City of Sherwood Oregon

Home of the Tualatin River National Wildlife Refuge

PLANNING COMMISSION MEETING PACKET

FOR

Tuesday, October 23, 2012
7:00 pm

Sherwood City Hall
22560 SW Pine Street
Sherwood, Oregon

City of Sherwood
PLANNING COMMISSION
Sherwood City Hall
22560 SW Pine Street
Sherwood, OR 97140
October 23, 2012 – 7PM

Business Meeting – 7:00 PM

1. **Call to Order/Roll Call**
2. **Agenda Review**
3. **Consent Agenda**
   a. **August 28, 2012 Planning Commission Minutes**
   b. **September 25, 2012 Planning Commission Minutes**
4. **Council Liaison Announcements**
5. **Staff Announcements**
6. **Community Comments**
7. **Old Business**
   a. Langer Farms Phase 7 (SP 12-05) *Continued from September 25, 2012* - The applicant is proposing a site plan to construct a commercial shopping center on 19.7 acres of property. The proposal includes a 189,500 square feet of commercial space which includes 145,000 square foot anchor building and six retail buildings with associated parking and landscaping.

8. **New Business**
   a. Brucker Building (SP 12-06)- The applicant is proposing to add to the existing roof over the deck, to improve the existing deck to finish floor level, and to add insulated window and doors.

9. **Adjourn**

Next Meeting: November 13, 2012

Meeting documents may be found on the City of Sherwood website or by contacting the planning staff at 503-925-2308.

DRAFT

City of Sherwood, Oregon
Planning Commission Minutes
August 28, 2012

Commission Members Present:
Chair Allen
Commissioner Copfer
Commissioner Griffin
Commissioner Cary (via phone)
Commissioner Clifford (via phone)

Staff:
Julia Hajduk, Planning Manager
Brad Kilby, Senior Planner
Tom Pessemier, Community Development Director
Bob Galati, City Engineer

Commission Members Absent:
Vice Chair Albert
Commissioner Walker

Council Liaison: Councilor Clark
Legal Counsel: Chris Crean

1. **Call to Order/Roll Call**
   Chair Allen called the meeting to order and Julia Hajduk called the roll and stated that Commissioners Cary and Clifford would vote via conference call when needed for a quorum.

2. **Agenda Review**
   Chair Allen stated he would dispense with the consent agenda, and move directly to Council Liaison comments, staff announcements, and community comments, then get Commissioners Cary and/or Clifford on the phone for the business before the commission and finish with the consent agenda.

3. **Council Liaison Comments**
   Councilor Clark commented that the City Council passed a resolution certifying the explanatory statement for the Tonquin Employment Area Annexation to accompany the ballot title previously passed by Council which will go on the November 2012 ballot. Council also passed a resolution declaring the need to acquire property and establish agreements for the connection of SW Langer Farms Parkway to Hwy 99.

4. **Staff Announcements**
   Planning Manager Julia Hajduk reminded the Commission of the Sherwood Town Center Open House on October 3, 2012, commented regarding the sign code amendments that have been adopted by Council and a brochure that Senior Planner Brad Kilby is distributing, and solicited attendees for Planning Commissioner training being offered by the Oregon City Planning Director's Association to be held September 27, 2012.

5. **Community Comments**
   Robert James Claus, 22211 SW Pacific Hwy, Sherwood. Mr. Claus commented regarding the rules of the Oregon Commission of Ethics, economic interest, and conflicts of interest. Mr. Claus commented regarding the value of land and zoning, transparency of City processes and the

boundaries of volunteering for public office. Mr. Claus cited law cases concerning bad tendencies and political speech and commented on first amendment rights in Oregon.

Julia Hajduk connected Commissioner Cary via conference call.

6. Old Business

a. Public Hearing- Sentinel Self Storage Annex (SP 12-03) Continued from 8/14/12 Planning Commission meeting.

Chair Allen conferred with Julia Hajduk regarding the wording for the Public Hearing statement and stated that because the public hearing had been held at the previous meeting he needed only to ask for any ex parte contact, bias or conflicts of interest. Commissioner Cary disclosed that he had ex parte contact with Wes Freadman regarding the project and that it did not have any bias on his decision.

Brad Kilby, Senior Planner stated that the hearing had been continued from August 14 to August 28 for additional public testimony. Brad showed a presentation (see record, Exhibit 1) and reminded the commission that the subject property was approximately 55 acres that was bound by Langer Farms Parkway, a railroad, Oregon Street, and farmland to the south of the site. Brad added that the property was a portion of Lot 5 from the approved Langer Farms Subdivision that was on appeal later in the evening. Brad commented that the proposal was to construct 430 storage units on approximately 6.9 acres and stated he will speak to issues from the previous hearing.

Showing the Site Plan, Brad stated there was a secondary fire access included in his memo. Brad added that a secondary access is always recommended by Tualatin Valley Fire and Rescue (TVF&R) and Deputy Fire Marshall John Wolffe stated that with this case the secondary access was not required. Regarding ownership Brad commented that the code requires the property owner to sign the application so they are aware that an application has been filed for land use on their property. Brad stated the manager Erin at the Tualatin River Wildlife Refuge was the liaison for the U.S. Fish and Wildlife Service who indicated that the area is not in their acquisition area, even though it might be a tributary to Rock Creek and they would not have any comments over and above Clean Water Services for storm water and resource protection. Brad stated that Sherwood Building Official, Scott McKie, had indicated that a 6’ x 6’bathroom was probably too small for ADA Access as the occupant needs to have a turning radius inside the stall and sink area, but the area may not need to be too much larger, possibly 7’ x 7’. Brad said the applicant’s representative, Chris Goodell, confirmed that the fuel would be diesel and propane as indicated in the testimony at the previous meeting and the fuel would require permits from TVF&R, but not the Department of Environmental Quality (DEQ). Brad explained that the DEQ is concerned about underground tanks and air quality. DEQ’s local representative confirmed that gasoline requires permits, but not diesel and propane. Brad commented that he further questioned the applicant regarding who would use the fuel and was told it would not be open to the public but to renters in the facility who will have to prearrange a time to fill up with an attendant. Brad expounded on the TVF&R permits for the fuel stating that the seismic loads, stability of the structure, emergency shut off and spillage issues will be reviewed prior to permitting. With respect to a turn around, the applicant has proposed additional signage and a permanent land line to call the office to provide access through the gate, but TVF&R will not require a turn around. Brad added that video surveillance is not required by the code, but the applicant has maintained

that it is a common practice in the industry and they will have video surveillance of various components of the storage facility.

Brad stated that staff continues to recommend approval with conditions and suggested that if the Commission is not comfortable with the language they could add a condition requiring that the fuel access be limited to patrons who have rented space in the facility, require an ADA bathroom, even though the Building Official will require it. Brad added that the RV wash has to be designed so that the storm and sewer do not mix per Clean Water Services, water from washing vehicles is put in the sewer system, and it cannot be open above because rain mixes with the sewer.

Chair Allen stated the record was left open for testimony and asked Brad for written testimony. Brad entered and read Exhibit K, a letter from Jim Haynes; Exhibit L, a letter from Scott Haynes; Exhibit M, an email from Casey Overcamp supporting the project, and Exhibit N, a letter from Jim Claus. As Mr. Claus was present the five page letter was not read. Julia added that a letter from the Chamber was received (see record, Exhibit O), but as they were also present to testify the letter was not read. Chair Allen opened the hearing for public testimony.

Robert James Claus, 22211 SW Pacific Hwy, Sherwood. Mr. Claus expressed his astonishment at the testimony and commented regarding the 1995 code and gas stations being prohibited as an accessory, incidental, or main use. Mr. Claus commented regarding the application getting an exception and if permits are issued they are revocable. Mr. Claus commented regarding a mini warehouse becoming a ministorage, a lumber yard becoming Home Depot, and the annex being an extension of a non-conforming use which, he stated, the code bars you from doing. Mr. Claus commented regarding clarifying language in the code before Council and disqualifying the PUD, and stated it would be administering variances for self-imposed hardships because of the parceling. Mr. Claus commented on the rush to get revenues, overlooking the 95 code, and previous City Manager, Jim Rapp's dislike for mini storage, self-service, and car lots. Mr. Claus commented on the last facility of this type that came before the Commission that was "refused because it did not meet the design standards" but had the same application in a general commercial zone that staff said it conformed to the code. Mr. Claus stated there were two laws in Sherwood; laws for people that curry political favor particularly within the urban renewal boundaries, and laws for the rest of us outside of it. Mr. Claus commented that the code, fire problems, and drainage problems were being ignored and the PUD was given in order to ignore the zoning. Mr. Claus stated he would appeal the decision and he would try his best to terminate this PUD, even if it takes a lawsuit.

Leanna Knutson, 17052 SW Cobble Court, Sherwood. Ms. Knutson stated she was President of the Sherwood Chamber of Commerce and was present to give support for the Sentinel Self-Storage expansion project on behalf of the hundreds of members the Chamber represents. Ms. Knutson commented on the mission of the Chamber and stated that business development and expansion creates jobs, fuels the City's tax base, and promotes the standard of living that we love about Sherwood. Ms. Knutson commented that the Chamber supports the expansion because it supports local opportunities. Ms. Knutson commented regarding the Residences at Cannery Square stating that the Chamber wanted to offer its support for that project and like the Sentinel Self-Storage expansion the apartment complex harmonizes the economic aspirations of our community.

Chair Allen commented that the public testimony has been closed for the Capstone project and the commission cannot take that part of her testimony into consideration.

Gary Langer, 17384 SW Timber Crossing Lane, Sherwood. Mr. Langer asked if there were enough commissioners to make a decision. Chair Allen affirmed that there was a fourth Commissioner participating by phone. Mr. Langer commented that there has been a lot of research for the development of this project, it will be a state of the art facility, and he wanted to share some of the positive aspects of the project. Mr. Langer commented that there was a lot of community support, where he lives you cannot have boats, cars and RV's out, and this facility works really well for the city of Sherwood. Mr. Langer commented on the design and planning for the project and facilities in Tigard, Tualatin, Wilsonville, and the new one on Cipole Road adding that RV repair can be done on site. Mr. Langer stated he wanted to address some objections raised by previous testimony. Mr. Langer commented regarding Home Depot and Sentinel being illegally built and stated the projects were done over ten years ago and done by code and he was unsure why the issue keeps reoccurring. Regarding sewer spillage into the water, Mr. Langer stated that the facility will have a safe dump station because of design, grading and structure. Mr. Langer commented that Sentinel has been in business since 1997, has a lot of repeat customers, and is at capacity much of the time. Mr. Langer commented that there was no water stored in the farm field and there was not a well near the site that it was set up for drainage and the wetland area. Mr. Langer commented on the landscaping ordinance not being met because of the use of the term annex and stated that the application meets all of the code requirements which have been approved by staff. Mr. Langer commented that 90% of the RVs will be covered and the site will be clean as he lives in Sherwood, too.

Sandford Rome, 14645 SW Willamette Street, Sherwood. Mr. Rome commented on the term *standing* and testimony received from residents outside of Sherwood. Mr. Rome commented that he would like to see this project go forward with the added conditions for approval. Mr. Rome commented regarding long term residents, standing, and the things he has seen in this town over the years. Mr. Rome commented regarding having to pay additional taxes for repairs or changes in the City and long term residents who have also had to pay. Mr. Rome commented regarding building a state of the art facility and not having it come back to the citizens and asked how the Commission might correct the problems that arise and said the City should have an addressable procedure for fixing any unforeseen problems immediately. Mr. Rome referenced streets that were not completed properly in the past. Mr. Rome commented on the standing of the Langer family and their rights to develop their property. Mr. Rome commented on the Cannery square and standards that were not met. Mr. Rome repeated his comments regarding problems being solved and stated if it is the City's dollar it is his dollar.

Chris Goodell, representing the applicant, Langer Family LLC, from AKS Engineering, 13910 SW Galbreath Drive, Ste. 100 Sherwood. Mr. Goodell stated he prepared a memo regarding the questions from the Commission at the last hearing that was included in the packet which included business operations. Mr. Goodell commented that the fuel in question will be diesel and not gas. Mr. Goodell stated there were project engineers, and the owner/ operator and applicant, were present to answer any questions. Mr. Goodell asked for the Commission's approval.

Wes Freadman, 21315 SW Baler Way, Sherwood. Mr. Freadman stated he was a supporter of the project and commented that all of the problems have been addressed. Mr. Freadman commented that Sentinel was at maximum capacity and if Sherwood residents did not want a storage facility it

would be empty. Mr. Freadman commented that the facility will be a good neighbor, good use of the land and tax revenue and he thought it should be approved.

With no one else signed up to testify, Chair Allen closed the public testimony and asked for any questions from the Commission.

Chair Allen asked regarding the code that applies to the project and referenced the Permitted Uses in the General Commercial Zone which states it "includes wholesale trade, warehousing, commercial storage, and mini warehousing". Mr. Allen commented that he would have thought commercial storage as a "business that sells storage" and asked if he was reading it correctly and in the correct version of the appropriate code. Brad confirmed and stated he wanted to clarify that under the Langer PUD, the applicant is allowed to construct in phases 6, 7, and 8, uses that were permitted in 1995, as well as uses that would be permitted under today's code. Brad stated this was his understanding of what council agreed to and was the intent in the 2007 minor modification. Brad stated that in the Staff Report it says that mini storage is a permitted use at the time that the PUD was approved and staff believes it is an allowed use in this zone.

Brad continued by commenting on the issue raised regarding Home Depot and the Sentinel Storage being illegal uses and stated that Home Depot was approved by the courts through a writ of mandamus and Sentinel Storage was approved through another action, that people had the opportunity to appeal, but those uses are allowed and in affect today.

Chair Allen commented on the issue of *standing* and stated that from a legal standpoint his understanding was standing was the ability to come and testify and if you do not like the decision to go appeal it. Chair Allen added that Land Use in Oregon is broad and everyone the Commission has heard from, has standing to be able to come and testify and carry their arguments. Attorney Chris Crean confirmed and stated that under Oregon law, at this level, any person may participate in a local land use proceeding and anyone who participates then has *standing* to appeal that decision. Chair Allen commented that the point being made regarding standing was more broad in that, irrespective of legal standing, some opinions may be entitled to different weight than others and his opinion was that any time someone comes to the Planning Commission he does not think of it as standing, but considers what their interests are. Chair Allen commented regarding a previous storage decision brought up in earlier testimony and stated his recollection differs from the testimony that was heard as the only one he could recall was the one that was built. Chair Allen stated the Planning Commission was rebuked by members of SURPAC for allowing it.

Chair Allen commented that he did not think additional conditions were necessary as they were adequately dealt with in other regulation. Chair Allen asked if other Commissioners had comments or questions. None were provided.

Motion: From Commissioner James Copfer for the Planning Commission to approve the application for the Sentinel Self-Storage Annex (SP 12-03), based on the applicant testimony, public testimony received, and the analysis, findings, and conditions in the Staff Report; seconded by Commissioner Griffin. All Commission members present voted in favor. (Commissioner Cary voted yes by phone, Vice Chair Albert and Commissioners Clifford and Walker were absent.)

Chair Allen called a five minute recess and the call with Commissioner Cary was terminated.

b. Public Hearing Residences at Cannery Square (SP 12-04 Continued from 8/14/12 Planning Commission meeting.

Chair Allen reconvened the public hearing for SP 12-04 and stated that public testimony had been closed. Chair Allen asked the Commissioners regarding any ex parte contact, bias, and potential or actual conflicts of interest.

Julia added that Commissioner Clifford was on the phone via conference call and there was still a quorum with a different commissioner.

Commissioner Griffin declared that he had a short conversation with Jeff Sacket from Capstone regarding the look of the buildings following the previous meeting that would not affect his vote.

Chair Allen stated that the public testimony had been closed, but there was written testimony that was received in a timely manner but was not in the record. Chair Allen stated they would enter the letter verbally into the record and re-open the testimony for anyone who wished to testify on any issues raised by that comment. Chair Allen stated he would give latitude to the responses, but asked that no new information be entered into the record because they should not be considered by the commission and will complicate matters.

Brad Kilby read the letter from John and Jackie Bolton, 22515 SW Lincoln Street, Sherwood (see SP 12-04, Exhibit J) which commented on raising their family in a historic house on Lincoln Street, the unofficial collaboration between the developer and the City, and changes in zoning laws over the years that allow an apartment building in the middle of a neighborhood. The Boltons stated that they were adamantly opposed to the building and questioned having a three level apartment building in the middle of one of the oldest neighborhoods in the city, adding that it will change the dynamics of Old Town Sherwood in a negative way. The Boltons commented on congestion in downtown Sherwood, traffic on Willamette street from the Old Town Field House and that an apartment complex will worsen the problem. The Boltons commented on the concern for safety the of children in the neighborhood who walk to school and the effect of a hundred more cars on the road. The Boltons commented on changing Old Town area with a structure that does not fit in and asked for consideration of the negative impacts to the families that live in the neighborhood. The Boltons commented that just because zoning codes allow it to be built, does not mean it is a good thing to be built and residents in the area most affected should be taken into consideration when making the decision. The Boltons commented that the complex will not keep Sherwood and old town going in a positive direction and commented on voting for ballot measures and council members that help Sherwood be great and fair to citizens.

Chair Allen opened public testimony for the limited purpose of hearing testimony in response to the issues raised in the letter.

Sandford Rome, 14645 SW Willamette Street, Sherwood. Mr. Rome commented regarding the project being harmonious with the neighborhood stating he has been working with Brad Kilby regarding language to be forthcoming. Mr. Rome commented that there was no way to build a four story building in a two story neighborhood and keep it harmonious. Mr. Rome commented on the number of cars in the neighborhood and suggested that with one hundred units there will be more than one hundred additional cars. Mr. Rome commented that the traffic study was provided by Capstone and if you study any apartment complex in town by the number of trips in

and out for seven days you would see that a 54 unit apartment, such as the Murdock Apartments, does something over 300 trips a day. Mr. Rome challenged the credibility that the traffic study was objective in studying apartment complexes in the city. Mr. Rome commented regarding pictures that he had submitted at a previous Planning Commission meeting regarding Lincoln Street improvements and remaining road problems and lack of sidewalks. Mr. Rome commented regarding putting drivers onto Tualatin Sherwood Road or Oregon Street and taking the most direct route, which is provided by Lincoln Street. Mr. Rome commented that it was difficult to drive by Willamette Street as the road ends at Murdock with a round-about. Mr. Rome commented that the project was like two army barracks with car parking underneath and the city has tried for two years to make it a viable project, disregarding comments and design standards. Mr. Rome commented on how the project was being financed and stated it was a dormitory type structure, with 51 units in each building, on roughly an acre. Mr. Rome commented on the need to provide for the neighborhood to make it harmonious and suggested two stories with fewer units or another building on the property. Mr. Rome asked how the city was going to pay property owners back for the damages done when the project is finally finished and opponents were right again.

Chair Allen closed the public testimony. Planning Manager, Julia Hajduk inquired regarding procedure to receive the applicant's final testimony. Chris Crean stated the applicant should have testified during the public testimony. Chair Allen reopened the public testimony in case there was any lack of clarity to receive the applicant's testimony with a five minute time limit.

Jeff Sacket, Capstone Partners, 1015 NW 11th Ave, Ste. 243, Portland. Mr. Sacket commented that he disagreed with regards to the project being incompatible with the neighborhood and stated the project has conformed with every regulation whether it was from the Code, the Planning Commission, or the Architectural Planning Book approved by the Planning Commission and City Council. Mr. Sacket commented that the project was handsome and he expects the project to be a welcome addition to Old Town and Sherwood as a whole. Mr. Sacket commented regarding the traffic engineer's analysis and stated DKS is a reputable local and regional traffic engineer that is beyond reproach adding that Capstone hired them to evaluate the traffic situation as they saw fit as well as respond to the City Engineer's requests. Mr. Sacket commented that Capstone is not traffic experts, but hire traffic experts and do as they advise.

Chair Allen closed the public testimony and stated there were updated staff comments.

Brad Kilby commented on the reputation of DKS and the number of traffic studies they perform and stated that the traffic studies were based on the 8th edition of the International Traffic Engineers Manual which is the accepted manual used by cities, counties and traffic engineers in determining traffic counts. Brad showed a presentation with the conditions of approval (see record, Exhibit 2) and commented that they were provided in the Planning Commission packet, with the exception of two conditions in the presentation. Brad stated that the first conditions of approval added are prior to final site plan approval which included in C.3 the verbiage "or evergreen screen" to the condition, from the last hearing, that required the applicant to install a 6-foot tall fence, wall *or evergreen screen* along the east property line of the east residential building, and the west property line of the west residential building. Brad explained that another condition was C.4 which contained language discussed regarding meeting Clean Water Services (CWS) requirements within the City in the event that the regional storm water quality facility came online and is to obtain construction plan approval for those facilities prior to final site plan approval or in the event that they were not required to do that a compliance agreement had to be

put into place to eliminate the water quality facility. Brad read the condition for the benefit of Commissioner Clifford who was on the phone: *Obtain construction plan approval from the Engineering Department for all public improvements including the on-site water quality facility if an alternative has not been agreed upon at time of final site plan review. If the applicant, City and CWS reach an acceptable agreement to use the regional water quality facility, the applicant may submit revised plans showing how the areas for the on-site water quality facility will be otherwise landscaped or utilized consistent with the approved development plans and the engineering compliance agreement modified accordingly to eliminate the on-site water quality facility.*

Brad commented that the next set of conditions were to be completed prior to building permits but they appeared to be the same as prior to final site plan approval and he moved on to conditions of approval prior to final occupancy. Brad read the condition E.6 which read *On-site or a regional storm water treatment system that complies with City of Sherwood and CWS standards shall be either in place, operational and any necessary connection fees paid or an agreement and assurances acceptable to both the City of Sherwood and CWS shall be in place.*

Chair Allen asked Brad to read the conditions of approval prior to building Permits from the revised staff report. Brad read D.1 *Prior to issuance of building permits for the east and west residential buildings, the applicant shall submit revised drawings that illustrate an enhanced decorative treatment of the southeast portion of the building and/or sites facing SW Willamette Street. Such architectural revisions shall involve variations of texture, materials, patterns, and color which are distinct yet complementary to the building, or shall include brick or stone elements which serve to add visual interest to the portion of the project visible from SW Willamette street* and stated that this language was requested by the commission. Brad read D.8 which states *Provide a set of plans that clearly demonstrates compliance with the pitch of the roof as permitted by the approved architectural pattern book* and commented that this was opposed to what the code called for.

Brad concluded and stated staff would recommend approval as amended.

Chair Allen commented on being harmonious with the neighborhood and said he was considering this issue. Chair Allen commented regarding what the neighborhood is, what it is to be harmonized with, and what is the aim to have it be. Chair Allen commented that the area was a transitional are; it was not Old Town or the lower density residential area nearby. Chair Allen commented that this area has been on track for years and was included in the Old Town Overlay five or six years ago. Chair Allen commented that we had the Cannery PUD a couple of years ago and now have this site plan, adding that the Commission is considering an area that is at least a transitional area between the existing residential and Old Town and at most an extension of Old Town proper in relation to Cannery Square and the Community Center. Chair Allen commented that the applicant has done a good job in trying to address that issue and make it harmonious in that transitional way. Chair Allen commented regarding traffic and street improvement issues and stated his opinions about those issues are on the record from the Commission's previous recommendation to Council regarding the PUD. Chair Allen commented that the narrower question is if this plan is consistent with that approved PUD and he believed it did and the revisions to the conditions strengthened that.

Commissioner Copfer stated he agreed with Chair Allen and wanted Sanford Rome to know that the Commission did hear regarding Lincoln Street, however it is the Commission's responsibility to look at if the application meets the PUD and it does.

Commissioner Griffin commented regarding the changes to the southeast side of the building and that he thought the comments from citizens were heard. Mr. Griffin commented regarding the traffic study being done by request from concerned citizens and the retention of a reputable company to perform the study. Mr. Griffin commented that the application was solid and it will add traffic to Old Town that may spark some activity in the area perhaps for Saturday Market or in new restaurants.

Commissioner Clifford commented (via phone) that he agreed as far as the application meeting the code and that he had looked over the plans and accompanying documents. Mr. Clifford commented on his concern regarding parking and the amount provided. Mr. Clifford commented regarding the application being a good project to bring together people using fewer vehicles, walking more, using public transportation, and utilizing the Old Town area. Mr. Clifford commented regarding the trash area in the interior of the building being an asset to keeping the project clean and orderly and on the enhancement of the southern portion of the buildings with more architectural detail.

Motion: From Commissioner James Copfer for the Planning Commission to approve the application for Residences at Cannery Square (SP 12-04) based on the applicant testimony, public testimony received, the analysis, finding, and conditions as revised in the Staff Report, seconded by Commissioner Russell Griffin. All Commission members present voted in favor. (Commissioner Clifford voted yes by phone, Vice Chair Albert and Commissioners Cary and Walker were absent.)

Chair Allen called a brief recess; the call with Commissioner Clifford was not terminated.

7. New Business

a. Public Hearing- Langer Farms Subdivision Appeal (SUB 12-02)

Chair Allen opened the public hearing on the appeal on the Planning Manager's decision of SUB 12-02 by reading the public hearing statement which stated the appeal was filed by Jim Claus. Chair Allen asked for the disclosure of any ex parte contact, bias or conflicts of interest. Chair Allen stated as it was legislative, ex parte did not strictly apply, but disclosed a conversation with Jim Claus the previous Friday regarding a courtesy advisory that he (Mr. Claus) was sending an email with a number of issues raised that did not pertain to the Langer Farms Subdivision Appeal.

Legal Counsel, Chris Crean clarified that the hearing was quasi-judicial, not legislative.

Commissioner Griffin disclosed that he had contact with the Clauses through piano lessons and church but it would affect his ability to make a decision.

Chair Allen asked for the Staff Report.

Brad Kilby gave a presentation (see record, Exhibit 3) explained that the hearing was for the appeal of SUB 12-02 the Langer Farms Subdivision, he would summarize the application, and

then go through his understanding of the appellant's assignments of error. Brad stated that the Planning Commission packet contained the all of Mr. Claus's testimony and Staff's responses.

Brad stated that on June 21, 2012 a decision to approve a subdivision of five lots and two tracks for a 55.09 acre site known as the Langer property was issued and the Sentinel Storage application approved earlier in the evening was a 6.93 acre portion of lot 5 of the subdivision. Brad stated that the decision was appealed in a timely manner by Jim Claus on July 5, 2012. Brad commented that the staff decision and associated attachments were in the Planning Commission packet as Exhibit 1, the appeal materials provided by Mr. Claus were Exhibit 2, and a letter from the applicant's attorney, Seth King of Perkins Coie, was Exhibit 3.

Brad commented on the assignments of error and began by stating that Mr. Claus believed there was a *Flawed original Notice of Decision containing conflicting information that staff cites as scrivener's error*. Brad explained that the Scrivener's error included language that stated *"this approval is valid for a period of one (2) years from the date of the decision notice, per Section 16.120.050."* Brad commented that 16.120.050 states that if the final plat is not approved within two years, the preliminary plat approval shall expire and a new plat must be submitted. Brad commented that this was a harmless Scrivener's error and it did not constitute a material error in the decision.

Brad commented that the second assignment of error was that *Improper Public Notice was given by staff and staff has relied on INFILL standards for proposed Lot 5 to grant waivers for the access without properly notifying the PUBLIC per Sherwood Zoning Code Chapter 16.68.060.* Brad stated that 16.68.060 applies to infill development standards which only apply to residential properties and not to light industrial or general commercial. Brad commented that Mr. Claus contends that staff relied on this section to allow the proposed lot to achieve the access standard when in fact the definition of a lot allowed staff to make that call adding that a lot *is a parcel of land of at least sufficient size to meet the minimum zoning requirements of this code and with frontage on the public or easement approved by the City.* Brad commented that there is precedence within the City for allowing lots to be accessed via an access easement and staff believes that the finding remains accurate. Brad added that there was a reference to 16.68 in the staff analysis but it was not relied upon for making the finding that the applicant could propose to access the site through an easement. Brad commented that Mr. Claus added that the City cannot allow such a long access and stated that the proposed access is a driveway and utility easement, not a street so it is not subject to the TSP.

Brad commented that the third assignment of error was that the application was a *Violation of the PUD – a Major Change to the Final Development Plan dated August of 1995. Staff is requiring a change in the use of the land and requiring dedication of land in this subdivision application for public roadway and right-of-way. The land was specifically proscribed from that use in the original Langer PUD. The Langer PUD must be treated as having a Major Change and thus go through the PUD approval process noted in Sherwood Code Chapter 16.40.* Brad stated staff disagrees and commented that Mr. Claus is contending that by extending and requiring the right-of-way dedication for the continuation of SW Century Boulevard that staff has changed the use of the land. Brad commented that utilizing that logic the City would never be able to plan for future street extensions, explaining that SW Century Drive came subsequently after the PUD and was added to the TSP as a connecting street. Brad commented that the dedication and future construction was agreed to in a modification of the PUD

and the Developer's Agreement in 2010. Brad commented that the PUD approval is an overly zone that is applied to a property and in order to constitute a major change a threshold had to be met. Brad explained that the boundaries of the PUD are not changing by requiring the road; the applicant is not asking for a major change that would be inconsistent with prior approvals; the prior approvals did not identify which land was devoted to a specific use; and the final development plan is only a phasing plan with some proposed accesses for this portion of the site off of what was North Adams Ave at the time, which is now SW Langer Farms Parkway. Brad added that there is not an increase in density because it is not a residential development and therefore does not constitute a modification in the Planned Unit Development.

Brad commented that the next assignment of error was *Staff's decision is flawed. Staff is treating the PUD as if it is outside of PUD constraints for part of the logic used to grant approval to a 5-lot subdivision of the PUD. Also, staff neglected to submit pertinent information to the record as part of this application which would have direct bearing on the original staff decision – which occurred after staff closed the comment period. As such I have included some of that missing information as it is directly pertinent to this appeal. See also Exhibit 8, copy from the 1995 code Section 3.4040 for appeals showing that parties may present old evidence or any additional evidence.* Brad stated that the subdivision is not subject to 3.4040 but subject to standards in the code today as it was not filed at the same time that the PUD was processed in 1995, therefore it was not required to be processed at the same time as the PUD was approved. Brad stated that according to the City Attorney's office "a PUD decision under 16.40 is a separate and distinct decision from a subdivision decision under 16.120.' Brad referred to language in 16.40.020.B.5 which states "If the PUD involves the subdivision of land ..." and pointed out that *if* was the key word. Brad stated that this PUD did not involve the subdivision when it was approved in 1995 and [per the attorney] "this affirms the interpretation that they are separate decisions, albeit when they are proposed concurrently, they need to be processed concurrently." Brad stated that if we were to work under this assumption that you could not ever come back and subdivide your property then businesses or large commercial complexes like Albertsons would not be able to go in and subdivide their property because it was not considered at that time; or Safeway would not be able to take off the small commercial portion where Starbucks and those businesses are. Brad stated that this is a common practice in commercial development to divide the land for the purposes of financing and selling the property and, as long as they meet the standards, then staff would review any subdivision application under today's regulations. Brad added that a subdivision application for four to ten lots will follow a Type II process and Mr. Claus maintains that staff did not have the ability to review this application and it should have been reviewed at a higher level and staff disagrees.

Brad stated that the next assignment of error was a *Violation of Sherwood code Section 16.40.040(A)(2): Failure to Complete. The Planning Commission must meet to decide if the PUD is still in the public's interest* and staff disagreed. Brad commented that the actual language for 16.40.040(A)(2) states, "*When substantial construction or development of a PUD, or any approved phase of a PUD, has not taken place within one (1) year from the date of approval of a Final Development Plan, the Commission shall determine whether or not the PUD's continuation, in whole or in part, is in the public interest."* Brad commented that this PUD has been under construction since 1995 with subsequent modifications to the PUD and City Council has reviewed and approved changes and modifications to developer agreements since 1995. Brad commented that staff believes that the City Council made the decision that was in the public's

interest when it approved the modifications in 2007 and agreed to negotiate the developer's agreement in 2010 by the Sherwood City Council.

Brad stated that the next assignment of error was a *Violation of the intent of the PUD – staff is attempting to incorrectly administratively apply Subdivision Standards to the Langer PUD Phases 6, 7, 8, which is beyond their scope and authority. The Phases are to have Site Plan Reviews with the Planning Commission/City Council. Staff essentially has made up a new process for the PUD by incorrectly trying to grant subdivision and land division approval through a Type II procedure.* Brad commented that staff believes the appellant is wrong because this application is a distinct application and not a PUD, but a subdivision of the PUD. Brad commented that the applicant is still required to come in and file for site plan review on each one of these lots as they come in to develop. Brad added that per the language referenced earlier 16.120.030.1.a which says that subdivision of land for four to ten lots is administratively processed meaning that it gets decided by the Planning Manager.

Brad stated that staff recommends denial of the appeal and an affirmation of the staff decision.

Chair Allen asked for questions of staff, seeing none Chair Allen called for applicant testimony from Seth King. Julia Hajduk set the timer for 30 minutes to time the applicant.
Seth King, Land Use Attorney at Perkins Coie, 1120 SW Couch Street, Portland. Mr. King stated he was present on behalf of the applicant, Langer Family LLC, with members of the development team including Matt Grady from Gramor Development, Alex Hurley project engineer, Keith Jones the project planner, and several members of the Langer family. Mr. King stated that the applicant believes there is substantial evidence in the whole record to support the conclusion that this subdivision application satisfies all of the applicable criteria and therefore should be approved. Mr. King referred the Commission to the letter dated July 17, 2012 which is part of the packet. Mr. King offered to answer any questions and asked to reserve the remainder of the time for rebuttal.

Chair Allen asked for any questions from the Commission. Having none, Chair Allen asked for public testimony for or against other than the appellant. Seeing none, Chair Allen asked for testimony from the appellant, Jim Claus.

Mr. Claus inquired about having 30 minutes to testify. Chair Allen confirmed.

Robert James Claus, 22211 SW Pacific Hwy, Sherwood. Mr. Claus stated he would add to the record items containing the ordinance where Mr. Langer, as a City Councilman, voted on the ordinance that allowed this subdivision occur and the City contract with Beery, Elsner, and Hammond (see record, Exhibit 4). Mr. Claus commented that he would give an overview of what he saw wrong with this process and spoke of his years teaching at the University of British Columbia where he was asked to debate against a man named Eric Todd; one of those rare people who had a doctorate in law from Harvard. Mr. Claus commented that Mr. Todd would turn about how the American Constitution protected Americans better than the Canadian system and said that Mr. Claus would see the complete corruption of Oregon's Land Use Planning because there is no14th amendment requirements and protections to any real degree. Mr. Claus commented regarding British Columbia using the British North American Act that has specific language that says "we loath to give government officials discretionary power for fear we will corrupt them" and Mr. Todd's guarantee of corruption of the system in Oregon because there is no sales tax and will

not be driven by good land use decisions but political decisions. Mr. Claus commented that there was a PUD on Langer's farm ground in order to borrow tax money to support staff and that he believes the parceling to be the worst denegation he has seen in this town. Mr. Claus commented regarding the tax base, excess, and new taxes going to the City. Mr. Claus commented on when he worked in San Francisco on Urban Renewal Plans where the Mayor used imminent domain to take property where the money was to be paid back in ten years so that everything then goes back on the tax roll. Mr. Claus added that the money was paid back in nine and a half years due to his math. Mr. Claus commented that the farm ground is being taken and the excess value is used to borrow bonds to run this city. Mr. Claus referred to the statements from Mr. Todd regarding corruption and staff eventually becoming an entity in and of themselves and alluded it wasn't just the union he worked for which manipulated elections.

Mr. Claus commented that the government workers had become an entity in and of themselves and are concerned as a stakeholder. Mr. Claus commented regarding the subject property and people like Wal-Mart being told where to build because they originally wanted to build on Broadhurst's and Shannon's property. Mr. Claus commented regarding the Broadhurst and Shannon property being a superior location at a lower price and the Mayor not wanting Wal-Mart or Opus there, adding that it would have been a lifestyle mall. Mr. Claus commented on the zoning being driven by financial needs not the enabling statute and was no longer promoting or protecting health, safety, and welfare, and aesthetics, but financing for the staff. Mr. Claus commented that City Hall stands as a monument to waste, fraud and abuse and stated it was where much of the urban renewal money went. Mr. Claus commented on the plaza and regarding old town being a the only classic central business district left in Oregon until it was turned into the Spanish Plaza model that it is now. Mr. Claus commented that it was centered on government and he maintained that the Cannery Square park was built so the staff would have a place to have lunch and suggested it was not built for children because it was without a bathroom. Mr. Claus commented that we have seen this system easily corrupted in Sherwood because we have a strong City Manager form of government. Mr. Claus commented regarding council person's stating "we have a good staff" and the City Manager having a group of staff that works for him adding that if a City Councilor talks to staff their job is threatened, and they can be called upon to resign. Mr. Claus commented on the City having a contract attorney that represents the City Manager, the Council, and the Mayor and commented regarding no attorney representing the interests of the City although the charter calls for it. Mr. Claus commented regarding getting rid of the City Attorney and staff operating ultra vires-ly and beyond the scope of their authority. Mr. Claus commented that code never intended to allow staff to make the discretionary interpretations they are making in a PUD. Mr. Claus commented on the location of Home Depot and a former City Manager calling it a lumber yard, deeming the application complete, the City Council finding out about it 120 days after, the subsequent lawsuit, and commented that it was the first shift from our plan to moving our retail on to light industrial. Mr. Claus added that the land across the street from Home Depot is light industrial and the buildings were not supposed to be there. Mr. Claus commented that we have drifted down that road to discretionary power for salaried government officials that is only constrained by the 14th Amendment and federal court, not constrained in Oregon. Mr. Claus commented regarding having four minutes to testify at meetings, but if you ask for answers and do not leave, you will be escorted out. Mr. Claus commented that this is being done because the only way that staff can move to that money is to be given discretionary power.

Mr. Claus commented regarding the commission not reading the 95 Code and that most do not have a copy and he does. Mr. Claus stated that the request on a PUD to make variances is not permitted in that code or in the latest edition, yet if you look at these subdivisions you have variances. Mr. Claus referred to Ambler Realty vs. The Village of Euclid and commented regarding the fifth amendment being set aside, a substantial benefit and value left in the property then referred to Nectow vs. Cambridge regarding having an exception in a code. Mr. Claus commented that the PUD was written so you could not have exceptions because you have already given away half of the world in the zoning. Mr. Claus commented regarding the code not allowing fueling and mini-storage because staff made discretionary decisions to finance this town. Mr. Claus commented regarding appealing to LUBA and it not being able to stop it.

Mr. Claus commented on a man named Jim Roberts from Madison who said the world spins because of dumb and if we don't have enough dumb we will all fall off of it and not stopping dumb but creating a record. Mr. Claus referred to Kelo vs. Newhaven where the Institute for Justice fought the suit because a big pharmaceutical company wanted the land and the city wanted money to increase the tax base, so kicked everybody out of an area that was not blighted. Mr. Clause commented that the pharmaceutical company waited until they won the case and never built. Mr. Claus commented that the case went to the supreme court, and this is a case study of urban renewal destroying zoning. Mr. Claus commented regarding the same litigation in Norwood and his involvement with the Small Business Administration's concern for taking people's property and the city paying the true price of what that property was worth, adding that the Ohio supreme Court said the enabling statute does not allow that kind of taking. Mr. Claus commented that Sherwood is moving toward a staff with a vested interest to keep the money coming in, having discretionary power to make decision, and freezing the rest of us out of business. Mr. Claus commented that the zoning has to be run by the staff so they can build the Downtown Center after destroying the Robin Hood Theater which was a better gift and there was no reason to destroy it as it represented historic buildings. Mr. Claus commented regarding the City needing money to build in Old Town .

Mr. Claus commented that the subject property was no longer a PUD but a catch as catch can subdivision and put forward that a mass merchandizer will come in and get staff to say it meets all of the requirements turning 13 Acres into Wal-Mart just like it did in Corvallis. Mr. Claus commented that the citizens will live with it because it generates lots of tax dollars but that it was a zero sum tax game except it puts money into our staff and into politician's hands and cheats school children. Mr. Claus repeated that Wal-Mart and Opus wanted to go on the highway, and Fred Meyer will go on the highway and stated that once they go there you won't build another one. Mr. Claus commented that the City is putting its value over there and using it up and explained that retail is the classic zero sum game; meaning somebody gains and somebody loses. Mr. Claus called Wal-Mart the merchant of death because they come into a trade area and they take the business from everybody else. Mr. Claus commented that there was $475 billion on groceries and supermarket sale and once you put in Wal-Mart and Fred Meyer on urban renewal you are going to kill Safeway and Albertsons, thus killing your own tax base. Mr. Claus added that this means you are not going to have enough money to pay the school children back in twenty years, because you have denigrated your own tax base. Mr. Claus stated he did not believe this was a PUD for a number of reasons which staff outlined and he believed the Langer's have the political influence which they did for Sherwood Plaza. Mr. Claus stated this was simply a mission in getting people to see what is going on and to say to institute of justice they need not worry about New Haven, Oregon has them beat cold. Mr. Claus asked if the Commission

understood that what has been done is taken something that was originally Fred Meyer, which Metro stopped, and turned it into RV parking, Wal-Mart, and a Target, and swinging business over there. Mr. Claus commented that the next step is part of a conspiracy to restrain trade and his conversation with Chair Allen regarding Cedar Brook Way.

Mr. Claus commented regarding the property near Cedar Brook Way being class A as it has everything it needs, including visibility, accessibility, and parking which are the location, location, location of retail. Mr. Claus stated that if they don't stop they will never build this area out and commented regarding a road through his property that cannot be built on because of the size of parcel and what can be put there. Mr. Claus commented about the eight hour American Bar and Appraisal classes and people talking for eight hours. Mr. Claus commented regarding LUBA seeing the non-disclosure and of people thinking their financial interests don't impact their elected members and their family. Mr. Claus commented regarding LUBA looking at this as stealing from school children or saying the application is not a PUD. Mr. Claus commented that it was a clever way to combine sick eminent domain proceedings with police power proceedings and turning the zoning of general commercial and retail over to the staff and certain elected officials. Mr. Claus commented that it was the end of market driven zoning as we know it, because there is no competition when staff tells buyers and retailers where to go. Mr. Claus commented regarding sovereign immunity, not being able to sue, and that a citizen only gets the rare privilege of pure political speech in front of the Commission. Mr. Claus commented that the staff has the privilege all of the time and it is called sovereign immunity. Mr. Claus commented that what is going to happen is it will lead to a suit and depositions will be taken. Mr. Claus commented regarding being able to build on Columbia because of the footprint and the new owner being able to build after he sold the property for a giveaway price. Mr. Claus commented regarding having urban renewal of all of the zoning in this town and reiterated that the subject property was not a Planned Unit Development. Mr. Claus commented regarding the cannery, the contract attorney signing a contract with Capstone LLC, the layout of the site and the public not knowing and the inability to appeal. Mr. Claus commented that citizens cannot complain regarding the work the attorneys do for the Mayor or the City Manager, but a City attorney would have had to report it. Mr. Claus commented that this will be a wonderful case study about how a town converted farm ground into a major industrial retail commercial center, shut down more competitive property, and had the staff determine where you will build. Mr. Claus commented that there are all of the technical reasons in the code to not approve the application but it was comical to see what has been done with it. Mr. Claus commented regarding every family owning land in the town that has tried to develop and being put out of business by the process. Mr. Claus commented regarding Metro running a pathway on his property and the rash people will get. Mr.Claus commented regarding the property on Columbia that was sold and the McFall subdivision watershed. Mr. Claus stated that nobody can live with that and in the end the City is putting money out there to dump 20% of it to staff. Mr. Claus stated he will appeal the decision even though he won't win and something will have to turn around. Mr. Claus commented regarding being insulted, using police and said the City must have something to hide.

Chair Allen asked if any commission members had questions. Seeing none, Chair Allen thanked Mr. Claus and asked how much time the applicant had remaining for rebuttal. Julia Hajduk replied that the applicant had 28 minutes and 41 seconds.

Seth King, on behalf of the applicant, Land Use Attorney at Perkins Coie, 1120 SW Couch Street, Portland. Mr. King commented that the appellant spoke for approximately 28 minutes without

addressing a single approval criterion applicable to preliminary subdivision plat or carrying the burden on any of his appeal issues. Mr. King commented that Mr. Claus did not present any substantial evidence that undermined the substantial evidence that is already in support of approval of the application. Mr. King stated there was no request for a continuance or that the record be held open. Mr. King commented that on the basis of those items the appellant has not carried its burden to present any reason to deny the application. Mr. King stated that conversely, based on the applicant's materials, staff presentation, and the letter from Perkins Coie dated July 17, 2012, there is substantial evidence in the record to support approval of the application subject to the conditions included in the original staff decision. Mr. King stated that because there was no request for a continuance or that the record be held open, the Planning Commission would be able to reach a decision tonight. Mr. King commented on Mr. Claus's concern that financial needs were driving land use decisions in the City and stated that there was no evidence of this being the case for this application. Mr. King commented regarding Mr. Claus's references that there was no right to request variances in the 1995 Code and stated that the 1995 Code is not at issue in this application and the code that was in effect at the time the application was submitted is applicable. Mr. King commented regarding Mr. Claus's attacks on the potential uses and end users of the property and stated this application does not concern the particular uses or end users and there is no evidence relating to what uses or end users there might be therefore it is not relevant to the decision. Mr. King commented regarding the issues Mr. Claus raised regarding the Planned Unit Development and its processes and stated that this application does not concern the Planned Unit Development as it is a subdivision application independent of the PUD. Mr. King concluded his rebuttal testimony by requesting that the Commission deny the appeal and affirm the staff decision.

Chair Allen asked for questions of Mr. King. Mr. Claus asked for rebuttal to Mr. King's testimony. Chris Crean noted that there was no provision for appellant rebuttal and explained that the ordinance requirements for an appeal hearing allow the applicant to split his time between presentation and rebuttal, but there is no provision for appellant rebuttal which is reserved exclusively for the applicant.

