

BEFORE THE LAND USE HEARINGS OFFICER
CLACKAMAS COUNTY, OREGON

Regarding an Appeal of a Planning Director
Decision Approving an Application for a Three-
Lot Partition Pursuant to Ballot Measure 49
Claim E131385.

Case File No:
Z0239-20-M Appeal

(Ringle Partition)

A. SUMMARY

1. The applicant/appellant is Colleen Spurgeon, and the owner is Ringle, Phil H. Jr. Trustee.
2. The subject property is located at 22700 S Beaver creek Rd, Beaver creek, OR 97004, within Clackamas County. The legal description is T3S, R2E, Section 25, Tax Lot 01400. The subject property is an approximately 66.64 acre parcel, zoned Urban Low Density Exclusive Farm Use (EFU), and is not located within an urban growth boundary. The property is, however, subject to an approved Ballot Measure 49 claim permitting a modification of the lot sizing and dwelling criteria for the EFU zoning district. The Planning Director therefore approved the Partition. This appeal concerns a condition of approval requiring a bike lane along the property's S Beaver creek Rd. frontage.
3. On March 18, 2021, Hearings Officer Carl Cox (the "Hearings Officer") conducted a public hearing to receive testimony and evidence in the matter.
4. The Hearings Officer approved the Partition, subject to the conditions of approval included in this final order, without the previous condition requiring a bike lane. The Hearings Officer closed the record at the conclusion of the public hearing.

B. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony and evidence at the March 18, 2021 public hearing about this appeal and related application. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of Transportation and Development. The public hearing was conducted virtually over the Zoom platform due to the corona virus. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the County's staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.
2. At the hearing, County Planner Liz Dance summarized the County's review of the application and related appeal, and presented the County's proposed amended decision, with a PowerPoint presentation, related Exhibits 1-10, and the County's recommendation of approval of the Partition subject to proposed amended conditions of approval removing the condition requiring a bike lane. Ms. Dance explained that the County's zoning for the subject property (Exclusive Farm Use) does not allow the residential development sought by the applicant. Ms. Dance further explained that the applicant and owner's request is enabled pursuant to State approval of a Ballot Measure 49 claim (ORS 195.300-195.336). Ms. Dance noted that

the appeal concerns one of the conditions of approval imposed in the County's January 20, 2021 approval pursuant to the Ballot Measure 49 claim of application Z0239-20-M49 Partition, requiring a bike lane on S Beaver Creek Rd. along the entire frontage of the property, consistent with requirements of Chapters 5 and 10 of the County's Comprehensive Plan and Clackamas County Roadway Standards. (Exhibits 5, 6)

3. On March 11, 2021, Samuel S. Nelson, attorney for the applicant/appellant and owner, submitted an appeal seeking reversal of the condition of approval requiring the bike lane. Mr. Nelson asserted several reasons for removal of the bike lane condition, including that the essential nexus and rough proportionality of the impact of adding two 2-acre residential parcels was not appropriately weighted against the exorbitant cost of constructing the bike lane, citing *Dolan v. City of Tigard*, 512 US 374 (1994); *Rogers Mach., Inc. v. Washington County*, 181 Or App 369 (2002); *Clark v. City of Albany*, 137 Or App 293 (1995). Mr. Nelson provided a copy of a written estimate of the cost of constructing the approximately 1/3 mile of 8-foot wide bike path of \$241,014, a second written estimate of \$150,000, and also reported a verbal estimate of \$200,000. Mr. Nelson further pointed out that the County's conditions of approval require removal of the property's current access through a driveway onto S. Beaver Creek, asserting this will actually result in reduced traffic along S. Beaver Creek, a reduced impact. (Exhibits 7, 8)
4. Jonny Gish, County Traffic Development Engineering, provided testimony concerning the County's condition of approval requiring construction of the bike lane. Mr. Gish noted that the County's Development Engineering staff reviewed the additional information submitted by Mr. Nelson on behalf of the applicant/appellant and owner of the property after the initial decision approving the Partition. He noted that, based on their review of the impacts of the proposed development versus the anticipated costs of the bike lane improvement, staff found that the costs of constructing the bike lane were not roughly proportional to the impacts of the development. Based on these findings, County Engineering staff agreed with the requested removal of the condition of approval requiring the bike lane, recommending approval of the Partition subject to all other conditions of approval in the original decision. (Exhibits 9, 10)
5. Mr. Nelson reported that the applicant/appellant agreed with the County's recommendation and proposed amended decision approving the Partition subject to the revised recommended conditions of approval (without the bike lane).
6. There was no opposing testimony.

