

**BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON**

In the Matter of the Application of)
Kent and Rebecca Kaufman)

Case No. Partition 16-014
Clerk's File No: **5719**

ORDER 17-049

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting on March 29, 2017, to consider the appeal of the application of Kent and Rebecca Kaufman for a partition 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 1000).

On September 7, 2016, the Planning Director issued a decision approving the partition. The applicants appealed the decision on September 22, 2016, challenging certain conditions of approval. On October 26, 2016, the hearings officer conducted a hearing on this application. On December 7, 2016, the hearings officer issued a decision finding that the applicant did not meet the burden of proving compliance with the applicable criteria and DENIED the partition application. The applicant subsequently appealed the hearings officer's decision. The Board accepted the appeal and on January 18, 2017, the Board held a duly noticed public hearing. The Board continued the hearing until January 25, 2017. At the continued hearing, the Board closed the hearing and left the record open for additional evidence until February 1, 2017. On February 8, 2017, the Board considered the evidence and testimony in the record and approved the partition request directing staff to return with an Order reflecting its decision.

The Board, after having considered the Planning Division's and Clerk's files, hearings officer's decision and the testimony and evidence in the record, makes the following Orders:

IT IS HEREBY ORDERED that the Board adopts the Findings of Fact and Conclusions of Law contained in Exhibit A attached hereto except as modified by Exhibit B attached hereto.

IT IS FURTHER ORDERED that the decision of the hearings officer denying the Partition is hereby reversed and the Partition is **GRANTED**, subject to the conditions contained in Exhibit C, attached.


DATED at Salem, Oregon this 29th day of March 2017.

MARION COUNTY BOARD OF COMMISSIONERS


Chair

Not Present At Meeting

Commissioner


Commissioner

JUDICIAL NOTICE

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Order becomes final.

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 70th 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 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.¹

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

1 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 7th day of December 2016.



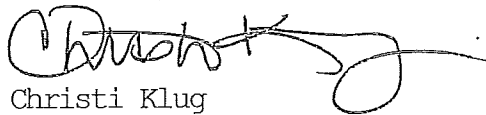
Ann Gasser
Marion County Hearings Officer

CERTIFICATE OF MAILING

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

	<u>Agencies Notified</u>
Kent & Rebecca Kaufman 6895 Canyon St. SE Salem, OR 97317 (via US Postal Service)	Planning Division (via email) <u>gfennimore@co.marion.or.us</u> <u>breich@co.marion.or.us</u>
Alan Sorem (via US Postal Service) 250 Church St. SE, Ste. 200 Salem, OR 97317	Building Inspection (via email) <u>twheeler@co.marion.or.us</u>
Rebecca Kunkel (via US Postal Service) 6885 Canyon St. SE Salem, OR 97317	Public Works Engineering (via email) <u>jasmussen@co.marion.or.us</u>
Mark Shipman (via email) <u>mshipman@sglaw.com</u>	Neighborhood Assoc.: ESSNA (via email) <u>publicworksessnasalem.org</u> <u>chair@essnasalem.org</u>
Hannah Stevenson (via email) <u>hstevenson@sglaw.com</u>	Assessor (via email) <u>assessor@co.marion.or.us</u>
	Tax (via email) <u>ageck@co.marion.or.us</u>

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 1st day of December 2016, and that the postage thereon was prepaid.


Christi Klug
Secretary to Hearings Officer

**Partition 16-014/Kaufman
Additional Findings**

The findings written by the Marion County Hearings Officer in her decision dated December 7, 2016, are hereby modified as follows. The page and paragraph numbers refer to the numbered pages and paragraphs of the Hearings Officer's decision.

Page 6, paragraph 10: The Hearings Officer could not determine based on the evidence in the record at that time whether the easement crossing the subject property to serve the newly created parcels would meet the standard in Marion County Code 17.172.220:

17.172.220 Street grades.

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.

The applicant's engineer provided evidence that Canyon Street does not exceed a 12% grade (Karl Goertzen letter, January 19, 2017) and that the grade of the easement between Canyon Street and the properties proposed to be created by the partition can be designed not to exceed 12% (Karl Goertzen letter, January 13, 2017). Marion County Code 17.172.220 is met by the proposal.

Page 9, paragraph 16: The Hearings Officer could not determine based on the evidence in the record at that time whether the proposal would meet stormwater requirements in Marion County Code 17.172.430:

17.172.430 Stormwater management.

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.