Chair Allen closed the public testimony and moved to final staff comments. There were no final staff comments.

Mr. Claus stated (from the back of the room) that Susan Claus would like to testify (inaudible). Chair Allen stated he called earlier for testimony for and against and no one came forward to testify.

Chair Allen called for a discussion on the appeal and remarked on a comment that the Commission does not have or has not read the 1995 Code and observed that the 1995 Code was courteously provided by the appellant, it is part of the record of this decision, and the Commission has had access to it for a number of weeks. Chair Allen stated he had looked through the relevant portions of the 1995 Code in considering his decision.

Chair Allen commented regarding the wide range of issues addressed in the testimony, whether staff had the authority to divide a big lot into smaller lots, if the correct code was followed, and whether staff made the correct decision under that code adding that he did not find anything persuasive in the written materials or in the testimony. Chair Allen commented that the correct

code was followed and it was a subdivision decision, not a PUD decision, and he could not find a basis to overturn the staff decision.

Commissioner Copfer added he would agree and stated he had read the 95 code and materials provided several times, that staff has completed the work, and he sees nothing to stop the subdivision.

Commissioner Clifford stated that he has reviewed the submittal documents, studied the plans provided, and read the letters and appeal documents. Mr. Clifford commented that staff's responses to the appeal were clear and the application did meet code requirements.

Commissioner Griffin commented that staff has done an adequate job in researching and making sure that what they do on behalf of the City is correct and legal. Mr. Griffin commented on the using the advice of an attorney and the path used to reach a decision. Mr. Griffin commented that the decision could be appealed to a higher board and he did not have anything at this level to say no to this application and perhaps City Council would feel differently.

Chair Allen inquired regarding if the proper method was to approve the application or to deny the appeal. Julia Hajduk deferred to legal regarding the proper method and clarified that the next level of appeal would be to the Land Use Board of Appeals (LUBA).

Chris Crean commented that the motion would be two parts: to uphold the appeal and reject the staff recommendation or, conversely, to deny the appeal and affirm the staff recommendation.

Motion: From Commissioner James Copfer for the Planning Commission To Deny The Appeal Of Langer Farms Subdivision (SUB 12-02) And Uphold The Staff's Findings, The Staff Decision To Move The Subdivision Forward, seconded by Commissioner Russell Griffin. All Commission members present voted in favor. (Commissioner Clifford voted yes by phone, Vice Chair Albert and Commissioners Cary and Walker were absent.)

8. Consent Agenda

The consent agenda consisted of various minutes from March 13, March 27, April 24, May 22, and August 10, 2012.

Motion: From Commissioner James Copfer for the Planning Commission To Adopt the Consent Agenda as Written, seconded by Commissioner Russell Griffin. All Commission members present voted in favor. (Commissioner Clifford voted yes by phone, Vice Chair Albert and Commissioners Cary and Walker were absent.)

Chair Allen commented that the next meeting was September 11, 2012 which include the Cedar Brook Way TSP. Julia confirmed and added that it also included the Langer Phase 7 commercial development project.

9. Adjourn

Chair Allen adjourned the meeting.

Submitted by _____
Kirsten Allen, Department Program Coordinator

DRAFT

City of Sherwood, Oregon
Planning Commission Minutes
September 25, 2012

Commission Members Present:

Chair Allen
Vice Chair Albert
Commissioner Griffin
Commissioner Copfer
Commissioner Cary
Commissioner Walker
Commissioner Clifford

Staff:

Julia Hajduk, Planning Manager
Brad Kilby, Senior Planner
Tom Pessemier, Community Development Director
Jason Waters, Civil Engineer
Kirsten Allen, Planning Dept. Program Coordinator

Council Liaison: Councilor Clark was absent
Legal Counsel: Chris Crean

1. **Call to Order/Roll Call**
   Chair Allen called the meeting to order at 7:00 pm.

2. **Agenda Review**
   Chair Allen stated there was a public hearing on the agenda.

3. **Consent Agenda**
   There was no consent agenda.

4. **City Council Comments**
   Councilor Clark was absent.

5. **Staff Announcements**
   Julia introduced Kirsten Allen as the new Planning Department Program Coordinator indicating she will be attending Planning Commission meetings and assisting the Planning Department. Kirsten is a long time employee of the City and comes from working in the Building Department and in the City Recorder's office.

   Julia informed that the Washington County meeting for the Tualatin Sherwood Road Open House will not be held on October 25th, but has been rescheduled to a later date. Julia invited all to come to the Sherwood Town Center Plan Open House on October 3rd at 6-8 pm in the Community Room at Sherwood City Hall.

   Julia stated that the city received word last Friday that the city was awarded a TGM grant for the Transportation System Plan update and added that it has been seven years since the last update was adopted. Julia added that the Town Center Plan grant was also a TGM grant and it will take some time to get through the scoping process, but to look for the update in coming months.

6. Community Comments

Susan Claus, 22211 SW Pacific Hwy, Sherwood. Ms. Claus commented regarding an individual who testified at the Sentinel Storage hearing who gave his address as a property owned by the applicant and commented that accurate information should be given. Ms. Claus said that this individual was aggressive towards her husband and she expressed her concern regarding the impact on the hearing and wanted it to go on the record. Ms. Claus commented regarding a letter she wrote to the editor about the City Finance Director hiring criteria and the amount of money the Finance Director is responsible for managing. Ms. Claus commented on the change in format for the appeal hearing held at a previous Planning Commission meeting, the unfairness of the changes, and having an honest citizen driven process for a home rule town. Ms. Claus submitted written testimony pertaining to her community comments (see record, Exhibit 1)

Robert James Claus, 22211 SW Pacific Hwy, Sherwood. Mr. Claus commented on urban renewal, corruption, and ethics stating that the process is so corrupt that it is being discussed in other places. Mr. Claus commented regarding questioning City actions that cause reprisal, special privileges granted for political involvement, and sovereign immunity. Mr. Claus commented on the deterioration of proper American planning in the city, the tax base crumbling because of land use decisions made to cover up spending, and comments made by legal counsel.

7. Old Business

There was no old business.

8. New Business

a. Public Hearing- Langer Farms Phase 7 (SP 12-05)

Chair Allen opened the public hearing, read the public hearing statement, and asked the commission for any ex parte contact, bias, or conflict of interest. Commissioner Cary stated that he had a discussion with Matt Langer regarding past hearings that had no bearing on his decision today and the discussion did not include this particular hearing. Chair Allen asked if anyone in the audience wished to challenge any commissioner ability to participate. Having none, Chair Allen stated that a written request had been received to leave the record open which will be honored and turned the time over for staff presentation.

Brad Kilby, Senior Planner began by amending the last sentence in the second paragraph on page 1 of the staff report to read "The planned unit development was approved in 1995 without a preliminary plat although a preliminary plat was recently approved for a five lot subdivision on the 55.09 acre site." Brad stated that within the staff report were Exhibits A through M and additional exhibits have been received that need to be entered into the record;

- Exhibit N, a letter from Seth Brumley, ODOT Engineer, submitted on September 18;
- Exhibit O, a letter from Charles and Amy Boyle, Homeowners in Arbor Terrace HOA Sherwood;
- Exhibit P, an email from Susan Claus requesting that the record be left open for additional testimony;
- Exhibit Q, a letter from Jim Haynes at Western Heritage Public Relations; and
- Exhibit R, a letter from Scott Haynes.

Brad stated the proposal before the commission was for Site Plan (SP 12-05) and a Conditional Use Permit (CUP 12-02) then gave a presentation (see record, Exhibit 2). Brad stated that the subject site is the east portion of the Langer property that is property bound on the east by SW Tualatin Sherwood Road, on the north by SW Langer Farms Parkway, will eventually be bordered on the west by extension of SW Century Blvd, and on the south by underdeveloped industrial property.

Brad stated that the proposal was to construct a shopping center on 19.82 acres that includes six buildings ranging in size from 3,500 to 10,760 square feet and an anchor tenant of about 145,000 square feet. Brad stated the proposal included a Conditional Use request to allow an outdoor sales area on approximately 30 parking spaces and a request for the approval from the City Engineer of a street modification for a wider, curb-tight sidewalk with tree wells along SW Century Boulevard.

Brad stated that the anchor store sits at the back of the site with the other retail establishments along SW Tualatin Sherwood and SW Langer Farms Parkway. Brad stated that two separate alternatives were provided on the site plan because the applicant would like to move a storm water quality pond. The applicant has received approval from Target and is in the process of studying moving the pond. Brad pointed out Building A, labeled as Fast Food, and said it had an option to be retail and that Building C, labeled Bank also has an option to be retail without the drive thru. Brad showed an alternate site plan that included the storm water pond as it currently exists under the BPA power lines, and the retail options. Brad stated that on the northeast corner there is a proposed restaurant at about 10,000 square feet and all of the other spaces are proposed to be flex retail space.

Brad stated that there is expected to be approximately 8070 new daily weekday trips generated for traffic and they are subject to the Capacity Allocation Program (CAP) which City Engineer Bob Galati has studied. Brad commented that with the information that they provided they have 760 P.M. peak traffic trips and they are allowed to have up to 847 P.M. peak traffic trips which equates to 43 net trips per acre, which is the CAP standard. Brad stated that part of their traffic mitigation was outlined in the developer agreement for the overall PUD which included:

- The extension of SW Langer Farms Parkway north from its current termination at Tualatin Sherwood Road to next to the Home Depot connecting to Pacific Highway;
- An extension of Century Boulevard where they have requested a modification to allow curb tight, wide sidewalks on both sides of the street with street trees in tree wells that the City Engineer is supportive of;
- Frontage improvements along SW Tualatin Sherwood Road.

Brad stated the applicant has worked with the County about paying a fee in lieu of the improvements because the county is about to do a MSTIP project that would widen Tualatin Sherwood Road at the intersection of Roy Rogers and Highway 99. Brad clarified that instead of breaking up the road twice the applicant will pay a fee to the County to do the improvements. Brad added the traffic mitigation included moving the water quality pond and moving it over to the water quality facility as well as handling all the water quality treatment.

Brad stated that ODOT has requested two additional mitigation measures one of which is to lengthen the storage distance on the northbound right-through lane at [99W] which is located on SW Sherwood Boulevard as you are coming from Newberg. Brad stated there is adequate right of way and it would probably amount to striping because the paved width is already there. Brad stated the second additional measure was to lengthen the distance on the northbound left turn lane at SW Roy Rogers Road. Brad indicated that Seth Brumley from ODOT was present to respond to questions the commission might have. Chair Allen asked if both measures were with respect to 99W and Brad confirmed.

Brad commented that parking requirements are based on the use and within their calculations they would be required to provide between 896-913 spaces, clarifying that the variety is whether the fast food and bank spaces are used as retail space. Brad stated that the applicant is proposing between 829-889 spaces which do not include the 30 spaces in the Conditional Use Permit. Brad stated that the code allows up to a 25% reduction for developments that have a multiple uses, or shared parking, on the site and with the numbers that they have proposed the reduction is between 1.3% and 9.2%. Brad stated that the average proposed range is 4.4 to 4.6 spaces per 1000 square feet of leasable area and the City's minimum parking standard for a minimum retail establishment is 4.1 spaces per 1000 square feet of leasable area. Brad added that the City established minimum space requirement is based on worst case scenario, usually the day after Christmas, and this is plenty of parking the remainder of the time.

Brad stated that the proposed landscaping includes perimeter and interior landscape areas at 12.2% of the entire parking area, the applicant would also landscape the visual corridors along SW Tualatin Sherwood Road and SW Langer Farms Parkway which are required along arterial and collector streets, and site amenities include pedestrian plazas and outdoor seating areas.

Brad stated that staff recommended approval of the development subject to the analysis, findings, and recommended conditions of approval found in the staff report and staff was available for questions.

Chair Allen asked regarding conditions that ODOT recommended and asked if they were already included in the staff report or if the Commission needed to consider and add them.

Brad answered that they were included and Kittelson had submitted revised numbers subsequent to the ODOT letter received from Seth Brumley. Brad commented that it is more of a timing issue between the County MSTIP improvements and the development of this site and ODOT wanted to assure that proposed mitigation measures on Hwy 99 would be constructed prior to occupancy so there is enough storage and capacity. Brad added that the SW Tualatin Sherwood Road frontage improvements would not include another lane unless the County plans to extend the MSTIP improvements beyond SW Langer Farms Parkway, but they would include establishing a curb, gutter, sidewalk, and planter strip.

Chair Allen asked for an explanation of the transportation improvements to understand the relationship between the MSTIP improvements and the improvements made by the applicant and where there will be three lanes or two lanes once both of the projects are done.

Brad stated he was unsure except that the widening on SW Tualatin Sherwood Road will be between SW Langer Farms Parkway and Hwy 99 and will extend beyond that to Roy Rogers Road becoming narrow again past Hunter's Ridge. Tom Pessemier, Community Development Director, added that the project is still in development and final decisions as to the extent of the project have not been made. Publically they are talking about adding an additional lane to the Roy Rogers portion of the road a little past Borchers, then on Tualatin Sherwood Road going back to 99W. Tom stated that the County expects to go to SW Langer Farms Parkway and they are hoping to get further, but it will depend on some of the mitigation measures and other factors that are determined as they go through the project development.

Chair Allen asked if Washington County was aware of the application and how the development would affect the roads. Tom confirmed that there has been coordination between the City, the developer, and Washington County and there is an understanding of what the "fee in lieu of" is for, adding that the County is thoroughly aware of the development potential in Sherwood.

Commissioner Michael Cary asked if the Traffic Impact Analysis (TIA) considered the proposed improvements and referred page to 3 of Exhibit D in the packet where it talks about the development of the TIA evaluation being based on a shopping center for the number of traffic at 8070 weekday trips. Mr. Cary asked if the evaluations were based on the current street improvements or the future street improvements.

Jason Waters, Civil Engineer for the City, answered that the ODOT conditions for the storage length and deceleration lanes are based on existing conditions for day of opening without the County five lane project. Jason added that staff has evaluated the project with the County's five lane project and did look at reassurances to day of opening without the County project completed.

Mr. Cary commented regarding the 760 trip vs. the maximum of 876 trip allowed and asked about the impact to traffic flow if the neighboring property to the south was developed at the same time.

Brad answered that the applicant would have to provide a separate Traffic Impact Analysis and explained that the way that the Planned Unit Development language was amended in 2007 it allowed Langer Family LLC to conglomerate their trips on 55 acres and the cap allows 43 PM net trips per acre. With 55 acres they have an allotment of traffic that can be added to the roadway for the PM peak and every time they come in with a development they have to provide a Traffic Impact Analysis to let the City know what kind of traffic the development will generate and what the PM trips are going to be. Brad stated the development is under what would be allowed for the 19.8 acres the remainder will shift down to the remaining 55 acres. Brad added that this means they meet the Capacity Allocation Program (CAP) which is an agreement between the City and ODOT that states how much traffic will be allowed onto Highway 99 over the foreseeable planning future. This does not mean that they would not have to do additional mitigation measures; if they impact the intersections that were studied below an acceptable Level of Service then mitigation is

required. Brad said he believed that acceptable Level of Service was Level D or E and if you drop below them, the traffic consultant will have recommended measures that the City weighs in on. Dropping below Level F requires mitigation as determined by the City Engineering staff to bring the traffic back to an acceptable Level of Service.

Mr. Cary referred to exhibit D in the Planning Commission packet and asked about the verbiage that states "any change in anchor store tenant classification" (e.g. discount supermarket, discount superstore) in addition to other building classifications that results in an increase in the trip generation values above the aggregate value calculation in the TIA will not be permitted."

Brad commented that a lot of people are upset because the applicant has chosen not to name the anchor tenant and stated they are not required to name the anchor tenant but to tell the City what the use is and staff has to base the decision on what the use is. Brad said the applicant knows and has anticipated that the question will arise. Their traffic engineer will speak to it, but they have adjusted the numbers to account for the other designations, of standalone discount store or standalone super discount store, from the shopping center data. Brad said that staff has raised these questions and discussed them with the applicant at length. The applicant is prepared to allow for a continuance to allow staff to work through those issues as well.

Mr. Cary asked if the number presented to the Commission through the TIA evaluation were the adjusted numbers.

Brad confirmed and stated that staff has asked the applicant to justify the information and show the data in layman's terms; where staff could look at the data and compare the different scenarios.

Chair Allen added that information in layman's terms would be helpful adding that he sits at the light on Tualatin Sherwood Rd and 99W in rush hour traffic through two or three cycles Chair Allen questioned what this project would do to that, what would happen if we didn't do anything, and what will the improvements do to prevent the problem from becoming worse, because from a layman's perspective the problem cannot be solved without a significant investments.

Brad explained that it isn't just about adding roads, more storage, or widening lanes, but also about signal timing, trying to anticipate and forecast how people will move through a system. A lot of traffic study and analysis is based on empirical data from around the country and their own experience of going out and doing independent traffic studies, drawing parallels of how people behave in existing systems. Brad commented that traffic engineers will propose traffic mitigation and our traffic engineers will review that mitigation and agree or disagree with information which the City Engineer has to translate into layman's terms. Brad said we are trying to create that information for the Commission as well as the public because traffic is a big issue. The number of cycles a person has to sit through is a level of service issue and some jurisdictions are better at it than others. About signal timing he was unsure what the city has for a traffic system.

Commissioner Russell Griffin asked if the application is approved as a shopping center classification and it turns out to be a freestanding discount superstore what options the City has.

Brad answered that the applicant did the traffic study under a shopping center classification and accounted for if a standalone super discount store were to be located there.

Mr. Griffin inquired regarding ODOT's recommendations to lengthen the queue lines for the right turn off of 99W onto Tualatin Sherwood Rd, the left turn onto Roy Rogers Rd., the frontage improvements on Tualatin Sherwood Rd. next to the subject property, and how the "payment in lieu of" to the County effected the project.

Brad answered that the County has to be comfortable with bringing those improvements into their project and he did not know what discussions the applicant has had with the County. City staff has discussed and doubts the County would entertain the option to bring in the queuing length at Sherwood Boulevard into their MSTIP project to allow that improvement to be folded into the fee in lieu of. The fee in lieu of is currently for the frontage improvements along Tualatin Sherwood Road.

Mr. Griffin asked if the queue lines would have to be done in order for the store to open.

Brad confirmed that ODOT has requested that as conditions.

Commissioner John Clifford asked regarding the traffic study and asked if there was any evaluation on existing roads that might be used for alternate routes due to road closures or an emergency.

Brad answered that crash data is included but he was unable to answer with any specificity. They do look at the existing system as it is today and forecast where traffic will go and gave an example of locals using alternate routes. Brad stated that they try to forecast the most convenient, immediate routes and look at existing capacity, which is where the mitigation measures come from. Brad said that the traffic engineer is asked to look at intersections where we anticipate there will be impacts, the scope of the study is not limited to city streets but opened up to the county and ODOT, and there is coordination with those other agencies.

Mr. Griffin asked if ODOT might adjust the light at Tualatin Sherwood Road and 99W.

Brad said the County might when they do the MSTIP program and commented that the MSTIP program was a funded improvement, that is going to happen and it is a matter of timing. Brad added that there will be a signal added at the extension of SW Langer Farms Parkway and Tualatin Sherwood Road which will be controlled by the County.

Chair Allen asked if ODOT will be changing the timing of the light. When Brad was unable to answer, Seth Brumley from ODOT Planning was asked to come forward and answer questions.

Mr. Brumley said he did not know regarding the timing of the light, but the signals on 99W are coordinated and he understood that the County had an interest in doing some coordination along Tualatin Sherwood Road but he was not on that project and was unaware of what they were.

Commissioner Lisa Walker inquired if the light at Baler Way was to be removed when they installed the light at Langer Farms Parkway.

Mr. Brumley was unable to answer. Tom Pessemier answered that the County was still looking at signal configuration and said there has been more earnest discussion about removing the light going into the theater parking lot and then improving Baler. Tom commented that Mr. Brumley was speaking of different MSTIP funded project regarding advanced traffic signal systems. They have done a portion in Tualatin and have funds allocated to do a system from Teton all the way through Sherwood and they are currently working with ODOT to determine whether or not they will tie that signal into the traffic system. Tom said he thought ODOT has allocated money to a stretch along 99W through Sherwood as a separate project and neither project has anything to do with this application.

Chair Allen asked if that meant the commission should consider the application with the assumption that no conditions about the operations of the lights on Tualatin Sherwood Road and 99W will change. Discussion ensued regarding the changes that will happen over time with no answers as to what they might be.

Commissioner Walker asked regarding the County MSTIP funds hoping to go as far as Langer Farms Parkway and the fee in lieu of funds enabling the County to go past Langer Farms Parkway.

Tom answered that the County intends to get as far as Langer Farms Parkway and the proposal is that the fee in lieu of is to take it past Langer Farms Parkway and to do the front edge of the subject property, but the County might be able to go even farther down the road and the County has not figured out how far they can go.

Jason Waters, Civil Engineer, added that Washington County has some of the options published on their website. One option shows a taper lane in front of the subject property, which tapers from five lanes to single lanes. They have to pick a zone to taper it back down and they are basically taking the same situation in front of the Red Robin and pushing it to the northeast area of the subject property.

Brad Kilby stated he had received a letter from Casey Overcamp (see record, Exhibit S) who had to leave early and submitted written testimony in support of the project.

Commissioner Griffin asked regarding the 30 parking spaces for the Conditional Use Permit (CUP 12-02). Brad answered they were for an outdoor sales area such as for Christmas trees or a sidewalk sale. Commissioner Griffin queried if they were for the applicant to reserve for use, certain times of the year, to fence off per the Conditional Use Permit. Brad confirmed and said they could use the spaces year round, in the same spot and they could request a

Temporary Use Permit for more spaces. Chair Allen advised that they would not include the accessible spaces. Brad confirmed.

Comissioner Clifford asked if the cart corrals were included in the required parking. Brad answered that the cart corrals are designated on the site plan and were not counted toward parking area.
With no other questions from the commission, Chair Allen asked for the applicant to testify.

Matt Grady, representing the applicant, from Gramor Development, 19767 SW 72nd Ave, Suite 100, Tualatin. Mr. Grady stated he would give a presentation (see record, Exhibit 3) that would take about 15 minutes and would save the remainder of the time for rebuttal. Mr. Grady described Gramor's involvement in the Sherwood area development which included the Albertson's shopping center and Target/ Langer Farms Marketplace, as well as projects in Wilsonville, Beaverton, and Lake Oswego. Mr. Grady commented on having a project team present and introduced team members from Tiland/ Schmidt Architects, Harper Houf Petterson Rigehllis, AKS Engineering & Forestry, Chris Freshley Landscape Architects, MKE and Associates, Kittelson and Associates, and Land Use Attorney, Seth King.

Mr. Grady showed a colored site plan showing PUD Phase 7 which is 19.8 acres in size with 191,130 square feet of comprised from six commercial buildings and an anchor tenant. Mr. Grady indicated they were working through the due diligence period with a potential anchor tenant and when all of the contingencies are accepted and released they will tell who they are when deal was signed. He indicated that they continue to work towards a good design to meet the criterion of approval. Mr. Grady commented on the fast food pad near Tualatin Sherwood Road that was 3500 square feet and said it could switch to a retail store of about 4000 square feet. On the corner was a 10,000 square foot restaurant and there is ample space within the plazas on the side for people to hang out on the corners of the project. Mr. Grady stated that Pad C is considered the Bank pad which could also be swapped out for retail space of about 4900 square feet. Mr. Grady commented that there are three other buildings that look larger in size that will divided into multiple pieces with tenant spaces ranging from 800 square feet to 1200 or 2600 square feet and they are working with brokers for those spaces.

Mr. Grady commented regarding site circulation and, referring to the presentation, stated that light blue was the main truck pattern coming off of Century Drive with a turnaround area big enough for trucks 65 foot and bigger to turn around and come back out onto Century Drive. The idea is to keep the trucks away from the front of the store and from coming in off of Langer Farms Parkway which is a potential safety issue. Mr. Grady commented that the green dashed line was the main vehicle circulation routes with one access coming off of Langer Farms Parkway and three other accesses (two primarily for vehicle access) off of Century Drive. Mr. Grady stated that pedestrian walkways are represented as the red line and there are two pedestrian access points off of Tualatin Sherwood Road and six direct connection points into the project, spaced at about 160 feet apart, around the corner. These points connect to an internal walkway that runs across the store frontages parallel to Langer Farms Parkway. Two more pedestrian access points are by Building F at the corner of Century Drive and the one that comes across the front of the anchor building that leads to two main spines that are about 250 feet apart from each other which align directly with the

two main entry points of the anchor building. Mr. Grady commented on working with the City Engineers regarding pedestrian safety in the parking area.

Mr. Grady commented regarding the landscaping plan and indicated that the pages labeled L.1- L.4 in the plans showed details about plant species and location. Mr. Grady noted that there were currently no trees on the site and the total proposed landscaping in the parking lot alone is 12.2% with the standard currently at 10%. The parking lot island spaces average one per every 9.4 spaces and the standard is one per every fifteen spaces. Mr. Grady added that 263 trees were added to the site, equating to one tree for every 430 square feet and did not count any trees under the power lines. The landscaping was compared to a 31% tree canopy per the new tree canopy code, which this is not subject to. Mr. Grady said there were 3500 shrubs on the site and the new standard is roughly 1800 shrubs. Mr. Grady stated they were endorsing a 15 foot, landscaped visual corridor for Tualatin Sherwood Road and a 10 foot landscape zone along Langer Farms Parkway.

Next in the presentation Mr. Grady covered building materials and colors used, stating the development team was passionate about making this project special for the area so people would be proud of it. Mr. Grady explained that the project will use board and baton, lap siding, stucco, brick, split face CMU, smooth face CMU, shingles, metal roofing, wooden beams, ledgestone bases, awnings and canopies and each building will have some unity and differences within the project. The anchor will have ledgestone bases along the main vestibules entrances, the gables will have metal roofing, and the façade will be undulating and have different colors. Mr. Grady showed an artist renderings of the project from an aerial view, at the main entrance, south of building D, and at the corner between buildings E and F.

Mr. Grady showed the off-site improvements and stated he hoped to answer a few questions concerning the timing of the project. The applicant will build a Regional Storm Water Quality Facility and extend Century Drive, which must be approved and accepted by the City before any occupancy permit is granted for anything in Phase 7. Mr. Grady said the County has looked at the frontage improvements and given the applicant an option to pay an in lieu fee and the applicant will be dedicating land to the County for the improvement to take place through the subdivision application recently upheld by the Commission. The applicant is not sure what has to be done there, and needs to confer with the County and get plans approved through them. Mr. Grady commented on the all way traffic signal at Langer Farms Parkway and Tualatin Sherwood Road and stated the County could allow an in lieu fee, but the only way to control the timing of opening is to have the County review and approve a design and construct it when Langer Farms north is constructed. Mr. Grady showed the two locations for the lane extensions that were conditioned by ODOT and stated they also had timetable issues. Mr. Grady commented that if the MSTIP project for the widening of Tualatin Sherwood Road was completed there would not be the need to extend the lane queues, but if the applicant wants to open up, as scheduled, and the project is still going on, we need to have approved construction plans to do those improvements within the existing right of way. Mr. Grady commented regarding the off-site improvements as related to the TIA report which was scoped out and reviewed with the City, Washington County, and ODOT. Mr. Grady commented about using a different classification other than a shopping center

classification and stated the applicant believes they meet the intent of those other uses and would like time to assure staff that the intent has been met.

Mr. Grady stated the applicant has met the site plan criterion of approval, adding that they did ask for a 9.2% parking reduction but could have asked for a 25% reduction. Part of the swing in the reduction is whether the storm water pond is removed and they were confident the storm water pond will be moved. Mr. Grady stated the applicant has applied for a Conditional Use Permit for outside sales on the north side of the anchor store and commented regarding the need for the Conditional Use Permit, the number of parking spaces used, and the location's impact. Mr. Grady requested the acceptance of the staff approval of the application pending a continuance request to leave the record open.

Chair Allen asked how much time the applicant took for their testimony. Kirsten Allen answered 17 minutes. Chair Allen stated they reserved 13 minutes for rebuttal.

Chair Allen reminded anyone interested in testifying to fill out a blue comment form and asked for public comment.

Robert James Claus, 22211 SW Pacific Hwy, Sherwood. Mr. Claus commented regarding the use of the clock to time the testimonies. Mr. Claus commented regarding the building of the Home Depot in Sherwood by calling it a lumber yard, ODOT placing a light at the intersection and zoning. Mr. Claus commented that the project was a conspiracy to restrain trade and that it goes to the very nature of competition in the marketplace. Mr. Claus said it was $4000 to appeal this application and stated he had appealed the parceling to LUBA and the applicant cannot do anything until they get the parcel through. Mr. Claus commented on the 2900, or 8,000-14,000 additional cars if it's Wal-Mart, suggested by the traffic report and his suspicions why the land has to be parceled, adding that Wal-Mart won't buy it. Mr. Claus commented regarding a letter of intent at $15 a foot, not building on Shannon and Broadhurst's property, and the Mayor telling them to build on Langer property. Mr. Claus said the Commission could call Wal-Mart and ask them if they were going to buy the property or if it was a clever tax swap where the applicant puts up the building and Wal-Mart pays for the RV storage. Mr. Claus commented that we will get a Wal-Mart without a Home Depot hearing. Mr. Claus commented that the staff has a vested interest in the outcome and has to get something in there that can borrow bond. Mr. Claus repeated his request for a two week continuance and suggested the commission call Wal-Mart or ask the applicant. Mr. Claus commented regarding the 1995 Code, said the property was no longer a PUD, and stated it was an end run that a contract attorney has advised somebody how to do. Mr. Claus commented regarding the end ratios and size fitting Wal-Mart and the use of the term anchor tenant for a free standing, mass merchandizer, category killer. Mr. Claus commented regarding the law suit he was planning for conspiracy to restrain trade.

Jim Haynes, 22300 SW Schmeltzer, Sherwood. Mr. Haynes stated he was present as a private citizen and an advocate for Sherwood's future, for job opportunities, and economic development. Mr. Haynes stated he had submitted written testimony and said he would read a couple of excerpts. Mr. Haynes commented that further and ongoing development of Sherwood's retail business community is fuel both for the local economy and a way to develop Sherwood's human capital and large retail stores will draw local, area, and regional

shopper's community. Mr. Haynes said that these customers will seek other goods and services that are not offered by that single store or a combination of stores and may also buy gasoline, sandwiches and other specialty items from other Sherwood businesses which adds to our tax base, helps other businesses survive and grow, as well as advertises Sherwood as a great place to live and work. Mr. Haynes commented that the retail ripple effect will mean jobs, for young people, students and part timers that help people get ahead. Mr. Haynes commented regarding his right to advocate for Sherwood development and stated he attached a list of his involvement in the community over the years.

Brad Kilby stated that Leanna Knutson was unable to stay and submitted a written testimony, in favor of, which was cataloged as Exhibit T.

Wes Freadman, 21315 SW Baler Way, Sherwood. Mr. Freadman stated he was in favor of the development and commented on the opportunities for shops, jobs, and tax revenue. Mr. Freadman commented on the view coming into Sherwood and the project adding desirability and value to Sherwood property.

Susan Claus, 22211 SW Pacific Hwy, Sherwood. Ms. Claus commented that the land was industrial and converting the 55 acres to retail and jobs for low end retail workers was a shame. Ms. Claus said the land was supposed to be for jobs that could support families and it is a loss that we do not deserve as a city. Ms. Claus commented on Langer Farms Parkway being an $8 million improvements, with $4 million provided by the county and $4 million and change provided by the City with a 20% cut to the staff. Ms. Claus commented regarding one million dollars coming out of Urban Renewal for the road and suggested that the money should be tracked and go back into the urban renewal fund. Ms. Claus commented that the in lieu of or traffic fees be given back to urban renewal for the art center and money to spend in Old Town. Ms. Claus commented regarding the 2010 development agreement and up to $500,000 to be used to punch through Century Drive which was not an obligation of the PUD. Ms. Claus said that staff is promoting the urban renewal funds be used and the applicant will get credited 500,000 additional dollars from urban renewal. Ms. Claus referred to an article in the paper concerning cuts to the art center and stated the whole reason urban renewal was initiated in 2000 was to build a beautiful art center that will suffer death by a thousand cuts and will be a small part of what was planned. Ms. Claus commented on $20,000 worth of improvements coming to Tualatin Sherwood Road and Langer Farms Parkway that enhances the bottom line for the sale price of the Langer PUD, the millions in benefits in zoning and code changes, and said there should be an obligation to put a little back into the town. Ms. Claus asked what it hurt to say who the anchor tenant was and to let our businesses have some preparations so that they can close up shop.

Eugene Stewart, PO Box 534, Sherwood. Mr. Stewart stated that he owned property in Sherwood, lived outside of town, but has lived in the area since 1946 and he has seen a lot of changes. Mr. Stewart commented that one of the problems with traffic is a truck coming down 99W northbound has two possibilities to get to I-5; Tualatin Sherwood Road or at the far end of Tigard. Mr. Stewart questioned how truck traffic was figured into this and suggested that there were more than three trucks on the road for every one hundred cars. Mr. Stewart said when you get into Tualatin in the afternoon it is almost 30-40% trucks trying to get onto I-5. Mr. Stewart commented that in the mornings when he goes to work from

Meinecke back to Sunset the traffic is getting heavier. Mr. Stewart asked what this will do to traffic in Old Town and if people will try to turn at Home Depot to cut through Old Town to get home. Cars driving through Old Town do not help the businesses there. Mr. Stewart commented that the project did not look bad and asked how the city has replaced the industrial property to balance things out. Mr. Stewart commented on the traffic that will be generated and said it appears to him that there is as much traffic on Barbur now as there was before they built I-5 and the problem he sees is there is no beltline system to get around the town. It should be at least five lanes around the city so people can get around easily and alleviate a lot of the problems. Mr. Stewart said he would like a condition of approval that looks at the traffic in six months and fixes problems if the studies are wrong. We need to look at it in a progressive way so we do not keep burying ourselves.

Jennifer Harris, 21484 SW Roellich Ave, Sherwood. Ms. Harris commented on her concern for a large discount store and the increase in traffic. With an anchor store that size, logic can weed out who we are talking about. Ms. Harris noted that outdoor sales might have fertilizer and garden supplies and asked how any pollution problems and items harmful to the environment might be handled and can the tenant be trusted. Ms. Harris expressed her concern for crime outside of big box stores and asked how this tenant moving in might affect other businesses in Sherwood. Ms. Harris inquired if it would do Sherwood any good if the store is filled with cheaper groceries, clothes, or whatever it is if Albertsons or Safeway has to close. She asked what the City will do with those locations and those employees who have to find work at another store for a lower wage. Ms. Harris said we don't know who the tenant will be, but this is the big picture and there are other places for high school students to work. Ms. Harris said that local stores keep their money local, and is used in our community up to eight times, but big box stores send their money back to the corporate office. We don't see that money stay in the community, in our Relay for Life, in our own families. Ms. Harris said these are her concerns along with the traffic, pollution, and obvious problems, but also the small things that affect our families.

Chair Allen asked Ms. Harris if she thought Sherwood was a better or worse community with Target.

Ms. Harris answered she might not say worse, but different. Ms. Harris said she was not excited about different and she loved who Sherwood is and how it is. Ms. Harris commented that Sherwood has received recognition as a best town to live in and raise a family in and a discount store makes those awards and the appeal of Sherwood go away. Ms. Harris stated she disagreed that property values would go up overall and statistically large retail store like this that go in do not have a positive effect on the community. Ms. Harris said the community may change over the next ten years it may be fine, but a citizen that was there before may not say it was a positive change.

Jason Doppée, 18517 SW Colfelt Lane, Sherwood. Mr. Doppée stated that he supported economic growth of Sherwood, but he does not support the assumed anchor store. Mr. Doppée said he enjoyed many of the projects mentioned by the developer and asked the City Council to hold off on making a decision anchor until an tenant is specified. Mr. Doppée commented on his traffic concerns and that his research shows that Wal-Mart tends to have

developers use them as an unspecified tenant until it is too late to keep them out. Mr.Doppée stated he has an MBA and every professor used Wal-Mart as an example of how not to run a company and how not to treat a community. Mr.Doppée asked that the Commisssion to consider the impact on local businesses and downtown. Mr.Doppée noted that for every job created by Wal-Mart it costs the community 1.5 jobs lost elsewhere. It will increase lost wages over time, decrease wages, have poor working conditions, inadequate healthcare, and 70% of their employees leave within the first year. Mr.Doppée commented on deteriorated Wal-Mart stores, the communities around them, and the increase in crime. Mr.Doppée said he did not want Wal-Mart to jeopardize Sherwood and asked that the commission postpone the decision, determine which store will move into the community, and think about the long term economic impact that Wal-Mart might have in our community.

Charles Boyle, 21426 SW Massey Terrace, Sherwood. Mr. Boyle clarified that he has submitted written testimony (see Exhibit O in the packet) and stated he found several things to be deficient with the proposal although the developer states they meet all of the conditions. Mr. Boyle stated that the City requires that drive through lanes should not be between buildings and residential or streets around. Each drive through is proposed to be between the building and the street. Mr. Boyle said the onsite circulation proposes convenient pedestrian access and in his opinion drive thrus are not convenient for pedestrian access. Mr. Boyle commented regarding the applicant providing Covenants, Conditions and Restrictions (CC&R) following approval and said he found it more necessary to have the CC&Rs provided before approval, as a condition of approval. Then items like peak hour of operation for each business can be determined based on use to decide if they qualify for the 9% parking reduction. Mr. Boyle commented regarding the staff report where it states in the 95 PUD that they are looking for a front porch society and that this is supposed to be a main gateway to the City of Sherwood and Old Town. A big box store like this is most likely to be a Wal-Mart as Fred Meyer has already purchased land by the Providence development and Winco has said they are not coming in. Not many people comment on how fancy a Wal-Mart is but do their shopping and leave town. Mr. Boyle commented on thieves considering Wal-Mart as a 24 hour opportunity for theft. Mr. Boyle noted that "buildings shall be located adjacent to and flush with the street subject to landscape corridor and setbacks" and commented that adjacent to and flush with means directly contiguous with minus those borders of shrubbery, trees or sidewalk. The anchor store does not meet that, because the size is too big and maybe it should be smaller. Mr. Boyle commented that a Wilsonville shopping center is very similar to this and their building codes for the traffic analysis used an 820 shopping center along with a Fred Meyer separate from that, whereas this development used an 820 classification for the entire complex, minus the drive thrus. The 820 draws on average 3.73 trips per unit and a big box store would draw 4.99 trips per unit. With just that basic difference it would put them well over the 847 and closer to the mid-900s or 1000.

With no other public comments Chair Allen asked for applicant rebuttal. The applicant asked for a few minutes. Chair Allen called for a recess at 8:49 pm.

Chair Allen reconvened the meeting at 8:57 pm and moved to rebuttal from the applicant. Chair Allen stated the applicant had 13 minutes for rebuttal.

Seth King, Land Use Attorney for Perkins Couie representing the applicant, 1120 NW Couch Street, 10th Floor, Portland. Mr. King introduced Chris Brehmer from Kittelson & Associates and indicated he will speak next. Mr. King commented that much of the testimony was based on speculation, not on substantial evidence or directed at applicable approval criteria. Mr. King commented that there was a lot of talk about the identity of the potential tenants and reminded that as staff noted, the identity of tenants is not an approval criterion for the city and the Planning Commission's decision on approval must be based on the approval criteria. Therefore the identity of tenants or the speculation of tenants cannot be a basis to approve or deny the application. Mr. King stated the applicant is working to try to identify tenants for the site and that will come later in the event that the project is approved.

Mr. King referred to previous testimony regarding a conspiracy to restrain trade and commented that it was based on speculation and there is no substantial evidence to support his arguments. Mr. King remarked on testimony regarding the land being zoned industrial and referred to the approved PUD that allows the applicant to elect a variety of different uses. The applicant is vested for retail uses and exercising that right to move forward on that. This was done earlier in a development agreement which the City Council has approved. Mr. King countered claims that urban renewal money was used for road improvements by stating that the property was within the Urban Renewal District and the development of it will generate revenue to fund additional urban renewal projects. Mr. King remarked on the deal with the City to fund the extension of Century Drive stating that this was negotiated in the amended development agreement in that the applicant agreed to take on certain improvements to Century Drive that were not obligations that the applicant originally had and the applicant is fulfilling those obligations .

Mr. King stated there was also testimony relating to impacts to existing small businesses and commented that this was speculative in light of the fact the exact composition of the tenants in the site have not been identified. Gramor Development is an experienced developer and would not be in Sherwood if the market were not strong for the retail market and they are confident that there is sufficient demand to support these new businesses… there is demand to go around.

Mr. King commented about the concerns that the proposed project would violate the City's drive thru standards and the buildings not being flush to the street and submitted that the standards are not applicable because the applicant is using an alternative option of the commercial design matrix. Under that matrix the applicant is to demonstrate, and has demonstrated, compliance with five different areas of commercial design. Mr. King commented that the codes referenced by Mr. Boyle say that the applicant "should" do those things and are not mandatory. Regarding the concern for CC&Rs, Mr. King stated they were not required to be submitted at this time. Mr. King added that there has been a request to keep the record open and said the applicant is supportive of a reasonable period for holding the record open.

Chris Brehmer, Principle Engineer with Kittelson & Associates, 610 SW Alder Street, Suite 700, Portland. Mr. Brehmer explained that Kittelson prepared the traffic impact study for the site in a collaborative effort with Washington County, Oregon Department of Transportation (ODOT), City staff, and the City's on-call traffic consultant DKS Associates stating it is an

extensive study with a lot of traffic impacts and mitigations as discussed this evening. Mr. Brehmer said he believed the transportation system will be better because of the improvements. Mr. Brehmer commented regarding the signal timing assumptions related to the ODOT signal on Tualatin Sherwood Road and stated that the traffic study is predicated on maintaining the existing signal timing pre-MSTIP project from the county, adding that they were not allowed change or influence signal timing. With the initial build out they are forecasting that in the peak 15 minutes, of the peak hour, the westbound queue will grow by 2-3 car lengths. When the County's project comes online, which is anticipated in 2014, the modeling documented in the September 11, 2012 memorandum, will drop by over half and traffic should get through the light on one or two cycles instead of the two to three being experienced now. Mr. Brehmer commented that truck traffic was documented in the study and the actual traffic counts separate passenger cars from heavy vehicles and the number of trucks in the traffic stream is accounted for in the analysis including the queuing analysis where the length of trucks is accounted for. Mr. Brehmer commented regarding the bigger picture and stated it was a sizable and comprehensive study with twenty one intersections studied as dictated by the different agencies. Mr. Brehmer commented regarding trip generation and gave the analogy of a bank account with $100 in it. You can withdraw the $100 in different increments but you cannot withdraw more than the account has. That is how the traffic study has been approached. There are a certain number of trips that cannot be exceeded and there are various ways that those trips can be used. Mr. Brehmer explained that, in his experience, most people do not know who their end tenants are so the traffic study is sized with the worst case scenario. A trip number is set up there will be an assurance from the City that the project does not go over that trip number. Mr. Brehmer said the applicant will work with the City staff to document that the traffic is covered. Mr. Brehmer stated that Kittelson & Associates prepared the traffic study for Target, and there were questions about the study at that time, but most people would acknowledge that the traffic has worked fairly well and the traffic impacts were consistent with what was forecast. Mr. Brehmer said that Kittelson has worked in the community for over 25 years and works on situations for private developers and on contract from time to time for ODOT, Washington County, and sometimes even the City. We approach these studies from a balanced perspective, have an ethical responsibility to present the facts, and provide information to base decisions on.

Chair Allen asked for questions from Commission members.

Commissioner Cary commented regarding the queue increase of 2-3 more cars asked if that put it in a Level of Service Category F.

Mr. Brehmer answered that it did not and operating standards in terms of level of service will still met.

Mr. Cary asked regarding the trip numbers and asked what happened in the case of an overdraw.

Mr. Brehmer answered that the way the conditions are written additional traffic analysis would be needed to document what the additional impacts of the trips are and if mitigations would be required.

Mr. Cary inquired who would be responsible for the additional analysis.

Mr. Brehmer answered that the applicant would be required to provide a supplemental study in coordination with the City, County and State. When the final tenants are known, Kittelson will be asked to provide documentation as to what the trip generation of those uses are compared to the traffic study and will be reviewed by the agencies. What we are aiming to do over the next two weeks is to provide documentation up front so that it is in the record and not an issue because the technical base will be in place.

Mr. Cary asked regarding the assumption for the tenant.

Mr. Brehmer replied that the trip generation assumptions are based on a shopping center. The Target was treated as a shopping center with some of the pads broken out into fast food and different supplemental uses. If there is a scenario that comes back and the shopping center use is no longer appropriate, the trip generation numbers would be recalculated to confirm that the project was still within the bank account of trips that has been set up. We will be providing that information during the open record period.

Chair Allen summarized that today the applicant has given hypothetical trip generation numbers based on a mix of tenants that is a blended number within the City standards. If the tenants were to come in with more fast food restaurants, the numbered would have to be recalculated and to use the analogy may overdraw. Chair Allen asked if the applicant was hoping to be more specific with those numbers during the open record period.

Mr. Brehmer explained that there have been specific questions as to if the tenant is a super discount store and we are going to provide those calculations as to the trip generation based on a super discount store so the Commission can compare the different scenarios side by side.

Chair Allen commented that one of the things that was attractive to him was the curb tight pad developments around the perimeter and asked if one possible outcome was if the anchor tenant was too large to allow for all of the pad development.

Mr. Brehmer answered that the expectation is that the pads would remain. The trip generation is sized with a shopping center such that it could evolve to other uses.

Chair Allen asked staff regarding dates for a continuance.

Brad stated the Council had three meeting dates to the end of the year and under the 120 day rule all local appeals have to be exhausted by that time. Brad explained that there are 14 days to file an appeal after the decision is made. The appeal would be to City Council and a 20 day notice is required for the appeal hearing.

Discussion ensued regarding options for continuance and tolling the 120 day deadline.

Chair Allen asked if the applicant would toll the deadline to December 19, 2012.