C. FACTS

1. The applicant proposes a Partition to divide the subject property into three parcels; One lot, the remainder lot, will contain the existing house and be 62.64 acres in size. The two new parcels will be 2 acres each, and both for new home sites. This request is enabled pursuant to State-approval of a Ballot Measure 49 claim (ORS 195.300 - 195.336), Election No. E131385, permitting a modification of the lot sizing and dwelling criteria for the EFU zoning district. As stated in the M49 claim this claim is valid for 10 years from the time the properties are no longer owned by the claimant, Phil H Ringle— if residential development is not established within this time frame future development will be subject to the current zoning standards at that time. (Exhibits 1, 2, 2a, 2b)
2. The applicant's proposal will result in two additional homes on the property. The current access from S Beaver Creek to the property and the existing home on the property will be

- removed, with all three homes sharing a new private access onto S Carus Rd. Several County department's review the application and proposal, including the County's Engineering Transportation Department, which, among other finds and conditions, submitted a condition for a bike lane as required by the Clackamas County Comprehensive Plan. (Exhibits 1, 5)
3. The applicant obtained preliminary Septic Feasibility for the proposed lots. The applicant also obtained a land use plan review by the Clackamas Fire District #1 determining that the property is located in an area without public water supply and there are no site conditions preventing the applicant from constructing proper access. (Exhibits 2c, 3)
 4. A neighbor submitted a comment asking about the proposed locations for the new homes, but did not express opposition to the application. (Exhibit 4)
 5. On January 20, 2021, the County approved with conditions application Z0239-20-M49 Partition submitted by the applicant and the owner to partition the property into three parcels, creating two new parcels of 2 acres each for new home sites, with the remainder 62.64-acre lot containing the existing house. On January 30, 2021, the County received an appeal of that decision challenging a condition of approval requiring a bike lane on S Beaver Creek Rd. along the entire frontage of the property of approximately 1/3 mile. (Exhibits 1, 8)
 6. The applicant/appellant and property owner had a number of email exchanges with County staff concerning the application, the County's approval, and the condition of approval requiring a bike lane along the property's frontage with S Beaver Creek. (Exhibit 6)
 7. On January 30, 2021, the applicant/appellant submitted an appeal of the County Engineering's Condition of Approval requiring the bike lane. On March 11, 2021, appellant's attorney submitted a narrative of the appeal, together with evidence that the cost of constructing the bike lane exceeded \$120,000. (Exhibits 7, 8)
 8. On March 11, 2021, Jonny Gish, County Engineering Transportation, reviewed the narrative and associated evidence of the construction cost for the bike lane, and provided a response agreeing that the anticipated cost of constructing the bike lane was not roughly proportional to the impacts of the development. Mr. Gish reported that County Engineering staff agreed with the suggested removal of the bike lane condition. (Exhibit 9)
 9. On March 11, 2021, Ms. Dance prepared a proposed Amended Land Use Decision that included a Bike Lane Proportionality Assessment determining that the requirement for a bike lane is not roughly proportional to the impacts of the development and therefore would not be required as a part of this Partition. (Exhibit 10)

D. DISCUSSION

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters. This appeal was processed as Type II procedure pursuant to Clackamas County Zoning and Development Ordinance (ZDO) Section 1307. This appeal concerns a Planning Director decision approving the applicant/appellant's proposed Partition subject to a number of Conditions of Approval, including a requirement for a bike lane on S Beaver Creek Rd. along the entire frontage of the property, which is approximately 1/3 mile. The Planning Director (or designee) is the County's decision maker for procedure Type II applications, including this

Partition application. The County Hearings Officer is the designated appeal review authority for these procedure Type II decisions.¹

County staff reviewed the appeal of the County's approval for this Partition application and provided a proposed amended decision for this Type II Land Use Permit with supporting exhibits identifying the applicable standards and proposing findings and conditions sufficient to support the County's recommended approval of the application. The hearings officer finds that the proposed amended decision accurately identifies the applicable standards and contains sufficient findings that the application complies or can comply with the applicable standards, as detailed below:

I. PROJECT OVERVIEW:

The applicant proposes a Partition to divide the subject property into three parcels; One lot, the remainder lot, will contain the existing house and shall be 62.64 acres in size. The two new parcels shall be 2 acres each, and both shall be for new home sites. This request is enabled pursuant to State-approval of a Ballot Measure 49 claim (ORS 195.300 - 195.336), Election No. E131385, permitting a modification of the lot sizing and dwelling criteria for the EFU zoning district. As stated in the M49 claim this claim is valid for 10 years from the time the properties are no longer owned by the claimant, Phil H Ringle— if residential development is not established within this time frame future development will be subject to the current zoning standards at that time.

- 1) This application is subject to Section(s) 401, 1001, 1002, 1003, 1006, 1007, 1105, 1012, 1015 and 1307 of the Clackamas County Zoning and Development Ordinance (ZDO) and the County Roadway Standards except as modified by the State-approved Ballot Measure 49 claim, Election No. E131385. The Clackamas County Planning and Zoning staff have reviewed these Sections of the ZDO in conjunction with this proposal and make the following findings and conclusions:
- 2) Section 1105 of the ZDO sets forth the process, standards and requirements for a land use application for a Partition.
 - A. A Partition is defined as a division of property that creates three or fewer parcels in a calendar year and shall be processed as an administrative decision by the Planning Director, or designate, pursuant to subsection 1305.02. The proposed request is a partition to create three parcels. The applicant has submitted a complete application on County forms consistent with the requirements of ZDO Secs. 1105 and 1307.
 - B. Pursuant to Section 1105, partitions shall comply with the ZDO and Oregon Revised Statutes (ORS) Chapter 92. Compliance with the applicable provisions of the ZDO is discussed in the findings that follow. Compliance with County subdivision criteria and procedures will satisfy the relevant requirements of ORS 92 as well.
- 3) Sections 401 of the ZDO sets forth the allowed uses, dimensional standards and development requirements of the EFU zoning districts. The use and development of the proposed lots is subject to Section 401 as they are located within the EFU-zoned.