The applicant's engineer provided evidence that the partition would be able to meet county stormwater requirements (Karl Goertzen letter, January 13, 2017). Subject to meeting conditions of approval, this criterion is met.

Page 10, paragraph 24: The Hearings Officer could not determine based on the evidence in the record at that time whether the proposal would meet easement standards in Marion County Code 17.172.560:

17.172.560 Access standards.

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 percent;

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 an identification for emergency vehicles in accordance with Chapter 11.55 MCC, Naming and Addressing Roads/Property.

The applicant's engineer provided evidence that the proposal would be able to meet county standards for an easement, in particular not exceeding a maximum 12% grade and providing adequate vision clearance at the intersection of the easement with Canyon Street (Karl Goertzen letter, January 13, 2017). Subject to meeting conditions of approval, this criterion is met.

Page 13, paragraph 34: The Hearings Officer could not determine based on the evidence in the record at that time whether county standards exist for a local access road.

The Marion County Engineer provided evidence that state law gives Marion County jurisdiction over local access roads (Oregon Revised Statutes 368.031) and that the county may adopt standards for such roads (ORS 368.036 and ORS 368.039). The Marion County Engineer further provided evidence of adopted Road Design Standards for a local access road. The Marion County Engineer testified that the county has discretion in its application of these standards. Therefore, the board finds that county standards exist for a local access road in Marion County and the county has authority to modify such standards.

Page 14, paragraph 35: The Hearings Officer could not determine based on the evidence in the record at that time that Marion County Rural Development Residential Policy #9 (4) was met:

When approving rural subdivisions and partitionings each parcel shall be approved as a dwelling site only if it is determined that the site [...] 4) there is adequate access to the parcel.

The Marion County Engineer provided evidence of county standards for a local access road and the applicant's engineer described that those standards as modified by the county can be met by the proposal (Karl Goertzen letters, January 13, 2017, and January 19, 2017). The applicable standards which the board finds the street will have to be improved to in order to be consistent with county engineering standards are detailed in the Conditions of Approval, adopted as Exhibit C to this order. Subject to meeting conditions of approval, this policy is satisfied by the proposal.

Page 14, paragraph 36: The Hearings Officer could not determine based on the evidence in the record at that time that Marion County Rural Transportation System Policy 10.3.5(23) was met:

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.

Not counting parcels with frontage on to 70th Avenue SE, there are five parcels with frontage on Canyon Street. Two additional parcels are proposed to be served via an easement to Canyon Street. The evidence now in the record shows that there are county engineering standards that apply to Canyon Street (#34 above) and that the applicant can improve the street to meet the applicable standards as described above (#35 above). This policy is satisfied by the proposal.

**Partition 16-014/Kaufman
Conditions of Approval**

The Marion County Board of Commissioners adopts the following conditions in Partition Case No. 16-014/Kaufman, which must be met as described below:

Prior to recording the final plat:

1. The applicant shall submit a final partition plat to the Marion 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. The applicant is advised that a Partition Plat Service Report from a title company will be required upon submission of the final mylar to the county surveyor.
3. 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 Marion County 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.**
4. The applicants shall submit four road names and the Marion County Planning Division, who in coordination with the 9-1-1 Emergency System, shall name the proposed private access easement. The name must be shown on the final partition plat and a work order for the street sign installation, with appropriate fee, must be submitted to Marion County Department of Public Works (MCPW). The access easement shall be designed to meet the requirements in MCC 17.172.560 and is also to provide for utilities.
5. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the plat until the following conditions have been satisfied:

Condition A – Design, permit and construct Canyon Street frontage improvements in general accordance with Attachment 1. The improvements shall consist of the following:

- 1) Pave a vehicular turnaround with Hot Mix Asphaltic Concrete (HMAC) to meet fire district standards or as acceptable to Marion County Fire District #1, but in no case to a lesser standard than the MCPW engineering standard described here. The turnaround shall be a minimum of 16 feet in width, be centered about the proposed shared access easement connection with Canyon Street, extend a minimum of 50 feet in either direction from the centerline of the easement connection, and project up the easement a minimum of 20 feet as measured from Canyon Street widened pavement edge.
- 2) Add 6-foot HMAC or gravel widening to Canyon Street commencing at a point along the frontage coincident with the subject property east property line and extending west to the paved turnaround section.

Condition B – Record a non-remonstrance agreement with Marion County stating that upon a westerly extension of Canyon Street (by others or based on further development of the subject property), Applicant agrees to either improve or contribute financially to such a widening improvement along the northern portion of Canyon Street to county standards adjacent to their property.