Mr. King stated the applicant would agree to toll the decision until December 19, 2012. The applicant would prefer to close the public hearing, with a 14-7-7 schedule. Fourteen days to accept written testimony from anyone, seven days for rebuttal evidence, and seven days for final written argument and come back to the Commission for a decision.

Chair Allen closed the public hearing and asked for a motion.

Motion: From Commissioner James Copfer for the Planning Commission to Close The Hearing on the Application for the Langer Farms Phase 7 Shopping Center (SP 12-05) and Conditional Use (CUP 12-02), Leaving the Written Record Open for Submission and Additional Testimony for Fourteen Days for Anyone to Submit Additional Testimony Ending at 5pm on October 9, Allowing Seven Days for Anyone to Rebut Information Received Within the First Fourteen Day Period Ending at 5pm on October 16, and Seven Days for the Applicant to Submit Final Response With No New Testimony Permitted to be Provided Ending at 5pm on October 23, Continuing the Commission's Deliberations on the Matter Until October 23rd, Acknowledging That the Applicant Has Agreed to Toll the 120 days to the 19th of December. Seconded by Commissioner Brad Albert, All Commission Members Voted in Favor.

9. Adjourn

Chair Allen adjourned the meeting at 9:26 pm.

Submitted by

_____

Kirsten Allen, Department Program Coordinator

City of Sherwood
Oregon
Home of the Tualatin River National Wildlife Refuge

MEMORANDUM

City of Sherwood
22560 SW Pine St.
Sherwood, OR 97140
Tel 503-625-5522
Fax 503-625-5524
www.sherwoodoregon.gov

DATE: October 12, 2012

TO: Sherwood City Planning Commission

FROM: Brad Kilby, AICP Senior Planner

SUBJECT: Langer Farms Phase 7 Shopping Center

The purpose of this memorandum is to provide you with a staff analysis of the additional information and testimony received by October 9th regarding the Langer Farms Phase 7 Shopping Center. As you may remember, the Planning Commission left the written record open for a period of 14 days to receive new evidence and testimony, an additional 7 days for anyone to respond to the new evidence, and a final 7 day period for the applicant to construct their closing arguments that will be provided to you at the Planning Commission meeting of October 23, 2012. The testimony and evidence that this memorandum addresses was accepted until 5PM on October 9, 2012. Testimony responding to the information described in this memo (received by October 9, 2012) is due no later than 5:00 p.m. on October 16, 2012. Due to the timing necessary to get the packets out, testimony received by 5:00 on October 16th will be transmitted under separate cover.

Staff received seven items from the applicant related to the conditions, and responding to testimony from the applicant, and two items from private property owners. Each item that was submitted is discussed below in the order that it was received.

1. **E-mail from Keith Jones, Senior Planner from Harper Houf Peterson Righellis Inc. (HHPR) regarding condition 43 of the original staff report. (Exhibit U to the record)**

Staff Analysis: Staff recommended condition #43, which states, *"Prior to the issuance of building permits, the applicant shall provide a revised parking lot plan that demonstrates that the proposed overhang areas are provided in addition to the required on-site and perimeter landscaping.* " Mr. Jones provided a plan that illustrates the location of the proposed overhang areas and demonstrates that the proposed required on-site and perimeter landscaping is provided. The Code requires that 10% of the paved parking area be dedicated to landscaping. After deducting the overhang areas, the applicant

maintains 11.6% of interior landscaping thereby meeting the standards. Perimeter landscaping along SW Langer Farms Parkway, and SW Century Blvd is required to be a minimum of 10 feet and 15 feet wide respectively. As proposed, the overhang areas do not encroach into the required landscaping. Finally the code requires that 50% of the required parking area landscaping is interior to the site. As proposed, and illustrated on the plan, 65% of the parking lot landscaping is inside.

If this information was submitted at the time of review, staff would have determined that the standards were satisfied, and would not have required the condition; therefore, based on the new evidence provided, staff would recommend that the Planning Commission remove this condition from the final decision should they decide to approve the development.

2. **E-mail from Keith Jones, Senior Planner for HHPR regarding conditions 51 and 52 of the original staff report. (Exhibit V to the record)**

Staff Analysis: Staff recommended conditions 51 and 52 based on comments received from the Oregon Department of Transportation on August 31, 2012. Subsequent to that letter and prior to the hearing, ODOT revised the letter dated September 18, 2012 based on updated information submitted to them by the applicant. The difference between the two memorandums amounts to whether or not the County MSTIP improvements to SW Roy Rogers Road on the north side of Highway 99, and SW Tualatin Sherwood Road on the south side of Highway 99 are complete by the time the applicant intends to seek occupancy. Conditions 51 and 52 are imposed to ensure that there is adequate storage at the intersections of Highway 99 and Sherwood Blvd, and Highway 99 and SW Roy Rogers Road for cars that intend to turn northbound from the Highway.

In speaking with ODOT staff, the conditions are warranted based on the perceived timing of construction. This means that if the shopping center is constructed before the County MSTIP project, then the storage and extension of the deceleration lanes are warranted. If on the other hand, the shopping center is phased to coincide with the construction of the County MSTIP project, the conditions are not warranted. Therefore, the applicant has requested that the conditions be amended to account for the timing of both projects as follows:

51. The northbound right turn lane on Highway 99W onto SW Sherwood Boulevard will exceed the available storage (625' versus 415'). The applicant shall <u>either</u> increase the right turn storage length from 415' to 625', <u>open the project after the County MSTIP 3D project is in place, or phase the project so the traffic generated does not exceed the existing</u>

available storage. The improvement, if needed, shall also include the associated deceleration lane distance.

52. The northbound right turn lane on Highway 99W onto Sherwood Boulevard will exceed the available storage (625' versus 415'). The applicant shall either increase the right turn storage length from 415' to 625', open the project after the County MSTIP 3D project is in place, or phase the project so the traffic generated does not exceed the existing available storage. The improvement, if needed, shall also include the associated deceleration lane distance.

The applicant's proposed modifications to the existing recommended conditions are underlined in the text of the two conditions. Given that the added language affords the applicant the latitude to time the improvements consistent with ODOT's revised comments, staff sees no issues with amending the conditions as proposed.

However, the applicant should understand that a letter from ODOT confirming that the condition has been met will be required in order to obtain the Certificate of Occupancy. In other words, the conditions were recommended from ODOT to address a discrepancy on an ODOT facility. So the City will not be in the position of speaking on ODOT's behalf regarding the conditions, it will be incumbent upon the applicant to obtain a letter from ODOT confirming that the condition has been met.

3. Letter from Seth King, Attorney at Perkins Coie proposing findings and an amendment to Condition #27 related to trip generation. (Exhibit W to the record)

STAFF ANALYSIS: Staff generally agrees with Mr. King's assessment, but would like to clarify that Condition #27 was originally proposed by staff to address the same concern raised in public testimony, that specific uses would not fit ITE category 820 (Shopping Center), specifically the proposed 145,000 square foot anchor tenant building, and staff's concern that the original traffic study submitted by Kittelson & Associates did not adequately describe how applying ITE category 820 over 180,800 square foot of building space was conservative enough to allow the anchor tenant to be either ITE category 820, 813 or 815 without providing additional traffic mitigation measures.

After the September 25, 2012 Planning Commission meeting, the applicant submitted supplemental information from Kittelson & Associates applying ITE category 813 (free-standing discount superstore) and 815 (free-standing discount store) to the anchor building, while keeping the retail, bank, restaurant, and fast-food spaces unchanged, resulting in less or equal impact

upon the transportation system than what was documented in the original traffic study.

Engineering Department staff, along with the City's on-call traffic engineer, DKS & Associates, reviewed the supplemental information and found that it provided sufficient detail to satisfy the intent of Condition #27. Furthermore, if the applicant submits a final site plan not matching the development that is approved (e.g. building sizes change), or if a tenant does not fit the categories and trip generation documented in the traffic impact analysis, then existing code language authorizes staff to require a modification to the site plan and submittal of a revised traffic impact analysis to assess impacts and mitigation measures prior to issuing building permits.

Mr. King's memo also recommends findings contradicting public testimony regarding a comparison of this development with the recent Fred Meyer in Wilsonville. After considering that the applicant has provided trip generation scenarios for three ITE categories (820, 813 and 815) all of which are aspects of a typical Fred Meyer store, and comparing the location of and additional land-uses associated with the Fred Meyer in Wilsonville (adjacent to I-5 and 60 units of multi-family housing), staff determined that comments related to the specifics of the Wilsonville development are not relevant and should not be considered.

4. **Memorandum from Chris Maciejewski, P.E., P.T.O.E., the City's on-call traffic engineer from DKS Associates dated October 5, 2012 regarding the supplemental trip generation comparison provided by the applicant, and related to Condition #27. (Exhibit Y to the record)**

STAFF ANALYSIS: The City's on-call traffic engineer performed an independent review of the supplemental information provided by Kittelson & Associates. In addition, they performed their own analysis of each scenario that showed minimal overall differences when compared with the information provided by the applicant, ultimately concluding that ITE codes 813 and 815 would generate approximately equal or fewer trips than what was assumed in the original traffic impact analysis from July 2012.

Staff discussed the applicant's analyses with DKS and determined that the traffic mitigation measures previously recommended in the September 18, 2012 staff report were sufficiently conservative for other ITE categories, but the original traffic study provided by the applicant did not provide information sufficient for final approval. The applicant has now provided information sufficient to support the mitigation measures proposed for the development as described.

Based upon the supplemental information provided by Kittelson & Associates and feedback received from the City's on-call traffic engineer, the applicant's

development as proposed meets the standard and will not require mitigation measures beyond that identified in the previous staff report and draft Notice of Decision dated September 18, 2012. Staff recommends the supplemental information provided by the applicant be accepted by the Planning Commission and recommends that the Planning Commission eliminate Condition #27 from the final Notice of Decision should the Commission decide to approve the application.

5. **E-mail from Keith Jones, Senior Planner for HHPR regarding Condition #14 related to work in SW Langer Farms Parkway, a construction limited street. (Exhibit Z to the record)**

STAFF ANALYSIS: These comments are specifically related to Condition #14 which states, "The applicant shall comply with SMC Section 12.17.025 - for exceptions to construction work within a construction limited street. The request submittal shall include exhibits which will provide technical design information of the impacts to the existing Langer Farms Parkway public infrastructure, and proposed mitigation efforts based on the City's Engineering Design and Standard Details Manual. Final mitigation requirements will be determined from review of this submittal and shall become part of the approval requirements for construction. Note - Submittal of the exceptions request is not a guarantee of being able to perform construction work within the construction limited street, and that review/approval is taken on a case-by-case basis".

The applicant submitted revised information that specifically identifies the extent and exact locations of the proposed improvements to illustrate that the improvements are the minimum necessary. The City Engineer has reviewed the information submitted by the applicant and has indicated that he is comfortable removing the condition and amending it with the following findings suggested by the applicant:

A. The City Manager or the City Manager's designee may approve an exception to the limitations in Section 12.17.015 in order to facilitate development on adjacent properties, provide for emergency repairs to subsurface facilities, provide for underground connections to adjacent properties, or to allow the upgrading of underground utilities.

An approved exception may include conditions determined necessary by the City Manager or designee to ensure the rapid and complete restoration of the street and surface paving, consistent with the purpose of this Chapter 12.17 to the greatest extent practicable. Pavement restoration requirements may include but are not limited to surface grinding, base and sub-base repairs, trench compaction, or other related work as needed, including up to full-width street pavement removal and replacement.

Finding: The applicant's traffic consultant Kittelson & Associates, Inc. prepared a Traffic Impact Analysis for the project dated May 2012. The study recommends realigning the existing Langer Farms Parkway Driveway so the through lane will align with the existing Target access driveway west of the project. The applicant requests the driveway relocation in the interest of traffic safety and operations. In order to accomplish the driveway relocation, some removal of paving is required. The applicant has submitted an exhibit prepared by AKS Engineering dated 9/28/2012 titled "Langer Farms Subdivision Driveway Relocation and Water Service Connection Plan." This exhibit shows the limits of the paving removal and also shows that the domestic waterline connection can be made in this same cut thereby consolidating the impact into one location. Staff finds that the proposal as shown on the 9/28/2012 exhibit is acceptable as it concentrates the work in one location and limits the impacts to existing paving. A condition is recommended to ensure that any work is consistent with the submitted exhibit.

> *B. A person seeking an exception under this section shall submit an application to the City Manager or designee in a form acceptable to the city. The application must include sufficient information to demonstrate reasonable compliance with Section 210.20 (Construction Limited Streets) of the Engineering Design Manual.*
>
> *The City Manager or designee will review the application and information and provide a written decision either approving or denying the application. The City Manager's or designee's decision may be appealed in the manner provided for a writ of review under ORS chapter 34.*

Finding: The details provided in this land use application along with the exhibit prepared by AKS Engineering dated 9/28/2012 titled "Langer Farms Subdivision Driveway Relocation and Water Service Connection Plan" are adequate to demonstrate compliance. The applicant should be conditioned to provide construction plans that are consistent with the impact area shown in this exhibit or request a new application under this Section 12.17.025 of the City's code.

Condition 14

~~The applicant shall comply with SMC Section 12.17.025 - for exceptions to construction work within a construction limited street. The request submittal shall include exhibits which will provide technical design information of the impacts to the existing Langer Farms Parkway public infrastructure, and proposed mitigation efforts based on the City's Engineering Design and Standard Details Manual. Final mitigation requirements will be determined from review of this submittal and shall become part of the approval requirements for construction. Note – Submittal of the exceptions request is not a guarantee of being able to perform construction work within the construction limited street, and that review/approval is taken on a case-by-case basis.~~ Work performed in Langer Farms Parkway shall be limited to the

area shown in the exhibit prepared by AKS Engineering dated 9/28/2012 titled "Langer Farms Subdivision Driveway Relocation and Water Service Connection Plan." If additional work in Langer Farms Parkway is needed to support the development, the applicant shall make a new request under the requirements of SMC Section 12.17.025.

6. **Letter from Jim Claus dated October 9, 2012 regarding the application. (Exhibit AA to the record)**

STAFF ANALYSIS: The letter from Mr. and Mrs. Claus includes a request for the City Council to call the decision up to themselves for review. The letter implies that the process disenfranchises the citizens, that there is not enough information to comment on the proposal given that there are not any specified users, that City Staff and the property owners are not looking out for the citizens, and that the traffic impacts are being understated by the applicant. Staff can only respond to issues related to the development code.

The Claus letter does not speak to any specific review criteria. The proposed development is subject to the applicable provisions of the development code related to notice and process, and those procedures have been followed. There is no process in the code for a "Council call-up." Therefore, this issue will not go before the City Council unless an appeal is filed.

Regarding the traffic impacts, the Engineering department, and the City's consulting traffic engineers have reviewed the information that the applicant has submitted, and has provided comments on the traffic generation under items 3 and 4 of this memorandum. Staff cannot speak to the inferences of corruption by the property owner and mayor.

7. **Letter from Seth King, Attorney at Perkins Coie, dated October 8, 2012 providing responses to the letter from Charles and Amy Boyle dated September 25, 2012.(Exhibit BB to the record)**

STAFF ANALYSIS: The letter is rebuttal testimony to a letter that was submitted by Charles and Amy Boyle (See Exhibit O) prior to the public hearing. Staff has reviewed that letter and this testimony, and stands by the staff analysis and findings in the original staff report regarding these issues.

8. **Letter from Seth King, Attorney at Perkins Coie, dated October 9, 2012 related to a phone call that staff received from the Bonneville Power Administration. (Exhibit CC to the record)**

STAFF ANALYSIS: On October 9th, City staff received a phone call from Monica Stafflund, a Realty Specialist with the Bonneville Power Administration that indicated that the City should not issue permits for the parking lot beneath the power lines. She stated that at this point in time, the data that she was reviewing would suggest that the static electricity below the power lines would

be too high for a parking lot. Staff asked Mrs. Stafflund if she would be providing her comments in writing. She indicated that she would, but has not followed up as of the date of this memorandum. Staff has attempted to contact her on two separate occasions.

Staff always recommends a condition to ensure that an applicant obtains all required federal, state, and local permits. In this case it appears that one of the permits requested may not be issued. The applicant was contacted and made aware of the correspondence that staff had with Ms. Stafflund. This letter is their response. It should be noted that the alternate site plan provided by the applicant is fairly consistent with the site plan provided with the application that illustrated the (Target) stormwater quality pond being retained in the northeast corner of the site, and would maintain 9.2% reduction in parking. Subsection 16.94.010.D permits up to a 25% reduction. Furthermore, the applicant has provided information from the landscape architect to substantiate that the loss in landscaping would not reduce the amount of parking lot landscaping below the minimums required for this development. The proposed development and reduction in parking, if BPA did not permit parking under their powerlines, is consistent with what is allowed by the development code, and would not change staff's original recommendation for approval with conditions.

9. **Letter from Charles and Amy Boyle dated October 9, 2012 related to the adequacy of the Transportation Impact Analysis submitted for the proposed development.**

STAFF ANALYSIS: As previously discussed, the applicant has submitted supplemental information that staff believes reflects a reasonable worst-case scenario for the planned development. The supplemental information was reviewed and concurred with by the City's on-call traffic engineer, DKS Associates, the same firm who prepared the traffic study for the City of Wilsonville for the Fred Meyer development area. The supplemental information evaluated anchor tenant scenarios using ITE codes 820, 813 and 815, the same codes mentioned in the Boyle's October 9, 2012 memo. Staff believes the applicant has provided adequate information to address the development's impact on the transportation system and that the proposed and conditioned mitigation measures are sufficient to offset the impacts to the transportation system.

In closing, staff is including exhibits N-DD as attachments to this memorandum. Exhibits A-M can be found in your packet for the September 25th hearing, or on the web at the following address:

http://www.sherwoodoregon.gov/sites/default/files/files/city_boards/planning_commission/pc_packet/2012/PC%20Packet%2009.25.12.pdf

Exhibit N

Oregon
John A. Kitzhaber, MD, Governor

Department of Transportation
Region 1 Headquarters
123 NW Flanders Street
Portland, Oregon 97209
(503) 731.8200
FAX (503) 731.8531

9/18/12

City of Sherwood
22560 SW Pine Street
Sherwood, OR 97140

ODOT Case No: 5197

Subject: SP 12-05: Langer Farms Phase 7
99W/Tualatin-Sherwood Rd and 99W/Sherwood Blvd

Attn: Brad Kilby, Senior Planner, City of Sherwood

Thank you for the opportunity to review the Supplemental Operations and Queuing Analysis prepared by Kittelson and Associates dated September 11, 2012. ODOT has permitting authority for Highway 99W and an interest in ensuring that the proposed land use is compatible with its safe and efficient operation. The analysis shows that queuing deficiencies at the 99W/ SW Sherwood Blvd and 99W/SW Roy Rogers Road will largely be mitigated by the Washington County MSTIP 3D project that will widen Tualatin-Sherwood Road to five lanes between SW Langer Farms Parkway and SW Borchers Drive.

While ODOT concurs with the queuing analysis, it is our understanding that the proposed shopping center will be constructed in 2013, while the County improvement project is not slated to be constructed until 2014 or later. That would leave a time period in which queuing on the highway could potentially exceed available storage at the SW Sherwood Blvd intersection by over 317 feet and exceed available storage at the SW Roy Rogers Road intersection by 91 feet. This scenario could cause significant operational and safety problems on the highway. Therefore, ODOT recommends that the City require that the applicant to either:

Construct 99W/SW Sherwood Blvd and 99W/SW Roy Rogers Road intersection improvements at the same time as shopping center construction: The applicant shall lengthen the storage distance on the northbound right-through lane at SW Sherwood Blvd up to 617 ft with the associated deceleration distance as feasible. The applicant shall lengthen the storage distance on the northbound left turn lane at SW Roy Rogers Road to 536 ft with the associated deceleration distance as feasible. Both projects shall be designed in accordance with ODOT design criteria and are subject to ODOT review and approval.

Or

Phase the construction of the shopping center so that the traffic it generates does not exceed the available storage until the MSTIP 3D project is constructed. A phasing program shall be agreed to by the applicant, City, and ODOT.

Both scenarios are intended to prevent queuing from spilling back into adjacent through lanes until such time as the transportation system can accommodate the additional trips.

Finally, in my previous letter I inadvertently referred to the through-right lane at SW Sherwood Blvd as a right turn lane. ODOT does not recommend striping this lane as a northbound right-turn only. Thank you again for providing ODOT the opportunity to participate in this land use review. If you have any questions regarding this matter, please contact me at 503.731.8234.

Sincerely,

Seth Brumley

Seth Brumley
Development Review Planner

C: Loretta Kieffer, ODOT District 2B
Avi Tayar P.E., ODOT Region 1 Traffic

Please send a copy of the Notice of Decision including conditions of approval to:

ODOT Region 1 Planning
Development Review
123 NW Flanders St
Portland, OR 97209

Exhibit O

Comments and Concerns Regarding Langer Farms Phase 7 Shopping Center

Public Hearing Scheduled for September 25, 012 at 7pm at Sherwood City Hall

Comments provided by Charles and Amy Boyle – Homeowners in Arbor Terrace HOA Sherwood, OR.

Comments and Concerns regarding "Anchor Store:"

1. Traffic:

a. The Applicant's submitted Traffic Analysis states that the site development sized at 197,800 sq. ft. will not exceed 43 PM peak hour trips per acre as specified in the Highway 99W Capacity Allocation Program. Similarly sized developments in the area show a much greater PM peak hour per acre number, example Wilsonville Fred Meyer Development, documented at 68 PM Peak Hour per acre. We argue that the above documented number in the traffic analysis is "loose" as the occupancy of the anchor retail store plays a significant role in determining traffic. Compare a Walmart vs. Fred Meyers vs. Costco, vs. Whole Foods.

b. The Applicant used cumulative ITE Codes 820, 912, 931 and 934 for the entire development for the traffic standard however; similar developments including the Wilsonville Fred Meyer Development use a cumulative ITE Code 820, 932, "Apartments/Condos/Townhouses," and a "Fred Meyer" standard in calculating the traffic for the area. The Langer Shopping Center Development neglects to account for the type of anchor store which will be in place. A Walmart, Fred Meyer, Winco, and BiMart all have varying traffic impacts. A determination of the occupant should be required prior to approval in regards to traffic impact. Currently, CC&Rs will be provided upon land use approval however; until CC&Rs are provided the City cannot determine whether or not the occupancies will meet the traffic requirements.

c. The Traffic Impact Analysis on pg. 25, "Proposed Development Plan" states

> "This plan was developed with conservative site build out assumptions for the purpose of identifying and mitigating traffic impacts associated with the highest trip generation potential for the site."

We argue that this statement is FALSE as a "conservative" analysis would use ITE Codes 813, 815 or 851 (Convenience Market 24 Hours – WALMART).

d. Traffic Volume Analysis Incomplete – Traffic volume was analyzed based on Highway 99 W historic data from an ATR located on Highway 99W in Newberg at Brutscher St. We argue that this analysis site does not represent traffic on SW Tualatin Sherwood at SW Langer Farms Parkway. We also argue that the word "historic" for the obtaining of data along Highway 99 W in Newberg is vague and does not provide a realistic timeframe for data collection.

2. Traffic Noise:
   a. The Response to Chapter 16.146 – Noise states,

      > "High levels of noise beyond what is expected in an urban area is not anticipated. Therefore, the proposed use will be within required standards and there will be no adverse impacts."

      This statement cannot be substantiated as the occupant of the anchor store is at this time unknown and currently CC&Rs are not in place to regulate the potential occupant. The difference between a Walmart, a Fred Meyer, Costco and Whole Foods is significant in regards to noise level and time of day of said noise.

   b. Response #1 found in Attachment 8 titled "Neighborhood Meeting Summary" states that commercial traffic would be routed down SW Langer Farms Parkway to the round-about and would then head East on SW Century Blvd and would not continue South on SW Langer Farms Parkway. We argue that there are still residential properties between SW Tualatin Sherwood Rd and SW Century Blvd along SW Langer Farms Parkway, which will be adversely effected by the commercial traffic in the area; especially with the varying potential occupants of the anchor retail store. As an alternate option, all commercial traffic could be routed in and out of SW Century Blvd where it connects with SW Tualatin Sherwood Blvd just east of DEQ and SW Langer Parkway therefore removing commercial trucking noise from SW Langer Farms Parkway in entirely.

3. Design:
   a. The proposed design does not meet the guidelines as outlined in the 1995 PUD Guidelines for "Front Porch Society." The exterior of the anchor building is bland and flat walled with limited aesthetic features. It appears as though the City is willing to compromise on the guidelines by stating that the ***development*** meets the "intent" of the guidelines therefore the ***anchor*** store can fall short. As an anchor store at the City's deemed entrance to Old Town, the building should be welcoming, inviting and aesthetically pleasing meeting the same aesthetic as the historic Old Town Sherwood.

b. In response to the 1995 PUD Design Standards for Retail Building Construction, found on page 17 of the Proposal, the Applicant states that these requirements are "guidelines" not "standards." Furthermore, the Applicant states the City set a "precedent" with Target in how guidelines are applied. We argue that a single data point does not make a trend and that a single data point could also prove to have been a mistake. However, Target's current exterior is more detailed that the current architectural drawings for the "anchor" store as outlined in the proposal.
c. The City has stated that their intent is to get the "highest quality" development for the city. It has also stated "It should be noted that this is envisioned to be a primary entrance into Old Town Sherwood given it's location..." Based on the current square footage of the anchor store there are limited retailers to which this size of building markets. Examples would include Walmart, Costco, Winco and Fred Meyer. There have been recent public statements that Fred Meyers is currently working on developing a site behind the Providence Medical Building in Sherwood therefore removing their possibility from the Langer Development. Is the City stating that a Walmart would meet the "highest quality" development and serve the Sherwood Community as an entrance into Old Town?

Comments and Concerns Regarding Overall Site Development

1. Drive Thrus:
    a. In the Pre-Application Q&A, the City of Sherwood has stated that drive thrus should not be located between the public street and the building as per response to Question #7. Based on the architectural designs it appears as though all three (3) proposed drive thrus fail to meet this standard as drive thru lanes come between the building and a public street. Bank (Langer Farms Parkway), Pharmacy (Century Blvd), Fast Food (Tualatin Sherwood).
    b. As per Chapter 16.96, On-Site Circulation, " On-site facilities shall be provided that accommodates safe and convenient pedestrian access..." We argue that the proposed drive-thrus make pedestrian access throughout the site development difficult and dangerous, as there are increased traffic crossings.
    c. As per Chapter 16.90 Site Planning, Section 7b, "Buildings should be located adjacent to and flush to the street, subject to landscape corridor and setback standards of the underlying zone." We argue that a drive thru does not meet this standard as outlined.
        Def. "Flush" as found in Merriam Webster Dictionary states "Having or forming a continuous plane or unbroken surface."

2. CC&Rs:
    a. As per Chapter 16.94, Off Street Parking and Loading, Section d, Multiple/Mixed Uses:

"When several uses occupy a single structure or a parcel of land, the total requirements for off-street parking and loading shall be the sum of the requirements of the several uses computed separately, with a reduction of up to 25% to account for cross-patronage of adjacent businesses or services. If the applicant can demonstrate that the peak parking demands for the combined uses are less than 25%, the total requirements may be reduced accordingly."

We argue that since the proposed retail spaces currently do not have a specified use nor are there CC&R's in place prior to land use approval, the peak parking demands cannot be reduced as outlined above. In order to meet these requirements CC&R's must be developed and approved prior to land use approval of the site.

b. Chapter 16.90, Site Planning, Section 3 states,

"Covenants, agreements, and other specific documents are adequate, in the City's determination, to assure an acceptable method of ownership, management, and maintenance of structures, landscaping, and on-site features."

The applicant states that it "...will prepare Covenants, Conditions and Restrictions (CC&Rs) for the development as well as shared access easements. These agreements will be provided to staff *following* land use approval. We argue that review of CC&R's should be conditional prior to land use approval and not upon land use approval.

Exhibit P

Bradley Kilby

From: Julia Hajduk
Sent: Tuesday, September 25, 2012 4:41 PM
To: Bradley Kilby
Subject: FW: Langer Commercial PHase 7 Hearing

From: claussl@aol.com [mailto:claussl@aol.com]
Sent: Tuesday, September 25, 2012 4:35 PM
To: PlanningCommission; Tom Pessemier; Julia Hajduk
Subject: Re: Langer Commercial PHase 7 Hearing

Dear Planning Commission Members--

I have materials to submit to the record for this application. Some of the materials will depend on the information presented tonight at the Site Plan and CUP land use hearing for Phase 7 of Langer Farms.

I would like to respond to the information that is submitted and heard in tonight's hearing. As a result I ask that the Planning Commission keep the record open for two weeks until the next planning commission meeting to allow for additional written information to be submitted to the record.

If the applicant's 120 day time window is an issue, I would also ask that you ask the applicant to extend their 120 days by two weeks to allow for the record submittal.

Sincerely,

Susan Claus
Sherwood

Exhibit A

Western Heritage
Public Relations

Mr. Patrick Allen, Chair
Sherwood Planning Commission
22560 SW Pine St.
Sherwood, Oregon 97140

September 25, 2012

Dear Mr. Allen

Further and ongoing development of Sherwood's retail business community will fuel both our local economy and develop Sherwood's "human capital."

Large, multi-line retail stores will draw local, area and regional shoppers to our community. These customers will seek other goods and services not offered by a single store. They may also buy gasoline, sandwiches, and specialty items as well from other Sherwood businesses. That adds to our tax base, helps other businesses survive and grow as well as advertises Sherwood as a great place to live and work.

That retail ripple effect means jobs. Especially jobs for young people, students, part timers. Many could be perfect first time job for high schoolers, or seasonal work for our college students. Maybe part time jobs for young moms. Those are jobs that support college or trade school education or can help a family get ahead. They are jobs that give young people something constructive to do learning skills useful for a lifetime and new opportunities for all employable residents.

I find it hard to believe that people will expound that somehow Sherwood suffers a loss if new revenues come in, new jobs are created, and more competitive and convenient shopping choices are made available.

This development should be approved.

Thank you for the opportunity to exercise my First Amendment rights and continue to show my support for a city that has been a part of life for me, my wife, my two Sherwood educated children who also worked here when they were in school, and for our business. For the record, attached is a list of my commitments to build positive outcomes for Sherwood and its citizens.

Sincerely,

Jim Haynes
Western Heritage Public Relations

503-502-5981 22300 SW Schmeltzer Rd. Sherwood OR 97140 westernheritagepr@msn.com

Haynes Community Service
to Sherwood Planning Commission
9-25-2012

President, Sherwood Junior Baseball: 1997

Chairman, Sherwood Chamber of Commerce Board: 2005-2006

Sherwood Chamber of Commerce Board Member: 2005-current

Committee Member, SHARE (Sherwood Helping All Reach Excellence)

Member Sherwood United Methodist Church

Developer and Presenter, Sherwood High School Independence Academy, 2008-2010

Sherwood Cruisin' Core Team Member: 2006-2012

I-5/99W Citizens Concept Committee (approx.) 2006-2008

Sherwood High School Varsity Golf assistant to coaches: 2001-2004

Washington County Community Block Grants Policy Advisory Board Member
(Representing the City of Sherwood): 2007-2011

Sherwood Cultural Arts Commission member: 2009-2011

Sherwood Robin Hood Festival "Knight:" 2008

Founding member, Sherwood Cruisers Car Club: 2008 and current member

Exhibit R

September 25, 2012

Mr. Pat Allen
Sherwood Planning Commission
22560 SW Pine St.
Sherwood, Oregon 97140

Dear Chair Allen and Fellow Commissioners:

As a product of Sherwood Hopkins, Middle and High Schools, a former employee of the Sherwood Feed Store, Sherwood Ice Arena, Sherwood Taco Time, Tualatin Island Greens and this area's state Representative, I understand the importance of local employment for young people.

Serving on the Sherwood Municipal Golf Course Advisory Board, and participating in Sherwood Junior Baseball, youth football and Sherwood High Varsity Golf and Football, I understand the value of business sponsorship and community involvement in making youth sports available to our young people.

As an citizen and area resident, I understand the value and need for business development in Sherwood. It equates to civic amenities and it equates to employment and the development of life-long marketable skills for young people. That is why I am President of Sherwood Rotaract, and a member of Sherwood Rotary, Sherwood Chamber of Commerce and the Sherwood Education Foundation.

This project, with its rich opportunity for jobs, is exactly the kind of employment needed for young people—the unemployment rate for Americans less than 20 years of age is nearly 20%.

The time has passed for negative, unproductive and irrelevant attacks on community progress and affronts people who support investing in the future of our community. Approve this proposal.

Thank you.

Scott C. Haynes

Exhibit S

Written Testimony for the Planning Commission Meeting on September 25, 2012

Submitted via writing and authorized for submission as testimony

Subject: Langer Farms Phase 7 Shopping Center

Name: Casey Overcamp

Address: 23469 SW Richen Park Terrace, Sherwood, OR 97140

Position: Proponent

Esteemed Chair and Commissioners,

As always, thank you for the opportunity to provide written testimony. My family and I are residents of Sherwood. In addition to living in Sherwood, we spend our recreational time in Sherwood, we go to church in Sherwood, we participate in community events in Sherwood, and we shop in Sherwood. Like the majority of Sherwood, I have a spouse and enough kids to outnumber my wife and me. We are within the primary Sherwood age demographic of 25-44. All this to say, I represent the primary demographic of the residents in the City of Sherwood and most of my interactions are also with those that represent the same demographic.

If you haven't already, undoubtedly tonight you will hear opposition from some individuals that are not interested in this City moving forward and progressing. They are only interested only in obstructing development and/or engaging in a personal vendetta against the Langer family. These individuals are not part of the primary demographic and represent a miniscule portion of the residents of Sherwood. Please, please do not let legal fear tactics, incorrect code references, mountains of meaningless paper work, and recollections of past problematic developments cloud your ability to trust your staff and what you know is best for the residents of Sherwood.

My family, and many that I talk with about the Langer Farms Phase 7 development, are excited about the commission moving forward with this development. I've heard testimony in the past that stores like Home Depot and Target were a bad idea. I wish to provide counter testimony that those stores are tremendously valued and frequented by the residents of Sherwood. Moreover the Langer Farms development with Target as the anchor store has provided spectacular ancillary stores such as Red Robin, Panda Express, and others and the residents of Sherwood enjoy.

I fully support the Langer Farms Phase 7 and look forward to frequenting the future businesses that it brings. Thank you for your time and your service to our community.

Respectfully Submitted,
Casey Overcamp

Exhibit T

September 25, 2012

Leanna Knutson
17052 SW Cobble Ct.
Sherwood, OR 97140

:RE: LANGER FARMS PHASE 7

As the Chamber of Commerce Board President, we represent all businesses in the area in advocating overall economic growth and positive development of our community.
Your Chamber of Commerce appreciates this open, public process to make sure new businesses join the Sherwood Community in a way that develops commercial shopping choice and employment opportunities.

Thank You!
Leanna Knutson

Job No.: TAS-01

Date: October 3, 2012

To: Brad Kilby, AICP

From: Keith Jones, AICP, LEED AP ND

Harper Houf Peterson Righellis Inc.
ENGINEERS ♦ PLANNERS
LANDSCAPE ARCHITECTS ♦ SURVEYORS

Project/Subject: **Langer Farms Phase 7 (SP 12-05/CUP 12-02)**
Recommended Condition #43 – Parking Landscaping Overhang

☐ Fax - Number:_____; Number of pages_____
(If you did not receive the correct number of pages, please call 503-221-1131)
☒ E-mail ☐ Mail ☐ Hand Deliver ☐ Interoffice

Background
Condition 43 is stated in the August 28, 2012 staff report recommendation to the Planning Commission as follows:

43. Prior to the issuance of building permits, the applicant shall provide a revised parking lot plan that demonstrates that the proposed overhang areas are provided in addition to the required on-site and perimeter landscaping.

Section 16.94.020(B) of the Sherwood Zoning and Community Development Code (SZCDC) requires a 20-foot deep stall with wheel stop placed three feet back from the head of the stall. This provides a 17-foot stall depth and three-foot vehicle overhang. In lieu of a 20-foot deep stall with wheel stop, the applicant has proposed a reduced stall depth and landscaping overhang. The applicant has proposed this in select locations of the site with an overhang that varies from 0.5-foot to 2.5 feet.

The staff analysis and finding on page 38 of the staff report indicates that these overhang areas cannot count towards required landscaping. Therefore Condition 43 was drafted by staff to require the applicant to demonstrate that the proposal complies with minimum landscaping amounts after deducting the landscape overhang areas.

Applicant Finding
The applicant has prepared the attached exhibit showing where these overhang areas are proposed along with the size of each area. The SZCDC Section 16.92.030 contains standards that are impacted by removing the landscaping overhang areas from required landscaping calculation. Compliance with these standards is demonstrated as follows:

1. 16.92.030(B)(1) – Parking and Loading Areas – Total Landscape Areas
   This section requires that a minimum of 10% of paved parking area is dedicated to landscaping. The applicant's landscaping plans dated 7-9-12 indicate 61,509 square feet or 12.2% of the 506,030 square foot parking area is landscaped.

   The attached exhibit shows that 2,633 square feet of overhang was included as parking lot landscaping for the purpose of this requirement. After deducting this amount, the proposal will

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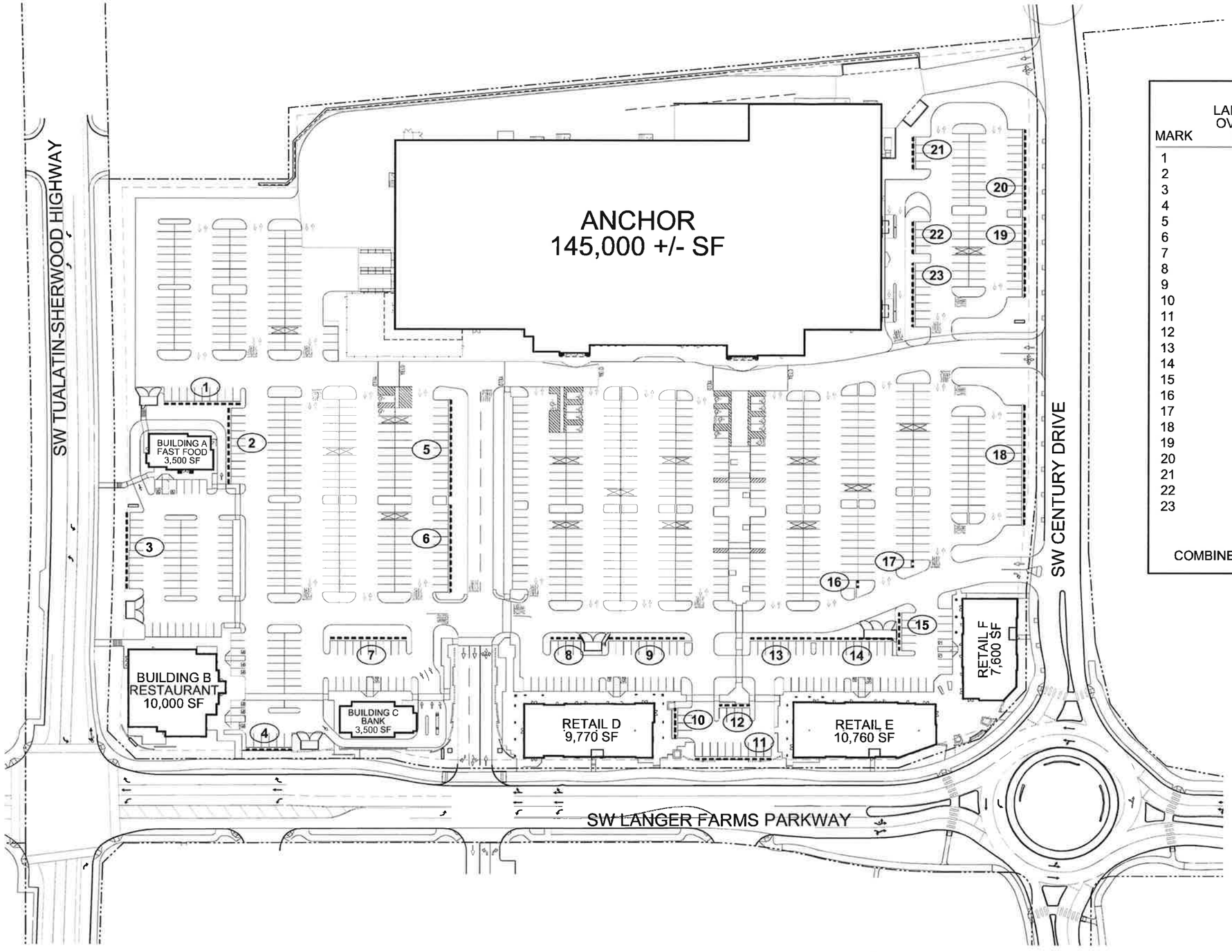
have 58,876 square feet of landscaping or 11.6% interior landscaping, and continues to exceed the 10% minimum amount.

2. 16.92.030(B)(3) - Parking and Loading Areas – Perimeter Landscaping
   A 10-foot wide perimeter landscape buffer is required between the parking area and the right-of-way. The attached exhibit shows the required landscape buffer as a dashed line as well as the location of the landscape overhang areas. In no case was the overhang used as part of the landscape buffer width. Further, Section 16.92.020(C) requires a 15-foot visual corridor on Tualatin-Sherwood Road. This 15-foot corridor is marked with the same dashed line as the required buffer. The overhang area does not encroach into the visual corridor as shown on the exhibit. Therefore the overhang area was not used as part of the required visual corridor or landscape buffer width.

3. 16.92.030(B)(4) - Parking and Loading Areas – Interior Landscaping
   This section requires that 50% of the required parking area landscaping is interior landscaping. The attached exhibit shows that 1,341 square feet of overhang area was counted towards this interior amount. The applicant's 7-9-12 landscaping plan indicates that 39,865 square feet, or 65%, of interior landscaping was proposed. After deducting the 1,341 square feet of overhang counted as interior landscaping, 38,524 square feet, or 65%, of interior landscaping is provided. Therefore the proposal continues to comply with this section.

Request
As demonstrated by this memo and attached exhibit, the applicant complies with minimum landscaping requirements after parking lot landscaping overhangs are deducted. Therefore, Condition 43 is satisfied and the applicant respectfully requests that Condition 43 be removed from the staff recommendation to the Planning Commission.



MARK	LANDSCAPE OVERHANG DEPTH	AREA (PARKING AREA INTERIOR)	AREA (PARKING AREA PERIMETER)
1	2'-6"		225 S.F.
2	2'-6"		225 S.F.
3	2'-6"		225 S.F.
4	2'-6"		135 S.F.
5	0'-6"	57 S.F.	
6	0'-6"	51 S.F.	
7	2'-6"	225 S.F.	
8	2'-6"	90 S.F.	
9	2'-6"	225 S.F.	
10	2'-6"		90 S.F.
11	2'-6"		225 S.F.
12	2'-6"	90 S.F.	
13	2'-6"	180 S.F.	
14	2'-6"	224 S.F.	
15	2'-6"	113 S.F.	
16	0'-6"	5 S.F.	
17	0'-6"	5 S.F.	
18	0'-6"		71 S.F.
19	0'-6"		48 S.F.
20	0'-6"		48 S.F.
21	0'-6"	19 S.F.	
22	0'-6"	19 S.F.	
23	0'-6"	38 S.F.	
	TOTALS:	1,341 S.F.	1,292 S.F.
	COMBINED TOTAL:	2,633 S.F.	

LEGEND

IDENTIFIER MARK — 18 — LANDSCAPE OVERHANG

PARKING STALLS

1 LANDSCAPE AT CAR OVERHANGS

1" = 60'

0 30' 60' 120' 180'

1" = 60'

NORTH

TILAND / SCHMIDT
ARCHITECTS, P.C.
3611 S.W. HOOD AVE.
SUITE 200
PORTLAND, OR 97239
(503) 220-8517
FAX (503) 220-8518

GRAMOR DEVELOPMENT

LANGER FARMS PHASE 7

SW TUALATIN-SHERWOOD ROAD AND SW LANGER FARMS PARKWAY
SHERWOOD, OREGON

LANGER GRAMOR LLC

LAND USE SET

PROJECT NO. 11364

DATE : 09-28-12

DRAWN BY : CDO

CHECKED BY :

REVISIONS

A/0.4

60

SP 78

Job No.: TAS-01

Date: October 3, 2012

To: Brad Kilby, AICP

From: Keith Jones, AICP, LEED AP ND

Harper Houf Peterson Righellis Inc.
ENGINEERS ♦ PLANNERS
LANDSCAPE ARCHITECTS ♦ SURVEYORS

Project/Subject: **Langer Farms Phase 7 (SP 12-05/CUP 12-02)**
Recommended Conditions #51 and #52
ODOT 99W Requirements

☐ Fax - Number:_____; Number of pages_____
(If you did not receive the correct number of pages, please call 503-221-1131)
☒ E-mail ☐ Mail ☐ Hand Deliver ☐ Interoffice

Background
Conditions 51 and 52 are stated in the August 28, 2012 staff report recommendation to the Planning Commission as follows:

51. *The northbound right turn lane on Highway 99W onto Sherwood Boulevard will exceed the available storage (625' versus 415'). The applicant shall Increase the right turn storage length from 415' to 625'. The improvement shall also include the associated deceleration lane distance.*

52. *The northbound left turn lane on Highway 99W onto Roy Rogers Road will exceed the available storage (525' versus 490'). The applicant shall Increase the left turn storage length from 490' to 535'. The improvement shall also include the associated deceleration lane distance.*

These conditions were drafted based on the first ODOT letter dated August 31, 2012 from Seth Brumley. These conditions were recommended by ODOT since the project may be open prior to the County-funded (MSTIP 3D) Tualatin-Sherwood Road Improvement project being constructed. However, if the County's project is in place prior to this project opening, these improvements are not required. Therefore, Seth Brumley of ODOT issued an updated letter dated September 18, 2012. This letter gave the option of either constructing these improvements, or phasing the project so that these improvements would not be needed.