¹ See ZDO Table 1307-1. Also See ZDO 1307.03(B), stating that the Planning Director includes "any County staff member authorized by the Planning Director to fulfill the responsibilities assigned to the Planning Director by the [ZDO]."

- A. The applicant is proposing to divide the property into three parcels; two of approximately two acres for new home sites and one of approximately 62.64 with an existing home and two accessory buildings to remain.
- B. Pursuant to Ballot Measure 49 claim, E131385, the maximum number of parcels authorized is three and one permanent home site on each parcel is also authorized. Additionally, as the property is mapped as high value agricultural soils, the two new parcels cannot exceed two acres each in size.
- C. The proposed partition plan is consistent with the Measure 49 claim requirements.
- D. As modified by the Measure 49 claim, the proposed partition complies with the parcel size requirements of the EFU zoning district.
- E. A condition of approval is warranted requiring that all structures on, and uses of, the parcels created by the proposed partition shall conform to the requirements of the EFU zoning districts subject to the provisions of Section 401 of the ZDO except as modified by the approved Measure 49 claim. Parcels 2 and 3 shall be no larger than two acres in size and future lot line adjustments increasing the size of these parcels is prohibited unless future changes in zoning render this limitation moot.

Finding: Based upon the information shown upon the preliminary plan, the proposed partition will comply with the minimum lot size criteria of Section 401 as modified by the Measure 49 claim.

- 4) Section 704 of the ZDO sets forth the general provisions for protection of medium streams.
 - A. Section 704 also applies to land that is located within 70 feet of the mean high water line of medium Type F streams, identified on the WPRC Maps. The location of these streams may vary from these maps if more specific information is provided. Classified as SCAs, these medium streams are designated in the Comprehensive Plan as those that generally have annual average flows of greater than two cubic feet per second and less than 10 cubic feet per second.
 - B. VEGETATION PRESERVATION REQUIREMENTS
 - a. A minimum of 75 percent of the setback area (distance) shall be preserved with native vegetation.
 - b. Tree cutting and grading shall be prohibited within the 70' buffer or filter strip, with the following exceptions:
 - i. Trees that endanger life or structures may be removed.
 - ii. Tree cutting and grading may be permitted in conjunction with those uses listed in Subsections 704.05 and 704.06, to the extent necessary to accommodate those uses. Disturbed areas that are outside the footprint of structures and other improvements shall be restored with native vegetation.
 - iii. Vegetation removal may occur when approved by the Oregon Department of Fish and Wildlife, upon written notification that such removal is required as part of a river or stream enhancement project.

the northwest corner of the property and will remain unaffected through this partition as the small stream and its associated 50' protected buffer is located on parcel 1, approximately 62.64 acres and proposed development is outside of this area.

- 5) Section 1001 of the ZDO sets forth the general provisions of the 1000 Sections that, taken together, set forth the general standards for development of property and associated facilities within the unincorporated area of Clackamas County.
- A. Pursuant to Subsection 1001.02(A), the standards set forth in the 1000 Sections apply to all partition applications and approvals.

Finding: As proposed these standards are met.

- 6) Section 1002 of the ZDO sets forth the standards, requirements and considerations that pertain to the protection of the natural features of Clackamas County.

*Finding: The property does contain natural features outlined in this section 1002.04 Rivers and Streams. Small stream identified as a tributary to Beaver Creek, runs off of the northwest corner of the property and will remain unaffected through this partition as outlined herein in ZDO findings and conditions ZDO 704 requiring a 50' protected buffer these **criteria as conditioned are met.***

- 7) Section 1002.01 Hillside A. Development on slopes greater than or equal to 20 percent and less than or equal to 35 percent—except that for residential development in the RR, MRR, and HR Districts, the upper limit is 25 percent—shall require review of a Type I application pursuant to Section 1307, Procedures, and shall be subject to the following standards:
- a) No partition or subdivision shall create any new lot or parcel which cannot be developed under the provisions of Subsection 1002.01.

Finding: The property is gradually sloped however no slopes over 20% or mapped geologic hazard area are identified on the property. These standards do not apply.

- 8) Sec. 1003 of the ZDO pertains to hazards to safety such as landslides, floodplains, soil hazards, and fire hazard area. The intent of these standards is to protect lives and property from natural or man-induced geologic or hydrologic hazards and disasters.
- A. The DOGAMI Bulletin 99 Geologic Hazard maps include this area. Based upon the site topography, soils types and results of the soils feasibility applications approved by the County Septic staff for the project area (Parcels 1, 2 and 3), the dogami area identified is located on the NE corner of lot 1. The property does contain landslide topography or other specific soils hazards. The site does not contain regulatory floodplain area. The site is not within a designated wildfire hazard area.
- Finding: There are no mapped DOGAMI areas on the property. These standards do not apply*
- B. The staff has reviewed all available sources; e.g. NWI maps, County Wetlands Inventory and the County Soil Survey, there is no documented evidence that the area of the proposed home sites contain a jurisdictional wetland.