Condition C – Record a Road Maintenance Agreement assigning responsibility to the subject property owner(s) for contributing to the continued maintenance of Canyon Street, a non-county maintained Local Access Road.

6. 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).

Prior to May 15, 2017, or prior to recording the final plat, whichever comes last:

7. Prior to May 15, 2017, Applicant shall design, permit and construct a paved widening improvement of the existing paved apron within the dedicated right-of-way along the western boundary of 70th Avenue where it intersects with the northern boundary of Canyon Street, as conceptually depicted in Attachment 2. This paving will not hold up the recording of the final plat if recording occurs prior to May 15, 2017. If the final plat has not been recorded by May 15, 2017, recording the final plat will be delayed until the above widening improvement has been completed. No building or other county permits and approvals (except plat approval), aside from those needed to authorize construction of the public roadway improvements themselves, will be issued for the subject property until all apron improvements have been constructed and approved by Public Works Engineering. Future sales of any resulting parcels should include disclosure of this restriction until such time as the improvements are completed.

Prior to issuance of building permits on the resulting parcels:

8. The partition plat shall be recorded.
9. The applicant shall obtain all required permits from the Marion County Building Inspection Division.
10. Prior to issuance of building or other county permits and approvals, the Canyon Street apron shall be paved as described in #7 above and Attachment 2.
11. The applicant shall submit evidence that the access easement has been improved to the standards in MCC 17.172.560.
12. 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.
13. The applicant shall obtain any stormwater permits necessary for development of a dwelling on the subject property.
14. A special dwelling setback of 100 feet shall be maintained from the west property line of the most westerly proposed parcel.
15. 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.
16. 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.

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

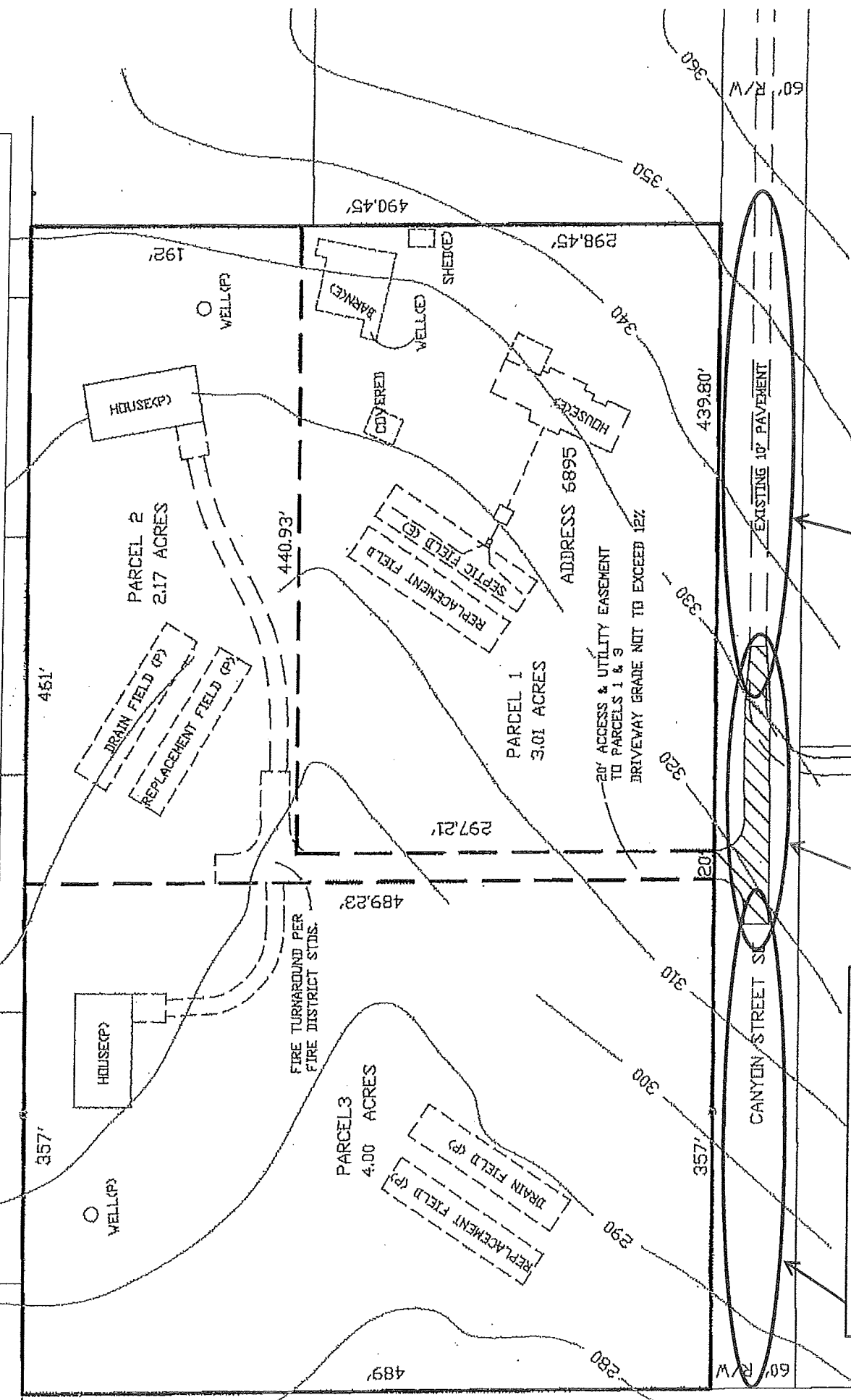
17. The resulting parcels shall significantly conform to the site plan submitted with the proposal. Minor variations are permitted upon review and approval by the Planning Director. All parcels shall be a minimum two acres in size.
18. After the final Partition plat has been recorded no alteration of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