Request
The updated September 18, 2012 letter from ODOT gives the option to phase the project until the County-funded Tualatin-Sherwood Road project is in place. Therefore the applicant requests that Conditions 51 and 52 are modified to be consistent with the updated ODOT recommendation. The applicant requests the following modifications to these conditions:

51. The northbound right turn lane on Highway 99W onto Sherwood Boulevard will exceed the available storage (625' versus 415'). The applicant shall either increase the right turn storage length from 415' to 625', open the project after the County MSTIP 3D project is in place, or phase the project so the traffic generated does not exceed the existing available storage. The improvement, if needed, shall also include the associated deceleration lane distance.

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Portland, OR 97202
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52. The northbound left turn lane on Highway 99W onto Roy Rogers Road will exceed the available storage (525' versus 490'). The applicant shall either Increase the left turn storage length from 490' to 535', open the project after the County MSTIP 3D project is in place, or phase the project so the traffic generated does not exceed the existing available storage. The improvement, if needed, shall also include the associated deceleration lane distance.

Perkins Coie

1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
www.perkinscoie.com

Seth J. King
PHONE: (503) 727-2024
FAX: (503) 346-2024
EMAIL: SKing@perkinscoie.com

October 4, 2012

VIA EMAIL

Brad Kilby, AICP
Senior Planner
City of Sherwood
Sherwood City Hall
22560 SW Pine Street
Sherwood, OR 97140

Re: Land Use Applications for Langer Farms Phase 7 Shopping Center (City of Sherwood File Nos. SP 12-05/CUP 12-02); Proposed Findings and Condition Relating to Trip Generation

Dear Brad:

This office represents Langer Gramor LLC, the applicant requesting approval of the above-referenced applications. Attached please find proposed findings and a revised Condition 27 relating to trip generation from the proposed development. These findings correspond with the revised data submitted to the City of Sherwood ("City") in a memorandum from Kittelson & Associates, Inc. dated October 1, 2012, as well as with forthcoming testimony that the applicant will submit responding to comments from the public regarding potential traffic impacts.

The attached findings and condition address the City's concern that the applicant consider and document the full range of likely uses in the anchor store and ensure that the ultimate development of the site not exceed the trip impacts of the applicant's Traffic Impact Analysis without further study. Further, the data, findings, and condition demonstrate compliance with applicable standards at this stage of approval for a variety of ITE Land Use Codes, which offers additional certainty to all parties and obviates the need for future processes unless the applicant modifies the development program in a manner that will increase trip generation from the site.

Please review these materials in advance of our meeting on Monday, where we can discuss these issues in more detail.

Please place a copy of this letter and its attachments into the official Planning Department file for this matter and place a copy before the Planning Commission before the close of the record. Thank you for your consideration of these materials.

Very truly yours,

Seth J. King

Enclosure

cc: Bob Galati (via email) (w/encl.)
Jason Waters (via email) (w/encl.)
Chris Crean (via email) (w/encl.)
Matt Grady (via email) (w/encl.)
Chris Brehmer (via email) (w/encl.)
Keith Jones (via email) (w/encl.)

CITY OF SHERWOOD FILE NOS. SP 12-05/CUP 12-02

PROPOSED FINDING:

The applicant submitted a Traffic Impact Analysis (TIA) performed by Kittelson & Associates, Inc. ("Kittleson") dated July 2012, with an amendment to the initial analysis submitted on August 12, 2012, a supplemental operations and queuing analysis from Kittelson dated September 11, 2012, and a second supplemental analysis from Kittelson dated October 1, 2012. The initial TIA and related amendments and supplements addressed impacts from the development on the City, County, and State transportation systems. The City's on-call traffic engineer, DKS Associates, Washington County Traffic Engineers, and State of Oregon DOT Traffic Engineers have reviewed the proposed traffic impacts of the development. Corresponding review comments and conditions are noted below.

The TIA identifies that the intersection of Highway 99W and Tualatin-Sherwood Road would reach a volume to capacity (v/c) ratio of 1.05 during peak hours with the applicant's proposed development (including the construction of off-site improvements such as the Langer Farms Parkway/Adams Avenue northern extension). Based on ODOT standards this level of congestion exceeds the mobility targets of the Oregon Highway Plan (OHP), listing a standard v/c of 0.99. However, this intersection is programmed and funded to be improved in the near future (2014) through the Washington County MSTIP capital improvement project (CIP) for Tualatin-Sherwood Road. Analysis of the traffic impacts with all of the proposed off-site improvements including the County's capital improvement of Tualatin-Sherwood Road reduces the v/c to 0.92 during peak hours and complies with the OHP mobility targets. Two conditions (Conditions 51 and 52) have been recommended to ensure that the project meets the OHP mobility targets.

According to the TIA, the proposed development will generate a maximum of 760 net new weekday PM peak hour trips. In the TIA and its amendments and supplements, Kittelson has determined that, subject to completion of the identified mitigation measures, the proposed development will not adversely affect the surrounding street system or any study intersections. In a memorandum dated _____, DKS Associates has concurred with Kittelson's analysis and conclusions.

The applicant's TIA was based on an assumed use under the Institute of Transportation Engineers (ITE) Code 820 ("Shopping Center") for the majority of the site. Staff finds that the applicant's assumed use of Shopping Center is reasonable for two (2) reasons. First, the use satisfies the description of the "Shopping Center" land use set forth in ITE *Trip Generation*, 8th Edition at page 1497, which reads as follows:

> "A shopping center is an integrated group of commercial establishments that is planned, developed, owned and managed as a unit. A shopping center's composition is related to its market area in terms of size, location and type of store. A shopping center also provides on-site parking facilities sufficient to serve its own parking demands. Specialty retail center (Land Use 814) and factory outlet center (Land Use 823) are related uses."

As set forth on the site plan, the applicant is proposing an integrated retail center, with seven (7) buildings that will share access, circulation, and parking. The applicant is planning and developing these buildings as a single project. Additionally, the applicant currently owns the entire site and it will operate under a common set of covenants, conditions, and restrictions. Therefore, staff finds that the proposed development is consistent with the ITE description of "Shopping Center."

Staff also finds that classifying the subject development as a "Shopping Center" is consistent with the City's treatment of the majority of the Langer Marketplace, which is located across the street from the subject property, as a "Shopping Center" at the time of its site plan approval in 2000. Like the subject development, Langer Marketplace includes a large retail anchor (Target) and related out pads with common access, circulation, and parking. Thus, for this additional reason staff finds that the "Shopping Center" classification is appropriate.

Finally, staff finds that the applicant's use of the "Shopping Center" use classification for the majority of the site is conservative because the TIA assumed a more intensive level of development than the applicant has actually proposed.

Staff finds that it is possible that, at the time of building permit, the applicant may propose a use in the anchor store that constitutes a different land use with different trip generation characteristics than a "Shopping Center." Accordingly, at staff's request, the applicant has also analyzed the traffic impacts of the anchor store under the trip generation rates applicable to two (2) other ITE land use categories that commonly apply to large-scale retail stores—"Free-Standing Discount Superstore" (ITE Code 813) and "Free-Standing Discount Store" (ITE Code 815). As set forth in Kittelson's second supplemental analysis dated October 1, 2012, the proposed development set forth in the applicant's site plan will generate 125 fewer net new weekday PM peak hour trips than the TIA reported if the anchor store constitutes a "Free-Standing Discount Superstore" and 10 fewer net new weekday PM peak hour trips than the TIA reported if the anchor constitutes a "Free-Standing Discount Store." In short, according to Kittelson's analysis, the development shown in the applicant's site plan will generate fewer net new weekday PM peak hour trips if the anchor is classified and analyzed as a "Free-Standing Discount Superstore" or "Free-Standing Discount Store" than if it is classified as a "Shopping Center" and the site is developed at the higher level of intensity reported in the TIA. DKS Associates has reviewed Kittelson's second supplemental analysis and has submitted a memorandum concurring with Kittelson's methodology and conclusions regarding the trip generation impacts of these two alternative uses.

Although Kittelson's second supplemental analysis also reported a single scenario that would cause the development to exceed the trip levels reported in the TIA, staff finds that this scenario is theoretical only and thus not a reliable estimate of the likely traffic impacts of the development. In that single scenario, which classified the anchor as a "Free-Standing Discount Store," the development would generate a 10-trip increase over the TIA in the weekday PM peak hour. Kittelson only offered the scenario for the sake of completeness and for the sake of analyzing a development consistent with the size assumed in the TIA. In fact, the scenario is not consistent with the applicant's site plan, which proposes to develop nearly 7,000 square feet less than the assumed development reported in the TIA and this scenario. *See* Sheets A0.1 and A0.2 dated July 9, 2012, of applicant's submittal. In short, the applicant is not requesting authorization

in this application to develop at the level of intensity reported in the scenario. Therefore, staff finds that the results of this scenario are not representative of the likely traffic impacts of the development and thus are not the basis to require additional traffic analysis or mitigation measures at this time. In order to ensure that the trip impacts of the development do not exceed the levels set forth in the TIA and thus do not rise to the level set forth in this single scenario, staff recommends the condition set forth below.

For these reasons, based upon the data and conclusions reported by Kittelson and concurred with by DKS Associates, staff finds that, whether the anchor store is developed as a Shopping Center (ITE Code 820), Free-Standing Discount Superstore (ITE Code 813), or a Free-Standing Discount Store (ITE Code 815), the applicant's proposed development set forth on site plan Sheets A0.1 and A0.2 (dated July 9, 2012) will not adversely impact the surrounding street system, subject to the mitigation measures identified in the staff report dated September 18, 2012, and subject to a condition limiting development to an amount that would not produce more net new weekday PM peak hour trips than the TIA.

In the event the applicant proposes an increase in the amount of the development or a change in the use of the anchor building from one (1) of the three (3) analyzed use categories in the TIA, a condition is warranted to ensure that the project does not create traffic impacts in the weekday PM peak hour over and above what is stated in the applicant's TIA.

Finally, staff finds that, contrary to testimony received from the public, the Fred Meyer Wilsonville development is not comparable to the subject site for purposes of analyzing trip impacts. Staff reaches this conclusion based upon the weight of the evidence in the record for three (3) reasons. First, as explained by the applicant in rebuttal testimony dated _____, the location, uses, density, and development program at the Wilsonville site are not comparable to the subject property. For example, the Fred Meyer site includes over 206,000 square feet of anchor and shopping center uses while the applicant is proposing only 173,130 square feet of such uses at the subject property. Additionally, the Fred Meyer site includes 60 units of multi-family housing, while the subject property does not include any housing. Furthermore, the Wilsonville site is located adjacent to higher volume roadways (SW Wilsonville Road and Interstate 5). Accordingly, due to location alone, the Wilsonville site serves as a regional draw. By contrast, the subject site is not in a location that is as accessible to traffic throughout the region, which will reduce its potential for generating traffic.

Second, there is no basis to require use of tenant-specific trip rates as used in Wilsonville because the applicant in this case does not have an identified tenant and, as explained above, has instead analyzed trip impacts based upon the likely uses of the anchor site, which for the reasons set forth in these findings, staff finds to be consistent with the ITE standards, which project traffic based upon use types and not tenant names. Additionally, staff notes that the Fred Meyer specific trip rate (4.95 trips per one thousand square feet) is actually lower than the trip rate for the anchor utilized in the applicant's TIA, which is 5.23 trips per one thousand square feet. In other words, the applicant has assumed greater trip impacts per square foot of anchor development than occurred at the Wilsonville site.

Third, the Fred Meyer TIA overstated the trip impacts of that site in order to be conservative. For example, that TIA calculated the trip impacts of the proposed office buildings as retail in

order to allow for possible future conversion to retail uses. Further, the Fred Meyer TIA assumed that the multi-family housing would develop at the highest possible rate for apartments, townhouses, or condominiums (ITE 231). Accordingly, the Fred Meyer TIA likely overestimated the actual trip impacts from the site. Therefore, staff finds that the Wilsonville site is not comparable, and thus, the traffic impacts related to the Fred Meyer Wilsonville do not constitute substantial evidence to support any conclusions about the traffic impacts of the subject property.

This standard is met, subject to the condition set forth below.

PROPOSED CONDITION 27:

Maximum development on the site shall be limited so that it would not produce more than 760 net new trips in the weekday PM peak hour (4:00pm-6:00pm). In calculating the trips of individual buildings for purposes of this condition, the City shall utilize the respective ITE land use codes and trip generation rates identified in the TIA dated July 2012; the amendment dated August 12, 2012; the supplemental operations and queuing analysis dated September 11, 2012; and the second supplemental analysis dated October 1, 2012; unless the applicant proposes a change to a use classified under a different ITE land use code, in which case the City shall utilize the land use code and trip generation rate applicable to the new use as set forth in ITE *Trip Generation*, 8th Edition.

The City may allow development intensity beyond this maximum number of peak hour trips only if the applicant submits to the City, Washington County, and ODOT a supplemental traffic impact analysis that demonstrates that the proposed intensification of use would not adversely impact the surrounding street system or such adverse impacts are mitigated. The applicant shall seek and the City shall consider the supplemental TIA as a modification to the site plan in accordance with Zoning and Community Development Code 16.90.

DKS

MEMORANDUM

DATE: October 5, 2012

TO: Bob Galati, City of Sherwood
Jason Waters, City of Sherwood

FROM: Chris Maciejewski, P.E., P.T.O.E.
Garth Appanaitis, EIT

SUBJECT: **Sherwood Transportation On-Call Task 3** P11117-003
Langer PUD Planning Review – Supplemental Trip Generation Comparison

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Per your request, we have reviewed the supplemental trip generation comparison[1] provided for the proposed Langer Farms Phase 7 retail development. The analysis was provided to demonstrate if other retail land use categories that could occupy the "big-box" portion of the site would generate a comparable (or less than) amount of traffic as the level assumed in the transportation impact analysis (TIA), and would be consistent with the recommended transportation conditions of approval.

We reviewed the trip generation for the four new scenarios presented in Tables 2 through 5. Each scenario contained a combination of land uses generally similar to what was assumed in the TIA (big box store with supporting retail, bank, and food pads). The differentiating features of each scenario are:

- Table 2: Scenario 1 - Free-Standing Discount Superstore (ITE 813) – TIA Assumed Area
- Table 3: Scenario 2 - Free-Standing Discount Store (ITE 815) – TIA Assumed Area
- Table 4: Scenario 1 - Free-Standing Discount Superstore (ITE 813) – Current Site Plan Area
- Table 5: Scenario 2 - Free-Standing Discount Store (ITE 815) – Current Site Plan Area

The primary difference between ITE 813 (discount superstore) and ITE 815 (discount store) is the inclusion of a full-service grocery department under the roof of ITE 813.

We generally concur with the trip generation calculations that are provided. In general, while categories 813 and 815 would have a higher trip generation rate than the category 820 ("Shopping Center") that was utilized in the TIA, the difference in pass-by trip reductions and internal-site trip reductions help offset the rate differences. Furthermore, the TIA utilized a conservative method to calculate the category 820 trips using the published regression equation instead of average rates, which, as explained by the applicant, provides flexibility to have a range of uses develop on the site without exceeding the level of traffic evaluated in the TIA.

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[1] Langer Farms Phase 7 Supplemental Trip Generation Comparison, prepared by Kittelson & Associates, October 1, 2012.

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Our own calculations on scenarios proposed indicate that internal trip reductions may slightly differ from what is shown by the applicant. However, these differences would be generally offset by adjusted pass-by reductions, resulting in minimal overall differences.

The total new trip calculation provided by the applicant adequately indicates that other high traffic generating retail land use types that could occupy the "big box" portion of the site (e.g., ITE Code 813 and 815) would generate approximately equal or fewer trips than what was assumed in the July 2012 TIA. Therefore, an ultimate mix of land uses consistent with the four scenarios would not generate additional transportation impacts beyond those found from review of the TIA. Furthermore, the proposed condition of approval requiring additional trip generation and traffic impact analysis depending upon the tenant of the big-box portion of the site is probably no longer necassary.

If you have any questions, please feel free to call.

Job No.: TAS-01

Date: October 9, 2012

To: Brad Kilby, AICP
Bob Galati, PE

From: Keith Jones, AICP, LEED AP ND

Copy: Alex Hurley, PE
AKS Engineering & Forestry

Harper Houf Peterson Righellis Inc.
ENGINEERS ♦ PLANNERS
LANDSCAPE ARCHITECTS ♦ SURVEYORS

Project/Subject: **Langer Farms Phase 7 (SP 12-05/CUP 12-02)**
Recommended Conditions #14
Work in Langer Farms Parkway

☐ Fax - Number:_____; Number of pages_____
(If you did not receive the correct number of pages, please call 503-221-1131)
☒ E-mail ☐ Mail ☐ Hand Deliver ☐ Interoffice

Background
Conditions 14 is stated in the August 28, 2012 staff report recommendation to the Planning Commission as follows:

14. The applicant shall comply with SMC Section 12.17.025 - for exceptions to construction work within a construction limited street. The request submittal shall include exhibits which will provide technical design information of the impacts to the existing Langer Farms Parkway public infrastructure, and proposed mitigation efforts based on the City's Engineering Design and Standard Details Manual. Final mitigation requirements will be determined from review of this submittal and shall become part of the approval requirements for construction. Note - Submittal of the exceptions request is not a guarantee of being able to perform construction work within the construction limited street, and that review/approval is taken on a case-by-case basis.

The site will be accessed via a full access driveway to Langer Farms Parkway. A commercial driveway was constructed by the City with the Langer Farms Parkway south project and at the time of construction, the driveway location was placed as the best "guess" absent of a detailed traffic study for a specific project. This driveway was installed so it aligns with the Target shopping center driveway across the street. However, the applicant proposes to reconstruct the existing driveway and move it slightly north so that the through lane from the proposed project will directly align with the existing through lane of the Target driveway. This will require removing the existing driveway apron and removing some paving from Langer Farms Parkway.

Finding
The City has placed a 3-year construction limitation that is set to expire in November of 2014 that prohibits any removal of asphalt in Langer Farms Parkway within this 3-year timeframe (Chapter 12.17 of the Sherwood Municipal Code). Section 12.17.025 of the City code allows staff to grant exceptions to the 3-year construction limitation when circumstances are warranted. The applicant's traffic engineer finds that aligning the through lanes will improve safety and function of the

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intersection and therefore the applicant believes the asphalt removal is justified. To minimize the impact, the applicant will limit the removal of asphalt so that the disturbance is kept close to the existing driveway. Attached is an exhibit prepared by AKS Engineering showing the extent of the asphaltic concrete (AC) grind and overlay proposed to accomplish the driveway relocation. As shown in the exhibit, the domestic water connection will be completed within this AC removal area and therefore all work within Langer Farms Parkway will be concentrated in this one area. This work is the minimum necessary to accomplish the driveway relocation and ensure an adequate replacement AC overlay.

Request
Based on the finding in this memo and attached exhibit, the applicant requests that the recommended "Staff Analysis" on page 47 and 48 and Condition 14 is amended as follows:

Staff Analysis page 47 and 48
The project fronts Langer Farms Parkway, a collector status road constructed in 2011. This road falls under Municipal Code Chapter 12.17 - Construction Limited Streets, and any proposed site improvements which impact the existing public street infrastructure shall comply with the requirements under Sections 12.17.025 Exceptions. The proposal complies with Section 12.17.025 as follows: ~~through 12.17.035. A condition is recommended below to ensure that any impacts are reviewed utilizing the correct procedure as spelled out in the Sherwood Municipal Code.~~

A. *The City Manager or the City Manager's designee may approve an exception to the limitations in Section 12.17.015 in order to facilitate development on adjacent properties, provide for emergency repairs to subsurface facilities, provide for underground connections to adjacent properties, or to allow the upgrading of underground utilities.*

An approved exception may include conditions determined necessary by the City Manager or designee to ensure the rapid and complete restoration of the street and surface paving, consistent with the purpose of this Chapter 12.17 to the greatest extent practicable. Pavement restoration requirements may include but are not limited to surface grinding, base and sub-base repairs, trench compaction, or other related work as needed, including up to full-width street pavement removal and replacement.

Finding: The applicant's traffic consultant Kittelson & Associates, Inc. prepared a Traffic Impact Analysis for the project dated May 2012. The study recommends realigning the existing Langer Farms Parkway Driveway so the through lane will align with the existing Target access driveway west of the project. The applicant requests the driveway relocation in the interest of traffic safety and operations. In order to accomplish the driveway relocation, some removal of paving is required. The applicant has submitted an exhibit prepared by AKS Engineering dated 9/28/2012 titled "Langer Farms Subdivision Driveway Relocation and Water Service Connection Plan." This exhibit shows the limits of the paving removal and also shows that the domestic waterline connection can be made in this same cut thereby consolidating the impact into one location. Staff finds that the proposal as shown on the 9/28/2012 exhibit is acceptable as it concentrates the work in one location and limits the impacts to existing paving. A condition is recommended to ensure that any work is consistent with the submitted exhibit.

B. *A person seeking an exception under this section shall submit an application to the City Manager or designee in a form acceptable to the city. The application must include sufficient information to demonstrate reasonable compliance with Section 210.20 (Construction Limited Streets) of the Engineering Design Manual.*

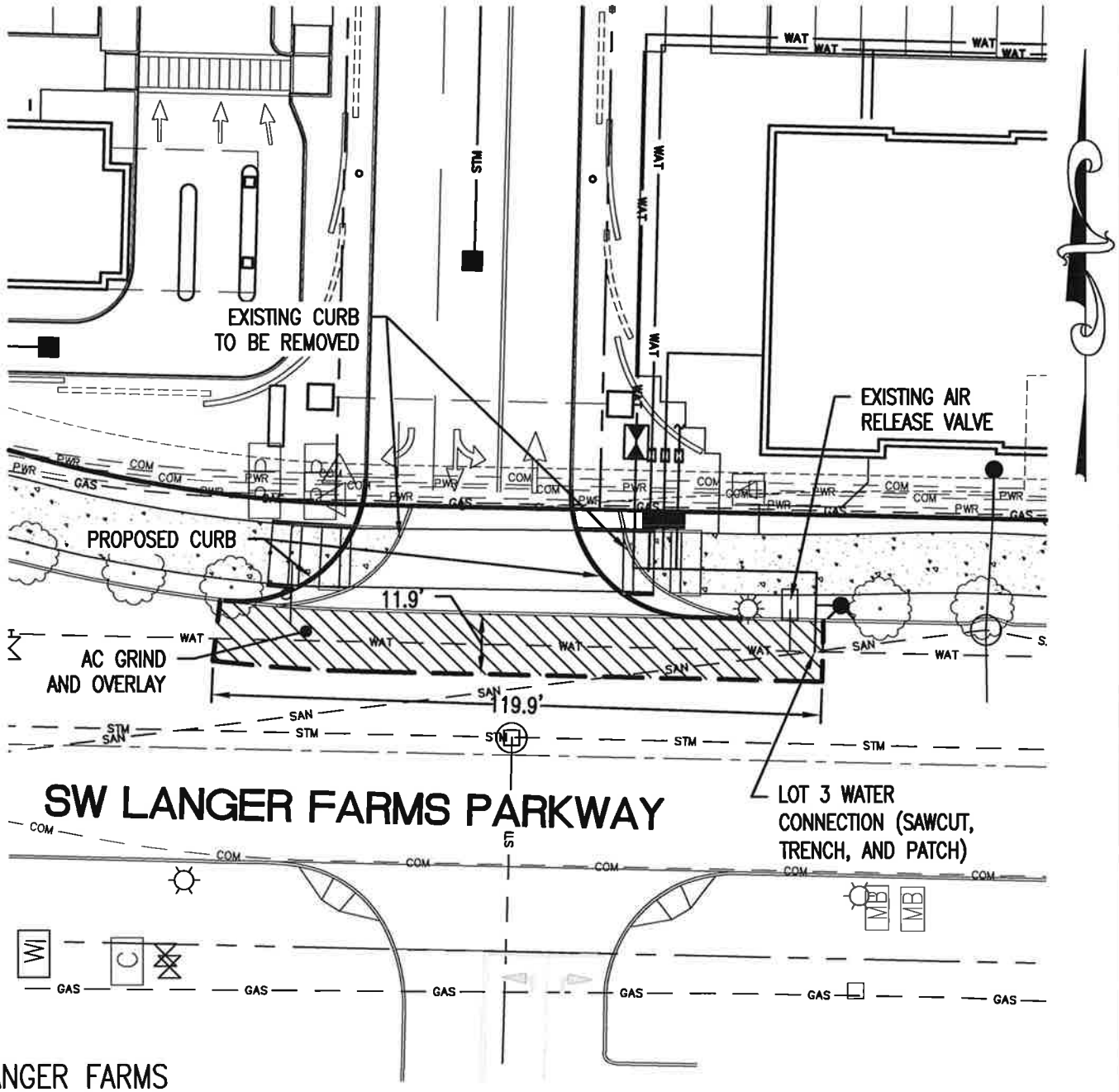
The City Manager or designee will review the application and information and provide a written decision either approving or denying the application. The City Manager's or designee's decision may be appealed in the manner provided for a writ of review under ORS chapter 34.

Finding: The details provided in this land use application along with the exhibit prepared by AKS Engineering dated 9/28/2012 titled "Langer Farms Subdivision Driveway Relocation and Water Service Connection Plan" are adequate to demonstrate compliance. The applicant should be conditioned to provide construction plans that are consistent with the impact area shown in this exhibit or request a new application under this Section 12.17.025 of the City's code.

Condition 14

~~The applicant shall comply with SMC Section 12.17.025 - for exceptions to construction work within a construction limited street. The request submittal shall include exhibits which will provide technical design information of the impacts to the existing Langer Farms Parkway public infrastructure, and proposed mitigation efforts based on the City's Engineering Design and Standard Details Manual. Final mitigation requirements will be determined from review of this submittal and shall become part of the approval requirements for construction. Note - Submittal of the exceptions request is not a guarantee of being able to perform construction work within the construction limited street, and that review/approval is taken on a case-by-case basis.~~

Work performed in Langer Farms Parkway shall be limited to the area shown in the exhibit prepared by AKS Engineering dated 9/28/2012 titled "Langer Farms Subdivision Driveway Relocation and Water Service Connection Plan." If additional work in Langer Farms Parkway is needed to support the development, the applicant shall make a new request under the requirements of SMC Section 12.17.025.



LANGER FARMS SUBDIVISION DRIVEWAY RELOCATION AND WATER SERVICE CONNECTION PLAN

SCALE 1" = 30 FEET

30 0 12 18 24 30

JOB NAME: LANGER FARMS (9/28/12)
JOB NUMBER: 3048
DRAWN BY: MTS
CHECKED BY: AHH
DWG NO.: STREET CUT EXHIBIT

ENGINEERING • PLANNING • LANDSCAPE ARCHITECTURE
FORESTRY • SURVEYING

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LICENSED IN OR & WA

13910 SW GALBREATH DRIVE, SUITE 100
SHERWOOD, OR 97140
PHONE: (503) 925-8799
FAX: (503) 925-8969

OFFICES LOCATED IN SALEM, OR & VANCOUVER, WA

Claus
22211 SW Pacific Highway
Sherwood, Oregon 97140
503-625-5265

October 9, 2012

Planning Commission Members
c/o City of Sherwood
Pine/Oregon Street
Sherwood, Oregon 97140

RE: Langer Commercial Site Plan Phase 7

Dear Planning Commission:

This process has been pre-determined. Councilor Matt Langer has voted on all the 2011-2012 code clean up legislation that has paved the way for this application to be heard by the Planning Commission in its current form. Code language has been tailored to meet the needs of the Langer PUD. City Council and city staff want to bring tax revenue in for the Urban Renewal to try to counter some of the accumulated debt payments and previous mistakes of earlier urban renewal projects and decisions.

In a world minus the influence of Councilor Langer, his clan and the urban renewal district money issues, a potentially large impact on the town like this would be decided by our seven elected officials. That world does not exist in Sherwood at the present time.

The City Council should appeal this land use file up to themselves because they are our highest elected officials as well as due to the cost prohibitive nature of the appeal fee-- 50% of the cost of the site plan which for this application is more than $13,000. A $6,500 plus appeal fee requirement by the city of the citizens is outrageous-- just to bring the application to our elected officials.

The "anchor tenant," (big enough for a Wal-mart type store) site alone at 14 acres of the Langer 55 acre parcel would generate over $9,000,000 in a land sale at $15 /sq.ft. 14 acres x 43,560 sq.ft/acre. x $15/sf = $9,147,600. Is it any wonder there have been a variety of questionable tactics used to push through the Langer PUD remaining site plans?

Citizens have not been given enough information to comment on the proposal-- Yet staff has deemed the application complete and has the clock ticking against the citizens. Citizens trying to provide meaningful information on a site plan without specified users and profiles is like trying to hit not only a moving target, but a shape shifting target. Applicant and staff comments, criteria and words morph as

they need to as the approval process and financial responsibilities take shape away from the public and without citizen review.

Who is looking out for the citizens?

Not the planning staff-- they don't even live in this town. The staff is pushing for development in the urban renewal agency boundaries so the urban renewal development bonds can get some revenue to cover the bond payments. They are also trying to get fees into their departments to prevent layoffs. Not the Langers and their investors-- they are looking to make millions of dollars for themselves while leaving the citizens with a mystery "anchor tenant" so large that only a few mass merchandisers could qualify to fill that space.

Tragedy of a Carefully Crafted "Process" that disenfranchises the citizens

Wal-Mart, known as "the merchant of death" could be brought into this town by an approval vote on this "undefined tenant" site plan application. Approval only takes a yes vote from four (a simple majority) of the seven appointed citizens who sit on the Planning Commission. The Planning Commission should reject this application because of the many unknowns of the end users for this site plan. Let the applicant then appeal the decision to the City Council and provide adequate information to the citizens. The citizens could then also hold their elected officials accountable for their vote on this proposal.

Legitimate Land Use Issues Being Circumvented

A stand alone operation like a mass merchandiser is different than an "anchor tenant." If the anchor is a mass merchandiser, during holidays they can generate 14,000 to 18,000 cars daily. Peak transportation causes several problems including gridlock on a road system that was not designed for such a use. That portion of the Langer PUD was to be industrial property-- look at their estate tax ruling as well as the initial traffic study that was done in 1995.

The recent traffic study has dramatically understated the traffic profile for the mystery tenants. Why are hypotheticals being allowed? Other tenants will also be drawing in their own traffic. Only by withholding users are the applicants and owners able to produce hypothetical traffic and tenant profile reports. The Northern extension of Adams Avenue (now called Langer Farms Porkway) was to be attached as a condition and completed by the Langers prior to this Phase, according to the latest version of their periodically changing "development" agreement with the city. Please make sure that as much of the road system improvements that can be required are being required prior to any mass merchandiser or mystery tenant being allowed to be built and occupy the 145,000 sq.ft. building.

The demographics of Wal-Mart will draw from 15-25 miles. We are the third highest income town in Oregon. This is not serving our town. Much of the customer profile that shops Wal-Mart has an income of $38,000 income or less. A lot of associated Wal-Mart information about increased theft, security, vagrancy, local business closures, decreases to the overall tax base and associated problems could be dealt with by the Planning Commission decision makers if the applicant would disclose the tenant information. These are legitimate land use issues that are being circumvented.

As with the opening of Albertsons several years ago, we saw the closing of the grocery market in the Sherwood Plaza. This mystery tenant may close Albertsons and/or Safeway, Target, and numerous small independent businesses that are already located in our town. The applicant is not even suggesting that these land uses will be providing family sustainable wages-- they are talking about part time student help and low level employee wages. Is this application worth such a set of trade-offs?

Shame on the Mayor who is friends with the Langer family and who is being vigorously supported for re-election this November by Councilor Matt Langer and members of his clan. It is no coincidence that this site plan application is being timed to be heard and approved by the Planning Commission without the credit for the land uses and processes placed at Mayor Mays and Councilor Matt Langer's door steps.

Langers and Keith Mays are fooling no one. The Planning Commission should place this application with the City Council where it belongs. Throwing out a little candy at the Robin Hood festival doesn't meet the threshold for a multi-million dollar pay day at the expense of the people of Sherwood.

T.C. Memo. 2006-232

UNITED STATES TAX COURT

ESTATE OF F. WALLACE LANGER, DECEASED, CLARENCE D. LANGER, JR., EXECUTOR, Petitioner v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 11116-04. Filed October 30, 2006.

John H. Draneas, for petitioner.

Wesley F. McNamara, for respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

HAINES, Judge: Respondent determined a Federal estate tax deficiency of $949,686 against the Estate of F. Wallace Langer

(the estate).[1] After concessions,[2] the issue for decision is the fair market value on February 29, 2000, of Phases 2 and 5 of the Langer MarketPlace Planned Unit Development.

FINDINGS OF FACT

Some of the facts have been stipulated and are so found. The stipulation of facts and the attached exhibits are incorporated herein by this reference.

F. Wallace Langer (decedent), a lifelong resident of Sherwood, Oregon, died on February 29, 2000 (the date of death). Decedent's nephew, Clarence D. Langer, Jr. (Clarence Langer), was appointed executor of the estate. At the time the petition was filed, he resided in Sherwood, Oregon.

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[1] Amounts are rounded to the nearest dollar.

[2] The parties have stipulated: (1) The taxable estate will be increased by $127,802, representing the value of the residence included in the Langer Residence Revocable Trust; (2) decedent's 29.19-percent interest in the Langer Family LLC (LFLLC) is included in the estate; (3) the fair market value of the real property owned by the LFLLC, excluding Phases 2 and 5 of the PUD and prior to reduction for deferred property taxes, was $5,885,000 on February 29, 2000; (4) the net value of the real property owned by LFLLC will be calculated by adding the fair market value of Phases 2 and 5 to $5,885,000, then subtracting $430,310 to account for property tax liabilities that would attach the property on the date of death; and (5) the value of decedent's 29.19-percent interest in LFLLC will be computed by multiplying the net value of the real estate owned by LFLLC by 15.32475 percent. This computation reflects a 47.5-percent discount to account for all applicable discounts. The figure thus computed will be substituted for the value of decedent's interest in LFLLC reported on Schedule G, Transfers During Decedent's Life, of the estate's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

A. The City of Sherwood

Sherwood, Oregon, is located approximately 15 miles southwest of Portland, Oregon. During the 1990s and through at least 2000, Sherwood experienced rapid population growth, increasing from 5,320 in 1995 to 12,230 by 2000.

The population growth led to increased commercial development in the Town Center area, which was centered around the intersection of T-S Road and Pacific Highway.[3] To facilitate commercial development, the City of Sherwood created a "master plan" for development, which included a comprehensive development plan, zoning districts, and a zoning map. Individual land owners could apply for planned unit developments, or PUDs, which overlaid the master plan. The PUDs included "categories of use", or phases, that fit within the general goals and requirements of the comprehensive plan. The PUDs were intended to be flexible, offering relief from strict adherence to the zoning map. The phases within each PUD could be altered without going through a comprehensive plan amendment or zoning change. The PUD phases were not separate legal parcels, and any development, reconfiguration, or partitioning of the phases required the city's approval.

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[3] In 2000, Pacific Highway had two to three lanes of traffic running in each direction, additional turn lanes, and an average daily traffic count of 37,800. In 2000, T-S Road had only one lane in each direction, a center turn lane, and an average daily traffic count of 22,946.

Prior to December 5, 2000, developers in Sherwood were subject to the traffic mitigation requirements of Metro, an elected regional government engaged in regional and local planning in the Greater Portland area. Traffic mitigation requirements could include constructing new roads, widening existing roads, or installing traffic signals. On December 5, 2000, Sherwood passed its own traffic mitigation ordinance, the Capacity Allocation Program (CAP). CAP's goal was to provide a better mechanism for transportation planning and more accurate calculations of infrastructure improvement costs.

Sherwood's continued growth and development were not without controversy. Around the date of decedent's death, many Sherwood citizens, including the mayor, showed some resistance to continued development. However, the resistence was insufficient to prohibit further development. By the date of death, new businesses in the Town Center area included a Home Depot, grocery stores, banks, restaurants, a movie theater, and an ice-skating arena.

B. The Langer MarketPlace Planned Unit Development and the Langer Family Limited Liability Company

Since 1879, the Langer family owned and farmed land in Sherwood. Their land was located in the Town Center area, approximately a quarter mile east of Pacific Highway and bisected by T-S Road. As population and commercial development increased,

farming became less practicable, and the Langers turned their attention to commercial development.

In 1995, the Langers created the Langer MarketPlace Planned Unit Development (the Langer PUD), which defined the development permitted on a 55.59-acre tract owned by a trust for decedent and a contiguous 29.88-acre tract owned by a trust for Clarence Langer. While it did not create separate legal parcels, the Langer PUD divided the land into eight phases of development. On April 25, 1995, the Sherwood City Council approved the Langers' application for the PUD. However, the approval was conditioned upon their agreement to, among other things, develop parks, pedestrian walkways, and:

> At each phase of development, and with each site plan submitted to the City, the applicant shall provide a traffic impact analysis for City, County and ODOT [Oregon Department of Transportation] review and approval. Recommended traffic safety and road improvements shall be considered by the City and may be required with each phase.

By agreement dated May 9, 1998, decedent, Clarence Langer, and other members of the Langer family formed the Langer Family Limited Liability Company (LFLLC). The trusts for decedent and Clarence Langer contributed to LFLLC the land subject to the Langer PUD. At his death, decedent held a 29.19-percent interest in LFLLC.

Prior to decedent's death, LFLLC sold Phase 1 of the Langer PUD. On the date of death, LFLLC still owned Phases 2 through 8.

Because the parties stipulated their value, Phases 3, 4, 6, 7, and 8 are not at issue. See supra note 2. At decedent's death, Phase 2 was zoned retail commercial, was 2.48 acres, and had a rectangular configuration. Phase 5 was zoned retail commercial, was 11.7 acres, and had an awkward configuration. On the date of death, there were no deals pending regarding the development or sale of Phases 2 and 5.

In August 2000, LFLLC entered into negotiations with Target Corporation (Target) for the purchase of Phase 5. On December 5, 2000, LFLLC filed an application for development of Phase 5 with the City of Sherwood, which was approved in October 2001. Because the application was submitted before the CAP ordinance was enacted, the development of Phase 5 was subject to the traffic mitigation requirements of Metro.

After approval of the development application, Sherwood's mayor encouraged LFLLC to redesign the development of Phase 5. In 2002, LFLLC proposed an amendment to the Langer PUD and requested the approval of a new development plan for Phases 2, 3, and 5, which proposed changing the sizes and configurations of those phases. The amended PUD and new development plan were approved on November 12, 2002.

On September 12, 2003, LFLLC and Target signed a Sale and Purchase Agreement for the purchase by Target of approximately 10.97 acres of Phase 5. On July 8, 2004, LFLLC sold

approximately 3.01 acres of Phase 5 to Gramor Langer Farms LLC (Gramor).

C. The Estate Tax Return

The estate timely filed a Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return (the estate tax return). As reflected on the estate tax return, the estate valued LFLLC's real property at $8,180,000 as of the date of death and determined that the value of decedent's 29.19-percent interest in LFLLC, after all applicable discounts, was $837,000.

On April 2, 2004, respondent issued the estate a notice of deficiency. Respondent determined that decedent's 29.19-percent interest in LFLLC was $2,606,700 rather than $837,000. In response to the notice of deficiency, the estate filed a petition with this Court on June 28, 2004.

OPINION

For Federal estate tax purposes, property includable in the gross estate is generally included at its fair market value on the date of the decedent's death. See secs. 2031(a) and 2032(a); sec. 20.2031-1(b), Estate Tax Regs.[4] Fair market value is "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant

[4] Unless otherwise indicated, all section references are to the Internal Revenue Code, as amended, and all Rule references are to the Tax Court Rules of Practice and Procedure.

facts." United States v. Cartwright, 411 U.S. 545, 551 (1973); sec. 20.2031-1(b), Estate Tax Regs. The willing buyer and the willing seller are hypothetical persons, instead of specific individuals and entities, and the characteristics of these imaginary persons are not necessarily the same as the personal characteristics of the actual seller or a particular buyer. See Estate of Bright v. United States, 658 F.2d 999, 1005-1006 (5th Cir. 1981).

Real estate valuation is a question of fact to be resolved on the basis of the entire record. See Ahmanson Found. v. United States, 674 F.2d 761, 769 (9th Cir. 1981); Estate of Fawcett v. Commissioner, 64 T.C. 889, 898 (1975). The valuation must reflect the highest and best use to which the property could be put on the relevant valuation date. Symington v. Commissioner, 87 T.C. 892, 896 (1986).

Valuation is an inexact process. See Buffalo Tool & Die Manufacturing Co. v. Commissioner, 74 T.C. 441, 452 (1980). As the trier of fact, we may use experts to assist us in deciding upon value, but we are not bound by those experts' views or opinions. See Silverman v. Commissioner, 538 F.2d 927, 933 (2d Cir. 1976), affg. T.C. Memo. 1974-285; Chiu v. Commissioner, 84 T.C. 722, 734 (1985). One expert may be persuasive on a particular element of valuation, and another expert may be persuasive on another element. See Parker v. Commissioner, 86

T.C. 547, 562 (1986). Consequently, we may adopt some and reject other portions of expert reports or views. See Helvering v. Natl. Grocery Co., 304 U.S. 282 (1938).

In attempting to establish the fair market value of Phases 2 and 5, the estate and respondent rely on valuation experts. The estate's valuation expert, Brian L. Kelley (Mr. Kelley), also valued the subject land for purposes of preparing decedent's estate tax return. Respondent's valuation expert was Stephen J. Pio (Mr. Pio).[5] The experts agree that the highest and best use of Phases 2 and 5 on the date of death was their intended use, commercial development. The experts also agree that the comparable sales method is the most appropriate valuation method.[6] However, the experts disagree over the fair market values of Phases 2 and 5 on the date of death. Mr. Kelley determined that Phases 2 and 5 had fair market values of $525,000 and $2,075,000, respectively. Mr. Pio determined that Phases 2

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[5] Because we find both experts to be qualified and because their relative experience does not impact our evaluation of their opinions, we do not discuss their qualifications or experience.

[6] The comparable sales approach is "'generally the most reliable method of valuation, the rationale being that the market place is the best indicator of value, based on the conflicting interests of many buyers and sellers.'" Estate of Spruill v. Commissioner, 88 T.C. 1197, 1229 n.24 (1987) (quoting Estate of Rabe v. Commissioner, T.C. Memo. 1975-26, affd. without published opinion 566 F.2d 1183 (9th Cir. 1977)). This method requires gathering information on sales of property similar to the subject property, then comparing and weighing the information to reach a likely value for the land being appraised.

and 5 had fair market values of $620,000 and $3,420,000, respectively.

Both parties encourage us to reject the other party's expert report in its entirety. However, we find each expert to be persuasive on some points, but not on others, and give each report its due weight.

A. Valuation of Phase 5

1. Mr. Kelley's Report

Mr. Kelley purported to value Phase 5 by using the comparable sales method. However, after arriving at a value per square foot, he then applied a "discounted cashflow analysis" to arrive at Phase 5's "net present 'as-is' land value" on the date of death.

a. Comparable Sales

To determine the value per square foot of Phase 5, Mr. Kelley used four comparables:

Comparable No.	Location	Sale date	Sales price	Acres	Adj. price per sq. ft.[1]
1	Intersection of Scholls-Sherwood Rd. and Pacific Highway, Sherwood, Oregon	12/99	$2,918,158	9.3	$7.20
2	20260 Pacific Highway, Sherwood, Oregon	8/00	4,473,194 (3,723,194 adjusted)	24.35/ (12.18 usable)	4.22/ (7.02 adjusted)[2]
3	NW 12th Ave. and Pacific Highway, Sherwood, Oregon	9/96	1,097,705	7.3	3.81
4	T-S Road and SW 90th Ave., Tualatin, Oregon	6/96	3,353,310	15.46	5.54

[1] Because comparables 3 and 4 were sold 40 months and 43 months before the valuation date, respectively, Mr. Kelley adjusted the sales prices upward by 10.5 percent and 11.25 percent to account for inflation. No such adjustments were made to comparables 1 and 2.

[2] Only a portion of comparable 2 was suitable for commercial development. Mr. Kelley determined that "approximately 50 percent" of the site was zoned for exclusive farm use, which prohibited commercial development. The seller of the property retained an option to repurchase that portion of the land for $400,000, though the option was never exercised. The seller also retained and exercised an option to repurchase a pad site on the property for $350,000. In order to get an "apples-to-apples" comparison, Mr. Kelley deducted $750,000, the total of the option prices, from the original sales price to get an adjusted sales price for the portion of usable land that was sold to and retained by the buyer.

Mr. Kelley determined that comparables 1 and 2 were high indicators of value because they were located on Pacific Highway, had superior exposure to traffic (exposure) than Phase 5, and were better configured for commercial development.[7] He determined that comparable 3 was a low indicator due to the older sales date and inferior configuration. Finally, he determined

[7] Both experts used the phrase "high indicator of value" to describe a comparable with a value greater than the property being valued and the phrase "low indicator of value" to describe a comparable with a value lower than the property being valued.

that comparable 4 was most similar to Phase 5 in exposure and location, but it was inferior in configuration and was thus a reasonable to slightly low indicator. Mr. Kelley concluded that Phase 5 had a value of $6 per square foot.

Comparables 3 and 4 were sold in 1996. In the period between those sales and the date of death, Sherwood experienced rapid population growth and increased demand for commercial property. Given the lapse in time and the change in demand for commercial property, we find that comparables 3 and 4 are not reliable indicators of value. Therefore, we take into consideration comparables 1 and 2 only.

b. Discounted Cashflow Analysis

Mr. Kelley determined that Phase 5 was not readily marketable on the date of death and that it would take 3 years to sell the property. To account for "an extended marketing and due diligence period" and for "the risk associated with the subject property", Mr. Kelley applied a discounted cashflow analysis to Phase 5's value per square foot to arrive at its "net present 'as-is' land value" of $2,075,000.[8]

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[8] Mr. Kelley's discounted cashflow analysis was essentially a three-step analysis: (1) He adjusted the value per square foot upwards by 3 percent annually for 3 years to account for inflation; (2) he then subtracted sales and marketing costs; and (3) he then discounted that amount by 12 percent annually for 3 years to account for the time-value of money and the risks associated with the property to arrive at a "net present 'as-is' land value".