Finding: These criteria are not applicable to the partition as configured.

9) Section 1006 of the ZDO sets forth the standards, requirements and considerations that pertain to water supply, sanitary sewer, surface water and utilities services concurrency.

A. Pursuant to Subsection 1006.01A The location, design, installation, and maintenance of all utility lines and facilities shall be carried out with minimum feasible disturbance of soil and site consistent with the rules and regulations of the surface water management regulatory authority.

Finding: Based upon the preliminary plans information submitted with this application, the staff of these reviewing bodies have determined that it is feasible to comply with the requirements of this section.

B. Pursuant to Subsection 1006.01B. All development that has a need for electricity, natural gas, and communications services shall install them pursuant to the requirements of the utility district or company serving the development. Except where otherwise prohibited by the utility district or company, all such facilities shall be installed underground. A condition of approval to this effect is warranted.

Finding: The applicant states that all electric, gas and communication services will be installed pursuant to the requirements of the applicable district or company. This criterion can be met.

C. Coordinated installation of necessary water, sanitary sewer, and surface water management and conveyance facilities is required.

Finding: Construction/installation of utilities will be coordinated. Each individual lot will have septic systems and wells installed in areas approved by the county. Septic systems will be installed with building permits for Parcels 2 and 3. All runoff from the site will sheet flow to the north and eventually infiltrate. The future homes should be graded to provide positive drainage away from their foundations, and the downspouts from roof runoff can drain to the ground surface, directed away from the homes, allowing the runoff to infiltrate into the ground. Specific runoff for future homes would be further addressed at the time of the building permits. This criterion can be met.

D. Easements shall be provided along lot lines as deemed necessary by the County, special districts, and utility companies. Easements for special purpose uses shall be of a width deemed appropriate by the responsible agency.

*Finding: The proposed 20-foot wide access and utility easement is shown on the preliminary plat for the private shared drive, and other utilities. **Conditions of approval will be imposed to assure compliance with these standards.***

E. Pursuant to Subsection 1006.02, street lights shall be required for all developments inside the urban growth boundary, as outlined under this Subsection.

The site is not located within the Portland Metropolitan Urban Growth Boundary.

*Finding: **This criterion is not applicable.***

F. Water Supply: Pursuant to Subsection 1006.03 specifies the requirements for water

supply outside the Portland Metropolitan Urban Growth Boundary.

Applicants shall specify a lawful water source for the proposed development, such as a public or community water system, certificated water right, or exempt-use well

Finding: *The newly created parcels 2 and 3 will use exempt-use wells.*

- G. Pursuant to Subsection 1006.06, all development which has a need for public/private sanitary sewers shall install the facilities pursuant to the requirements of the district or company serving the development. Installation of such facilities shall be coordinated with the extension of necessary water services and storm drainage facilities.

The site is not located within the Portland Metropolitan Urban Growth Boundary or the Mount Hood Urban Area; therefore on-site subsurface sewage disposal systems are permitted if approved by the County WES, Soils Sec.

Finding: *This criterion is not applicable.*

- H. Pursuant to Subsection 1006.07A, all development proposing subsurface sewage disposal (i.e., septic systems) shall receive approval for the system from the County Septic and Onsite Wastewater Systems division.

- i. The applicant has obtained soils evaluation approvals for on-site sewage disposal systems to serve the existing and proposed home sites from the County Septic and Onsite Wastewater Systems department.

Finding: *These criteria have been met.*

- I. Pursuant to Subsection 1006.07B, development that proposes subsurface sewage disposal shall be limited to property located outside of the Metro Urban Growth Boundary (UGB) and the Mount Hood urban area, except that which meets the criteria defined under this Subsection.

- i. The site is not located within the Portland Metropolitan Urban Growth Boundary or the Mount Hood Urban Area; therefore on-site subsurface sewage disposal systems are permitted when approved by the County Septic and Onsite Wastewater Systems office.

Finding: *This criterion is met.*

II. ZDO Section 1007 ROADS AND CONNECTIVITY

1007.01 GENERAL PROVISIONS

- A. The location, alignment, design, grade, width, and capacity of all roads shall be planned, coordinated, and controlled by the Department of Transportation and Development and shall conform to Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards. Where conflicts occur between Section 1007, the Comprehensive Plan, and the Clackamas County Roadway Standards, the Comprehensive Plan shall control.

- B. Right-of-way dedications and improvements shall be required of all new developments, including partitions, subdivisions, multifamily dwellings, two- and three-family dwellings, condominiums, single-family dwellings, and commercial, industrial, and institutional uses, as deemed necessary by the Department of Transportation and Development and consistent with Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.

Finding: The subject parcel is located along S Beaver Creek Rd and S Carus Rd. Clackamas County Comprehensive Plan Map 5-4b designates S Beaver Creek Rd as a Minor Arterial and S Carus Rd as a rural local roadway.

*The existing public right-of-way width along S Beaver Creek Rd is 60 feet, which is adequate. **This condition is met.***

*The existing public right of way width along S Carus Rd is 40 feet. The applicant will be required to dedicate a minimum of 4 feet from centerline to provide for a 24-foot public right-of-way along S Carus Rd. **This condition can be met.***

- C. New developments shall have access points connecting with existing private, public, county, or state roads.