EXHIBITS:

- Attachment 1: Tentative Plat with Proposed Canyon Street Improvement (MCPW Engineering map with comments)
- Attachment 2: Proposed Apron Improvement Engineering Drawing by Karl Goertzen

Partition 16-U14 County Proposed Improvements Part 1

Attachment 1



Widen existing travel way to min 16 feet, (prefer pavement but gravel acceptable), from easterly property line, west, to connect to proposed widening/fire turnaround

Construct paved surface to Req'd County Standards

Enter into recorded non-remonstrance agreement to build/financially participate in widening of remaining frontage to County standard at such time as road may be extended in public r/w

CANYON STREET S
EXISTING 10' PAVEMENT

ADDRESS 6895
20' ACCESS & UTILITY EASEMENT TO PARCELS 1 & 3
DRIVEWAY GRADE NOT TO EXCEED 12%

PARCEL 2
2.17 ACRES

PARCEL 1
3.01 ACRES

PARCEL 3
4.00 ACRES

HOUSE (P)

REPLACEMENT FIELD (P)
DRAIN FIELD (P)

REPLACEMENT FIELD (P)
SEPTIC FIELD (P)

REPLACEMENT FIELD (P)
DRAIN FIELD (P)

HOUSE (P)

HOUSE (P)
WELL (P)
BARN (P)
SHEED (P)
COVERED

WELL (P)

FIRE TURNAROUND PER FIRE DISTRICT STDS.

451'

440.93'

439.80'

297.21'

489.23'

357'

290'

357'

300'

310'

320'

330'

340'

298.45'

490.45'

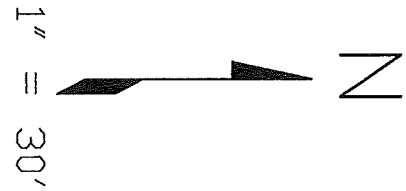
192'

60' R/W

60' R/W

489'