We disagree with Mr. Kelley's use of a discounted cashflow analysis for two reasons. First, Mr. Kelley did not determine Phase 5's fair market value on the appropriate date--the date of death. Because we are determining fair market value on the date of death, it necessarily follows that the hypothetical sale between a willing buyer and a willing seller consummates on the date of death. See United States v. Cartwright, 411 U.S. at 551; sec. 20.2031-1(b), Estate Tax Regs. Mr. Kelley did not determine the price at which Phase 5 would change hands between a willing buyer and a willing seller on the date of death. Instead, he determined the price at which Phase 5 would change hands 3 years after the date of death and then discounted this amount by 12 percent annually for 3 years, as demonstrated by his testimony: "In my valuation analysis, I'm appraising it for a buyer that would most probably buy it three years from the date of valuation, because I didn't feel that it was really marketable at that point in time and therefore, I needed to discount that value over a 3-year period."

Second, we do not agree with Mr. Kelley's conclusions on which he based his use of a discounted cashflow analysis. By using a discounted cashflow analysis, Mr. Kelley attempted to reduce Phase 5's value to account for: (1) The uncertainty of offsite costs; (2) the City of Sherwood's stance on further

development; and (3) the purported oversupply of commercial property in Sherwood.

The uncertain offsite costs to which Mr. Kelley refers are the costs of traffic mitigation requirements imposed on commercial developers by Metro. However, these requirements were not peculiar to Phase 5--all commercial developers in Sherwood (or at least those developing larger tracts of land) were subject to the requirements of Metro, including the developers of comparables 1 and 2. Any impact the uncertain traffic mitigation costs had on the market should be reflected in the sales prices of comparables 1 and 2, and are thus taken into account by using those comparables in the comparable sale method. A further discount is not necessary.

The estate also argues that Phase 5 was subject to other extraordinary offsite costs. In valuing Phase 5, we generally take into consideration only those costs that are reasonably foreseeable by a hypothetical buyer and a hypothetical seller on the valuation date. See Estate of Spruill v. Commissioner, 88 T.C. 1197, 1228 (1987). The estate has not established that extraordinary offsite costs were reasonably foreseeable on the date of death. Instead, it appears that the estate is focusing on the costs associated with the reconfiguration of Phase 5 in 2002. However, the reconfiguration was not contemplated by LFLLC on or before the date of death, nor was it reasonably foreseeable

that such reconfiguration would be necessary. Therefore, we do not take into account any purported extraordinary offsite costs.

Mr. Kelley and the estate assert that the City of Sherwood's hostility to further development made approval for additional development difficult and expensive. Like the uncertain offsite costs, any impact the City's attitude toward development had on the market should be reflected in the sales prices of comparables 1 and 2 and is thus taken into account by using those comparables in the comparable sale method. A further discount is not necessary.[9]

Finally, we do not agree with Mr. Kelley's determination that there was an oversupply of commercial space in Sherwood on the date of death. In analyzing the supply and demand for commercial property, Mr. Kelley conducted a "retail expenditure analysis". To summarize, Mr. Kelley determined that there were 9,218 people residing in 3,404 households within a 1.5-mile radius of the intersection of Pacific Highway and T-S Road. Using average retail expenditure data, he then determined that

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[9] There is some indication that LFLLC had particular difficulty in getting city approval because of strained personal relationships between Clarence Langer and members of Sherwood's government. Because we are determining the fair market value based on a hypothetical sale by a hypothetical seller, we do not necessarily take into consideration the personal characteristics of the actual seller. See Estate of Bright v. United States, 658 F.2d 999, 1005-1006 (5th Cir. 1981). Therefore, we do not factor in any difficulty arising from Clarence Langer's relationship with members of the city government.

3,404 households could support only 208,325 square feet of retail space. Because more than 300,000 square feet of commercial space was available on the date of death, Mr. Kelley concluded that there was an oversupply of commercial property.

By limiting his analysis to a 1.5-mile radius, Mr. Kelley made an implicit assumption that people living outside the radius will not shop within the radius. His approach takes into account only 9,218 people, which does not even include the entire population of Sherwood in 2000 (12,230). Mr. Kelley did not offer a reasonable explanation for why he so limited his analysis. The businesses within the area included a Home Depot, grocery stores, banks, restaurants, a movie theater, and an ice-skating arena. We find that it is unreasonable to assume that only those people living within 1.5 miles will frequent such businesses.

For the above-stated reasons, we reject Mr. Kelley's use of a discounted cashflow analysis.[10]

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[10] We recognize that discounted cashflow analysis can be an appropriate valuation method. For example, discounted cashflow analysis has been accepted as a method of valuing a company's stock by determining the present value of its future stream of income. See, e.g., N. Trust Co. v. Commissioner, 87 T.C. 349, 378-380 (1986). Also, in Estate of Rodgers v. Commissioner, T.C. Memo. 1999-129, discounted cashflow analysis was accepted to determine the fair market value of multiple pieces of real property. The properties were so numerous that they could not be liquidated within a reasonable time without depressing the sales prices, and thus a discounted cashflow analysis was appropriate to take into account a market absorption rate. Id. This case is
(continued...)

2. Mr. Pio's Report

In valuing the subject property, Mr. Pio made a "hypothetical assumption" that Phases 2 and 5 were legally partitioned on the date of death.[11] He then determined the fair market value of Phase 5 using seven comparables:

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[10](...continued)
distinguishable from Estate of Rodgers because there has been no showing that, due to their numerosity, the Phases could not be sold within a reasonable time without depressing their sales prices. In fact, Mr. Kelley did not purport to use his discounted cashflow analysis to take into account a market absorption rate, nor does the estate argue that Mr. Kelley's discounted cashflow analysis was used to take into account a market absorption rate.

[11] The estate argues that Mr. Pio's "hypothetical assumption" was inappropriate because Mr. Pio does not take into account costs associated with the subdivision of the phases for individual sale. However, both parties valued Phases 2 and 5 as if they were separate properties on the date of death. It does not appear that Mr. Kelley took into account the costs associated with the subdivision of the phases, nor does the estate offer an estimate of such costs. Because the estate has failed to provide any basis upon which we could make an estimate, we cannot take such costs into consideration.

Comparable No.	Location	Sale date	Sales price	Acres	Price per sq. ft.
7	NW Imbrie Rd. at NW Cornelius Pass Rd., Hillsboro, Oregon	7/00	$7,500,000	13.01	$13.23
8	SE 24th Ave at TV Hwy, Hillsboro, Oregon	2/01	7,000,000	13.22	12.16
9	NW Stucki Rd. at Cornell Rd., Hillsboro, Oregon	2/00	8,276,240	17.67	10.75
10	Intersection of Scholls-Sherwood Rd. and Pacific Highway, Sherwood, Oregon	12/99	2,918,158	9.3	7.20
11	20260 Pacific Highway, Sherwood, Oregon	7/00	4,473,194/ (4,373,194 adjusted)	24.39/ (12.97 usable)	4.22/ (7.74 adjusted)[1]
12	T-S Rd., between Adams Ave. and Langer Dr., Sherwood, Oregon	9/03	2,702,160	10.93	5.68
13	T-S Rd. at Langer Dr., Sherwood, Oregon	7/04	1,500,000	3.01	11.44

[1] Mr. Pio adjusted the sales price of comparable 11 downward by $100,000 to account for the land zoned for exclusive farm use.

Mr. Pio determined that comparables 7, 8, and 9 were very high or high indicators of value due to their location and development costs, that comparable 10 was a reasonable indicator due to its modestly superior exposure but less desirable access, and that comparable 11 was a reasonable indicator due to its superior exposure but inferior zoning and less desirable access. Comparables 12 and 13 represented the sales portions of Phase 5, as reconfigured in 2002, to Target in 2003 and Gramor in 2004. Mr. Pio did not accord either comparable great weight. Mr. Pio

concluded that Phase 5 had a fair market value on the valuation date of $7.50 per square foot, or $3,420,000.

Mr. Pio acknowledged that Hillsboro was a completely different market with characteristics distinct from Sherwood. As such, we find that comparables 7, 8, and 9 are not reliable indicators of value. Likewise, comparables 12 or 13 are not reliable indicators of value. The sales occurred more than 3 years after the valuation date, and because of the reconfiguration, the character of the property was significantly different than it was on the date of death. Therefore, we take into consideration comparables 10 and 11 only.

3. Fair Market Value of Phase 5

Mr. Kelley's comparable 1 was the same property as Mr. Pio's comparable 10 (comparable 1-10). Likewise, Mr. Kelley's comparable 2 was the same property as Mr. Pio's comparable 11 (comparable 2-11). Both comparables were located in the Town Center area of Sherwood, and the sales dates were within 6 months of the date of death. Thus, we find that comparables 1-10 and 2-11 are the most helpful in determining the fair market value of Phase 5. Based on the expert reports, we find that there are five major factors that must be weighed in comparing comparables 1-10 and 2-11 to Phase 5: Location, exposure, configuration, accessibility, and zoning.

a. Comparable 1-10

Comparable 1-10 was located on Pacific Highway, while Phase 5 was located on T-S Road. Because Pacific Highway had a significantly higher traffic count than T-S Road, comparable 1-10 had superior location and exposure to Phase 5. While Mr. Pio did not address comparable 1-10's configuration, we agree with Mr. Kelley that comparable 1-10 had superior configuration for commercial development due to Phase 5's awkward configuration. These three factors indicate that comparable 1-10 is a high indicator of value.

The impact of accessibility is less clear. However, even assuming arguendo that Phase 5 had superior accessibility, this factor would not outweigh the three factors above. In addition, both Phase 5 and comparable 1-10 were zoned retail-commercial, making zoning a neutral factor. Thus, comparable 1-10, at $7.20 per square foot, is a high indicator of value.

b. Comparable 2-11

Only a portion of comparable 2-11 was suitable for commercial development, the remainder being zoned for exclusive farm use. Both experts agree that the sale price of comparable 2-11 must be adjusted to determine the value of the area suitable for commercial development only. However, they do not agree to the extent of the adjustment. Additionally, their reports conflict regarding the acreage of the land usable for commercial

development. These issues must be resolved before a reliable comparison can be made.

Mr. Kelley valued the land zoned for exclusive farm use at $400,000, based on an option retained by the seller to repurchase that portion of the land. Mr. Pio testified that, hypothetically, if a buyer and seller believed that the land was worth $400,000, then $400,000 would be an appropriate value. However, Mr. Pio did not believe the land was actually worth $400,000. He concluded that it was worth $100,000, but did not offer any support for his conclusion other than that he "happened to be familiar with that property". Because the parties to the sale agreed to an option price of $400,000, we find that it is an appropriate measure of value for the exclusive farm use portion of comparable 2-11.

Mr. Kelley also reduced the sale price of comparable 2-11 by $350,000 to account for an option exercised by the seller to repurchase a 1.59-acre pad site on the property.[12] Mr. Pio did not make the adjustment because he was not aware that the seller retained and exercised the option. However, he testified that it would be appropriate to reduce the sale price by $350,000, so long as the acreage was also reduced by 1.59 acres.

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[12] A pad site is a building site within a shopping area that is ready for construction of a retail establishment and is usually surrounded by customer parking areas.

We conclude that the sale price of comparable 2-11 should be reduced by $750,000, to reflect the exclusive farm use portion and additional pad site. Thus, we use an adjusted sale price for comparable 2-11 of $3,723,194.

Mr. Kelley determined that comparable 2-11 was 24.35 acres, and "approximately 50% of the site" was zoned for exclusive farm use. He used 12.18 acres (approximately 50 percent of 24.35) to calculate the adjusted sales price per square foot. Even though he deducted the option price of the pad site, he did not deduct the pad site's 1.59 acres from the usable acres.

Mr. Pio determined that comparable 2-11 was 24.39 acres, and 12.97 acres was usable. Mr. Pio's determination was based on a plot map and is thus more reliable than Mr. Kelley's approximation. From the 12.97 acres, we must also subtract the 1.59-acre pad site because we reduced the adjusted sale price by the pad site's option price. Thus, we find that 11.38 acres of comparable 2-11 was suitable for commercial development by the buyer, resulting in an adjusted sale price of $7.51 per square foot.

Because of its location on Pacific Highway, comparable 2-11 had superior location and exposure to Phase 5. It also had superior configuration due to its relatively square shape. Mr. Pio argues that these factors are offset by comparable 2-11's inferior accessibility and zoning. We disagree. As discussed

above, Phase 5's accessibility is unclear. Even assuming arguendo that Phase 5 had superior accessibility, this would not offset the other three factors. Additionally, comparable 2-11 was zoned light industrial instead of retail-commercial. However, given the fact that comparable 2-11 was sold to Home Depot for the construction of a Home Depot store, we find that its zoning did not have a significant impact on the ability to develop the property. Thus, comparable 2-11, at $7.51 per square foot, is a high indicator of value.

c. Fair Market Value of Phase 5

Due to the importance of the traffic count, we find that location and exposure are the most significant factors in determining Phase 5's fair market value. In 2000, Pacific Highway had an average daily traffic count of 37,800, while T-S Road had an average daily traffic count of only 22,946. Because of their location on Pacific Highway, comparables 1-10 and 2-11 had superior location and exposure to Phase 5. Additionally, Phase 5 was less suitable for commercial development due to its awkward configuration. To take these factors into consideration, we find that a 25-percent discount from the average sales price per square foot of the comparables is appropriate. We conclude that Phase 5 had a value of $5.52 per square foot on the date of

death.[13] Therefore, we find that the fair market value of Phase 5 on the date of death was $2,813,279.[14]

C. Valuation of Phase 2

1. Mr. Kelley's Report

Similar to his valuation of Phase 5, Mr. Kelley used the comparable sales method to determine Phase 2's value per square foot ($6) and then applied a discounted cashflow analysis to arrive at Phase 2's "net present 'as-is' land value" on the date of death ($525,000). For the same reasons described above, we reject the discounted cashflow analysis portion of Mr. Kelley's valuation.

To determine the value per square foot of Phase 2, Mr. Kelley used five comparables:

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[13] Phase 5's value per square foot on date of death = ($7.51 + $7.20)/2 = $7.36 [average sales price per square foot of comparables 1-10 and 2-11] x 0.75 [to reflect a 25-percent discount] = $5.52.

The estate argues that Phase 5's value should be reduced due to: (1) The uncertainty of traffic mitigation costs imposed by Metro; (2) the city's hostility towards further development; and (3) the extraordinary offsite costs associated with making Phase 5 suitable for commercial development. These arguments are discussed supra in our analysis of Mr. Kelley's discounted cashflow analysis.

[14] $5.52 per square foot x 43,560 square feet per acre = $240,451 per acre x 11.7 acres = $2,813,279.

Comparable No.	Location	Sale date	Sales price	Acres	Adj. price per sq. ft.[1]
1	Edy Rd., Just West of Pacific Highway, Sherwood, Oregon	6/99	$775,404	3.03	$5.87
2	19740 SW 72nd St., Tualatin, Oregon	3/00	320,352	0.92	7.99
3	Smith Blvd. at Pacific Highway, Sherwood, Oregon	2/99	210,000	1.06	4.55
4	Intersection of Sherwood Blvd. and Pacific Highway, Sherwood, Oregon	11/97	349,919	0.95	9.05
5	Intersection of T-S Rd. and Pacific Highway, Sherwood, Oregon	3/97	660,000	2.46	6.71

[1] Because comparables 4 and 5 were sold 28 months and 36 months before the valuation date, respectively, Mr. Kelley adjusted the sales prices upward by 7 percent and 9 percent to account for appreciation and inflation. No such adjustments were made to comparables 1-3.

Mr. Kelley's expert report provided only a summary analysis of the comparables:

> The high end of the value range is indicated by Comparable 4 ($9.05/SF), a pad site with superior exposure. In concluding a value for the subject, primary emphasis is placed on Comparables 1 and 5 ($5.87/SF to $6.76/SF) both located in the immediate area. Considering the subject's secondary locational characteristics, a value of $6.00 per square foot is concluded for this phase of the subject property.

2. Mr. Pio's Report

Mr. Pio used six comparables to determine Phase 2's fair market value on the date of death:

Comparable No.[1]	Location	Sale date	Sales price	Acres	Price per sq. ft.
1	Intersection of SW Handley St. and Pacific Highway, Sherwood, Oregon	3/01	$249,000	0.74	$7.72
2	7300 SW Childs Rd., Tualatin, Oregon	6/02	$500,000	1.74	$6.60
3	3585 NW 215th Ave., Hillsboro, Oregon	8/99	$485,000	2.83	$3.93
4	SW Borchers Dr., Just West of Pacific Highway, Sherwood, Oregon	2/00 & 11/00	$900,000	3.39	$6.09
5	Smith Blvd. at Pacific Highway, Sherwood, Oregon	3/99	$210,000	1.03	$4.68
6	Edy Rd., Just West of Pacific Highway, Sherwood, Oregon	6/99	$775,404	3.03	$5.87

[1] Mr. Pio's comparables 5 and 6 are the same properties as Mr. Kelley's comparables 3 and 1, respectively. We note that Mr. Pio reported the sale date of his comparable 5 as March 1999, while Mr. Kelley reported the sale date of that property (his comparable 3) as February 1999.

In comparing the properties to Phase 2, Mr. Pio determined: (1) Comparable 1 was a high indicator of value because it had superior exposure than Phase 2 and was smaller in size, which indicated a relatively high value per square foot; (2) comparable 2 was a good to slightly high indicator of value due to its location in Tualatin; (3) comparable 3 was a low indicator of value because of inferior zoning and exposure; (4) comparable 4 was a good indicator of value because of similar location and exposure; (5) comparable 5 was a low indicator of value because, though it was located on Pacific Highway, it was away from most of the commercial development; and (6) comparable 6 was a good to

modestly high indicator of value; it had superior location and exposure, but inferior configuration and access. Mr. Pio concluded:

> The preceding sales show a range in prices from $3.93 to $7.72. Sale Nos. 1 and 2 ($7.72 and $6.60) are high indicators. Sale Nos. 3 and 5 ($3.93 and $4.58) are low indicators. Therefore, the subject value should be between these two price ranges, the mid-range of which is $5.64 per square foot. The remaining sales are $5.87 and 6.09 per square foot, suggesting a value conclusion closer to the upper end of the range. Based on the preceding, the value opinion is modestly above the mid-range, at $5.75 per square foot. After applied to the total land area, the final value opinion for Subject Parcel Phase 2 is:
>
> 108,029 square feet x $5.75 = $621,167, Rounded $620,000.

3. Fair Market Value of Phase 2

We accept Mr. Pio's valuation of Phase 2. Mr. Kelley did not offer a detailed analysis of his comparables and did not further elaborate at trial. On the other hand, Mr. Pio offered a detailed and reasonable comparison of each comparable to Phase 2. We do not find that all of Mr. Pio's comparables are reliable indicators of value, particularly those not located in Sherwood. However, the elimination of those comparables would not have a significant impact on the final value determination because $5.75 per square foot was in the range of the sales prices for the comparables located in Sherwood. Therefore, we find that the fair market value of Phase 2 on the date of death was $620,000.

In reaching our holdings herein, we have considered all arguments made, and, to the extent not mentioned above, we find them to be moot, irrelevant, or without merit.

To reflect the foregoing and the concessions of the parties,

Decision will be entered under Rule 155.

SHERWOOD TOWNCENTER
FOR LEASE ~ RETAIL & OFFICE SPACE
SHERWOOD, OREGON

Description

PROJECT INFORMATION

Langer Crossings at Sherwood is a planned, 57 acre Retail/Office Development in the heart of Sherwood located on Tualatin Sherwood Road directly east of Target and Langer Shopping Center in Sherwood, Oregon. Langer Crossings will be fronted by the new Adams Avenue extension which will become the new north/south arterial to Historic Downtown Sherwood and SW Pacific Highway. Langer Crossing will be a new 22-acre Power Center in addition to new office and flex space on the remaining 27 acres.

Langer Crossing is situated in the heart of the Tualatin Valley between I-5, the fast growing City of Tualatin, and the famous Willamette Valley Vineyards. As the Willamette Valley expands with new boutique hotels, gourmet restaurants and over 200 existing wineries, Sherwood has become the main entrance to the wine country. The population of the primary trade enjoyed a 27% growth rate from 2000 to 2006, averaging 4.5% per year. The City of Sherwood's population has grown at an average rate of 3.4% annually for the last 10 years. This site is ready for retail development today and in fact the Johnson/Gardner Report has estimated that there is an approximate demand for over 800,000 s.f. of new retail. The average household income is expected to increase $17,845 over the next 5 years, an average annual increase of 4.9%.

Langer Crossing preliminary design will include approximately 225,000 s.f. of retail, plus 295,000 s.f. of office and flex development. Directly west of Langer Crossings is Langer Shopping Center, a 186,000 s.f. Target-anchored retail center. Langer Crossing is in close proximity to existing retail centers that include Albertsons, Safeway, GI Joes, Home Depot and a 10- screen Regal Movie Theater for over 700,000 square feet of retail space.

RETAIL DEMAND

Currently, the residual demand in the Primary Trade Area is estimated at over 800,000 s.f. of retail space. Over the next 20 years, the residual demand is projected to grow at a faster rate than supply in the area. There are no other vacant commercially zoned parcels that approach the size of Langer Crossing it will be almost impossible to have another center of this magnitude within several miles. The site is located next to an established cluster of retail

EXCLUSIVE LEASING AGENTS

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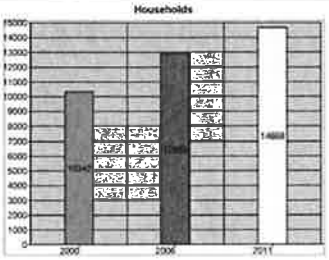
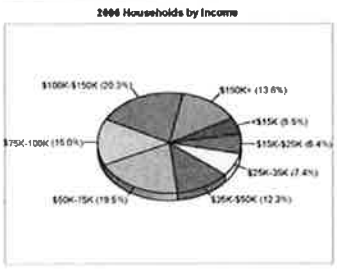
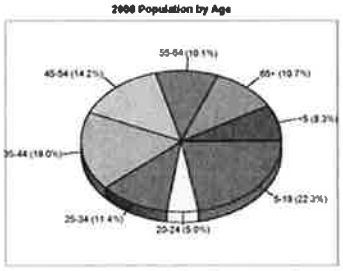
Demographics

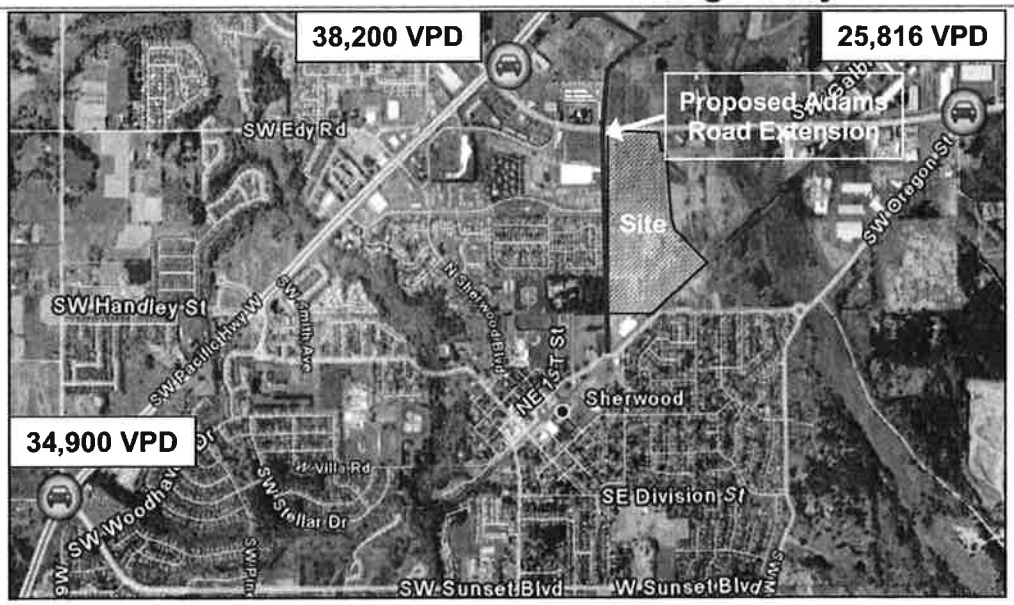






Sherwood, OR 97140	Site Type: Radius 3.0 Mile		Radius:
Summary	**2000**	**2006**	**2011**
Population	26,947	34,419	39,406
Households	10,342	12,903	14,668
Families	7,430	9,244	10,423
Average Household Size	2.59	2.65	2.67
Owner Occupied HUs	7,723	9,979	11,417
Renter Occupied HUs	2,619	2,924	3,251
Median Age	35.2	36.6	37.2
Trends: 2006-2011 Annual Rate	**Area**	**State**	**National**
Population	2.74%	1.23%	1.30%
Households	2.6%	1.23%	1.33%
Families	2.43%	1.02%	1.08%
Owner HHs	2.73%	1.27%	1.41%
Median Household Income	4.07%	3.29%	3.32%

Average Daily Traffic Counts



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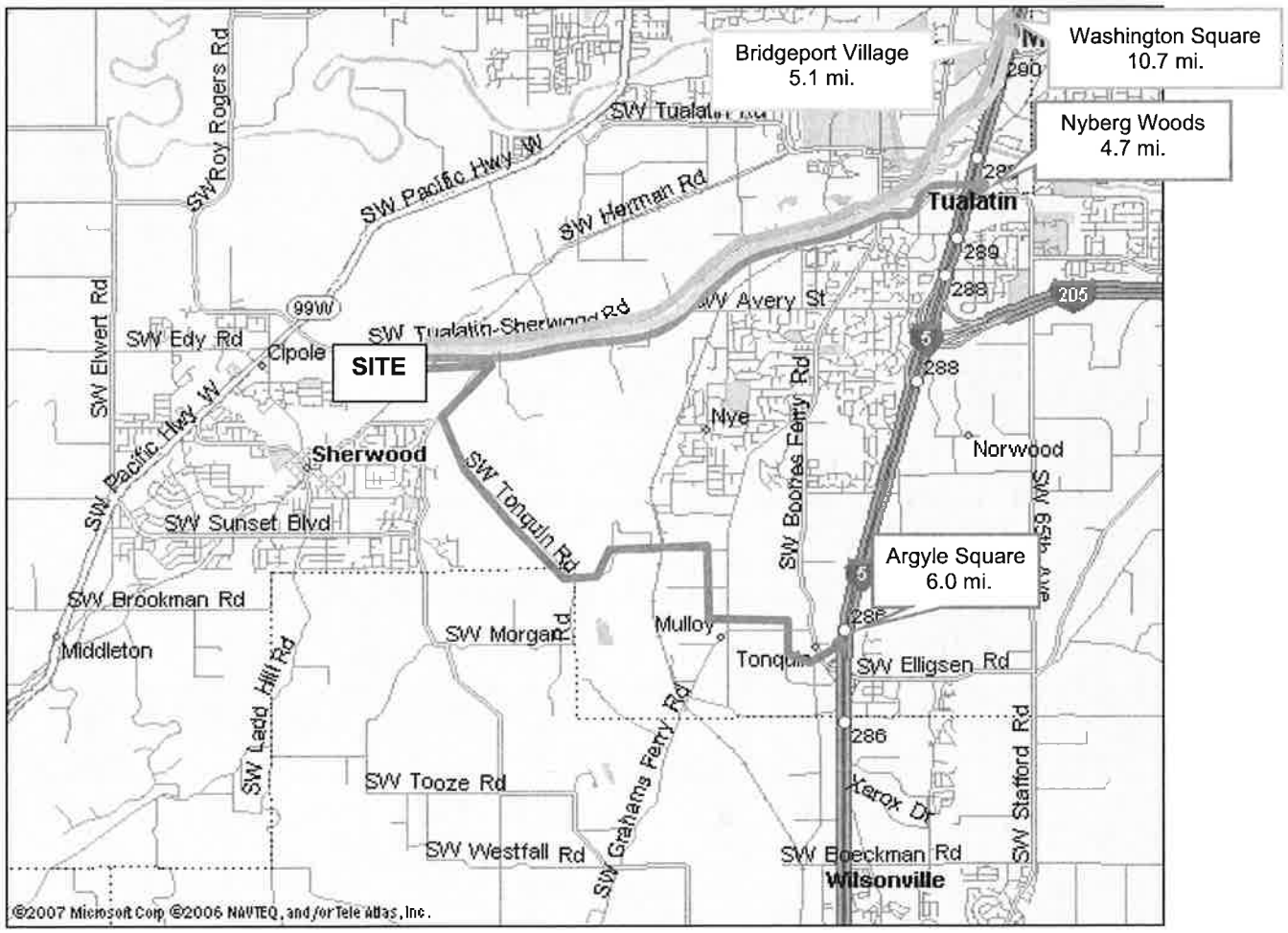

REAL ESTATE INVESTMENT GROUP

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503-222-1655

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SHERWOOD TOWNCENTER
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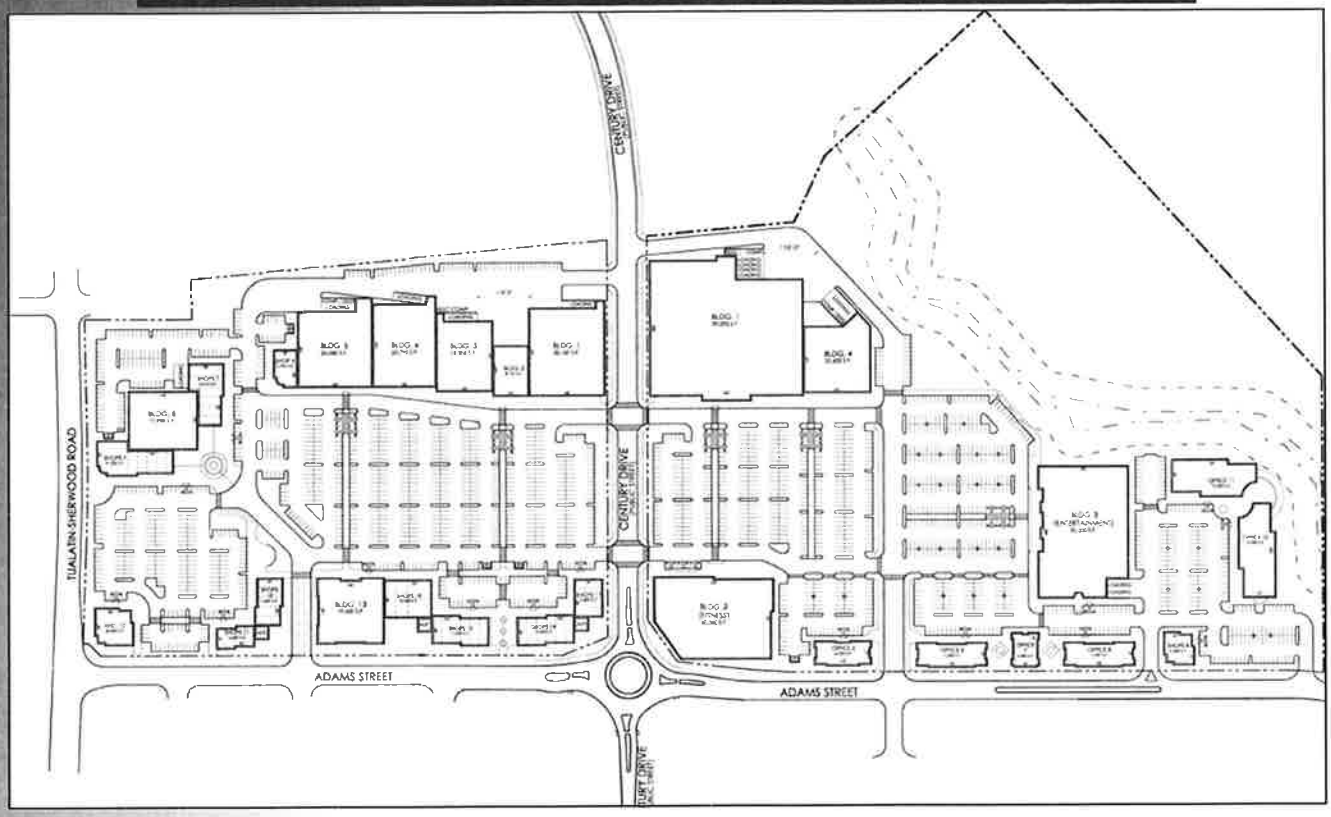
SHERWOOD, OREGON



Location:	Tualatin-Sherwood Rd. @ Adams Ave.		
Project:	466,324 SF Retail Development		
Size:	57 acre Master Development		
Traffic Counts:	23,876 VPD on Tualatin-Sherwood Rd.		
Demographics:	**1 Mile**	**3 Mile**	**5 Mile**
2006 Population	6,305	34,419	104,666
2006 Household Income	$72,982	$73,372	$68,916
Expected Income Growth:	4.9% a year over the next 5 years		
Population Growth:	27% from 2000 - 2006		
Estimated Completion:	Spring 2009		

EXCLUSIVE LEASING AGENTS

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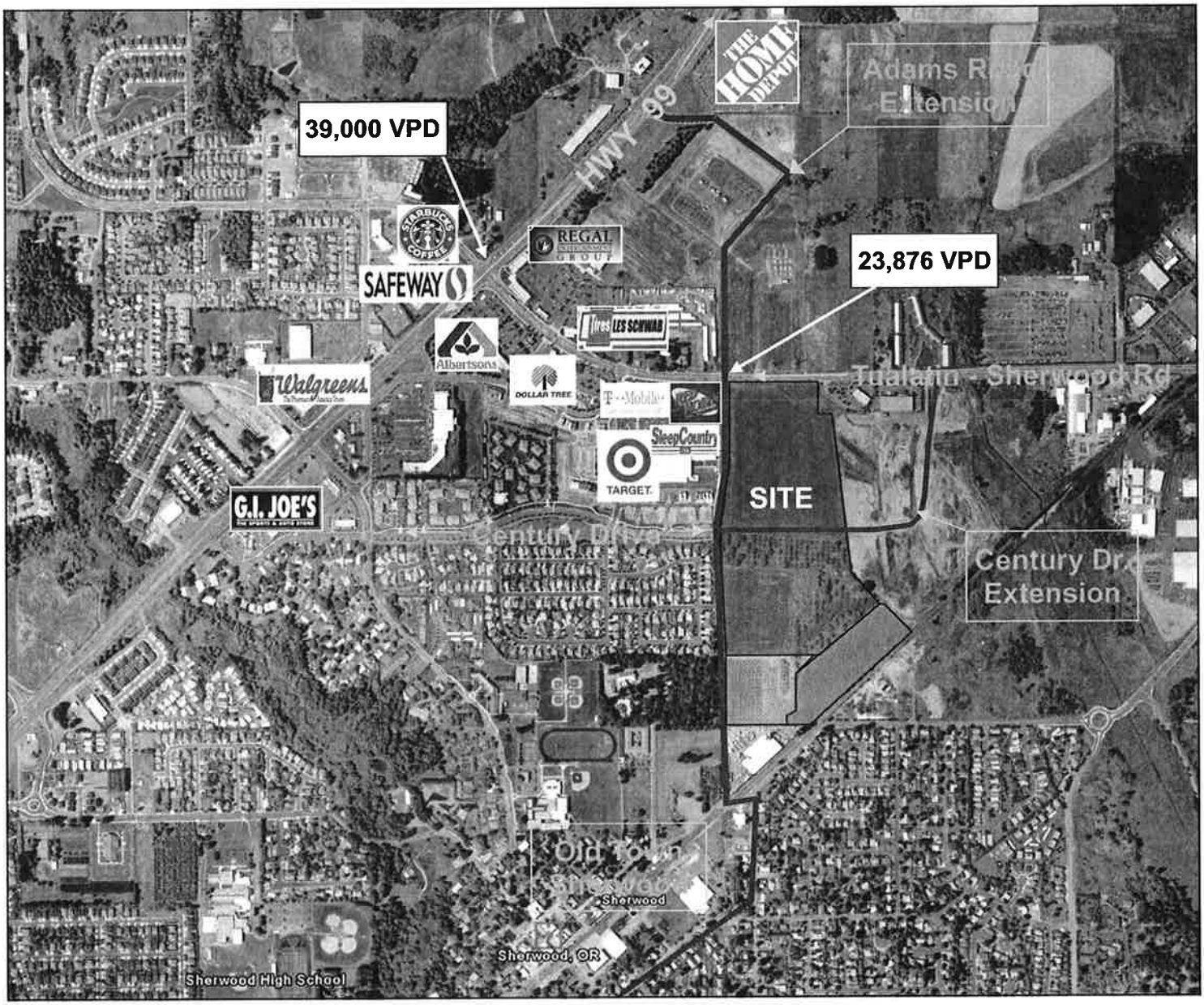

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LANGER V. CIR
2006 Tax Ct. Memo LEXIS 235 (October 30, 2006)
Judge Haines

Langer: Team Approach Essential to Successful Estate Tax Valuation

By Owen Flore, JD, CPA

By cooperating yet remaining independent, taxpayer's legal counsel and appraisers served the Langer Estate well. Together, their effective estate planning followed by adept negotiations during the audit and litigation phases led to a nearly 50% combined valuation discount of an LLC interest-- without any Section 2036 attack by the Service, or a trial on the discount.

DILLIGENCE PAYS OFF

Since 1879, the Langer family had owned and farmed land located in Sherwood, Oregon, just outside of Portland. As the surrounding population and commercial development increased, farming became impractical. The family decided to "go with the flow" of Sherwood's development, actual and potential, through estate planning.

In 1995, the family created an 8-Phase PUD (planned unit development) for their properties and received approval from the town council. Three years later, they formed the Langer Family LLC, bringing together the family members' respective farm holdings under a single manager's control. Maximizing land values was an important goal, as was managing the development process, including dealing with the local city council. And, of course, preserving maximum value, net of income and estate tax, for family members was an imperative for the family LLC.

Legal counsel guided the family throughout the process, including tax attorney John Draneas (Draneas & Hugin, P.C.; Lake Oswego, OR), who would eventually represent the estate in audit negotiations with the IRS as well as in the Tax Court litigation. When Wallace F. Langer, one of the family patriarchs, died in 2000, Draneas helped the estate obtain qualified appraisal assistance to complete it federal tax return (Form 706). This, there were five years of careful planning before the IRS intervened.

MOST PRE-TRIAL ISSUES RESOLVED IN ESTATE'S FAVOR

On advice of counsel, the estate selected Steven Kam, ASA (Cogent Valuation, San Francisco), to prepare the valuation report of the devedent's non-managing, minority interest (29.19) in the Langer Family LLC. In his conclusions, Kam first developed combined discounts for lack of control and marketability of more than 63%, in large part due to Wallace Langer's non-managerial role and minority interest in the LLC.

A concerted team effort by Kam and the estate's attorney successfully resolved most of the pre-trial issues in the estate's favor. Notably, the Service settled on 47.5% combined discount, and dropped a Section 2036 challenge to the viability of the LLC, due to proof of its overriding business purpose. They parties also reached stipulations on the values of five of the PUD parcels.

ONLY TWO REAL ESTATE VALUES REMAINED IN DISPUTE

By the time the matter reached trial, the valuation of just two out of seven PUD phases were in dispute (the LLC had sold one phase prior to Langer's death.) Through their respective real estate appraisers, both the IRS and the estate accepted the "highest and best use" value for the real estate, which-- given the facts surrounding Sherwood's growth and the impetus for the LLC, was clearly commercial retail development.

Both experts also agreed to use the comparable sales methodolgy; however, in advancing specific comparables and considering PUD risks (market uncertainties and costs), they came up with different conclusions of value.

On the value of PUD Phase 2, the experts were $100,000 apart in their appraisals (not much considering the decedent's 29%-plus interest in the LLC and the stipulated 47.5% discount). The Tax Court agreed with the IRS appraisal of $620,000, based on its "detailed and reasonable comparison of each comparable to Phase 2." The Court did not find that all of the expert's comparables were reliable indicators of value, particularly those located outside of the Sherwood area. However, the elimination of these outlying values "would not have a significant impact on the final value determination," the Court daid, and it accepted the overall determination.

But on PUD Phase 5, the experts were substantially farther apart: The IRS appraiser opined a value of $3.4 million, while taxpayer's appraiser came up with a $2.1 million value. (Keep in mind that for the value of devedent;s interest, the divergence was barely $200,000, meaning that a little over $100,000 in estate tax was at issue, plus interest over the years since the filing of the return). Yet it seems that the eleven hours of trial-- completed in a single day, according to attorney Draneas-- was well worth it, as the Tax Court came up with a $2.8 million value for Phase 5.

INSIGHTS FROM THE LITIGATION

In its final opinion, the Tax Court also provided a number of insights for appraisers and client advisors in its determination of Phase 5 value:

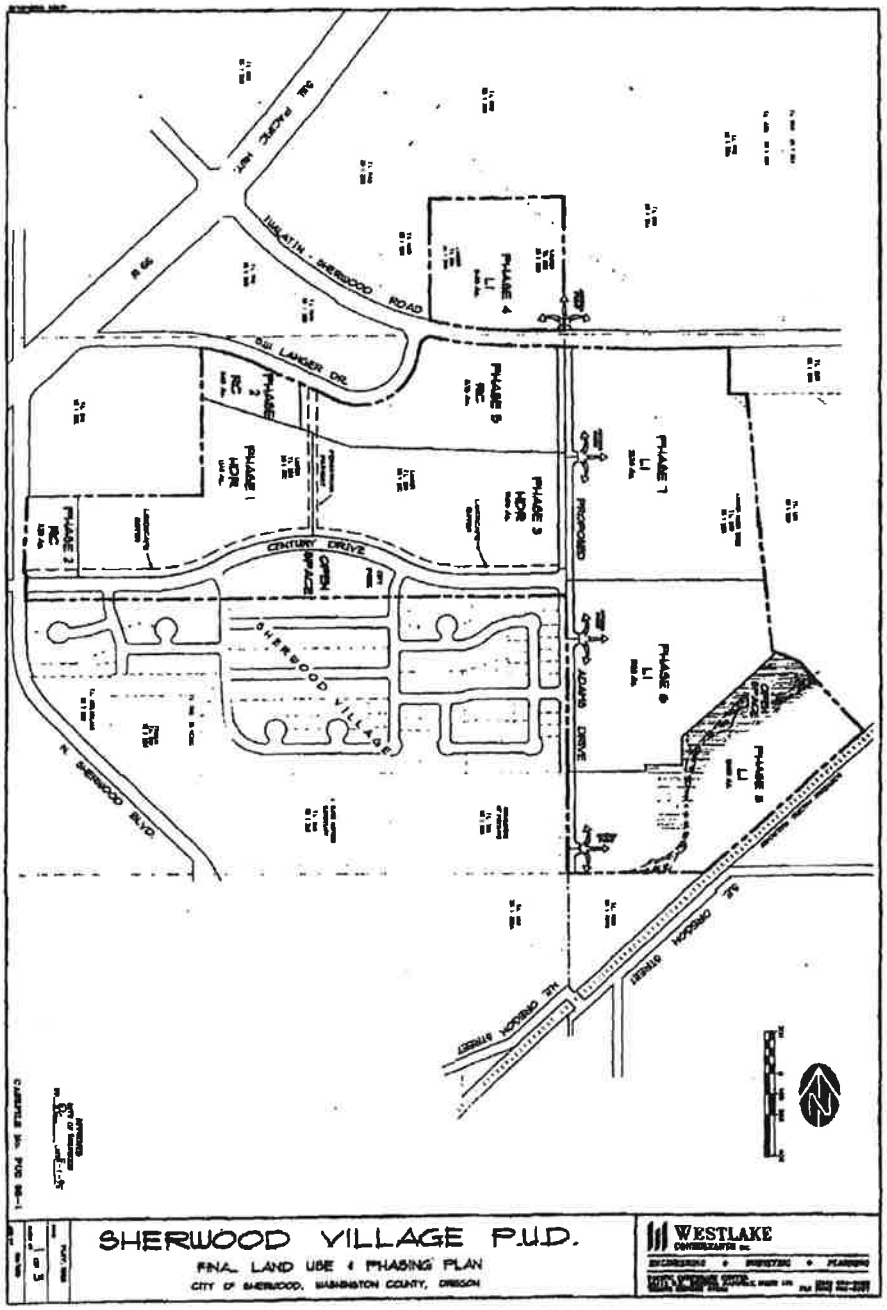
1. ***DCF analysis does not apply appropriate valuation date.*** The estate's real property appraiser, while paying lip service to the comparable sales method, essentially employed a discounted cash flow (DCF) analysis, relying on his opinion that any sale required three years of extended marketing and due diligence. The Tax Court disagreed, for two reasons:

   a. First, the date of death is the applicable valuation date for estate tax purposes (unless the allowable alternative valuation date is selected). Instead of determining the price at which Phase 5 would change hands between a willing buyer and seller on the date of death, however, the estate's expert had determined the price at which it would change hands three years later, discounted by 12% annually.

b. Second, the appropriate sales comparables should account for any uncertainties such as offsite improvement costs, changing city and resident views on commercial development, and possible oversupply of commercial properties, "A further discount is not necessary," the Court said.

2. ***Relevancy of sales comparables.*** The Tax Court accepted only two of the estate's comparables, as the remaining two had occurred three years after the date of death. But the Court rejected five of the IRS comparables, fixing on the same two that it had accepted from the estate. A good reminder that the Court Court is likely to play the "pick and choose" game with appraisals, so the better the report, the more likely the trier of fact will choose its elements for the ultimate determination of fair market value.

3. ***Weighing Comparable Sales.*** The Tax Court listed five factors in considering relevant comparables: Location, exposure, configuration, accessibility and zoning. Two of these --- location and expsoure-- were the most significant in this case. Given Phase 5 was less-desirably located than the court-selected comparables and had an "awkward configuration," the Court concluded that a 25% discount from the average sales price per square foot of the comparables was appropriate.