1. Intersection spacing and access control shall be based on Subsection 3.08.110(E) of the Metro Code (*Regional Transportation Functional Plan*); Chapters 5 and 10 of the Comprehensive Plan; and the Clackamas County Roadway Standards.

*Finding: The applicant is proposing a shared access to S Carus Rd. Section 220 of the Roadway Standards Table 2-2 requires access spacing along rural local Roadways to be 100 with a minimum 100 feet from any an intersection with an arterial roadway. **This condition can be met.***

2. Access control shall be implemented pursuant to Chapter 5 of the Comprehensive Plan and the Clackamas County Roadway Standards considering best spacing for pedestrian access, traffic safety, and similar factors as deemed appropriate by the Department of Transportation and Development.
3. Approaches to public and county roads shall be designed to accommodate safe and efficient flow of traffic and turn control where necessary to minimize hazards for other vehicles, pedestrians, and bicyclists.
4. Joint access and circulation drives utilizing reciprocal easements shall be utilized as deemed necessary by the Department of Transportation and Development. In the NC District, joint street access for adjacent commercial developments shall be required.

Finding: The applicant has proposed a shared access to S Carus Rd. In accordance with Section 220.4 of the Roadway Standards single-family driveways

*shall not directly take access from arterials roadways, where access is available from a lower classification roadway. S Carus Rd is classified as a Rural Local Roadway; therefore access to the proposed partition will be limited to access from S Carus Rd. The applicant will be required to remove the existing driveway approach to S Beaver Creek Rd and re-establish the drainage swale. All access will be required to be from S Carus Rd. **This condition can be met.***

1007.02 PUBLIC AND PRIVATE ROADWAYS

D. All roadways shall be developed according to the classifications, guidelines, tables, figures, and maps in Chapters 5 and 10 of the Comprehensive Plan and the provisions of the Clackamas County Roadway Standards.

5. Development along streets with specific design standards specified in Chapter 10 of the Comprehensive Plan shall improve those streets as shown in Chapter 10.

*Finding: The proposed development has two frontages along S Beaver Creek Rd and S Carus Rd, which do not have specific design standards. **This standard does not apply.***

6. Development along streets identified as Regional or Community Boulevards on Comprehensive Plan Map 5-5, *Metro Regional Street Design Classifications*, shall provide pedestrian, bicycle, transit, and visual amenities in the public right-of-way. Such amenities may include, but are not limited to, the following: street trees, landscaping, kiosks, outdoor lighting, outdoor seating, bike racks, bus shelters, other transit amenities, pedestrian spaces and access to the boulevard, landscaped medians, noise and pollution control measures, other environmentally sensitive uses, aesthetically designed lights, bridges, signs, and turn bays as appropriate rather than continuous turn lanes.

*Finding: The proposed development is not located on Map 5-5. **This standard does not apply.***

7. Development adjacent to scenic roads identified on Comprehensive Plan Map 5-1, *Scenic Roads*, shall conform to the following design standards, as deemed appropriate by the Department of Transportation and Development:

- a. Road shoulders shall be improved to accommodate pedestrian and bicycle traffic; and
- b. Turnouts shall be provided at viewpoints or for recreational needs.

*Finding: The proposed development is not located along a Scenic Road designated on Map 5-1. **This standard does not apply.***

E. Developments shall comply with the intersection sight distance and roadside clear zone standards of the Clackamas County Roadway Standards. In addition:

Finding: The applicant is proposing a new private access to S Carus Rd. S Carus Rd does not have a posted speed limit and the governed by the basic rule of 55 MPH. Clackamas County Roadway Standards Section 240 Table 2-9 allows intersection sight distances to be lower for local roads with less than 400 ADT. In 2018 traffic counts on S Carus Rd east of Beavercreek Rd averaged 255 ADT. Therefore, the applicant will be required to provide and maintain a minimum of 405 feet of intersection sight distance from the proposed private access east and west bound along S Carus Rd

- F. New developments, subdivisions, and partitions may be required to dedicate land for right-of-way purposes and/or make road frontage improvements to existing rights-of-way as deemed necessary by the Department of Transportation and Development and consistent with Section 1007, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.

*Finding: The existing public right-of-way width along S Beavercreek Rd is 60 feet, which is adequate. **This condition is met.***

*The existing public right of way width along S Carus Rd is 40 feet. The applicant will be required dedicate a minimum of 4 feet from centerline to provide for a 24-foot public right-of-way along S Carus Rd. **This condition can be met.***

1007.03 PRIVATE ROADS AND ACCESS DRIVES

- G. Private roads and access drives shall be developed according to classifications and guidelines listed in Section 1007, Comprehensive Plan Figures 5-1 through 5-3, *Typical Roadway Cross Sections*, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards, except:

*Finding: The applicant has proposed a shared access to S Carus Rd. The applicant will be required to design and construct a private access meeting standard detail D500 and R100. The applicant will be required to provide Fire Marshal approval for the proposed access for emergency access and circulation. **This standard can be met.***