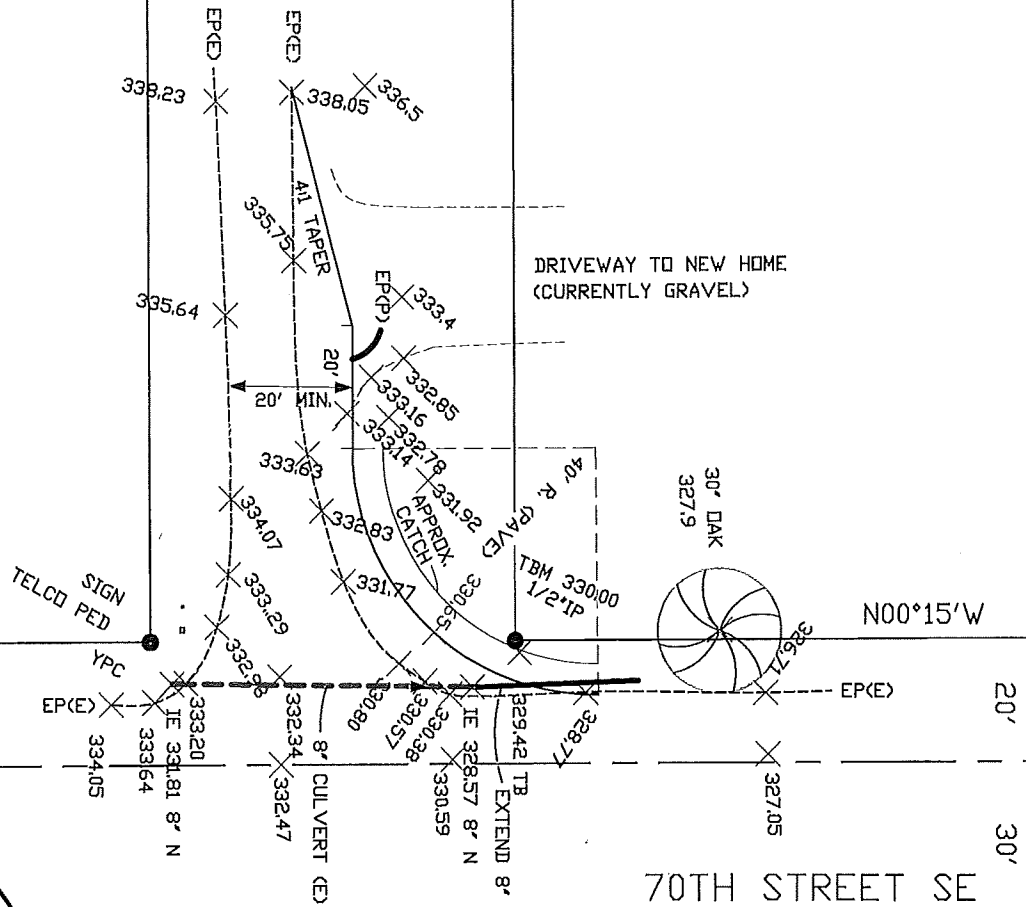
280'



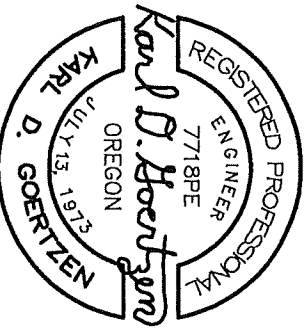
CANYON STREET SE

N89°45'E

DRIVEWAY TO NEW HOME
(CURRENTLY GRAVEL)



- LEGEND:
- EP(E) = EXISTING EDGE PAVEMENT
 - EP(P) = PROPOSED EDGE PAVEMENT
 - X 332.47 SURVEYED SPOT & ELEVATION (4-27-2017)
 - TB = TOP DITCH BANK
- DESIGN ASSUMPTIONS:
1. CROSS-SECTION INCLUDES 1' GRAVEL SHOULDER, 1/4:1 SLOPE TO EXISTING GROUND
 2. NO CHANGE WILL BE MADE TO (EO) DITCH LOCATION CROSS-SECTION ON 70TH.



RENEWAL DATE: 6-30-2017

<p>CONSTRUCTION PLAN 6895 CANYON STREET SE PARTITION CASE NO. 16-014 DATE: JAN. 27, 2017</p>	<p>LAND OWNER: KENT KAUFMAN 6895 CANYON STREET SE SALEM, OR, 97317</p>	<p>KARL D. GOERTZEN, PE, PLS 4753 FIR DELL DR. SE SALEM, OR 97302 PH. 503.378.0952 E-mail: KDGoertz@comcast.net</p>
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MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: March 29, 2017

Department: Public Works Agenda Planning Date: March 23, 2017 Time required: 10 Min.

Audio/Visual aids

Contact: Brandon Reich Phone: 503-566-4177

Department Head Signature: [Signature]

TITLE Consider approving an order granting Partition Case 16-014/Kaufman.

Issue, Description & Background The applicants in Partition Case 16-014 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 conditions that 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. The board accepted the appeal and opened a public hearing on January 18, 2017. After receiving testimony, the board continued the hearing for further testimony and deliberation until January 25, 2017. On January 25, 2017, the board closed the hearing and left the record open for further testimony until February 1, 2017. On February 8, 2017, the board approved the partition and directed staff to prepare an order consistent with its approval.

Financial Impacts: None.

Impacts to Department & External Agencies None.

Options for Consideration: 1. Approve the order granting Partition Case 16-014/Kaufman. 2. Direct staff to modify the order Partition Case 16-014/Kaufman and return for the board's consideration.

Recommendation: Staff recommends the board approve the order granting Partition Case 16-014/Kaufman.

List of attachments: Order

Presenter: Brandon Reich

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



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Copies to:

Brandon Reich breich@co.marion.or.us