OLD PACIFIC HWY.
TUALATIN - SHERWOOD ROAD
SW LANGER DR.
PHASE 4
PHASE 5
PHASE 1
PHASE 3
PHASE 2
PHASE 7
PHASE 6
PHASE 8
CENTURY DRIVE
OPEN SPACE
PROPOSED
ADAMS DRIVE
SHERWOOD VILLAGE
SW SHERWOOD BLVD.
NE OREGON STREET
SHERWOOD
SHERWOOD VILLAGE P.U.D.
FINAL LAND USE & PHASING PLAN
CITY OF SHERWOOD, WASHINGTON COUNTY, OREGON
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October 9, 2012

VIA EMAIL ONLY

Patrick Allen, Chair
City of Sherwood Planning Commission
c/o Planning Department
22560 SW Pine Street
Sherwood, OR 97140

Re: Land Use Applications for Langer Farms Phase 7 Shopping Center (City of Sherwood File Nos. SP 12-05/CUP 12-02); Response to Letter from Charles and Amy Boyle Dated September 25, 2012

Dear Chair Allen and Members of the Planning Commission:

This office represents Langer Gramor LLC ("Applicant"), the applicant requesting approval of the land use applications for Langer Farms Phase 7 Shopping Center (City of Sherwood File Nos. SP 12-05/CUP 12-02) ("Applications") on approximately 19.7 acres of real property on the east side of SW Langer Farms Parkway ("Property"). This letter responds to and rebuts the letter from Charles and Amy Boyle to the Planning Commission on September 25, 2012. For the reasons explained below, the Planning Commission should deny each of the Boyles' contentions.

1. Response to Boyle Letter.

The Boyles' contentions are set forth below in the order in which they appeared in their letter. Following each contention, the Applicant provides a response explaining why the Planning Commission should deny the contention.

"Comments and Concerns regarding 'Anchor Store'

"1. Traffic

"a. The Applicant's submitted Traffic Analysis states that the site development sized at 197,800 sq. ft. will not exceed 43 PM peak hour trips per acre as specified in the

Highway 99W Capacity Allocation Program. Similarly sized developments in the area show a much greater PM peak hour per acre number, example Wilsonville Fred Meyer Development, documented at 68 PM Peak Hour per acre. We argue that the above-documented number in the traffic analysis is 'loose' as the occupancy of the anchor retail store plays a significant role in determining traffic. Compare a Walmart vs. Fred Meyers vs. Costco, vs. Whole Foods."

RESPONSE: The Planning Commission should deny this contention because the Wilsonville Fred Meyer site is not comparable to the Applicant's development for four (4) reasons. First, the August 2008 *Fred Meyer Transportation Impact Study* prepared by DKS Associates assumed a lower trip generation—4.95 trips per 1,000 square feet—than the Applicant's TIA, which assumed a trip generation of 5.23 trips per 1,000 square feet. Second, the Wilsonville site is located along higher volume roadways. Third, the Wilsonville site includes a larger anchor store. Fourth, the Fred Meyer TIA overstated the trip impacts of that site in order to be conservative. For example, that TIA calculated the trip impacts of the proposed office buildings as retail in order to allow for possible future conversion to retail uses. Further, the Fred Meyer TIA assumed that the multi-family housing would develop at the highest possible rate for apartments, townhouses, or condominiums (Institute of Transportation Engineers ("ITE") 231). Accordingly, the Fred Meyer TIA likely overestimated the actual trip impacts from the site. After reviewing the Fred Meyer study, the Applicant's expert traffic consultant, Kittelson & Associates, Inc. ("Kittelson"), concluded that the Fred Meyer site is distinguishable and that the trip generation assumptions in the Applicant's TIA "are reasonable and appropriate." *See* Exhibit A (memo from Kittelson) for additional analysis. The Planning Commission should deny the Boyles' contention.

"b. The Applicant used cumulative ITE Codes 820, 912, 931 and 934 for the entire development for the traffic standard however; similar developments including the Wilsonville Fred Meyer Development use a cumulative ITE Code 820, 932, "Apartments/Condos/Townhouses," and a "Fred Meyer" standard in calculating the traffic for the area. The Langer Shopping Center Development neglects to account for the type of anchor store which will be in place. A Walmart, Fred Meyer, Winco, and BiMart all have varying traffic impacts. A determination of the occupant should be required prior to approval in regards to traffic impact. Currently, CC&Rs will be provided upon land use approval however; until CC&Rs are provided the City cannot determine whether or not the occupancies will meet the traffic requirements."

RESPONSE: The Planning Commission should deny this contention for three (3) reasons. First, there is no basis to require use of the ITE trip generation data applicable to "Apartments/Condos/Townhouses" because the Applicant's development does not include any multi-family housing. Second, Kittelson has submitted updated trip data into the record dated October 1, 2012, that demonstrates that the TIA assumes a sufficient number of trips to account

for potential development of the anchor store as either a Shopping Center (ITE Code 820), Free-Standing Discount Superstore (ITE Code 813) or Free-Standing Discount Store (ITE Code 815). Accordingly, there is no basis to require use of tenant-specific trip rates as used in Wilsonville. The Applicant does not have an identified tenant. Further, as explained above, the Applicant has instead analyzed trip impacts based upon the likely uses of the anchor site. This approach is consistent with the ITE standards, which project traffic based upon use types and not tenant names. Moreover, the City's on-call traffic consultant, DKS Associates, has submitted a memorandum into the record dated October 5, 2012, that concurs with Kittelson's assessment. Finally, the Boyles do not explain how covenants, conditions, and restrictions ("CC&R's") are even relevant to the question of traffic impacts. Therefore, the Boyles' contention lacks merit.

"c. The Traffic Impact Analysis on pg. 25, 'Proposed Development Plan' states

> **'This plan was developed with conservative site build out assumptions for the purpose of identifying and mitigating traffic impacts associated with the highest trip generation potential for the site.'**

"We argue that this statement is FALSE as a 'conservative' analysis would use ITE Codes 813, 815 or 851 (Convenience Market 24 Hours – WALMART)."

RESPONSE: The Planning Commission should deny this contention for two (2) reasons. First, as explained above in response to the previous contention, Kittelson has now analyzed the trip impacts of the anchor store under the trip generation rates applicable to ITE Code 813 and ITE Code 815 and has determined that the Applicant's development will generate fewer trips under either of these classifications than the TIA assumed, and DKS Associates has submitted a memorandum concurring with this assessment. Second, as further explained by Kittelson in Exhibit A, it is inappropriate to apply ITE Land Use Code 851 to the anchor because that code is only applicable to convenience stores such as 7-Eleven, which are clearly of a smaller size than the anchor. Therefore, the Planning Commission should deny this contention.

"d. Traffic Volume Analysis Incomplete – Traffic volume was analyzed based on Highway 99 W historic data from an ATR located on Highway 99W in Newberg at Brutscher St. We argue that this analysis site does not represent traffic on SW Tualatin Sherwood at SW Langer Farms Parkway. We also argue that the word 'historic' for the obtaining of data along Highway 99 W in Newberg is vague and does not provide a realistic timeframe for data collection."

RESPONSE: For the reasons explained by Kittelson in Exhibit A, the Planning Commission should deny this contention.

"2. Traffic Noise

"a. 'The (applicant's) response to Chapter 16.146 – Noise states,

'High levels of noise beyond what is expected is an urban area is not anticipated. Therefore, the proposed use will be within required standards and there will be no adverse impacts.'

"This statement cannot be substantiated as the occupant of the anchor store is at the time unknown and currently CC&R's are not in place to regulate the potential occupant. The difference between a Walmart, a Fred Meyer, Costco and Whole Foods is significant in regards to noise level and time of day of said noise."

RESPONSE: The Planning Commission should deny this contention for three (3) reasons. First, the Boyles have not explained how the existence of CC&R's will affect compliance with this standard. In fact, although Sherwood Zoning and Community Development Code ("ZCDC") 16.146.010 allows the City to request evidence of applicable permits or certification from a noise engineer, this standard does not require—or permit—the City to consider CC&R's for purposes of determining compliance with noise standards. Second, the Boyles have not presented any evidence to substantiate their contention that there are "significant" differences in noise impacts between the various retail tenants they identify. Third, as set forth at page 61 of the staff report, the development is not adjacent to any noise-sensitive uses, and thus, the City cannot require a noise level study pursuant to ZCDC 16.146.020. Therefore, the Planning Commission should deny the Boyles' contention on this issue.

"b. Response #1 found in Attachment 8 titled 'Neighborhood Meeting Summary' states that commercial traffic would be routed down SW Langer Farms Parkway to the round-about and would then head East on SW Century Blvd and would not continue South on SW Langer Farms Parkway. We argue that there are still residential properties between SW Tualatin Sherwood Rd and SW Century Blvd along SW Langer Farms Parkway, which will be adversely effected [sic] by commercial traffic in the area; especially with the varying potential occupants of the anchor retail store. As an alternate option, all commercial traffic could be routed in and out of SW Century Blvd where it connects with SW Tualatin Sherwood Blvd just east of DEQ and SW Langer Parkway therefore removing commercial trucking noise from SW Langer Farms Parkway in entirely."

RESPONSE: The Planning Commission should deny this contention because ZCDC 16.146.030 ("Exceptions") provides that traffic noise is exempt from the City's standards as follows:

> "This Chapter does not apply to noise making devices which are maintained and utilized solely as warning or emergency signals, or

> to noise caused by automobiles, trucks, trains, aircraft, and other similar vehicles when said vehicles are properly maintained and operated and are using properly designated rights-of-way, travel ways, flight paths or other routes. This Chapter also does not apply to noise produced by humans or animals. Nothing in this Chapter shall preclude the City from abating any noise problem as per applicable City nuisance and public safety ordinances." (Emphasis added.)

Accordingly, the Planning Commission cannot either deny or condition the Application based upon possible noise caused by traffic. To the extent that the Boyles actually intend for this contention to relate to truck routes, Kittelson has addressed it in Exhibit A. For these reasons, the Boyles' contention lacks merit.

"3. Design:

"a. The proposed design does not meet the guidelines as outlined in the 1995 PUD Guidelines for 'Front Porch Society.' The exterior of the anchor building is bland and flat walled with limited aesthetic features. It appears as though the City is willing to compromise on the guidelines by stating that the *development* meets the 'intent' of the guidelines therefore the *anchor* store can fall short. As an anchor store at the City's deemed entrance to Old Town, the building should be welcoming, inviting and aesthetically pleasing meeting the same aesthetic as the historic Old Town Sherwood."

RESPONSE: The Planning Commission should deny this contention for two (2) reasons. First, as explained in the Applicant's narrative, the design of the anchor store is consistent with the Design Guidelines. For example, the elevations include two (2) vestibules that take their design cues, materials, and elements from the surrounding retail buildings. The incorporated design elements include light tone palette colors, trimmed openings at windows, some wood exterior components, pitched roof entry points, staggered parapet heights along the elevations, metal grids along the exterior siding, and canopies as shown on the Applicant's building elevations. Further, the main entrances to the anchor are connected to the other retail buildings and to public pathways. Accordingly, the Applicant's proposed anchor design is consistent with the Design Guidelines. Second, although the Boyles contend that the development should be required to reflect elements of Old Town Sherwood, there is no basis in the Design Guidelines to reach this conclusion. For example, the Design Guidelines do not reference "Old Town" at any point. Therefore, the Planning Commission should deny the Boyles' contention.

"b. In response to the 1995 PUD Design Standards for Retail Building Construction, found on page 17 of the Proposal, the Applicant states that these requirements are 'guidelines' not 'standards.' Furthermore, the Applicant states the City

set a 'precedent' with Target in how guidelines are applied. We argue that a single data point could also prove to have been a mistake. However, Target's current exterior is more detailed that [sic] the current architectural drawings for the 'anchor' store as outlined in the proposal."

RESPONSE: The Planning Commission should deny this contention for three (3) reasons. First, as noted at page 10 of the staff report, the Design Standards are, in fact, guidelines and not mandatory criteria. Although the Boyles appear to disagree with this point, they do not offer any substantial evidence to rebut it. Further, a reasonable person would conclude that the City's application of these guidelines to the Target store did establish a precedent because the Target site (Langer Marketplace) is the only other example of retail development in the PUD. As such, it is the only instance when the City has applied the standards. Thus, the Boyles cannot point to any other examples within the PUD that support a contrary interpretation. Third, the relevant issue is whether the elevations of the anchor store are consistent with the Design Guidelines. As explained above in response to the previous contention, the Applicant's proposed anchor design is consistent with the Design Guidelines. The Planning Commission should deny the Boyles' contention.

"c. The City has stated that their intent is to get the 'highest quality' development for the city. It has also stated 'It should be noted that this is envisioned to be a primary entrance into Old Town Sherwood given it's [sic] location...' Based on the current square footage of the anchor store there are limited retailers to which this size of building markets. Examples would include Walmart, Costco, Winco and Fred Meyer. There have been recent public statements that Fred Meyers is currently working on developing a site behind the Providence Medical Building in Sherwood therefore removing their possibility from the Langer Development. Is the City stating that a Walmart would meet the 'highest quality' development and serve the Sherwood Community as an entrance into Old Town?"

RESPONSE: The Planning Commission should deny this contention because it lacks merit for three (3) reasons. First, it is purely speculative because there is no evidence in the record indicating who will ultimately use the site. In fact, staff and the Applicant have specifically stated that this information is not known. It is equally speculative at this time that Fred Meyer will locate at another site in the City. Second, this contention is not directed at any applicable approval criterion. As such, it does not provide a basis to deny or condition the Applications. Third, the Applications propose the "highest quality" development for the City. For example, the Applicant's proposal satisfies applicable PUD Design Guidelines as well as each of the five (5) categories in the Commercial Design Review Matrix (Building Design, Building Location, Parking and Loading Areas, Landscaping, and Miscellaneous). For these reasons, the Planning Commission should deny this contention.

"Comments and Concerns Regarding Overall Site Development

"1. Drive Thrus:

"a. In the Pre-Application Q&A, the City of Sherwood has stated that drive thrus should not be located between the public street and the building as per response to Question #7. Based on the architectural designs it appears as though all three (3) proposed drive thrus fail to meet this standard as drive thru lanes come between the building and a public street. Bank (Langer Farms Parkway), Pharmacy (Century Blvd), Fast Food (Tualatin Sherwood)."

RESPONSE: The Planning Commission should deny this contention for two (2) reasons. First, there is no applicable approval criterion that prohibits the Applicant from placing drive-through facilities between the public street and the building. Properly construed, staff's statement in the pre-application notes was simply a suggestion and not a binding requirement. Additionally, it should be noted that staff reviewed a different iteration of the site plan during the pre-application stage, and the site plan in the Application better orients the buildings to public streets. Second, although the Applicant did not comply with staff's suggestion, the Applicant has proposed a superior design that protects pedestrian safety and ensures screening of vehicles, as summarized in the introduction of the narrative for the Applications:

> "The applicant has gone to great lengths in not only placing the drive-thrus in areas where they will not conflict with pedestrian traffic but also designed them to not detract from the street scape. To address the pedestrian corridor and encourage people to walk to the development, all of the buildings along Langer Farms Parkway have been placed next to the pathway and pedestrian amenities provided including storefront windows and walkways. To ensure that the optional bank drive-thru is consistent with this design intent, a roof extension that matches the architectural look of the neighboring buildings is proposed to extend over the drive-thru lane. In addition, a decorative low wall is proposed to conceal the lower portions of automobiles and the asphalt drive-thru lane. With the use of screening and the drive-thru roof cover, the mass of the building is pulled close to the road while the auto use is deemphasized. This design provides a consistent pedestrian-focused streetscape along Langer Farms Parkway consistent with City code and policies."

The Applicant reviewed the alternative of placing the drive-through lanes in the interior of the site, however, doing so creates conflicts with pedestrians and parking lot maneuvering. This is

the case because access to the site is limited to only a few locations, so all vehicular traffic to the shopping center and drive-throughs will come from the interior of the site and indirectly from surrounding roads. Therefore, parking and vehicular access to all buildings will be from the interior. Placing the drive-throughs in the interior of the site near the parking area starts to create conflicts since drivers need to enter the drive-through so they can complete their transactions from the left side of the car. This requires that either drivers cross over from right to left or that the site design provide additional stacking in the parking area. This additional stacking room is easier to accommodate when the drive-through is placed between the building and the road as it allows for separation and additional room. Also, this design allows the Applicant to place ADA parking spaces close to the front door of each building. Finally, this design also adds safety for pedestrians as access from the sidewalk can be channelized to a path that crosses in front of the of drive-through window in plain view of the driver.

"b. As per 16.96, On-Site Circulation, 'On-site facilities shall be provided that accommodates safe and convenient pedestrian access...' We argue that the proposed drive-thrus make pedestrian access throughout the site development difficult and dangerous, as there are increased traffic crossings."

RESPONSE: The Planning Commission should deny this contention for two (2) reasons. First, the passage cited by the Boyles, which is the introductory sentence of this chapter of the ZCDC, is not an approval criterion. Rather, it is a generalized purpose-type statement that is informed by the implementing criteria set forth in ZCDC 16.96, A., B., C., D., E., and F. and ZCDC 16.96.030. The Boyles do not contend that the Applications do not satisfy these specific implementing standards. Second, the pedestrian crossings at the end of drive-through lanes shown on the Applicant's site plan provide "safe and convenient pedestrian access" because they are well-marked and located in plain view of drivers of vehicles in the drive-through lane. Further, they connect sidewalks. As such, they provide the most direct route for pedestrians, so there is no incentive for pedestrians to engage in a dangerous short-cut across vehicular traffic. Finally, redesigning the site to place the drive-through facilities on the interior would concentrate more vehicle maneuvering into a smaller area, which would result in pedestrian crossings that are more dangerous and confusing than the Applicant's proposed design. For these reasons, the Planning Commission should deny the Boyles' contention.

"c. As per Chapter 16.90 Site Planning, Section 7b, 'Buildings should be located adjacent to and flush to the street, subject to landscape corridor and setback standards of the underlying zone.' We argue that a drive thru does not meet this standard as outlined.

"Def. 'Flush' as found in Merriam Webster Dictionary states 'Having or forming a continuous plane or unbroken surface."

RESPONSE: The Planning Commission should deny this contention because the standard cited by the Boyles—ZCDC 16.90.030.D.7.b.—is not a mandatory approval criterion for two (2) reasons. First, pursuant to ZCDC 16.90.030.D.7.d., ZCDC 16.90.030.D.7.b. is not applicable if an applicant chooses to comply with the Commercial Design Review Matrix. The Applicant has opted to comply with the Commercial Design Review Matrix (and has presented substantial evidence to support a conclusion that the Applications satisfy same). Second, even if ZCDC 16.90.030.D.7.b. were applicable, it is not mandatory in nature because the plain language of this provision utilizes the aspirational term "should," rather than "shall." Accordingly, the Planning Commission should deny the Boyles' contention.

"2. CC&Rs:

"a. As per Chapter 16.94, Off Street Parking and Loading, Section d, Multiple/Mixed Uses:

> **"'When several uses occupy a single structure or a parcel of land, the total requirements for off-street parking and loading shall be the sum of the requirements of the several uses computed separately, with a reduction of up to 25% to account for cross-patronage of adjacent businesses or services. If the applicant can demonstrate that the peak parking demands are less than 25%, the total parking requirements may be reduced accordingly.'**

"We argue that since the proposed retail spaces currently do not have a specified use nor are there CC&R's in place prior to land use approval, the peak parking demands cannot be reduced as outlined above. In order to meet these requirements CC&R's must be developed and approved prior to land use approval of the site."

RESPONSE: The Planning Commission should deny this contention for two (2) reasons. First, neither ZCDC 16.90.030.D.3. nor any other approval criterion specifically requires submittal of CC&R's as a prerequisite to obtaining approval of a reduction in parking for a mixed use development. For that matter, the Boyles do not articulate why CC&R's are even informative to determining whether or not to grant a reduction in parking. Second, although the Applicant has proposed site plan alternatives (each with a slightly different mix of uses), the Applicant has also presented a chart at page 47 of the narrative and related explanation at pages 44 and 45 of the narrative justifying the reduction in parking for each of the site plan alternatives. The Boyles have not presented substantial evidence to undermine the Applicant's testimony. Therefore, the Planning Commission should deny this contention.

"b. Chapter 16.90, Site Planning, Section 3 states,

> **"'Covenants, agreements, and other specific documents are adequate, in the City's determination, to assure an acceptable method of ownership, management, and maintenance of structures, landscaping, and on-site features.'**

"The applicant states that it '...will prepare Covenants, Conditions and Restrictions (CC&Rs) for the development as well as shared access easements. These agreements will be provided to staff *following* land use approval. We argue that review of CC&R's should be conditional prior to land use approval and not upon land use approval."

RESPONSE: The Planning Commission should deny this contention for two (2) reasons. First, neither ZCDC 16.90.030.D.3. nor any other approval criterion specifically requires submittal of CC&R's as a prerequisite to obtaining approval of a site plan application. Second, notwithstanding that the Applicant has not yet submitted CC&R's into the record, there are a number of "agreements and other specific documents" that assure an acceptable method of ownership, management, and maintenance of structures, landscaping, and on-site features. For example, development of the Property is subject to the PUD Design Guidelines, which the Applicant has satisfied. Further, development of the Property will be subject to the conditions of approval of the Applications themselves, which also assures compliance with ZCDC 16.90.030.D.3. For instance, staff's proposed Condition 47 requires that all site development comply with the approved site plan:

> "All site improvements including but not limited to landscaping, parking and site lighting shall be installed per the approved final site plan and inspected and approved by the Planning Department." (Emphasis in original.)

Additionally, staff's proposed Condition 5 requires that the Applicant maintain the Property in accordance with the approved site plan on an ongoing basis or else be subject to code enforcement proceedings:

> "An on-going condition of approval is that the site be maintained in accordance with the approved site plan. In the event that landscaping is not maintained, in spite of the assurances provided, this would become a code compliance issue."

These staff-proposed conditions, if adopted by the Planning Commission, will ensure that the Property improvements are owned, managed, and maintained in a manner that is acceptable. IN fact, the condition likely provides the City with greater enforcement authority than any CC&R's would. The staff report at pages 19 and 20 supports the Applicant's position on this issue. The Boyles have not presented any substantial evidence to rebut this conclusion. The Planning

Commission should deny the Boyles' contention on this issue and find that the Applications satisfy ZCDC 16.90.030.D.3., subject to staff's proposed conditions of approval.

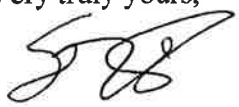
3. Conclusion.

For the reasons set forth above, the Planning Commission should deny each of the Boyles' contentions. Instead, the Planning Commission should find that there is substantial evidence to support the conclusion that the Applications satisfy applicable approval criteria, and the Planning Commission should approve same.

This letter and its exhibit constitute a portion of the Applicant's submittal into the record during the first open record period ending on October 9, 2012, at 5:00 p.m. I have asked City staff to place this submittal in the official Planning Department file for this matter and to place it before you before you render a decision in this matter. The Applicant reserves the right to submit additional argument and evidence in accordance with ORS 197.763 and the open record schedule approved by the Planning Commission.

Thank you for your consideration of the points in this letter.

Very truly yours,



Seth J. King

Enclosure (Exhibit A – Memorandum from Kittelson & Associates, Inc.)

cc: Brad Kilby (via email) (w/encl.)
Bob Galati (via email) (w/encl.)
Jason Waters (via email) (w/encl.)
Chris Crean (via email) (w/encl.)
Matt Grady (via email) (w/encl.)
Chris Brehmer (via email) (w/encl.)
Keith Jones (via email) (w/encl.)

KITTELSON & ASSOCIATES, INC.
TRANSPORTATION ENGINEERING / PLANNING
610 SW Alder Street, Suite 700, Portland, OR 97205 P 503.228.5230 F 503.273.8169

October 5, 2012 Project #: 12241

Planning Commission
City of Sherwood City Hall
22560 SW Pine Street
Sherwood, Oregon 97140

RE: Langer Farms Phase 7 Response to Transportation Comments – Sherwood, Oregon

Dear Planning Commission Members,

This letter responds to the transportation-related written comments provided by Charles and Amy Boyle at the September 25, 2012 Planning Commission Hearing. The pertinent comments are listed below in *italic* text, followed by our response.

Issue 1a) Comments and Concerns regarding "Anchor Store"

> *The Applicant's submitted Traffic Analysis states that the site development sized at 197,800 sq. ft. will not exceed 43 PM peak hour trips per acre as specified in the Highway 99W Capacity Allocation Program. Similarly sized developments in the area show a much greater PM peak hour per acre number, example Wilsonville Fred Meyer Development, documented at 68 PM Peak Hour per acre. We argue that the above documented number in the traffic analysis is "loose" as the occupancy of the anchor retail store plays a significant role in determining traffic. Compare a Walmart vs. Fred Meyers vs. Costco,. vs. Whole Foods.*

Response: The July 2012 Langer Farms – Phase 7 Transportation Impact Analysis (July 2012 TIA) prepared by Kittelson & Associates, Inc. was developed per the scoping direction of the Oregon Department of Transportation (ODOT), Washington County, and the City of Sherwood. All three agencies and the City's on-call traffic consultant (DKS Associates) have reviewed the study and concurred with the trip generation assumptions stated in the TIA. As indicated in my testimony at the September 25, 2012 public hearing, the final site plan trip generation should not be allowed to exceed the net new trip generation assumed in the July 2012 TIA without further study.

We have submitted a document dated October 1, 2012 outlining how trip data associated with other land use categories (as published by the Institute of Transportation Engineers, ITE) could be assumed

for the anchor tenant and that the July 2012 TIA assumed a sufficient number of trips to cover such uses.

The comment letter prepared by the Boyle's also raises questions about whether the trip rates assumed for the Wilsonville Fred Meyer Development should be considered for the Langer Farms Phase 7 project. As a follow-up to this information, we obtained a copy of the August 2008 *Fred Meyer Transportation Impact Study* prepared by DKS Associates for the City of Wilsonville from DKS Associates. Per Table 9 of the 2008 study, the Fred Meyer store trip rate is 4.95 trips/1,000 square feet based on Fred Meyer trip rate obtained from surveyed Fred Meyer stores in Oregon and Washington.

By comparison, the July 2012 TIA assumed a shopping center land use for the anchor tenant with a total trip generation of 945 weekday p.m. peak hour trips. Based on the assumed shopping center area of 180,800 square feet, the trip rate used in the July 2012 TIA was 5.23 trips/1,000 square feet. Given the trip rate assumed in the July 2012 TIA is higher than what was assumed for the Wilsonville Fred Meyer trip generation, the Wilsonville site is located adjacent to higher volume roadways (Interstate 5) and the Wilsonville Fred Meyer is larger than the proposed anchor tenant, we continue to believe the July 2012 TIA trip generation assumptions are reasonable and appropriate.

> *Issue 1b. The Applicant used cumulative ITE Codes 820, 912, 931 and 934 for the entire development for the traffic standard however; similar developments including the Wilsonville Fred Meyer Development use a cumulative ITE Code 820, 932, "Apartments/Condos/Townhouses," and a "Fred Meyer" standard in calculating the traffic for the area. The Langer Shopping Center Development neglects to account for the type of anchor store which will be in place. A Walmart, Fred Meyer, Winco, and BiMart all have varying traffic impacts. A determination of the occupant should be required prior to approval in regards to traffic impact. Currently, CC&Rs will be provided upon land use approval however; until CC&Rs are provided the City cannot determine whether or not the occupancies will meet the traffic requirements.*

Response: As noted in our response to Issue 1a, we have submitted a document dated October 1, 2012 outlining how trip data associated with other ITE land use categories (ITE 813, Free-Standing Discount Store and ITE 815, Free-Standing Discount Superstore) could be assumed for the anchor tenant and that the July 2012 TIA assumed a sufficient number of trips to cover such uses. There was no reason to consider use of Apartments/Condos/Townhouses on the proposed site development because no residential uses are proposed. We remain confident that the July 2012 TIA accommodates

the range of land uses anticipated on site and note that the final site plan trip generation should not be allowed to exceed the net new trip generation assumed in the July 2012 TIA without further study.

Issue 1c. The Traffic Impact Analysis on pg. 25, "Proposed Development Plan" states "This plan was developed with conservative site build out assumptions for the purpose of identifying and mitigating traffic impacts associated with the highest trip generation potential for the site." We argue that this statement is FALSE as a "conservative" analysis would use ITE Codes 813, 815 or 851 (Convenience Market 24 Hours – WALMART).

Response: See Response to Issue 1a. In addition, we note that ITE Land Use 851, Convenience Market, reflects facilities that "sell convenience foods, newspapers, magazines, and often beer and wine..." Per ITE *Trip Generation, 8th Edition*, the average convenience market building size in the weekday p.m. peak hour trip database is 3,000 square feet, with the largest being under 5,000 square feet. Locally, 7-Eleven or other similar convenience stores would be analogous to the trips associated with ITE Land Use 851. With respect to the Langer Farms Phase 7 project, use of Land Use 851 trip data would be inappropriate to reflect an anchor tenant building based on the building size alone.

Issue 1d. Traffic Volume Analysis Incomplete – Traffic volume was analyzed based on Highway 99 W historic data from an ATR located on Highway 99W in Newberg at Brutscher St. We argue that this analysis site does not represent traffic on SW Tualatin Sherwood at SW Langer Farms Parkway. We also argue that the word "historic" for the obtaining of data along Highway 99W W in Newberg is vague and does not provide a realistic timeframe for data collection.

Response: As documented in the July 2012 TIA, the operations analysis at the study intersections was based on traffic volume data collected in 2012 at each of the individual intersections (including SW Tualatin-Sherwood Road/Langer Farms Parkway). The historic ATR data referenced on page 14 of the July 2012 TIA was used to seasonally adjust the 2012 traffic counts along Highway 99W to 30th highest hour design volumes as per ODOT requirements.

Issue 2b. Response #1 found in Attachment 8 titled "Neighborhood Meeting Summary" states that commercial traffic would be routed down SW Langer Farms Parkway to the round-about and would then head East on SW Century Blvd and would not continue South on SW Langer Farms Parkway. We argue that there are still residential properties between SW Tualatin Sherwood Rd and SW Century Blvd along SW Langer Farms Parkway, which will be adversely effected by the commercial traffic in the area; especially with the varying potential occupants of the anchor retail store. As an alternate option, all commercial traffic could be routed in and out of SW Century Blvd where it connects with SW Tualatin Sherwood Blvd just east of DEQ and SW

Langer Parkway therefore removing commercial trucking noise from SW Langer Farms Parkway entirely.

Response: Truck deliveries to the site are expected to be routed to and from the site loading area via SW Century Drive. Trucks destined to and from the east on I-5 are likely to access the site via SW Century Drive and SW Tualatin-Sherwood Road. Trucks entering or exiting the site towards Highway 99W are likely to travel via SW Century Drive to SW Langer Farms Parkway to SW Tualatin-Sherwood Road to use the new signalized intersection at SW Langer Farms Parkway/SW Tualatin-Sherwood Road. We do not anticipate site-related truck delivery traffic to travel to or from the site via SW Langer Farms Parkway south of SW Century Drive unless such vehicles have other delivery needs located south of SW Century Drive.

Please contact me if you have any questions or comments regarding the contents of this letter or the analyses performed.

Sincerely,
KITTELSON & ASSOCIATES, INC.

Chris Brehmer

Chris Brehmer, P.E.
Principal Engineer

Perkins Coie

1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
www.perkinscoie.com

Seth J. King
PHONE: (503) 727-2024
FAX: (503) 346-2024
EMAIL: SKing@perkinscoie.com

October 9, 2012

VIA EMAIL ONLY

Patrick Allen, Chair
City of Sherwood Planning Commission
c/o Planning Department
22560 SW Pine Street
Sherwood, OR 97140

Re: Land Use Applications for Langer Farms Phase 7 Shopping Center (City of Sherwood File Nos. SP 12-05/CUP 12-02); Response to Possible Comment from Bonneville Power Administration

Dear Chair Allen and Members of the Planning Commission:

This office represents Langer Gramor LLC ("Applicant"), the applicant requesting approval of the land use applications for Langer Farms Phase 7 Shopping Center (City of Sherwood File Nos. SP 12-05/CUP 12-02) ("Applications") on approximately 19.7 acres of real property on the east side of SW Langer Farms Parkway ("Property"). The Applicant has just learned that the Bonneville Power Administration ("BPA") may submit written comments into the record that request that the City not approve development within BPA's power line easement, which crosses the northeast corner of the Property ("Easement Area").

The Applicant has not seen the substance of the written comment. Thus, the Applicant reserves the right to respond to same if and when it is submitted into the record. Further, the Applicant does not concede that BPA has the authority to limit the Applicant's development rights in the Easement Area. Accordingly, by submitting this letter and enclosure, the Applicant does not waive any arguments that the BPA has exceeded its legal authority by submitting the written comment.

Nevertheless, in an abundance of caution and in light of the open record schedule, the Applicant submits into the record a slightly modified site plan that removes all development from the Easement Area. A copy of this site plan is set forth in Exhibit A. The Applicant offers this alternative site plan only in the event the City determines that it is necessary to restrict

development in the Easement Area based upon written comments from BPA. The Applicant does not withdraw any site plan alternatives already included in the record for this matter.

The modified site plan removes all development from the Easement Area and relocates parking from the Easement Area to other locations on the Property. There is no net loss of building floor area or parking spaces. Truck turning radii can still be safely accommodated on-site, as set forth in Exhibit B. Finally, as explained in Exhibit C, the modified site plan satisfies applicable landscaping requirements. There are no other material changes to the site plan or the size or location of any buildings or access points. Accordingly, subject to staff's proposed conditions of approval (as modified by the Applicant's comments), the site plan satisfies all applicable City development standards and, if necessary to address BPA's comments, should be approved.

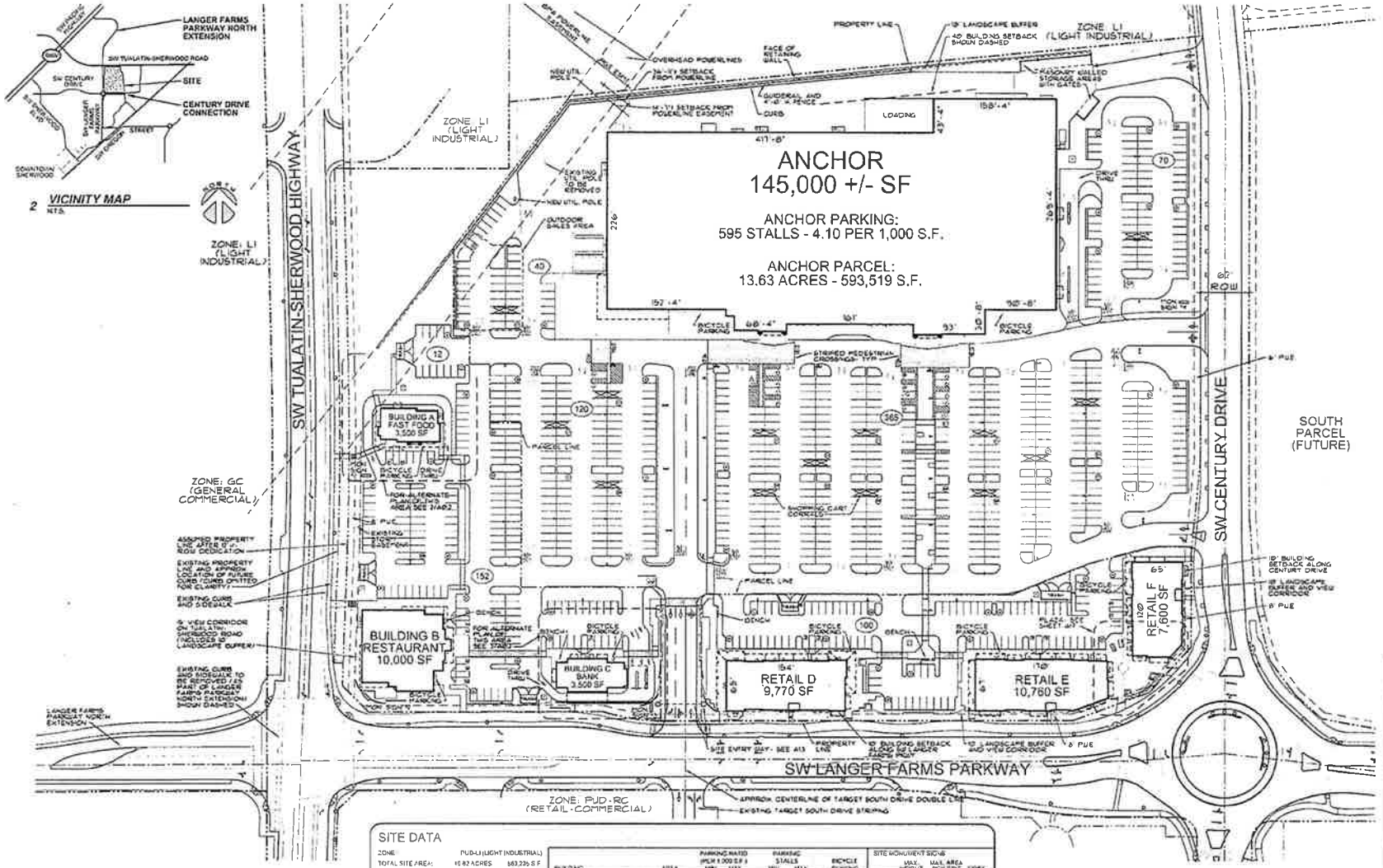
Thank you for your attention to the modified site plan and the points in this letter.

Very truly yours,

Seth J. King

Enclosures (Exhibit A – Site Plan; Exhibit B – Truck Turning Figure; Exhibit C – Landscaping Calculations)

cc: Brad Kilby (via email) (w/encl.)
Chris Crean (via email) (w/encl.)
Matt Grady (via email) (w/encl.)
Chris Brehmer (via email) (w/encl.)
Keith Jones (via email) (w/encl.)



SITE DATA

ZONE: PUD-LI (LIGHT INDUSTRIAL)

TOTAL SITE AREA: 19.82 ACRES 863,235 S.F.

EXISTING POWERLINE EASEMENTS: NOT DEDUCTED FROM TOTAL SITE AREA) 59,001 S.F.
BPA: 32,195 S.F.
PUE: 26,806 S.F.

BUILDING	AREA	PARKING RATIO (PER 1,000 S.F.) MIN.	MAX.	PARKING STALLS MIN.	MAX.	BICYCLE PARKING
ANCHOR	145,000 S.F.	4.1	5.3	595	769	30
BUILDING A - FAST FOOD	3,500 S.F.	9.5	10.4	33	43	8
BUILDING B - RESTAURANT	10,000 S.F.	15.5	19.5	155	195	8
BUILDING C - BANK	3,500 S.F.	4.3	5.4	15	19	4
RETAIL D	9,770 S.F.	4.1	5.3	40	52	3
RETAIL E	10,760 S.F.	4.1	5.3	44	57	3
RETAIL F	7,600 S.F.	4.1	5.1	31	39	3
TOTAL BUILDING AREA	193,630 S.F.	PARKING TOTALS*		913	1,137	TOTAL 46
BUILDING COVERAGE, OVERALL:	22.43 %	OVERALL RATIO:		4.69	5.86	MINIMUM 44

PARKING, ANCHOR:	595 STALLS	4.10 PER 1,000 S.F. (REQUIRES NO REDUCTION FROM CODE)
PARKING, OTHER:	204 STALLS	5.86 PER 1,000 S.F. (REQUIRES 17.0% REDUCTION FROM CODE)
OUTDOOR SALES:	+30 STALLS	
PARKING, TOTAL:	829 STALLS	4.26 PER 1,000 S.F. (REQUIRES 6.5% REDUCTION FROM CODE)

SITE MONUMENT SIGNS

	MAX. HEIGHT	MAX. AREA PER SIDE	SIDES
SIGN 1	20'-0"	150 S.F.	2
SIGN 2	6'-0"	35 S.F.	1
SIGN 3	6'-0"	35 S.F.	2
SIGN 4	8'-0"	36 S.F.	2

ALTERNATE SITE PLAN #2 WITH BPA EASEMENT NOT UTILIZED

1 1" = 60'

0 30' 60' 120' 180

1" = 60'

TILAND / SCHMIDT
ARCHITECTS, P.C.
361 S.W. HOOD AVE.
SUITE 200
PORTLAND, OR 97239
(503) 226-8511
FAX (503) 226-8518

GRAMOR DEVELOPMENT

LANGER FARMS PHASE 7

SW TUALATIN-SHERWOOD ROAD AND SW LANGER FARMS PARKWAY
SHERWOOD, OREGON

LANGER GRAMOR LLC

LAND USE SET

PROJECT NO. 11364
DATE: 10-09-12
DRAWN BY: CDO
CHECKED BY:
REVISIONS

A 0.5

SP 2

EXHIBIT A

LANGER FARMS PHASE 7
SW TUALATIN-SHERWOOD ROAD AND SW LANGER FARMS PARKWAY
SHERWOOD, OREGON
LAND USE SET
PROJECT NO 11364
DATE : 10/09/12
DRAWN BY : RSH
CHECKED BY : JMP
C 4.1
PRELIMINARY
TRANSPORTATION
CIRCULATION PLAN
TRUCK TURNAROUND
SCALE: 1" = 30 FEET
LOADING DOCK
LOADING AND MANEUVERING AREA
TRUCK TURN-AROUND AREA
WHEEL STOP (TYPICAL)
ADA ROUTE
9.5'X17' PARKING STALL (TYPICAL)
9.5'X20' PARKING STALL (TYPICAL)
DRIVE-THRU
PEDESTRIAN ACCESS
CIRCULATION PLAN LEGEND
GENERAL SITE CIRCULATION
PEDESTRIAN CIRCULATION
SW TUALATIN-SHERWOOD ROAD

EXHIBIT B

From: Chuck Oliver [mailto:chuckoliver@tilandschmidt.com]
Sent: Tuesday, October 09, 2012 2:24 PM
To: Matt Grady
Subject: RE: Sherwood - Alternate Plan Staying Out of BPA Easement

Landscape numbers check out, and mostly improved. Partial breakdown:

Total: 134,806 SF / 15.6% (from 13.09%, minimum is 10%)

Landscaped percentage of parking area: 12.0% (from 11.6%, minimum is 10%)

"Interior" portion of parking lot landscaping: 64.9% (from 65.4%; minimum is 50%)

Car overhangs are factored in.

Chuck Oliver
Tiland/Schmidt Architects, p.c.
3611 SW Hood Ave, Suite 200
Portland, OR 97239
503.220.8517
chuckoliver@tilandschmidt.com

EXHIBIT C

October 9, 2012

City of Sherwood
Planning Commission
22560 SW Pine St
Sherwood, OR 97140

Subject: SP 12-05 / CUP 12-02 Langer Farms Phase 7 Shopping Center

Planning Commission,

We would like to argue that the transportation impact analysis (TIA), which was created for this proposed development, does not appropriately measure the potential traffic impact based on worst-case scenario and that more appropriate ITE Codes should have been used to accurately reflect a reasonable worst-case scenario for the planned development.

After comparing TIAs in the area to include the City of Wilsonville Fred Meyer TIA, City of Cornelius Retail Development on North Adair TIA (Walmart) and East Vancouver Costco TIA, the study should have more accurately broken down the development into 5 separate spaces with 5 separate, more appropriate ITE codes.

1. Anchor Store (145,000 sq. ft.) – ITE Code 815 "Free-standing discount store."
2. Shopping Center (35,800 sq. ft.) – ITE Code 820
3. Bank w/ drive thru (3,500 sq. ft.) – ITE Code 912
4. Quality Restaurant (10,000 sq. ft.) – ITE Code 931 (possibly 932)
5. Fast-food Restaurant w/ drive thru (3,500 sq. ft.) – ITE Code 934

In a letter from ODOT to Kittelson & Associates, dated August 5, 2005, in regards to the proposed Cornelius Walmart on North Adair, ODOT recommended that a reasonable worst-case scenario for the development would use ITE Code 815, "Free standing discount store". Since the anchor store tenant has not been identified, a reasonable worst-case scenario should use at a minimum ITE code 815 in calculating the anchor store potential trip rate.

In the City of Wilsonville Fred Meyer TIA, the Fred Meyer "anchor" store trips were calculated separately from the remaining retail space. The Fred Meyer store was proposed at 155,700 sq. ft. and the remaining shopping center was 50,900 sq. ft. The Fred Meyer trip rates were based on surveyed Fred Meyer stores in Oregon and Washington and the remaining retail space was calculated based on ITE Code 820. Fred Meyer rates were calculated separately from the retail stores. And we argue

that the proposed anchor store should be calculated separately from the remaining retail space.

The Wilsonville Town Square TIA also used an ITE Code 932 "High Turnover (sit down) Restaurant while the Sherwood Langer Farms TIA used ITE Code 931 "Quality Restaurant. " In comparing trip rates between the ITE 931 (7.49 trips/KSF) and ITE 932 (11.15 trips/KSF) you will find a difference of 3.66 trips/KSF. Again, a reasonable worst-case scenario would be to use ITE Code 932 instead on 931 for the proposed restaurant.

In summary, the traffic impact analysis created for the proposed Langer Farms Phase 7 Shopping Center development does not accurately reflect the worst-case scenario in regards to traffic impact for the development.

Thank you,

Charles and Amy Boyle
21426 SW Massey Terrace
Sherwood, OR 97140

Resources Used:

1. City of Cornelius Proposed Retail Center Transportation Impact Analysis– North Adair St/North 4th Avenue (Walmart) dated August 2005, prepared by Kittleson & Associates, Inc.
2. City of Wilsonville Fred Meyer Transportation Impact Study dated August 2008, prepared by DKS Associates.
3. East Vancouver Costco Transportation Impact Analysis dated October 2009, prepared by Kittelson & Associates, Inc.