8. When easements or “flag-pole” strips are used to provide vehicular access to lots or parcels, the minimum width shall be 20 feet, unless a narrower width is approved by the Department of Transportation and Development and the applicable fire district’s Fire Marshal;

*Finding: The applicant has proposed a shared access and utility easement to S Carus Rd. **This standard has been met.***

9. Where the number of lots served exceeds three, a wider width may be required as deemed appropriate or necessary by the Department of Transportation and Development consistent with other provisions of Section 1007, the Comprehensive Plan, and the Clackamas County Roadway Standards;

*Finding: The applicant has proposed a three-lot partition. The applicant will be required to provide a minimum 20-foot wide access and utility easement. **This standard has been met.***

10. Access easements or “flag-pole” strips may be used for utility purposes in addition to vehicular access;

*Finding: The applicant is proposing a shared access and utility easement. **This standard has been met.***

11. The standards listed above may be deviated from when deemed appropriate by the Department of Transportation and Development to accommodate one-half streets or private common access drives and roads within developed urban areas providing access to not more than seven lots; and

*Finding: The applicant has not proposed any Design Modifications. **This standard does not apply.***

12. The intersection of private roads or access drives with a public or county road and intersections of two private roads or access drives shall comply with the sight distance and clear zone standards pursuant to Subsection 1007.02(D).

*Finding: The applicant is proposing a new private access to S Carus Rd. S Carus Rd does not have a posted speed limit and the governed by the basic rule of 55 MPH. Clackamas County Roadway Standards Section 240 Table 2-9 allows intersection sight distances to be lower for local roads with less than 400 ADT. In 2018 traffic counts on S Carus Rd east of Beavercreek Rd averaged 255 ADT. Therefore, the applicant will be required to provide and maintain a minimum of 405 feet of intersection sight distance from the proposed private access east and west bound along S Carus Rd. **This standard can be met.***

1007.04 PEDESTRIAN AND BICYCLE FACILITIES

- A. General Standards: Pedestrian and bicycle facilities shall be developed according to the classifications and guidelines listed in Section 1007, Comprehensive Plan Figures 5-1 through 5-3, *Typical Roadway Cross Sections*, Chapters 5 and 10 of the Comprehensive Plan, and the Clackamas County Roadway Standards.

Finding:- S Beavercreek is listed as a planned bikeway on Clackamas County Comprehensive Plan Map 5-2b Planned Bikeway Network Rural. The applicant/appellant has provided a construction cost estimate for constructing 1,610 feet of 8-foot wide bike lane along S Beavercreek Rd with pricing between \$120,000 and \$240,000. While this is a large deviation, County Staff finds this pricing to be accurate on the lower scale. Based upon our review of the impacts of the development versus the anticipated costs of the improvement, we find the required improvements of Condition IV subpart 5 are not roughly

proportional to the impacts of the development. This condition is not proportional to the propose development and not required as a part of this partition.

B. Pedestrian and Bicycle Facility Design: Pedestrian and bicycle facilities shall be designed to the following standards.

Finding: As represented a bike lane is not required at this time. These Standards are not applicable.

1007.07 TRANSPORTATION FACILITIES CONCURRENCY

H. Subsection 1007.07 shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses.

Finding: The applicant is proposing two new homes located along a rural local roadway. The concurrency standards do not trigger the requirement of a traffic analysis. This standard does not apply.

SUMMARY: The Planning and Zoning Staff finds that the applicant has submitted information which demonstrates that it is feasible for the applicant to satisfy the relevant standards of the Zoning and Development Ordinance and other County and State Regulations, as outlined in Section 3 of this report for the proposed partition and subject to compliance with the conditions of approval. The imposition of Conditions of Approval found in Section 2 will assure compliance with the Code. ***The Hearings Officer has reviewed and adopts the above findings, related discussion, and conclusions by the Planning Director as proposed in the County's amended decision.***

E. DECISION

Based on the findings, discussion, conclusions, and the public record in this matter, the Hearings Officer hereby APPROVES this application for Partition, subject to the following conditions of approval:

F. CONDITIONS OF APPROVAL

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parentheses.

1. Approval of this land use permit is based on the submitted written narrative and plan(s) filed with the County on 6/9/2020 and additional documents submitted on 12/4/2020. No work shall occur under this permit other than which is specified within these documents, unless otherwise required or specified in the conditions below. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of any approval resulting from the decision described herein.

