zone.*

Although the proposed partition is appropriate, the County requires that a Declaratory Statement be recorded with the property deed because the subject property is near a resource zone. This serves to notify the applicant and subsequent owners that there are farm or timber operations in the area. Also, a special dwelling setback of 100 feet should be maintained from the west property line of the most westerly parcel to further minimize the potential for conflict with farm or timber uses. Any approval can be conditioned to meet this criterion.

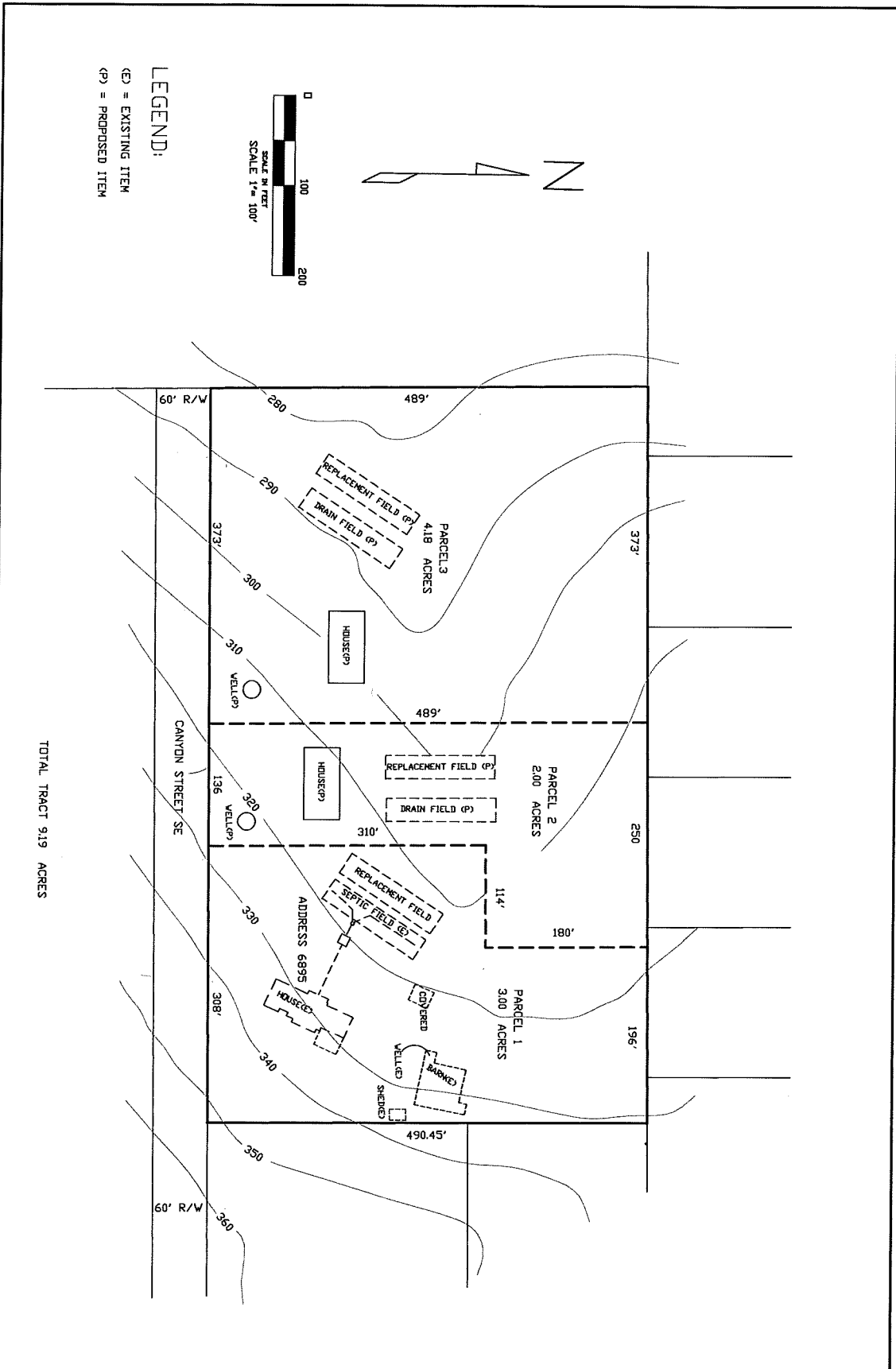
9. Based on the above findings, the proposed partition complies with the applicable criteria and is, therefore **APPROVED**, subject to conditions.

Warren Jackson  
Director-Planning Division

Date: September 7, 2016

If you have any questions please contact Patty Dorr at 503-588-5038.

Notice to Mortgagee, Lienholder, Vendor or Seller: ORS Chapter 215 requires that if you receive this Notice, it must promptly be forwarded to the purchaser.