Exhibit DD

Perkins Coie

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Seth J. King
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FAX: (503) 346-2024
EMAIL: SKing@perkinscoie.com

October 16, 2012

VIA EMAIL ONLY

Patrick Allen, Chair
City of Sherwood Planning Commission
c/o Planning Department
22560 SW Pine Street
Sherwood, OR 97140

Re: Land Use Applications for Langer Farms Phase 7 Shopping Center (City of Sherwood File Nos. SP 12-05/CUP 12-02); Second Open Record Period Submittal

Dear Chair Allen and Members of the Planning Commission:

This office represents Langer Gramor LLC ("Applicant"), the applicant requesting approval of the land use applications for Langer Farms Phase 7 Shopping Center (City of Sherwood File Nos. SP 12-05/CUP 12-02) ("Applications") on approximately 19.7 acres of real property on the east side of SW Langer Farms Parkway ("Property").

For the reasons explained below, the Planning Commission should deny each of the contentions presented by the Boyles and the Clauses in their respective correspondence dated October 9, 2012. Instead, the Planning Commission should approve the Applications, subject to staff's proposed conditions of approval, as modified by Applicant.

1. Response to October 9, 2012 Letter from Charles and Amy Boyle.

In a letter dated October 9, 2012, Charles and Amy Boyle contend that Applicant's Traffic Impact Analysis ("TIA") does not accurately project the worst-case traffic impacts associated with the development because the TIA: (1) aggregates several of the retail spaces under the "Shopping Center" Land Use category rather than calculating the impacts of the anchor tenant separately; and (2) utilizes ITE Code 931 ("Quality Restaurant") rather than ITE Code 932 ("High Turnover (sit-down) Restaurant"). The Planning Commission should deny these contentions for four (4) reasons.

First, although Applicant stands by the TIA as an accurate and complete assessment of projected traffic impacts, Applicant has submitted into the record a supplemental trip generation comparison prepared by Kittelson & Associates, Inc. ("Kittelson") dated October 1, 2012. Kittelson's supplemental report assesses the projected traffic impacts of the anchor store under the trip generation rates applicable to two (2) other ITE land use categories that commonly apply to large-scale retail stores—"Free-Standing Discount Superstore" (ITE Code 813) and "Free-Standing Discount Store" (ITE Code 815). As explained in Kittelson's supplemental report, the TIA assumes a sufficient number of trips to account for potential development of the anchor store as either a Shopping Center (ITE Code 820), Free-Standing Discount Superstore (ITE Code 813), or Free-Standing Discount Store (ITE Code 815). The Planning Commission should find that the supplemental data addresses the Boyles' first contention.

Second, as to the classification of the sit-down restaurant, Applicant selected ITE Code 931 because it most closely approximates the expected use of the restaurant in this location. In the event Applicant proposes a change from Quality Restaurant to a use classified under ITE Code 932 or any other ITE land use code, the City must calculate the trip impacts of the restaurant building by utilizing the land use code and trip generation rate applicable to that new use (as opposed to ITE Code 931) as set forth in ITE *Trip Generation*, 8th Edition, pursuant to Applicant's proposed Condition 27. The Planning Commission should find that this response addresses the Boyles' second contention.

Third, although the Boyles contend that Applicant must conduct a worst-case scenario traffic analysis, the Planning Commission should deny this contention because the Applicant is not required to do so. Rather, pursuant to Sherwood Zoning and Community Development Code ("ZCDC") 16.90.030.D.6, Applicant is required to "provide adequate information * * * * to demonstrate the level of impact to the surrounding street system." Further, Applicant is required to mitigate for "impacts attributable to the project" (emphasis added), not for impacts attributable to a hypothetical, worst-case proposal. *Id.* In short, under the City's land use regulations, Applicant is required to assess a realistic scenario based upon the proposed development program. Between the TIA and the supplemental trip generation comparison dated October 1, 2012, Applicant has assessed a variety of realistic scenarios utilizing conservative assumptions and trip rates. Further, as set forth in proposed Condition 27, Applicant has agreed to be bound by a trip cap during the weekday PM peak hour that is nearly 100 trips below the rate allowed by the City's Capacity Allocation Program. The City's on-call traffic consultant, DKS Associates, has submitted a memorandum into the record dated October 5, 2012, that concurs with Applicant's assessment of traffic conditions.

Finally, to Applicant's knowledge, the three (3) traffic studies mentioned by the Boyles in their letter are not included in the record. Therefore, the Planning Commission cannot rely upon this evidence when rendering a decision in this matter.

For these reasons, the Planning Commission should deny the Boyles' contentions.

2. Response to October 9, 2012 Letter from Jim and Susan Claus.

In a letter dated October 9, 2012, Jim and Susan Claus raise various contentions in opposition to the Applications. The Planning Commission should deny these contentions because they are speculative, not supported by substantial evidence, and not directed at applicable approval criteria.

First, the Clauses contend that the City's process is pre-determined to result in an approval of the Applications. The Planning Commission should deny this contention, because there is no evidence—substantial or otherwise—to support it. In fact, the City has followed its standard procedures in reviewing the Applications, including requiring a neighborhood meeting and noticed public hearing before the Planning Commission. At the hearing, the Planning Commission gave interested persons an opportunity to testify about the Applications. Further, the Planning Commission held the record open (per the Clauses' request) to allow parties to submit additional evidence and argument relating to the Applications. Finally, it should be noted that City staff has closely reviewed the Applications and has recommended 54 conditions of approval, a far cry from approving the Applications as presented by Applicant.

Second, and on another procedural point, the Clauses request that the City Council itself appeal the Planning Commission's decision on the grounds that the City Council consists of the City's "highest elected officials" and because the Clauses contend that the City's local appeal fee is "cost prohibitive." The Planning Commission should deny this contention for two (2) reasons. First, the Clauses do not cite to any provision of the ZCDC or City Charter that authorizes the City Council to call up or appeal the Planning Commission's decision on the Applications. In fact, ZCDC 16.72.010.B.3.d(2) limits appeals of a decision for a Type IV land use application to those persons who testified before the Planning Commission. Second, the City has established its local appeal fees through a separate process consistent with the requirement in ORS 227.180(1)(c) that the fee be "reasonable and no more than the average cost of such appeals." To the extent that the Clauses object to the City's fee schedule, that challenge was most properly lodged at the time of the City's earlier and separate adoption of the fee schedule, not in this proceeding.

Third, the Clauses contend that the Planning Commission should deny the Applications because Applicant has not identified tenants for the shopping center. The Planning Commission should deny this contention because it is not directed at any applicable approval criterion. In fact, no provision of the ZCDC requires that applicants identify the end users of their developments, particularly when, as in this case, the end users are not yet finalized. Additionally, the Clauses do not explain how the identification of tenants would affect the City's analysis of the

Applications under any specific criterion. In short, the Clauses' contention does not provide a basis to condition or deny the Applications.

Fourth, the Clauses contend that Applicant's traffic study understates the traffic profile for the development. The Planning Commission should deny this contention for two (2) reasons. First, as explained in Section 1 above, Applicant has submitted supplemental traffic data that demonstrates that the TIA assumes a sufficient number of trips to account for potential development of the anchor store as either a Shopping Center (ITE Code 820), Free-Standing Discount Superstore (ITE Code 813), or Free-Standing Discount Store (ITE Code 815). Second, the Clauses do not offer any substantial evidence, such as an alternative traffic study prepared by a traffic engineer, to rebut or undermine the conclusions set forth in the TIA. Accordingly, there is no basis to uphold the Clauses' contention.

The Clauses further request that the Planning Commission require Applicant to complete "as much of the road system improvements that can be required" as conditions of the approval. In fact, the City's proposed conditions of approval satisfy this request by requiring Applicant to take the following actions to mitigate the transportation impacts of the development:

- Design and construct SW Century Drive between SW Langer Farms Parkway and the existing street segment at the eastern Property line
- Construct the north extension of SW Langer Farms Parkway from SW Tualatin-Sherwood Road to Highway 99W
- Construct a traffic signal at SW Langer Farms Parkway and SW Tualatin-Sherwood Road (or pay a fee in lieu)
- Construct frontage improvements along SW Tualatin-Sherwood Road (or pay a fee in lieu)
- Construct additional lane storage on Highway 99W or engage in substitute mitigation measures consistent with Oregon Department of Transportation recommendations in the record

The Planning Commission can find that conditioning approval of the Applications on Applicant taking these actions will satisfy the Clauses' concern.

Finally, the Clauses contend that development of the shopping center will adversely affect other businesses in the area. This contention is entirely speculative and not directed at any applicable approval criterion. Therefore, the Planning Commission should deny this contention.

3. Conclusion.

For the reasons explained above, the Planning Commission should deny each of the contentions presented by the Boyles and the Clauses in their respective correspondence dated October 9,

2012. Instead, the Planning Commission should approve the Applications, subject to staff's proposed conditions of approval, as modified by Applicant.

This letter constitutes Applicant's second open record period submittal by October 16, 2012, at 5:00 p.m. I have asked City staff to place this submittal in the official Planning Department file for this matter and to place it before you. Applicant reserves the right to submit final written argument in accordance with ORS 197.763 and the open record schedule approved by the Planning Commission.

Thank you for your consideration of the points in this letter.

Very truly yours,

Seth J. King

cc: Brad Kilby (via email)
Chris Crean (via email)
Matt Grady (via email)
Chris Brehmer (via email)
Keith Jones (via email)

Case No. SP 12-06
Fee _____
Receipt # _____
Date 9-13-12
TYPE _____

City of Sherwood
Oregon
Home of the Tualatin River National Wildlife Refuge

City of Sherwood
Application for Land Use Action

Type of Land Use Action Requested: (check all that apply)

- ☐ Annexation
- ☐ Plan Amendment (Proposed Zone _____)
- ☐ Variance(list standard(s) to be varied in description
- ☒ Site Plan (Sq. footage of building and parking area)
- ☐ Planned Unit Development
- ☐ Conditional Use
- ☐ Partition (# of lots _____)
- ☐ Subdivision (# of lots _____)
- ☐ Other: _____

By submitting this form the Owner, or Owner's authorized agent/ representative, acknowledges and agrees that City of Sherwood employees, and appointed or elected City Officials, have authority to enter the project site at all reasonable times for the purpose of inspecting project site conditions and gathering information related specifically to the project site.

Note: See City of Sherwood current Fee Schedule, which includes the "Publication/Distribution of Notice" fee, at www.sherwoodoregon.gov. Click on Departments/Planning/Fee Schedule.

Owner/Applicant Information:
Applicant: Brad Brucker — Phone: 503-702-8207
Applicant Address: 22545 S.W. Park St. Sherwood — Email: brad.brucker@hotmail.com
Owner: Bradeann Brucker — Phone: 503-702-8207
Owner Address: 22545 S.W. Park St. Sherwood — Email: brad.brucker@hotmail.com
Contact for Additional Information: _____

Property Information:
Street Location: 16273 S.W. Railroad St.
Tax Lot and Map No: 2S132BC05400
Existing Structures/Use: Art Studio & Hair Salon
Existing Plan/Zone Designation: RC
Size of Property(ies) 5000 S.F.

Proposed Action:
Purpose and Description of Proposed Action: modify/ Add Cover Roof To Finish/Complete Roof over deck. Improve existing deck to Finish Floor & Add Insulated windows & doors as noted on SP1.1.

Proposed Use: Art Studio

Proposed No. of Phases (one year each): 1

Continued on Reverse

EXHIBIT A

LAND USE APPLICATION FORM

Authorizing Signatures:

I am the owner/authorized agent of the owner empowered to submit this application and affirm that the information submitted with this application is correct to the best of my knowledge.

I further acknowledge that I have read the applicable standards for review of the land use action I am requesting and understand that I must demonstrate to the City review authorities compliance with these standards prior to approval of my request.

Applicant's Signature — Date: 9-13-2012

Owner's Signature — Date: 9-13-2012

The following materials must be submitted with your application or it will not be accepted at the counter. Once taken at the counter, the City has up to 30 days to review the materials submitted to determine if we have everything we need to complete the review.

☑ 3 * copies of Application Form completely filled out and signed by the property owner (or person with authority to make decisions on the property.

☑ Copy of Deed to verify ownership, easements, etc.

☑ At least 3 * folded sets of plans

☑ At least 3 * sets of narrative addressing application criteria

☑ Fee (along with calculations utilized to determine fee if applicable)

☐ Neighborhood Meeting Verification including affidavit, sign-in sheet and meeting summary (required for Type III, IV and V projects)

☑ Signed checklist verifying submittal includes specific materials necessary for the application process

* Note that the required numbers of copies identified on the checklist are required for completeness; however, upon initial submittal applicants are encouraged to submit only 3 copies for completeness review. Prior to completeness, the required number of copies identified on the checklist and one full electronic copy will be required to be submitted.

Washington County, Oregon
09/21/2009 03:08:39 PM
D-DBS Cnt=1 Stn=29 RECORDS1
$5.00 $5.00 $11.00 - Total = $21.00

2009-084920

01410173200900849200010010

I, Richard Hobernicht, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.

Richard Hobernicht, Director of Assessment and Taxation, Ex-Officio County Clerk

After Recording Return To:
Name: Ann C. Brucker
Firm/Company: A & B Brucker, LLC
Address: 16273 SW Railroad St.
City, State, Zip Sherwood, OR 97140
Phone: (503) 625-0818

Until a change is requested all tax statements
Shall be sent to the following address:
A & B Brucker, LLC
16273 SW Railroad Street
Sherwood, OR 97140

STATUTORY
BARGAIN AND SALE DEED

Bradley D. Brucker and Ann C. Brucker (Grantors), convey to A & B Brucker, LLC an Oregon corporation (Grantee), the following described real property situated in Washington County, Oregon, to-wit:

Lot 5, Block 3, 0.11 Acres, SHERWOOD, in the county of Washington and State of Oregon.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

The true consideration for this conveyance is $ none for estate planning purposes. (Here comply with the requirements of ORS 93.930)

Dated on the 21st day of September, 2009.

Bradley D. Brucker

Ann C. Brucker

ACKNOWLEDGEMENT

STATE OF Oregon }
} SS:
COUNTY OF Clackamas }

OFFICIAL SEAL
LORI GLENN
NOTARY PUBLIC-OREGON
COMMISSION NO.428761
MY COMMISSION EXPIRES MAY 5, 2012

On this 21st day of Sept, 2009, before me, the undersigned, personally appeared the within named Bradley D. Brucker and Ann C. Brucker known to me to be the individuals who executed the within instrument and acknowledged to me that they executed same freely and voluntarily.

Notary Public: Lori Glenn

My commission expires on: May 5, 2012

9-13-2012

To: City of Sherwood Planning
From: Brad Brucker
RE: 16273 S.W. Railroad St. Bldg. #4
Narrative Addressing Application Criteria

The following is the Narrative / Zoning Analysis Addressing All aspects for planning review. See project Description below for scope of Project.

ZONING ANALYSIS

PROPERTY DATA:

PROPERTY ADDRESS
329 Railroad Street
Sherwood, Oregon 97140
OWNER Brad & Ann Brucker
TAX LOT
PROPERTY ID - W236744
LOT SIZE = 5,000 SF (50' X 100')

ZONING DATA:

ZONE = RC - RETAIL COMMERCIAL
OVERLAYS = OLD TOWN - SMOCKVILLE

PROJECT DESCRIPTION:

Enclose an Existing 12' x 24' deck for Artist Studio, work includes extending roof over a 12' x 12' portion of deck, wall framing for North Elevation, and Glazed West Elevation with Glazed Dbl. Doors.

ZONING & DEVELOPEMENT CODE:

DIVISION II - LAND USE & DEVELOPMENT CODE

Section 16.28 - (RC) - RETAIL COMMERCIAL
16.28.020 - Permitted Uses: Art Studios, Hair Salon, Professional Services - OK

16.28.050 Dimensional Standards:
1. Min. Lot Area: OT Overlay = 2,500sf - Existing = 5,000 sf - OK
2. Lot Width at Front Property Line: 50' & 100' - OK
2. Lot Width at Building Line: 50' & 100' - OK

Setbacks-
1. Front Yard: '0' - Existing '0' @ Railroad St. - OK
2. Side Yard: '0' - Existing '0' @ Park St. - OK
'0' - 14' @ Existing North Side Yard - OK
3. Rear Yard: '0' - 14' @ Existing @ West Rear Yard - OK (Imaginary Prop. Line)

Maximum Height = 50' Max - 22' Existing - OK

DIVISION V - COMMUNITY DESIGN

Section 16.90 - SITE PLANNING

16.90.020 - Site Plan Review - Exceptions - Major Modification

16.90.030 - Site Plan Modification & Revocation
A. Major Modification to Approved Site Plans - 5 Increase in Floor Area over 10%
D. Required Findings, meets applicable zoning district standards & design standards of Divisions II, and all provisions of Div. V, VI, VIII & IX.
2. Services conforming to Community Design - All services were completed with original Site Plan - OK
3. Ownership remains the same as original Site Plan - OK
4. This Site Plan Modification proposal maintains the Natural Features - OK
5. This Site Plan Modification proposal is exempt within the Old Town Overlay - OK
6. This Site Plan Modification proposal will not increase ADT's. - OK
7. This Site Plan Modification proposal maintains pedestrian, bicycle and transit orientation - OK
7a. This Site Plan Modification proposal maintains Street Oriented Front Entrances - OK
7b. This Site Plan Modification proposal maintains building is flush to Railroad St. & Park St. - OK
7c. This Site Plan Modification proposal has no modifications to street elevations - OK

16.92 - Landscaping - refer to updated Landscape Plan with the following improvements:
1. Pavered common area between Bldg. #1 & Bldg. #2.
2. Pond with stone & landscaping upgrades.
3. New pathways from sidewalks to pavered common area.

16.94 - Parking not required - OK
16.96 - On site circulation, enhanced with new connecting pathways - OK
16.98 - No on site storage proposed - OK
16.102 - No new signs proposed.

DIVISION VII - LAND DIVISIONS

No land use modifications - OK

CHAPTER VIII - ENVIRONMENTAL RESOURCES

Not identified on FIRM Maps - NA

CHAPTER IX - HISTORIC RESOURCES

16.162.010 - Old Town Overlay - Smockville
16.162.020 - Objectives - No Changes - OK
16.162.030 - Permitted Uses - Artist Teaching Studio & Hair Salon (Tenant) OK
16.162.060 - Dimensional Standards - Meets all criteria - OK
16.162.070 - Community Design, No Landscape changes, No Parking/Loading, No New Signs, Color Scheme to match existing - OK
16.162.090 - Old Town Smockville Design Standards.
C Remodeling of existing structure - No Original Elements are effected - OK
D. Remodeling Standard #2 - Front Facing Presentation - No Change - OK
E. Commercial Structures:
1. Volume / Mass - No changes
2. Openings - New 2' x 2' window on North Elevation, and new Glazing & Glazed Doors for West Elevations - OK
3. Height: No Changes
4. Horizontal Facade Rythm: No Changes
5. Vertical Facade Rythm: No Changes
6. Sense of Entry: No Changes
7. Roof Form - 7/12 - No Changes
8. Exterior Surface Materials: Existing is Cement Fiber Lap & Shake siding No Changes
9. Awnings & Marquees - Not Required.
10. Secondary Elevations: Public Rear Entry, proposed Glazed Wood Dbl. Doors - OK
11. Additions to Existing Buildings:
A. Compatability - Existing Fiber Cement Lap Siding on West Elevation, New Glazed West Wall at edge of Existing Deck.
12. Front Facing Presentation - No Change.

Thank you!

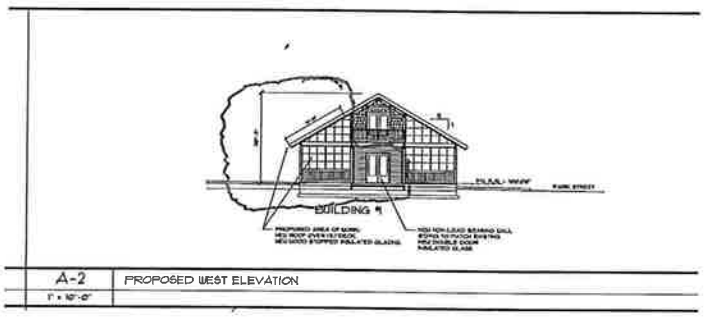
Brad Brucker - Owner

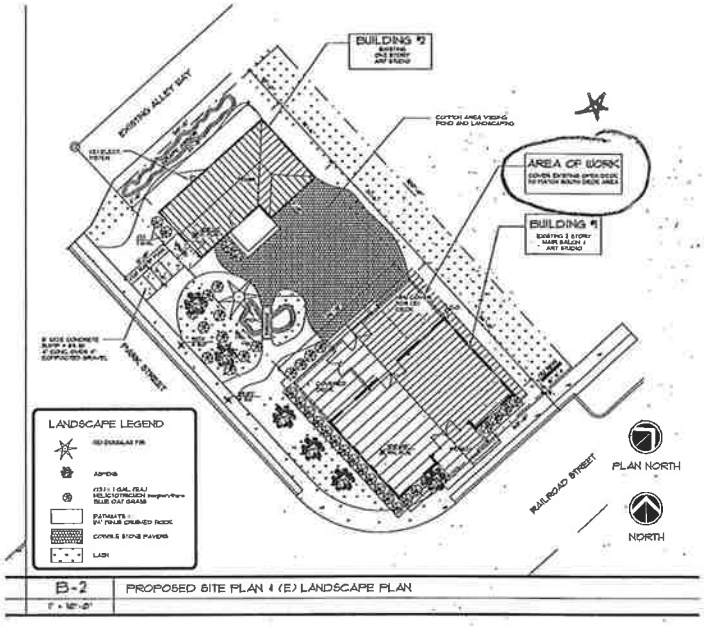
Notice send date: September 7, 2012

NOTICE OF NEIGHBORHOOD MEETING

A Neighborhood Meeting will be held on September 12th , 2012 at 16273 SW Railroad St, in the court yard between the Savvy Salon (larger building) and Mosaic Arts Loft (smaller building), to inform the community about our proposed modification to the back porch of the larger building. Interested community Members are encouraged to attend this meeting. Please contact Brad Brucker at 503-702-8207 for additional information.

PROJECT PROPOSAL: The A & B Brucker LLC is proposing a modification to the existing larger building that finishes off the NW side of the roof and encloses the back porch. The initial use would be for an Art Studio.





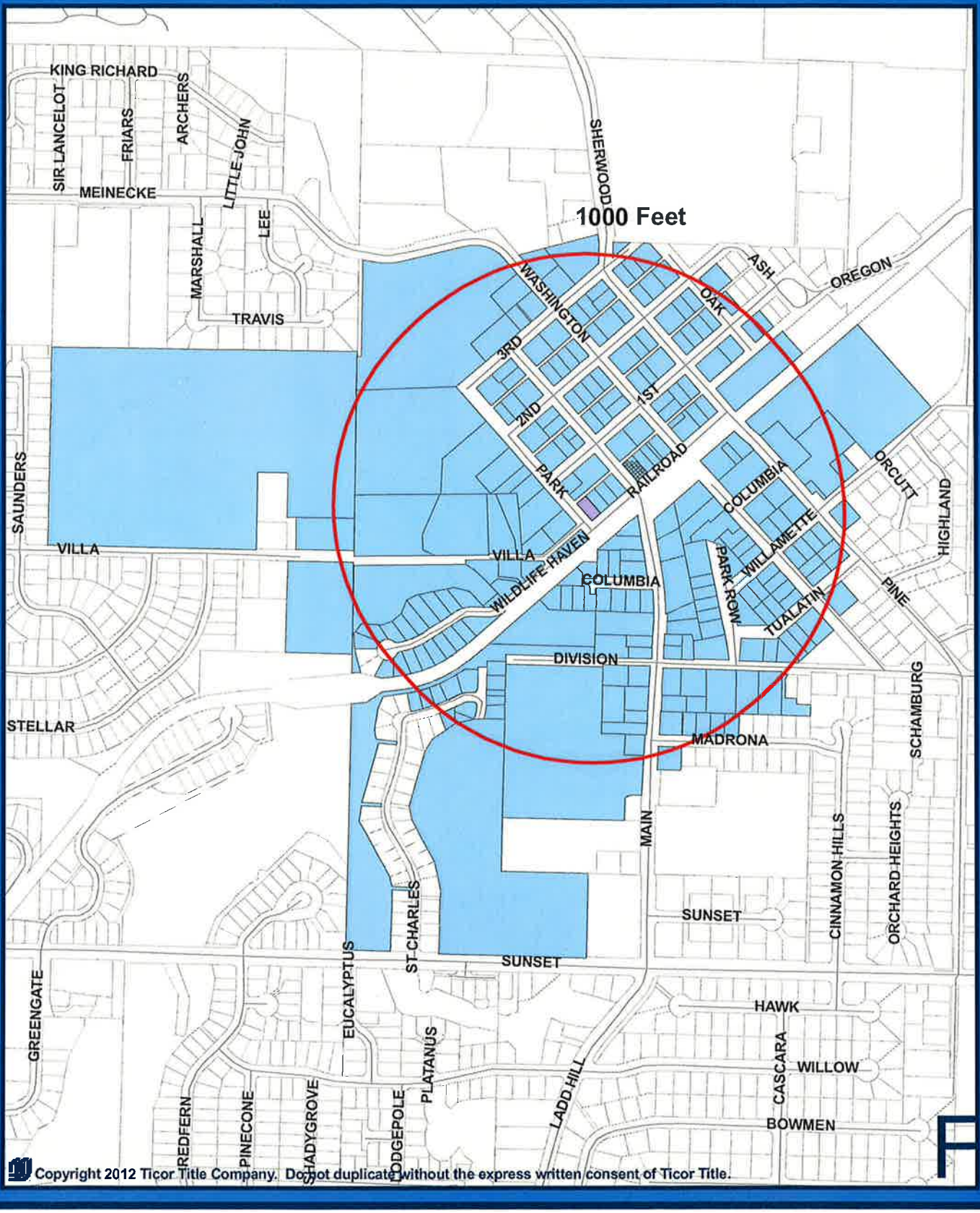
Agenda

6:30PM - Welcome
7 PM - Project Presentation
7:15 PM - Question and Answers
7:30 to 8PM - Meeting Adjourn

Meeting Information

DATE: September 12, 2012
Time: 7PM
Location: 16273 SW Railroad St (Subject Site) Sherwood, OR
Contact: Brad Brucker – Owner AB Brucker LLC 503-702-8207

Radius Search
16273 SW Railroad St Sherwood



AFFIDAVIT OF MAILING

I, Brad Bucher do hereby certify that on September 7, 2012 the following action took place:

☑ Notice to property owners within 1,000-feet of the site was placed in a U.S. Mail receptacle.

Signed _____ September 12, 2012

NEIGHBORHOOD MEETING SIGN IN SHEET

Proposed Project: Bucker Modification to Building "A"

Proposed Project Location: 16273 S.W. Railroad St.

Project Contact: Brad Bucker

Meeting Location: 16273 S.W. Railroad St.

Meeting Date: 9-12-2012

Name	Address	E-Mail	Please identify yourself (check all that apply)			
			Resident	Property owner	Business owner	Other
Ann Bucker	22545 SW Park St.	muskicats loft@yahoo.com	✓	✓	✓	
Brad Bucker	22545 SW Park St.	brad.bucker@hotmail.com	✓	✓	✓	

Updated October 2010

Meeting notes Summary: Brad Bucker showed up To Welcome at 6:30 PM.
AT 6:45 Brad's wife came & signed in.
AT 7:02 Brad presented the project To all
attendees - 1 person, his wife,
AT 7:15 - no questions were asked - 7:30 meeting adjourned

RECEIVED
SEP 07 2012
By

Clean Water Services

Clean Water Services File Number: 12-002109

Sensitive Area Pre-Screening Site Assessment

1. Jurisdiction: SHERWOOD

2. Property Information *(example 1S234AB01400)*
Tax lot ID(s): 2S132BC05400
Lot 5, Block 3, 0.11 Acres Sherwood Wd. County
Site Address: 16273 S.W. Railroad St.
City, State, Zip: Sherwood, OR 97140
Nearest Cross Street: Park

3. Owner Information
Name: AR Brucker LLC - Brad Brucker
Company:
Address: 22545 S.W. Park St.
City, State, Zip: Sherwood, OR 97140
Phone/Fax: 503-702-8207
E-Mail: brad.brucker@hotmail.com

4. Development Activity *(check all that apply)*
- [x] Addition to Single Family Residence (rooms, deck, garage)
- [ ] Lot Line Adjustment
- [ ] Minor Land Partition
- [ ] Residential Condominium
- [ ] Commercial Condominium
- [ ] Residential Subdivision
- [ ] Commercial Subdivision
- [ ] Single Lot Commercial
- [ ] Multi Lot Commercial

Other: Modification to Back of Bldg. Adding 144 Sq.Ft. of Roofed Enclosing deck

5. Applicant Information
Name: Brad Brucker - owner
Company: ~~16273 S.W. Railroad St.~~
Address: 22545 S.W. Park St.
City, State, Zip: Sherwood, OR 97140
Phone/Fax: 503-702-8207
E-Mail: brad.brucker@hotmail.com

6. Will the project involve any off-site work? [ ] Yes [x] No [ ] Unknown
Location and description of off-site work:

7. Additional comments or information that may be needed to understand your project: Small Modification to existing building adding 144 S.F. of Roofed Enclosing deck

This application does NOT replace Grading and Erosion Control Permits, Connection Permits, Building Permits, Site Development Permits, DEQ 1200-C Permit or other permits as issued by the Department of Environmental Quality, Department of State Lands and/or Department of the Army COE. All required permits and approvals must be obtained and completed under applicable local, state, and federal law.

By signing this form, the Owner or Owner's authorized agent or representative, acknowledges and agrees that employees of Clean Water Services have authority to enter the project site at all reasonable times for the purpose of inspecting project site conditions and gathering information related to the project site. I certify that I am familiar with the information contained in this document, and to the best of my knowledge and belief, this information is true, complete, and accurate.

Print/Type Name: Brad Brucker Print/Type Title: Owner

Signature: Date: 9-7-2012

FOR DISTRICT USE ONLY

- [ ] Sensitive areas potentially exist on site or within 200' of the site. THE APPLICANT MUST PERFORM A SITE ASSESSMENT PRIOR TO ISSUANCE OF A SERVICE PROVIDER LETTER. If Sensitive Areas exist on the site or within 200 feet on adjacent properties, a Natural Resources Assessment Report may also be required.
- [x] Based on review of the submitted materials and best available information Sensitive areas do not appear to exist on site or within 200' of the site. This Sensitive Area Pre-Screening Site Assessment does NOT eliminate the need to evaluate and protect water quality sensitive areas if they are subsequently discovered. This document will serve as your Service Provider letter as required by Resolution and Order 07-20, Section 3.02.1. All required permits and approvals must be obtained and completed under applicable local, State, and federal law.
- [ ] Based on review of the submitted materials and best available information the above referenced project will not significantly impact the existing or potentially sensitive area(s) found near the site. This Sensitive Area Pre-Screening Site Assessment does NOT eliminate the need to evaluate and protect additional water quality sensitive areas if they are subsequently discovered. This document will serve as your Service Provider letter as required by Resolution and Order 07-20, Section 3.02.1. All required permits and approvals must be obtained and completed under applicable local, state and federal law.
- [ ] This Service Provider Letter is not valid unless _____ CWS approved site plan(s) are attached.
- [ ] The proposed activity does not meet the definition of development or the lot was platted after 9/9/95 ORS 92.040(2). NO SITE ASSESSMENT OR SERVICE PROVIDER LETTER IS REQUIRED.

Reviewed by: Jamie Harris Date: 9/12/12

2550 SW Hillsboro Highway • Hillsboro, Oregon 97123 • Phone: (503) 681-5100 • Fax: (503) 681-4439 • www.cleanwaterservices.org

BRUCKER BUILDINGS

A-1 ZONING ANALYSIS

ZONING ANALYSIS

PROPERTY DATA:

ZONING DATA:

PROJECT DESCRIPTION:

ZONING & DEVELOPMENT CODE:

DIVISION II - LAND USE & DEVELOPMENT CODE

DIVISION V - COMMUNITY DESIGN

DIVISION VII - LAND DIVISIONS

CHAPTER VIII - ENVIRONMENTAL RESOURCES

CHAPTER IX - HISTORIC RESOURCES

1" = 10'-0"

B-2 BUILDING CODE ANALYSIS

BUILDING CODE ANALYSIS

CHAPTER 3 - USE OR OCCUPANCY

CHAPTER 5 - GENERAL BUILDING HEIGHTS & AREA

CHAPTER 6 - TYPES OF CONSTRUCTION

CHAPTER 7 - FIRE-RESISTANCE-RATED CONSTRUCTION

CHAPTER 8 - INTERIOR FINISHES

CHAPTER 9 - FIRE PROTECTION SYSTEMS

CHAPTER 10 - MEANS OF EGRESS

CHAPTER 11 - ACCESSIBILITY

CHAPTER 29 - PLUMBING SYSTEMS

B-3 DRAWING INDEX

DRAWING INDEX

CS COVER SHEET - DRAWING INDEX, ZONING CODE ANALYSIS & BUILDING CODE ANALYSIS

SP1 SITE PLAN - EXISTING & PROPOSED

A-2 PROJECT DESCRIPTION

PROJECT DESCRIPTION:

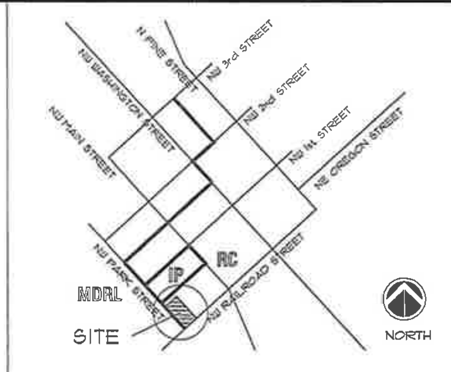
BUILDING #1

ENCLOSING AN EXISTING DECK LOCATED ON THE BACK OF THE BUILDING. WORK INCLUDES MINOR ROOF & WALL FRAMING, WOOD SET INSULATED WINDOWS, INSULATION AND INTERIOR FINISHES.

BUILDING #2

NO WORK PROPOSED

A-3 LOCATION PLAN



FRITZIE ARCHITECTS

BRUCKER BUILDING

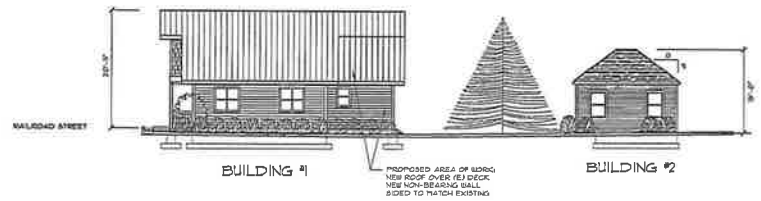
MOSAIC ART STUDIOS - BUILDING #1 ENCLOSE EXISTING DECK COOPERATIVE USE W/ TENANT

DRAWING INDEX, ZONING & BUILDING ANALYSIS

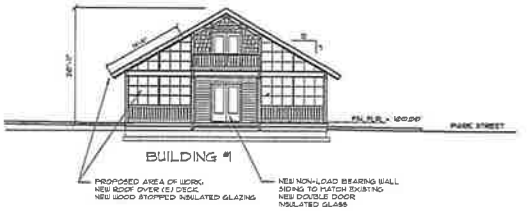
REGISTERED ARCHITECT LARRY F. FRITZIE PORTLAND, OREGON STATE OF OREGON

1" = 10'-0"

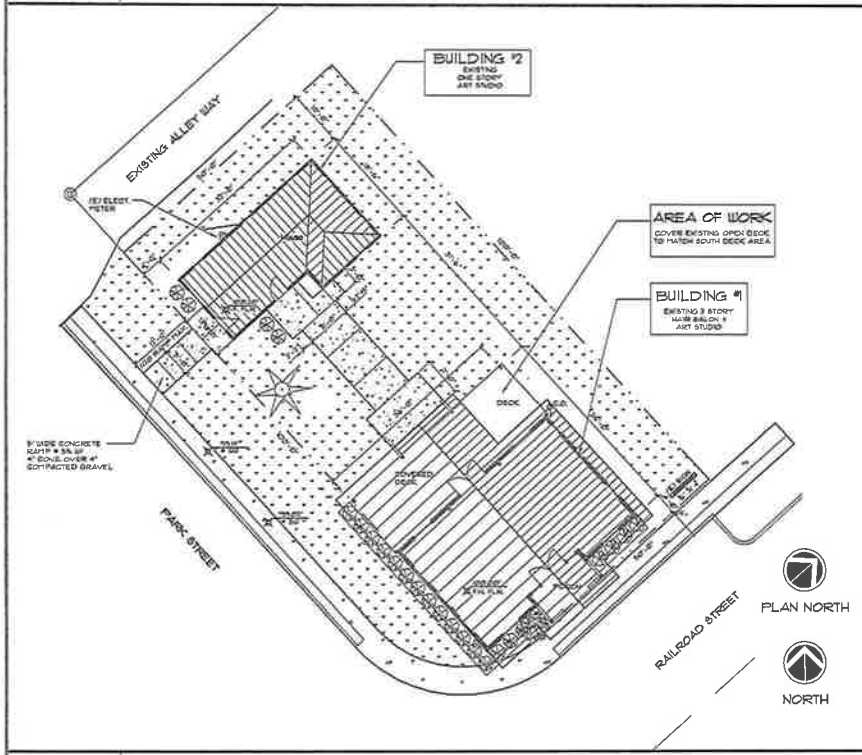
CS



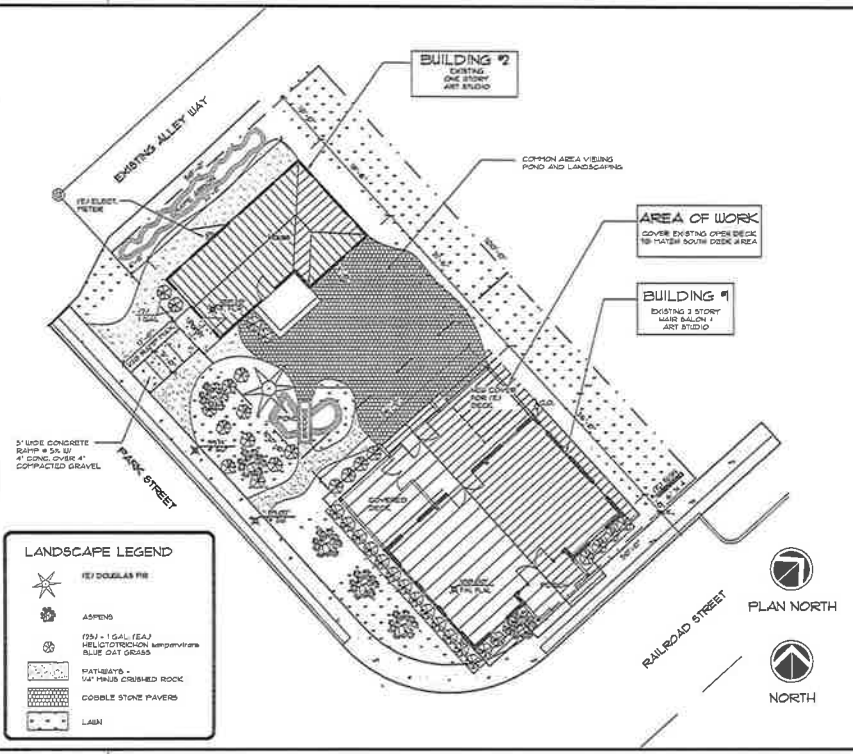
A-1 PROPOSED NORTH ELEVATION
1" = 10'-0"



A-2 PROPOSED WEST ELEVATION
1" = 10'-0"



B-1 ORIGINAL APPROVED SITE PLAN & ORIGINAL APPROVED LANDSCAPE PLAN
1" = 10'-0"



B-2 PROPOSED SITE PLAN & ENHANCED LANDSCAPE PLAN
1" = 10'-0"

FRITZIE ARCHITECTS

BRICKER BUILDING
350 RAILROAD ST. SHERWOOD, OREGON
NEW ART STUDIOS - NEW BUILDING #1
RELOCATE BUILDING #2 W/
A CHANGE OF USE/OCCUPANCY

SITE PLANS - EXISTING & PROPOSED

REGISTERED ARCHITECT
LARRY F. FRITZIE
PORTLAND, OREGON
STATE OF OREGON

SP1.1

City of Sherwood Oregon
Home of the Tualatin River National Wildlife Refuge

Community Development Division
Planning Department
22560 SW Pine St
Sherwood, OR 97140
503-625-4202

PLANNING REVIEW LETTER

October 3, 2012

Brad Brucker
22345 SW Park Street
Sherwood, OR 97140

RE: Brucker Building Addition (SP12-06)

Dear Mr. Brucker:

The City has received the application submittal for your building addition. The application was received on September 14, 2012. We have reviewed the application and determined that the application is complete.

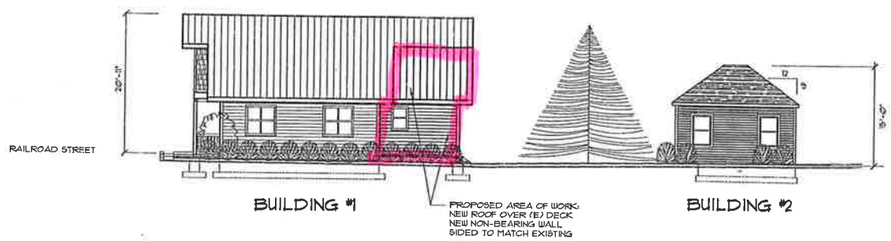
The application has been tentatively scheduled for review by the City of Sherwood Planning Commission on October 23, 2012.

Please do not hesitate to let me know if you have questions. You can reach me at 503-625-4206, or by e-mail at kilbyb@sherwoodoregon.gov .

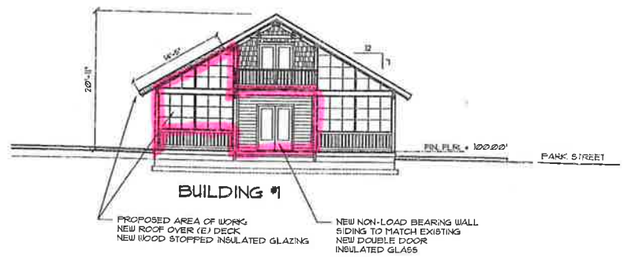
Sincerely,

Brad Kilby, AICP
Senior Planner

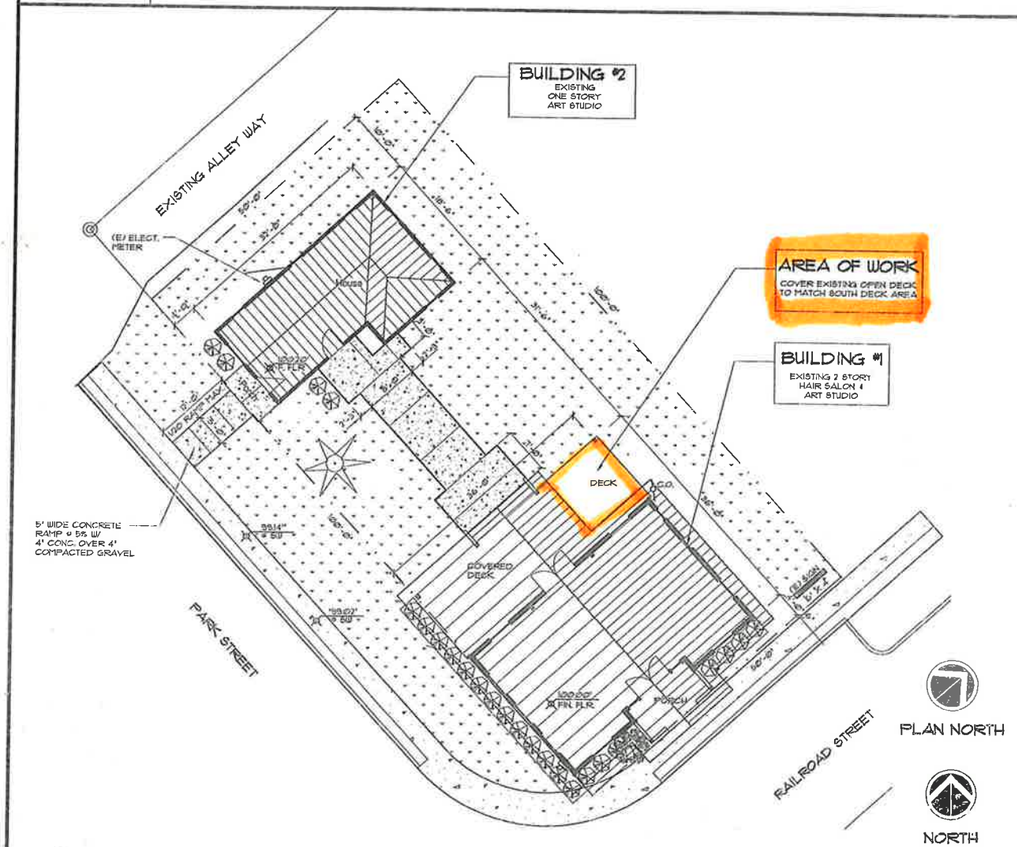
Add to record 10/23/2012
Project - Provide to PC @ 9/11/12 mtg as Community Comments



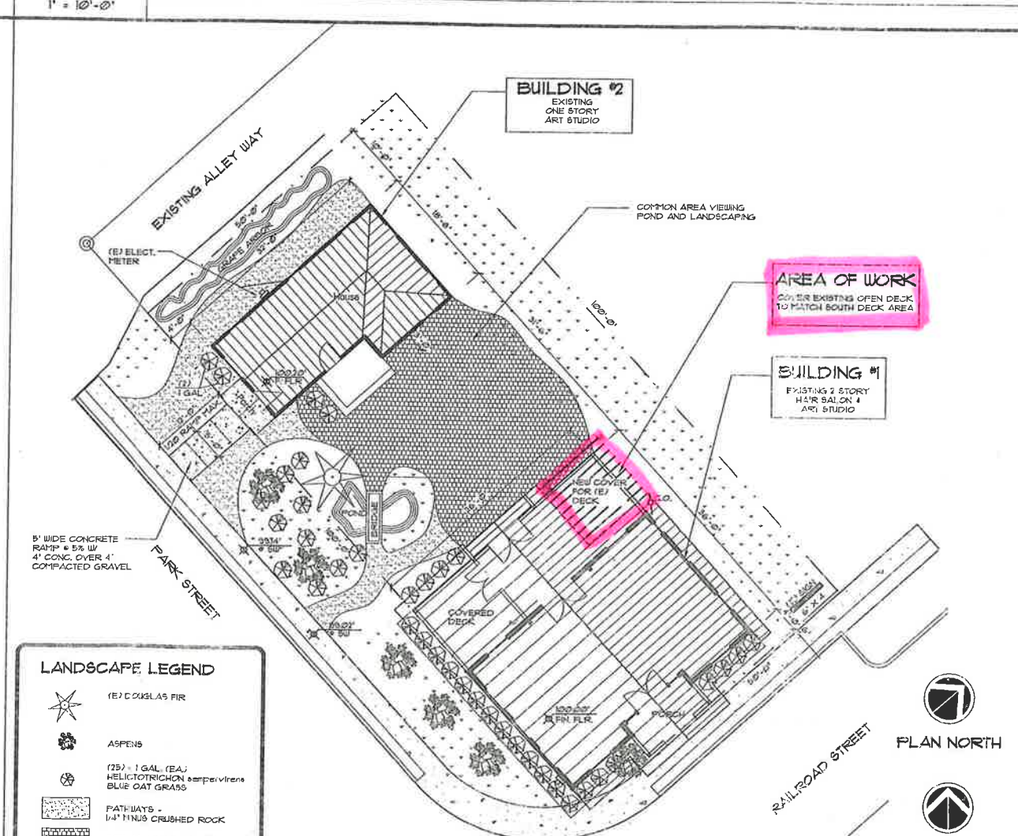
A-1 | PROPOSED NORTH ELEVATION
1" = 10'-0"



A-2 | PROPOSED WEST ELEVATION
1" = 10'-0"



B-1 | EXISTING SITE PLAN & EXISTING LANDSCAPE PLAN
1" = 10'-0"



LANDSCAPE LEGEND

- (E) DOUGLAS FIR
- ASPENS
- (25) - 1 GAL. (EA.) HELICTOTRICHON sempervirens BLUE OAT GRASS
- PATHWAYS - 1/4" MINUS CRUSHED ROCK
- COBBLE STONE PAVERS
- LAWN

B-2 | PROPOSED SITE PLAN & (E) LANDSCAPE PLAN
1" = 10'-0"

FRITZIE ARCHITECTS
ARCHITECTURE + INTERIORS + DEVELOPMENT SERVICES
1118 LARKSPUR AVE. • SPRINGFIELD, OREGON 97477
TELE 503-525-3040 FAX 503-552-2421

PROJECT TITLE: BRUCKER BUILDING
390 RAILROAD ST., SHERWOOD, OREGON
NEW ART STUDIOS - NEW BUILDING #
RELOCATE BUILDING #2 W/
A CHANGE OF USE/OCCUPANCY

DRAWING TITLE: SITE PLANS - EXISTING & PROPOSED

CONSULTANT

SEAL: REGISTERED ARCHITECT LARRY F. FRITZIE PORTLAND, OREGON STATE OF OREGON

DESIGNED BY
DRAWN BY
CHECKED BY
REVIEWED BY
DATE 8-31-12

PROJECT NUMBER
SCALE 1" = 10'-0"
SHEET NUMBER SP1.1

NOTICE OF APPLICATION AND REQUEST FOR COMMENTS

City of Sherwood Oregon

Notice Date: October 3, 2012
Please submit comments by: October 12, 2012

Notice is hereby given that a hearing is tentatively scheduled with the City of Sherwood Planning Commission on October 23, 2012 to consider the following application. Known as SP 12-06, the application is a proposal to enclose and roof an approximately 288 square foot deck on an existing building in Old Town Sherwood . This project will be known as the Brucker Building proposal for the purposes of commenting.