2. Prior to any earth disturbing activity, the applicant/property owner shall complete the following:

I. General Conditions: Lizbeth Dance, (503) 742-4524, Ldance@clackamas.us

- 1) Preliminary partition approval is based upon the preliminary partition plan and the Ballot Measure 49 claim, Election No. E131385, and these conditions of approval. Any change in design, including lot layout and access to lots, must be approved by the Planning and Zoning Division prior to final plat approval. No work shall occur under this permit other than which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitations of approval described herein.
- 2) This decision becomes effective the day after expiration of the appeal period (if not appealed). After that date, no changes to these conditions can be made without a new land use application unless otherwise specified herein.
- 3) The services of a registered professional land surveyor and a civil engineer are required to satisfy these conditions of approval.
- 4) **Platting:** Pursuant to ORS 92, five (5) copies of the draft partition plat survey of the development shall be submitted to the Engineering Division for routing & review.
 - a. A copy of the final plat survey and review deposit shall also be submitted separately to the County Surveyor's office for review.
 - b. After the draft plat is approved by the Planning & Zoning Division staff and reviewed by the Survey Department, one (1) mylar copy and four (4) paper copies of the final plat shall be submitted to the County Engineering Division for final review.
 - c. The draft and final plats shall be prepared by a registered professional land surveyor in a form and with information consistent with the provisions of ORS 92, relevant portions of ORS 209.250, the County ZDO, Chapters 11.01 and 11.02 of the County Code and these conditions of approval.
 - d. When final approval is given by the Planning and Zoning Division and the final plat is approved by the County Surveyor, the plat must then be filed and recorded with the County Clerk. All property taxes shall be paid in full for the current year in order for the plat to be recorded.
 - e. None of the individual parcels may be sold, transferred or assigned until the final plat has been approved by the County Surveyor and recorded with the County Clerk.
- 5) **Approval Period:** Pursuant to subsection 1106.05(A) of the ZDO, this preliminary partition approval is valid for **four years** from the date of this final written decision. **Failure to record the final partition plat with the County Clerk within four years of the date of this decision will void this approval unless a time extension is approved (see following).**

- 6) **Time Extensions:** Prior to expiration of this approval, the applicant may request a single two-year extension of the preliminary approval subject to the criteria set forth in Section 1310 of the ZDO.
- 7) **Easements:** All existing, proposed and required easements shall be shown upon the final plat.
- 8) **Fire Protection:** Prior to final plat approval, the applicant shall submit stamped and approved plans or written verification from the Tualatin Valley Fire and Rescue Fire Marshal indicating that the access and fire flow standards have been, or will be met.
- 9) **Building Codes:** Building construction on any of the approved lots shall be consistent with Oregon Plumbing Specialty Code, Oregon Residential Specialty Code, Oregon Structural Specialty Code and/or Oregon Manufactured Home Standard requirements, as administered by the DTD, Building Codes Division. Foundation drain requirements shall be designed to ensure structural stability and proper foundation and crawl space drainage.
- 10) **Water Service:** No water service is available for the property. Development of exempt-use wells is required for each created Parcel
- 11) **On-site Septic Systems:** Installation of septic systems shall comply with the requirements of the Oregon DEQ rules administered by the County Septic and Onsite Wastewater staff. Care shall be taken in the location of homes, wells, driveways, etc. to ensure that the approved drainfield and repair areas within the parcels are not compromised. Approved Septic locations shall be indicated on the preliminary plat map
- 12) **Utilities:** Pursuant to Subsection 1006 of the ZDO, electricity, gas, and communications services shall be installed consistent with the requirements of the district or company serving the development. Except where otherwise prohibited by the utility district or company, **all new or relocated utilities shall be installed underground and in accordance with the requirements of the service providers.**

II. County Surveyor Conditions: County Survey department (503) 742-4475.

- 1) All partition plats shall be prepared pursuant to ORS 92 and County Code Chapters 11.01 and 11.02.
- 2) Any private access easements should also contain provisions for public utility services such as water, electricity, communications, natural gas, storm drainage, sanitary sewer, emergency services, etc.
- 3) New easements should include a statement that the easements are for the lots or parcels shown and any future divisions thereof.

- 4) Easements created for access to parcels that can be redeveloped or further divided shall contain language that would allow the access and utilities easement(s) used by any additional development or parcels created in future. Any private easements should also contain provisions for public utility services such as water, electricity, communications, gas, storm drainage, sanitary sewer, etc.

III. Planning and Zoning Division Conditions: Contact: Lizbeth Dance, 503-742-4524, Ldance@clackamas.us

- 1) Future construction on the proposed parcels shall be subject to the use, dimensional and development standards of Section 401, the relevant requirements of Section 1001.02 of the ZDO and relevant conditions of approval herein except as modified by Measure 49 claim E131385.
- 2) Underground utilities are required for this partition and shall be installed pursuant to the requirements of the utility service providers serving the development.
- 3) Proposed Parcels 2 and 3 shall not exceed two acres in size and future lot line adjustments resulting in an increase in a size exceeding two acres is prohibited. **A plat note/restriction to this effect shall be noted on the final partition plat.**

IV. County Engineering Division Conditions: Jonny Gish; 503-742-4673, Jgish@clackamas.

Conditions for Roads & Connectivity:

1) Overview:

The following items are project requirements from the Department of Transportation and Development's Development Engineering Division. These conditions of approval are not intended to include every engineering requirement necessary for the successful completion of this project, but are provided to illustrate to the applicant specific details regarding the required improvements that may prove helpful in determining the cost and scope of the project. These conditions are based upon the requirements detailed in the County's Comprehensive Plan (Comp Plan), the County's Zoning and Development Ordinance (ZDO) and the County's Roadway Standards. Additional requirements beyond those stated in the conditions of approval may be required once plans have been submitted and reviewed. The applicant may discuss the requirements of the project with staff at any time.

The requirements specifically required by the Comprehensive Plan and the ZDO cannot be modified by the Development Engineering Division. However, the requirements detailed in these conditions of approval, derived from the County Roadway Standards, are based upon nationally accepted standards and engineering judgment and may be modified pursuant to Section 170 of the Roadway Standards. The applicant is required to provide sufficient justification to staff in the request. Staff shall determine if a modification is warranted.