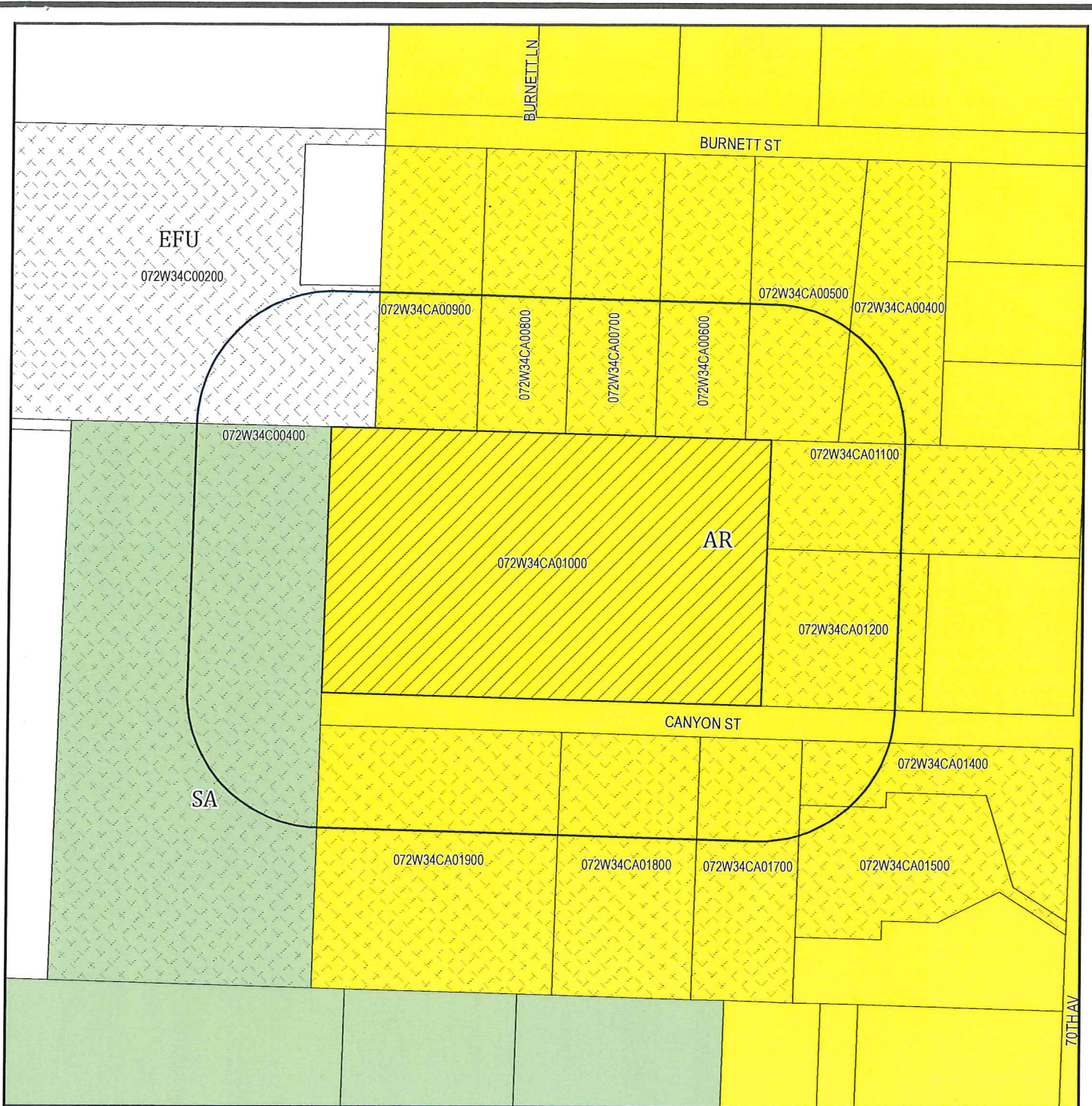


**LEGEND:**  
 (E) = EXISTING ITEM  
 (P) = PROPOSED ITEM

TOTAL TRACT 9.19 ACRES

PARTITION PRE-APPLICATION PLAN	PROPERTY ADDRESS : 6895 CANYON ST. SE SALEM, OR 97317  DEVELOPER: KENT KAUFMANN	KARL D. GOERTZEN, PE, PLS 4753 FIR DELL DR. SE SALEM, OR 97302 PH. 503.378.0952 E-mail:KGoertz@concast.net
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



## NOTIFICATION MAP

Input Taxlot(s): 072W34CA01000

**Owner Name:** KAUFMAN, KENT &  
**Situs Address:** 6895 CANYON ST SE  
**City/State/Zip:** SALEM, OR, 97317  
**Land Use Zone:**  
**School District:** SALEM-KEIZER  
**Fire District:** MARION COUNTY #1

### Legend

- |  |   |
|--|---|
|  Input Taxlots    |  Search Radius |
|  Adjacent Taxlots |  Highways      |
|  Notify Taxlots   |  Cities        |



**search radius = 250'**  
 scale: 1 in = 267 ft

**DISCLAIMER:** This map was produced from Marion County Assessor's geographic database. This database is maintained for assessment purposes only. The data provided hereon may be inaccurate or out of date and any person or entity who relies on this information for any purpose whatsoever does so solely at his or her own risk. In no way does Marion County warrant the accuracy, reliability, scale or timeliness of any data provided on this map.