Case File No.: SP 12-06

Tax Map/Lot: 2S132BC05400

Property Owner: Brad and Ann Brucker
22545 SW Park Street
Sherwood, OR 97140

Property Location: 22545 SW Park Street
Sherwood, OR 97140

Staff Contact: **Brad Kilby, AICP, Senior Planner** 503-625-4206
kilbyb@sherwoodoregon.gov

Proposal: The applicant proposes to enclose an approximately 288 square foot deck for an existing Art Studio and Hair Salon. The property is zoned Retail Commercial, and is located in the Smockville area of the Sherwood Old Town Overlay.

Applicable Code Criteria: Sherwood Zoning and Community Development Code, 16.22 (Commercial Land Use Districts –RC); 16.90 (Site Planning); 16.162 (Old Town Overlay District), and where applicable 16.168 (Landmark Alteration).

COMMENTS – Brucker Building

x No comment.
□ We encourage approval of this request.
□ Please address the following concerns should this application be approved:

_____
_____

□ We encourage denial of this request for the following reasons:

_____
_____

Please feel free to attach additional sheets as needed to complete your comments.

Comments by: __Sattler, Rich_____ Date: ___10/3/12_____
Address: _____ Tel.: ___x2319_____ (optional)
_____ Email: _____ (optional)

EXHIBIT B

Clean Water Services

MEMORANDUM

Date: October 9, 2012

To: Brad Kilby, Senior Planner, City of Sherwood

From: Jackie Sue Humphreys, Clean Water Services (the District)

Subject: Brucker Building Addition, SP 12-06, 2S132BC05400

Clean Water Services has no concerns or objections to this application request. As submitted, this application request will not require further review or the issuance of a Storm Water Connection Permit Authorization.

EXHIBIT C

2550 SW Hillsboro Highway • Hillsboro, Oregon 97123
Phone: (503) 681-3600 • Fax: (503) 681-3603 • cleanwaterservices.org

NOTICE OF APPLICATION AND REQUEST FOR COMMENTS

Notice Date: October 3, 2012
Please submit comments by: October 12, 2012

Notice is hereby given that a hearing is tentatively scheduled with the City of Sherwood Planning Commission on October 23, 2012 to consider the following application. Known as SP 12-06, the application is a proposal to enclose and roof an approximately 288 square foot deck on an existing building in Old Town Sherwood . This project will be known as the Brucker Building proposal for the purposes of commenting.

Case File No.:	SP 12-06	**Tax Map/Lot:**	2S132BC05400
Property Owner:	Brad and Ann Brucker 22545 SW Park Street Sherwood, OR 97140	**Property Location:**	22545 SW Park Street Sherwood, OR 97140

Staff Contact: **Brad Kilby, AICP, Senior Planner** 503-625-4206
kilbyb@sherwoodoregon.gov

Proposal: The applicant proposes to enclose an approximately 288 square foot deck for an existing Art Studio and Hair Salon. The property is zoned Retail Commercial, and is located in the Smockville area of the Sherwood Old Town Overlay.

Applicable Code Criteria: Sherwood Zoning and Community Development Code, 16.22 (Commercial Land Use Districts –RC); 16.90 (Site Planning); 16.162 (Old Town Overlay District), and where applicable 16.168 (Landmark Alteration).

COMMENTS – Brucker Building

- ☑ No comment.
- ☐ We encourage approval of this request.
- ☐ Please address the following concerns should this application be approved:
  TVF+R Finds No Access or Water Supply Issues with Plans As Permitted
- ☐ We encourage denial of this request for the following reasons:

Please feel free to attach additional sheets as needed to complete your comments.

Comments by: John Wolff
Address: TVF+R
Tigard OR
Date: 10-11-12
Tel.: 503 259 1504 (optional)
Email: _____ (optional)

EXHIBIT D

Bradley Kilby

From: Kristin Leichner <kristinl@pridedisposal.com>
Sent: Thursday, October 04, 2012 9:53 AM
To: Bradley Kilby
Subject: RE: Land Use Proposal in Sherwood

We have no comments on this change as garbage service will still be provided curbside in residential style roll carts.

Kristin Leichner
Office Manager
Pride Disposal Co.
(503) 625-6177

From: Bradley Kilby [mailto:KilbyB@SherwoodOregon.gov]
Sent: Wednesday, October 03, 2012 1:59 PM
To: 'Wendy.S.ELSTUN@odot.state.or.us'; 'baldwinb@trimet.org'; 'rmk@nwnatural.com'; Brad Crawford; 'Charles.redon@state.or.us'; 'crbelt@bpa.gov'; Craig Sheldon; 'paulette.Copperstone@oregonmetro.gov'; 'ehays@sherwood.k12.or.us'; 'karen.mohling@tvfr.com'; Kristin Leichner; 'kurt.A.MOHS@odot.state.or.us'; 'd5b@nwnatural.com'; Bob Galati; 'raindrops2refuge@gmail.com'; 'mwerner@gwrr.com'; 'Raymond.Lambert@pgn.com'; 'Naomi_Vogel@co.washington.or.us'; 'Kevin_Rolph@kindermorgan.com'; 'r2g@nwnatural.com'; 'Seth.A.BRUMLEY@odot.state.or.us'; 'brian.harper@oregonmetro.gov'; 'stephen_roberts@co.washington.or.us'; 'steven.b.schalk@odot.state.or.us'; 'john.wolff@tvfr.com'; Andrew Stirling; 'humphreysj@CleanWaterServices.org'; 'tumpj@trimet.org'; 'spieringm@CleanWaterServices.org'; 'Region1DEVREVApplications@odot.state.or.us'; 'Paulette.Copperstone@oregonmetro.gov'
Cc: Bob Galati; Scott McKie; Craig Sheldon; Richard Sattler
Subject: Land Use Proposal in Sherwood

All,

Please see the attached proposal for a building addition in Old Town Sherwood, and provide any comments or concerns by the 12th of October.

Brad Kilby, AICP, Senior Planner
22560 SW Pine Street
Sherwood, Oregon 97140
503-625-4206

Please consider the environment before printing this e-mail.

EXHIBIT E

Bradley Kilby

From: ELSTUN Wendy S *ODOT <Wendy.S.ELSTUN@odot.state.or.us>
Sent: Tuesday, October 09, 2012 2:33 PM
To: Bradley Kilby
Subject: FW: Land Use Proposal in Sherwood
Attachments: Brucker Bldg SITE 9-10-12.pdf; Agency Notice SP12-05_07102012.doc. v3_0.doc

Hi Brad
Not visible to a state highway-no comments
Wendy

Wendy S Elstun
Program Coordinator, ODOT
Outdoor Advertising Sign Program
503-986-3650fx 503-986-3625

From: Bradley Kilby [mailto:KilbyB@SherwoodOregon.gov]
Sent: Wednesday, October 03, 2012 1:59 PM
To: ELSTUN Wendy S *ODOT; 'baldwinb@trimet.org'; 'rmk@nwnatural.com'; Brad Crawford; REDON Charles; 'crbelt@bpa.gov'; Craig Sheldon; 'paulette.Copperstone@oregonmetro.gov'; 'ehays@sherwood.k12.or.us'; 'karen.mohling@tvfr.com'; 'kristinl@pridedisposal.com'; MOHS Kurt A; 'd5b@nwnatural.com'; Bob Galati; 'raindrops2refuge@gmail.com'; 'mwerner@gwrr.com'; 'Raymond.Lambert@pgn.com'; 'Naomi_Vogel@co.washington.or.us'; 'Kevin_Rolph@kindermorgan.com'; 'r2g@nwnatural.com'; BRUMLEY Seth A; 'brian.harper@oregonmetro.gov'; 'stephen_roberts@co.washington.or.us'; SCHALK Steven B; 'john.wolff@tvfr.com'; Andrew Stirling; 'humphreysj@CleanWaterServices.org'; 'tumpj@trimet.org'; 'spieringm@CleanWaterServices.org'; Region 1 DEVREV Applications; 'Paulette.Copperstone@oregonmetro.gov'
Cc: Bob Galati; Scott McKie; Craig Sheldon; Richard Sattler
Subject: Land Use Proposal in Sherwood

All,

Please see the attached proposal for a building addition in Old Town Sherwood, and provide any comments or concerns by the 12th of October.

Brad Kilby, AICP, Senior Planner
22560 SW Pine Street
Sherwood, Oregon 97140
503-625-4206

EXHIBIT F

Sherwood Planning Commission Meeting

Date: October 23, 2012

☑ Meeting Packet

☑ Approved Minutes Date Approved: Nov. 6, 2012

☑ Request to Speak Forms

Documents submitted at meeting:

Ex 1 = Langer Farms Phase 1 Shopping Center Presentation

Ex. 2 = Brucker Building Presentation

- Individuals may not impugn the character of anyone else, including but not limited to members of the community, the reviewing body, the staff, the applicant, or others who testify. Complaints about staff should be placed in writing and addressed to the City Manager. If requested by the complainant, they may be included as part of the public record. Complaints about the City Manager should be placed in writing and addressed to the Mayor. If requested by the complainant, they may be included as part of the public record.

- Comment time is 4 minutes with a Council-optional 1 minute Q & A follow-up.

- The Chair of a meeting may have the ability to modify meeting procedures on a case-by-case basis when especially complicated issues arise, or when the body is involved in extraordinary dialogue, but only after receiving the advice and majority consent of the body. The Chair may also cut short debate if, in his judgment, the best interests of the City would be served.
  (Note: Written comments are encouraged, and may be submitted prior to the meeting by mail, or at the meeting. There is no limit to the length of written comment that may be submitted)

Persons who violate these rules may be asked to stop their comments by any member of the body. Comments beyond the 4-minute limit may not be included in the record of the meeting. Persons who impugn the character of anyone will be required to stop immediately. Their comments will not be included in the record of the meeting, and they will forfeit their remaining time. Any person who fails to comply with reasonable rules of conduct or who causes a disturbance may be asked or required to leave and upon failure to do so becomes a trespasser.
*****

I have read and understood the Rules for Meetings in the City of Sherwood.

Name: Brad Brucker **Date:** 7-23-2012

Address: 22545 SW Part St

Telephone: 503-702-8207

I would like to speak to the Council regarding:

Subject: 8 - Brucker Building

If you want to speak to Council about more than one subject, ***please submit a separate form for each item.***

Please give this form to the City Recorder prior to you addressing City Council. Thank you.

SP 12-05 and CUP 12-02
Planning Commission Public Hearing
October 23, 2012, 2012

Langer Farms Phase 7 Shopping Center

10-23-12
Date

Planning Comm.
Gov. Body

7a
Agenda Item

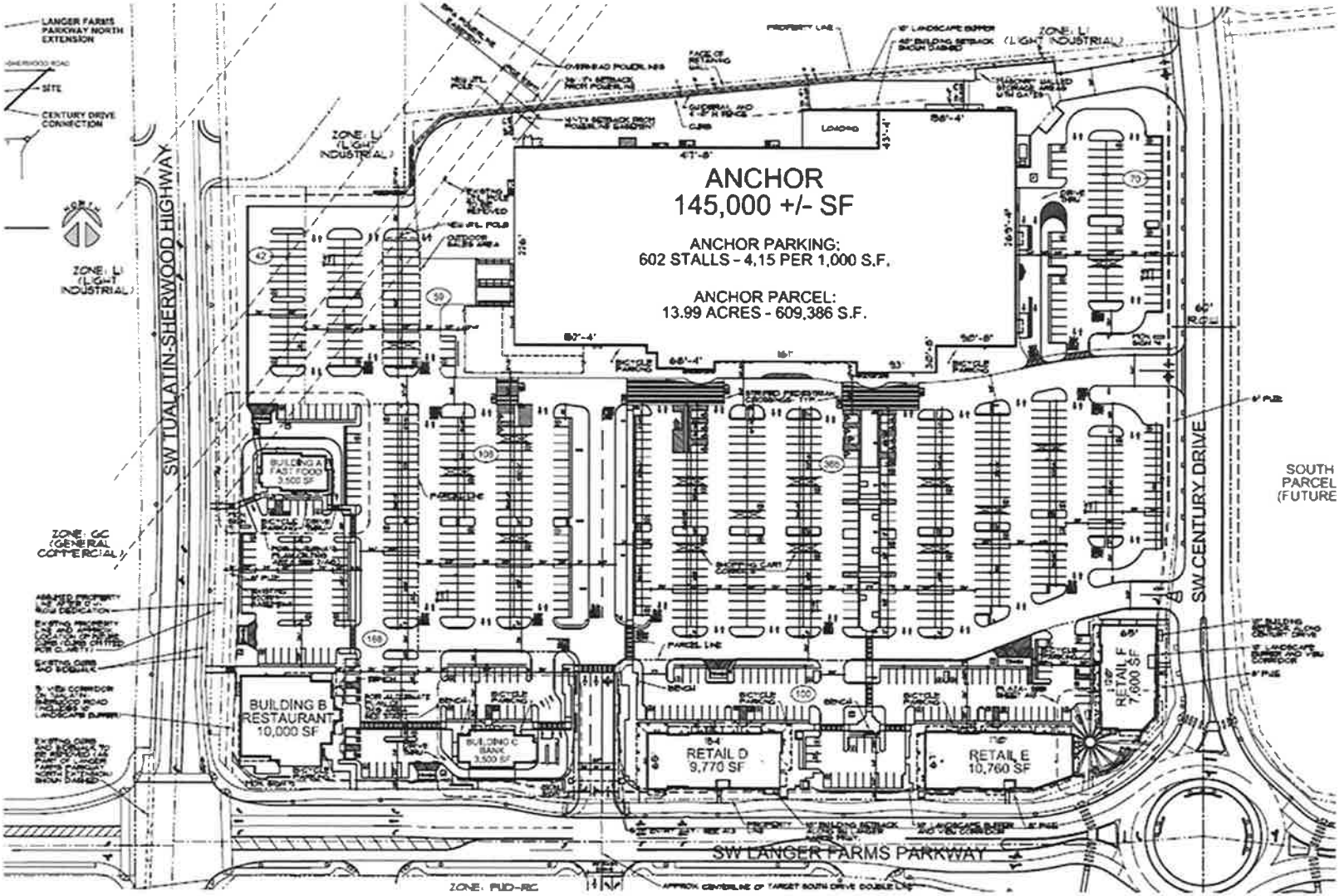
1
Exhibit #

Vicinity Map

Proposal

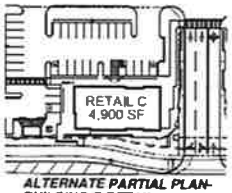
- Proposal to construct a shopping center on 19.82 acres
  - Includes six buildings ranging in size from 3,500 to 10,760 square feet in size and one large anchor tenant that would be 145,000 square feet in size.
- Proposal for a Conditional Use Permit for an outdoor sales area for the anchor tenant.
- Approval of an street modification for a wider curb-tight sidewalk with tree wells along SW Century Blvd.

Site Plan

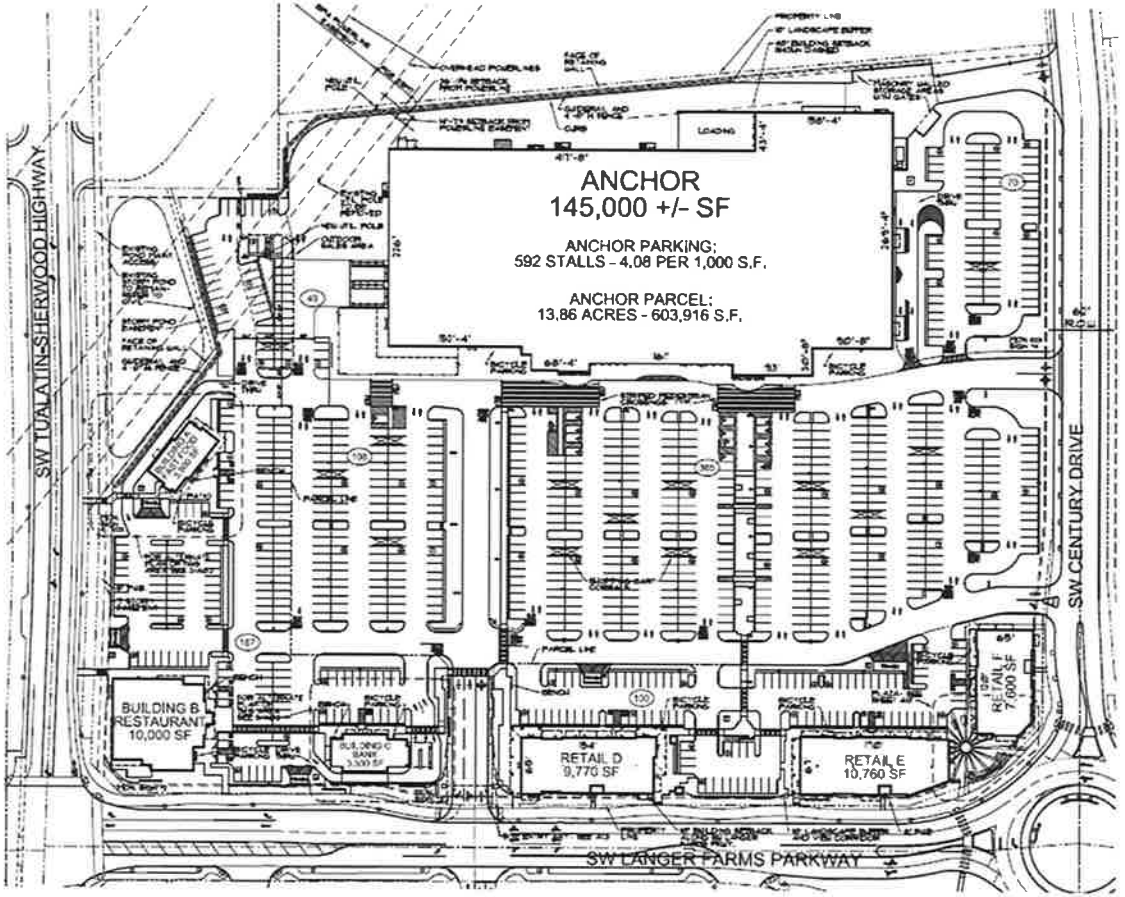

ANCHOR
145,000 +/- SF
ANCHOR PARKING:
602 STALLS - 4.15 PER 1,000 S.F.
ANCHOR PARCEL:
13.99 ACRES - 609,386 S.F.
SW TUALATIN-SHERWOOD HIGHWAY
SW CENTURY DRIVE
SW LANGER FARMS PARKWAY
BUILDING B
RESTAURANT
10,000 SF
RETAIL D
9,770 SF
RETAIL E
10,760 SF
RETAIL F
7,600 SF
SOUTH
PARCEL
(FUTURE
ZONE: L
(LIGHT
INDUSTRIAL)
ZONE: GC
(GENERAL
COMMERCIAL)
ZONE: PUD-RC

Alternate Site Plan

2 **ALTERNATE PARTIAL PLAN- BUILDING A RETAIL**
1" = 60'



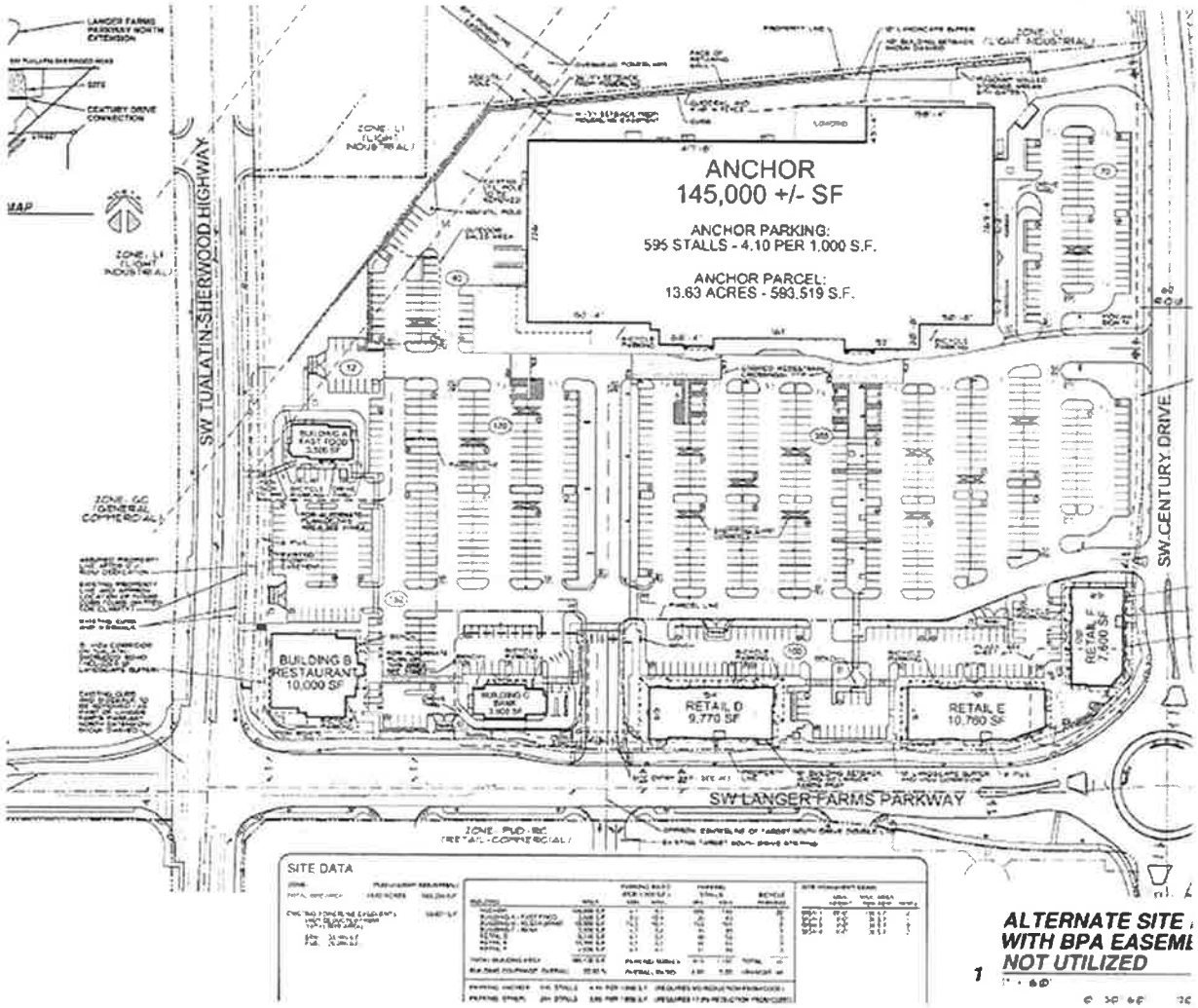
3 **ALTERNATE PARTIAL PLAN- BUILDING C RETAIL**
1" = 60'



SITE DATA

1 **ALTERNATE SITE PLAN WITH STORM POND RETAINED**
1" = 60'

Alternate Site Plan



Revised Staff Recommendation

- Approval with Conditions
- Revise Condition #14 – Based on proposed street location for curb cuts/utility extensions
- Remove Condition #27 – Applicant and traffic consultant has justified the numbers in the TIA
- Remove Condition #43 – Applicant submitted additional information that demonstrates compliance.
- Reword Condition #51 to be consistent with ODOT Language
- Reword Condition #52 to be consistent with ODOT Language

Schedule

- Initially record was left open as follows:
  - October 9th – 1st 7 Day for new evidence
  - October 16th – Opportunity for all to comment on new evidence (1 submittal by the applicant)
  - October 23rd – Applicant's Closing Arguments Due
- Applicant has requested that the record be reopened for the purposes of submitting a technical memo submitted to Engineering during the first open record period that staff relied on to provide analysis.
- Amy and Charles Boyle have requested that the record be reopened to enter in the three traffic studies that were referenced in their October 9th letter (EX. CC)

Schedule Cont'd

- Leave the record open for 7 days for anyone to comment on the information entered into the record.
- Provide the applicant with 3-7 days to provide their closing argument.
- Potential Continuation dates: November 1st, November 6th, or November 13th
  - First two alternatives allows plenty of time to notice a Council appeal hearing for December 18th. Third date requires preemptive notice.

Planning Commission Hearing
October 23, 2012

Brucker Building (SP 12-06)

10-23-12
Date

Planning Comm.
Gov. Body

8a
Agenda Item

2
Exhibit #

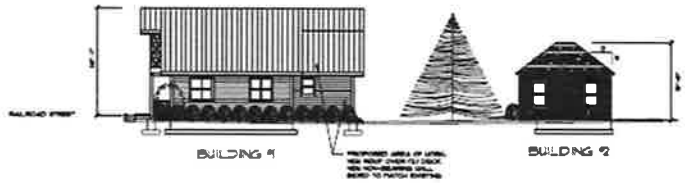
Vicinity Map

Proposal and History

- The applicant proposes a major modification to an approved site plan to enclose an approximately 288 square foot deck as an addition to an existing Art Studio and Hair Salon.

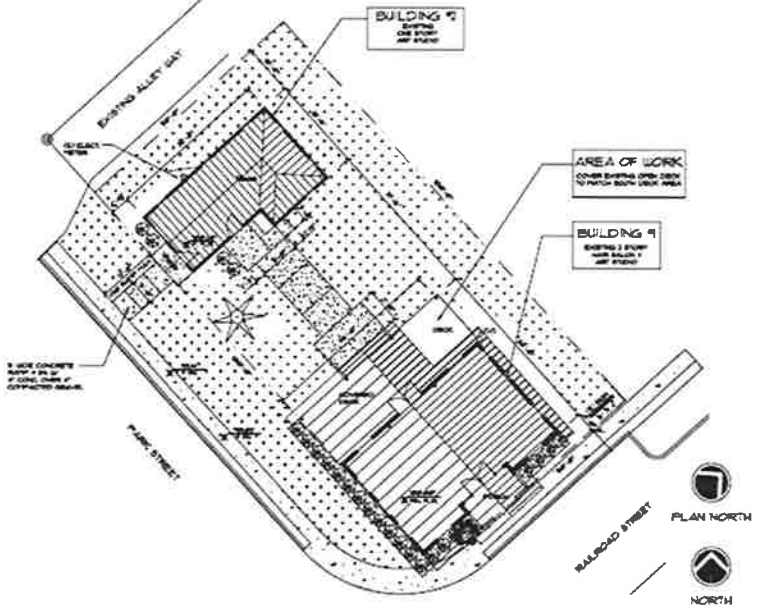
- The existing buildings were moved on to the site in 2005 for the purposes of an art studio. The buildings are now being used as an art studio and a hair salon. A site plan was approved in 2005 (SP05-06)

Request

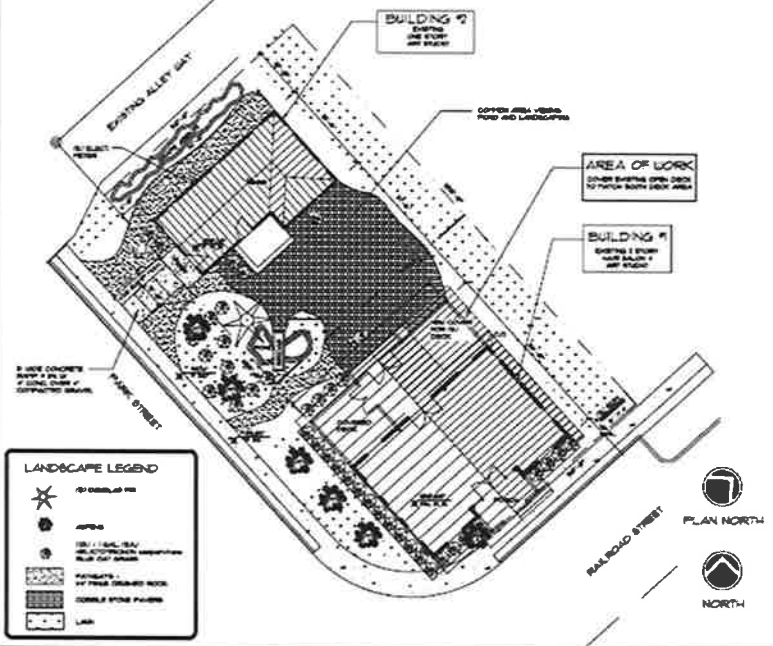


A-1 PROPOSED NORTH ELEVATION

A-2 PROPOSED WEST ELEVATION



B-1 ORIGINAL APPROVED SITE PLAN & ORIGINAL APPROVED LANDSCAPE PLAN



B-2 PROPOSED SITE PLAN & ENHANCED LANDSCAPE PLAN

Zoning

- The property is approximately 4,800 SF in size, zoned Retail Commercial, and located in the Smockville Area of Old Town Sherwood.
- There are no required parking improvements
- There are no required setbacks that would apply to the proposed addition.
- It meets the dimensional standards of the Development Code

Staff Recommendation

- Approval as proposed.

APPROVED MINUTES

City of Sherwood, Oregon
Planning Commission Minutes
October 23, 2012

Commission Members Present:
Commissioner Copfer
Commissioner Cary
Commissioner Griffin
Commissioner Walker

Commission Members Absent:
Chair Allen
Vice Chair Albert
Commissioner Clifford

Staff Present:
Julia Hajduk, Planning Manager
Brad Kilby, Senior Planner
Tom Pessemier, Community Development Director
Bob Galati, City Engineer
Jason Waters, Civil Engineer
Mark Daniel, Police Captain
Kirsten Allen, Planning Dept. Program Coordinator

Council Liaison
Councilor Clark

Legal Counsel Present:
Chris Crean

1. **Call to Order/Roll Call** – Commissioner Copfer called the meeting to order at 7:01 pm.

Planning Manager Julia Hajduk addressed the issue of no one to run the meeting as Chair Allen and Vice Chair Albert were not present and asked for a formal motion to appoint a temporary chair for the meeting.

Motion: From Commissioner Russell Griffin To Temporarily Appoint Commissioner Copfer To Head The Planning Commission Meeting, Seconded By Commissioner Michael Cary. All Commission Members Present Voted In Favor (Chair Allen, Vice Chair Albert, And Commissioner Clifford Were Absent).

2. **Agenda Review**
   The agenda consisted of the Consent Agenda and Public Hearings for SP 12-05 Langer Phase 7 and SP 12-06 Brucker Building.

3. **Consent Agenda**
   a. August 28, 2012 Planning Commission Minutes
   b. September 25, 2012 Planning Commission Minutes

   Commissioner Griffin pointed out two errors in the minutes from August 28, 2012.
   - On page 9, add the word "not" to in the third paragraph from the bottom of to read "it would not affect his ability to make a decision"
   - On page 11 to change the word "overly" to "overlay"

Motion: From Commissioner Lisa Walker To Approve The Consent Agenda As Amended, Seconded By Commissioner Russell Griffin. All Commission Members Present Voted In Favor (Chair Allen, Vice Chair Albert, And Commissioner Clifford Were Absent).

4. **City Council Comments**
Councilor Clark informed the Commission that there was a Council work session where they discussed alcohol use in public parks and received an update for the downtown streetscapes project.

5. **Staff Announcements**
Julia asked for feedback regarding the level of detail desired for minutes or input on how to make the Planning Commission packet more usable by the Commission members.

Julia informed the Commission that the Tualatin River National Wildlife Refuge has prepared a Comprehensive Conservation Plan and Environmental Assessment for the Refuge and they are asking for input. Julia said there would be an open house at the Refuge on November 13, 2012 from 7-9pm and there will be a link added to the City website for interested parties.

Bob Galati gave an update on the Downtown Streetscapes Project and said the project included SW Railroad Street (between SW Pine and SW Main) and SW Washington Street (between SW 1st and SW Railroad) including the alleyways with twelve foot sidewalks on Railroad Street. Bob said the next phase would include public outreach to the business owner's downtown. The project is expected to reach substantial completion in time for Cruisin' Sherwood.

6. **Community Comments**
There were no community comments

7. **Old Business**
a. Public Hearing- Langer Farms Phase 7 (SP 12-05/ CUP 12-02)
Commissioner Copfer gave a brief summary of the project and asked for any new ex parte contact, bias, or conflict of interest from the Commissioners. None were received.

Brad Kilby, Senior Planner, gave a brief summary of the project for SP 12-05 and CUP 12-02 in a presentation (see record, Exhibit 1) and reminded the Commission that the subject property was a 19.82 acres and the proposal was to construct six buildings ranging from 3500 to 10,760 square feet with a 145,000 square foot anchor store. The Conditional Use Permit would allow for thirty spaces to be used as an outdoor sales area. The applicant has also asked for a street modification for curb tight sidewalks with tree wells along SW Century Boulevard.

Brad informed the Commission that the City Received verbal comments from the Bonneville Power Association (BPA) that there were concerns regarding parking under the power lines. The applicant is working with the BPA and has submitted an alternate site plan, during the open record period, that shows parking removed from under the BPA power line easement. Brad said they are still within the range for the parking adjustment that has been requested.

Brad said staff continues to recommend approval with the revisions discussed in the Staff memo to conditions 14, to remove conditions 27 and 43, and to revise conditions 51 and 52 in order to be consistent with the Oregon Department of Transportation (ODOT) language submitted by Seth Brumley from ODOT.

Brad stated that a request has been received to reopen the record for the purpose of accepting evidence into the record. One is a memo from Kittelson and Associates that was received and reviewed by the City's Engineering Department, but was omitted from the record. The other

evidence consists of three traffic studies, referred to in written testimony, received by Charles and Amy Boyle in an October 9th letter. Brad said that the Commission was not required to reopen the record, but the information in the Kittelson memo has been relied on by staff and the applicant to make a case for the traffic mitigation and to demonstrate that the initial traffic impact analysis was sufficient.

Brad commented that if the Commission were to decide to reopen the record, staff would recommend leaving the record open for 7 days to allow anyone to comment on the new information. Brad explained that the applicant is provided 7 days to respond, but can waive a portion of that time and discussed possible meeting dates with the Commission. Brad added that the applicant has allotted an additional 10 days to the 120 day check, with a deadline of December 29, 2012, if the record is reopened, and commented that the goal is to make the decision within the 120 day period (with extensions) or the applicant can ask the court to make the decision on the City's behalf.

Two motions were received.

Motion: From Commissioner Lisa Walker To Add An Additional Planning Commission Meeting On November 6, 2012 To Further Address Langer Farms Phase 7 (SP 12-05), Seconded By Commissioner Russell Griffin. All Commission Members Present Voted In Favor (Chair Allen, Vice Chair Albert, And Commissioner Clifford Were Absent).

Motion: From Commissioner Lisa Walker To Reopen The Record For Langer Farms Phase 7 (SP 12-05) For The Submittal Of Additional Testimony This Evening, Leaving The Record Open For 7 Days For People To Respond To That Testimony, And An Additional 7 Days For The Applicant To Provide Final Rebuttal As Staff Has Suggested, Seconded By Commissioner Russell Griffin. All Commission Members Present Voted In Favor (Chair Allen, Vice Chair Albert, And Commissioner Clifford Were Absent).

Brad entered written testimony into the record and catalogued a letter and CD from Charles and Amy Boyle dated October 23rd (see record, Exhibit EE). The exhibit will be placed on the website and contains the traffic impact analyses from the Wal-Mart in Cornelius, the Fred Meyer in Wilsonville, and the Costco in East Vancouver and is a supplement to Exhibit CC.

Brad entered a letter dated October 23rd, submitted by Seth King, as the applicant's final written argument (see record, Exhibit FF) and noted that this is not their final written argument since they now have until November 6th to provide final written comments.

Brad passed out a letter dated October 23rd, from Seth King, requesting that the record be reopened to accept the exhibits with an email showing the applicants good faith effort to submit the information to the City on time (see record, Exhibit GG).

Julia confirmed with legal counsel that the meeting has been continued and no further motions are needed and advised the Commission not to deliberate any further until the next November 6th, so that all Commissioners present at the November 6th meeting can be part of the deliberation.

Brad clarified that written public comments would be accepted until 5pm on October 30, 2012 regarding the new information contained in exhibits EE, FF, and GG; the applicants written closing

argument would be due on November 6, 2012; and the exhibits will be posted on the City website the following morning.

Commissioner Griffin asked if there would be a staff memo. Julia commented that the Commission will not get a packet on the 30th, but in the days following based on written comments received.

Commissioner Copfer stated that the public hearing for Langer Farms Phase 7 (SP 12-05) was continued and called for a recess at 7:34pm.

Commissioner Copfer reconvened the meeting at 7:44pm.

8. New Business

a. Brucker Building (SP 12-06)

Commissioner Copfer opened the public hearing, read the public hearing statement, and asked for any ex parte contact, bias, or conflict of interest from the Commissioners present. None were received.

Senior Planner Brad Kilby gave a presentation on the proposal (see record, Exhibit 2) and stated the subject property was on the corner of SW Park Street and SW Railroad Street. Brad informed the Commission of the approval criteria stating the property is zoned retail commercial and is in the Old Town Overlay, but the Landmark Alteration criteria does not apply. The applicant is proposing to enclose a 288 square foot deck, which constitutes a major modification to the site plan, because it is a greater than 10% increase in building floor area. The existing buildings were moved onto the site in 2005 under SP 05-06. Brad reported that the Sherwood Public Works Department, Engineering Department, Clean Water Services, Tualatin Valley Fire and Rescue, Pride Disposal, and ODOT all indicated that they did not have comments or were in support of the application. Brad said the project is before Planning Commission because it is in the Old Town Overlay and that it meets all of the dimensional requirements of the underlying zone, as well as, the design standards of the Smockville area in Old Town. The applicant proposes an enclosure that would mirror the opposite side of the building and change a single door to double doors that open onto the deck area. Brad stated that staff is recommending approval without conditions, subject to building permit approval.

Commissioner Cary asked how big the building is currently. Brad answered that both buildings on the site are at 1792 square feet.

Commissioner Copfer invited the applicant to give testimony.

Brad Brucker, 22545 SW Park Street, Sherwood. Mr. Brucker commented that the project was stated as a major modification, but it was fairly minor and should be approved without issue. Mr. Brucker commented that it was a rigorous process for a minor construction project that has no impact on the City and he was trying to add space to encourage new business in Old Town. Mr. Brucker remarked that his concern was regarding the process and stated he would like a refund for most of the fees paid. Mr. Brucker stated that he was informed that a refund was up to City Council and asked for a referral from the Planning Commission in order to make that request to City Council. Mr. Brucker commented that he lived, worked, and has developed in Old Town, there has not been a lot of private sector development in Old Town, and commented regarding the Commission's role in inviting private sector investment in Old Town. Mr. Brucker commented on the cost of the application and the cost to hire an architect because the project was in Old Town.

Commissioner Copfer asked for any additional public comment. None were received.

Commissioner Walker asked regarding the fees and if they were set by City Council.

Julia Hajduk confirmed and stated they were set during the budget process. Julia said the code requires that fees can only be waived by Council and Mr. Brucker would have to go before Council to ask for those fees to be waived or refunded. Julia agreed that it was a lot of process for a little project, but a percentage was assigned for minor modifications and this might be example to look at for future code clean up.

Commissioner Copfer commented that the line has to be drawn somewhere, but there might be exceptions for this type of project.

Commissioner Walker suggested that those exceptions might be able to go before Council for a waiving or reduction in fees because it did not meet the intent. The 10% did not seem like too high of the threshold.

Mr. Brucker commented on the small size of the lots in Old Town, successful code clean up, his specific situation, and suggested a minimum of 10% or 500 square foot whichever is larger.

Commissioner Walker commented that when the Commission did the code clean-up they included stakeholders and asked for public comment.

Commissioner Copfer asked if there was anything the Commission would do in the way of a recommendation for Mr. Brucker to go to Council. The consensus was for Mr. Brucker to approach Council during the public comment period.

Councilor Clark added that if Mr. Brucker goes before Council she will be able to act as a liaison to the Planning Commission and share what she heard.

Commissioner Griffin commented that Old Town was a gem in Sherwood and the City has to put rules in place. Mr. Griffin expressed his concern that the project was attempted without the proper approvals and Old Town has rules and processes, approved by City Council, that need to be followed.

Commissioner Copfer closed the public testimony and asked for any additional comments or questions from the Commission. Seeing none the following motion was received.

Motion: From Commissioner Michael Cary To Approve The Application For The Brucker Building Addition (SP 12-06) Based On The Applicant's Testimony, Public Testimony Received, Analysis, Findings, And Conditions In The Staff Report, Seconded By Commissioner Russell Griffin. All Commission Members Present Voted In Favor (Chair Allen, Vice Chair Albert, And Commissioner Clifford Were Absent).

Prior to adjourning the meeting, Julia mentioned the Commissioners' request to have a layman's lesson on the traffic studies for Langer Farms Phase 7 and asked if that could be done via a work

session in order to give a general layout of the project without talking about the topic itself. Commissioners Cary, Copfer, and Walker expressed their interest.

Ms. Walker added that she would like to look at the Langer Farms Phase 7 project, as the biggest project development in Sherwood, and be able to see exactly what is being proposed. Ms. Walker said the traffic is her biggest issue with the project and it seems that its accuracy is an issue with the public. Ms. Walker expressed her interest in understanding what a traffic study is in general as well as specifically regarding this project.

Julia commented that the record has been closed to any new information and because of the high profile nature of the project any meetings would have to be on the record.

Chris Crean stated he did not think you could have a work session mid-process, because it becomes evidence that was placed before the decision makers and part of the deliberation. Mr. Crean said the distinction between the work session and the land use application process is then lost and as long as your work from the evidence in the record, staff can answer questions. Mr. Crean explained that the Commission can ask questions at the meeting on November 6th, communication with staff is not ex parte, and staff can walk commission members through the transportation analysis that evening.

Ms. Walker asked about questions regarding the traffic studies submitted by Charles and Amy Boyle. Brad Kilby suggested that commission members could email questions to staff so those questions could be answered for everyone.

Mr. Crean stated that everything has to be on the record and suggested that questions can be given to staff ahead of the meeting so staff can prepare the answers for the November 6th meeting. Then all of the information would be on the record.

Mr. Crean commented that in general a training session on traffic studies would be beneficial. Commissioner Copfer requested more training regarding parking as well. Discussion followed with the conclusion that a training session will be scheduled for after the first of the year.

Commissioner Copfer closed the meeting at 8:13 pm.

Submitted by:

Kirsten Allen

Kirsten Allen
Planning Department Program Coordinator

Approval Date: 11-6-12