2) General Provisions:

Prior to Final Plat approval the applicant shall obtain a Development Permit from the Engineering Department for review and approval of frontage improvements, erosion control Best Management Practices implemented, sight distances and the shared driveway improvements. The permit shall be obtained prior to commencement of site work and

recording of the partition plat. To obtain the permit, the applicant shall submit construction plans prepared and stamped by an Engineer registered in the State of Oregon, or plans acceptable to the Engineering Division, provide a performance guarantee equal to 125% of the estimated cost of the construction within the County right-of-way and pay a plan review and inspection fee. The fee will be calculated as a percentage of the construction costs if it exceeds the minimum permit fee. The minimum fee and the percentage will be determined by the current fee structure at the time of the Development Permit Application.

Prior to Final Plat approval the applicant shall dedicate a sufficient right-of-way to provide for a minimum 24-feet from centerline along S Carus Rd.

Prior to Final Plat approval the applicant shall provide a road maintenance agreement for the shared private road implementing ORS 105.170 – 105.185. This agreement shall include any and all signings and postings and be recorded with the plat.

Prior to Final Plat approval the applicant shall provide a note restricting parcel 1 from vehicular access to S Beaver Creek Rd without Jurisdictional approval.

Prior to Final Plat approval the applicant shall meet the requirements set forth within Section 190 of the Clackamas County *Roadway Standards*.

3) Public & Private Roadways:

Prior to Development Permit issuance the applicant shall remove the existing access to S Beaver Creek Rd and reestablish the drainage swale.

Prior to Development Permit issuance the applicant shall show all utility work within County right-of-way on the approved plans or obtain Utility Permits for utility connections and work within County right-of-way.

4) Private Roads & Access Drives:

Prior to Development Permit issuance the applicant shall provide a minimum 20-foot wide access and utility easement from S Carus Rd to serve each parcel. The easement shall be a common, nonexclusive reciprocal access and utility easement benefitting parcels 1, 2, 3 and future division thereof.

Prior to Development Permit issuance the applicant shall provide a private access to S Carus Rd meeting Standard Detail D500 and R100. If individual driveways are not constructed by the developer with the common access an Entrance Permit will be required for each parcel at Building Permit application.

Prior to Development Permit issuance the applicant shall provide written approval from the Fire Marshal for emergency access and circulation of the private access. If greater than 150 feet, a fire apparatus turnaround at or near the end of the shared private roadway will be required, per Standard Drawing C350 at a location approved by Clackamas Fire and Engineering staff.

Prior to Development Permit issuance the applicant shall provide and maintain minimum intersection sight distances at the proposed shared private road intersection with S Carus Rd. Intersection sight distance shall restrict plantings at maturity, retaining wall, embankments, trees, fences or any other objects that obstruct vehicular sight distance. Minimum required intersection sight distance is 405-feet east and west bound along S Carus Rd.

V. Advisory Notes:

Advisory notes are not a part of the decision on this land use permit. The items listed below are not conditions of land use approval and are not subject to appeal. They are advisory and informational only but may represent requirements of other agencies/departments. As such, they may be required by these other agencies/departments in order to complete your proposed development.

1. The fire department has reviewed the proposal and has provided the following advisory notes:

A land use plan review was conducted for the listed property. It has been determined that this property is in an area without public water supply, and there are no site conditions that would prevent the applicant from constructing the proper access. Fire department access and water supply are reviewed in accordance with the 2019 edition of the Oregon Fire Code (OFC), and OAR 918-480-0125 Uniform Alternate Construction Standard for One and Two Family Dwellings.

For one and two family dwellings located in rural areas without reliable municipal fire fighting water supply the following apply:

<3,600 square feet (including attached garage)

- a) No water supply required

>3,600 square feet (including attached garage)

- a) Required fire flow for areas in which reliable water systems do not exist shall be calculated in accordance with current NFPA Standard 1142

When submitting plans for fire department access and water supply approval please include the following information:

- Applicant/contact name, e-mail, and phone number
- Scope of project
- Size of structure
- Location of building envelope
- Hose pull distance from access roads
- Driveway width
- Driveway length
- Turnaround location (for dead end roads/driveways greater than 150 feet)
- Grade/slope of driveway
- Alternate water supply for homes greater than 3,600 square feet

Access and water supply plans can be submitted to Clackamas Fire District #1 via e-mail to matt.amos@clackamasfire.com (503)742-2661.

For design assistance we provide additional information including the Fire Code Application Guide, please visit our new construction website at <http://www.clackamasfire.com/fire-prevention/new-construction-resources/>

Note: This review is to determine if the project can be designed and constructed to meet the requirements of the Oregon Fire Code, and should not be considered approval of the design as submitted.

Dated: March 31, 2021

A handwritten signature in blue ink that reads "Carl D. Cox". The signature is written in a cursive style with a large initial "C".

Carl D. Cox
Clackamas County Hearings Officer

APPEAL RIGHTS

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision is "final" for purposes of a LUBA appeal as of the date of the decision appearing by my signature.