

# **WALMART IN SHERWOOD - FREQUENTLY ASKED QUESTIONS**

Updated 7-31-13 (new questions and updated responses are noted in red)

With the announcement that Walmart was the tenant at the Langer commercial retail center site, many people who were previously unaware that a proposed 190,000 square foot commercial retail center was even proposed found out about it and had questions. At the May 7<sup>th</sup> City Council Meeting, many concerned citizens came forward with questions and concerns about Walmart coming to Sherwood. This FAQ is provided to answer many of the common questions being asked by citizens. This FAQ will be updated periodically to address additional questions as they are raised.

The questions which have been raised fall generally into 6 main categories:

- Why did the City allow this to happen?
- What was the process that allowed this to be approved?
- Questions about whether the approval considered impacts?
- Options to address specific concerns associated with this development?
- Questions about whether this type of use and this particular tenant is really needed and whether there is a market for it?
- Questions about what the public gets with this development that might be positive?

**NOTE:** All materials related to the land use approval can be found at [www.sherwoodoregon.gov/walmart-plans-open-store-sherwood-updated-7312013](http://www.sherwoodoregon.gov/walmart-plans-open-store-sherwood-updated-7312013) including the applicant's materials, the decision and links to all exhibits.

## **Why did the City allow this to happen?**

### **1. Why did the City choose Walmart?**

The City didn't choose Walmart. The City cannot choose what specific businesses are allowed to locate in town. The zoning laws allow for types of uses such as "eating and drinking establishment," "car service", or "retail" and the property owner can determine how and whom they want to develop their property based on their own decision making criteria. In this case, general retail trade is a permitted use and the property owner chose to partner with Gramor Development to develop a plan for the property that included a large anchor tenant and several additional building pads.

### **2. There is already enough retail, how can the residents support more retail establishments?**

That is a market based decision that developers and business owners must consider.

### **3. Why did the City allow this property to be zoned for retail in the first place?**

The Langer property is zoned light industrial however the City Council granted planned unit development approval in 1995, as part of the larger Langer Farms Planned Unit development. The light industrial zoning allows Planned Unit Developments to apply the uses permitted at the time the Planned Unit Development was approved, which in this case, includes commercial uses. In 2007, the City Council affirmed the original Planned Unit Development approval and all development of properties located within the original approval were allowed to develop the property with uses that were allowed to be developed on the property in 1995.

The purpose of the type of zoning that the City of Sherwood and many other cities within Oregon employ is to prevent incompatible land uses from being located too close to each other, such as a heavy industrial use next to a residential neighborhood. Every property in the City is assigned a certain zone that determines the types of uses allowed on that property. The Langer property allows retail uses in addition to light industrial uses.

### **4. We've heard that other City Councils such as Hillsboro have voted against Walmart. Why can't Sherwood?**

According to the Current Planning Supervisor at Hillsboro a Walmart supercenter was proposed in 2002. Because the development was located in a "station area" it required a Concept Development Plan (similar to what Sherwood calls a

Planned Unit Development). This process required approval by both the Hillsboro Planning Commission and Council. If it wasn't in a station area, it most likely would have been a staff level decision, appealable to the Planning Commission and City Council. For several reasons, but primarily traffic impact concerns, the Planning Commission voted to deny the proposal as did the Hillsboro City Council. The decision was based on the traffic associated with a commercial development of that size and type, not because it was a Walmart. The decision was appealed to the Land Use Board of appeals and the denial was upheld. Since that time, there have been no other City Council votes in Hillsboro on a Walmart.

Sherwood's process does not require review by the City Council. As noted in the section "Did the Approval Consider the Impacts" the Planning Commission reviewed the project for compliance against all code standards and found the project could comply with conditions, therefore they voted to approve the proposed 190,000 square commercial retail center.

**5. Did the City provide tax breaks or credits?**

The City provided no tax breaks.

After the Langer's dedicated land for the construction of Langer Farms Parkway, Transportation System Development credits were issued as required by City Code. City Code requires credits to be issued for projects that dedicate land for collector and arterial roads.

**6. NEW QUESTION How was the construction of Langer Farms Parkway paid for? Is the public being forced to pay for impacts of this development?**

Langer Farms Parkway was constructed primarily through the use of County Major Street Transportation Improvement Program (MSTIP) funds. The MSTIP is a funding source first approved by County voters in 1986 and is now part of the County's fixed tax rate. The MSTIP funds are intended to fund major transportation projects. The Tualatin Sherwood Road widening project and 124<sup>th</sup> Avenue extension will also be funded from the MSTIP funds. While public funds were used to construct Langer Farms Parkway, this does not alleviate the developer's responsibility to pay for their share of the impact. All development (including the construction of new single family homes), regardless of whether they abut a collector or arterial street is required to pay City Transportation System Development Charges (SDC's) and Washington County Transportation Development Tax (TDT) to fund system wide improvements that benefit the community at large. The SDC's and TDT are calculated based on the use and traffic impacts associated with that use. It is important to understand that for collector and arterial roads (Langer Farms Parkway is a Collector) it is assumed that more than just traffic from a particular development will benefit from improvements. For this reason, if a project is adjacent to a collector or arterial road and they are required to construct improvements, or dedicate right of way for the road, they may be eligible for SDC and/or TDT credits up to the cost of dedication and construction of the road.

**7. Was any member of the Langer Family on Council in 1995?**

No. Council meeting records from 1995 indicate the following as Council members: Hitchcock, Arnold, Cottle, Kennedy and Boyle.

In addition, there was no member of the Langer family on the Council in 2007 when the PUD modification was approved.

**What was the process that allowed this to be approved**

**8. What is the zoning of the property where Walmart is planned to locate?**

See answer #3 above.

**9. Couldn't another use have been approved for this property?**

Yes. The zoning classification provides a list of the type of uses allowed in each zone. A property owner or developer can propose a development that is consistent with any of the uses in the zoning classification. If a proposed use is allowed in the zone, the City cannot legally deny the requested use provided it meets all the applicable City code provisions.

The City reviewed an application for a 192,532 square foot retail center on approximately 19.06 acres. The application was based on the zoning of the property and the development standards that are applied to all commercially developed properties within the City of Sherwood. In other words, the use, (retail in this case) had to be allowed within the zone, and the physical development of the property had to meet the setbacks, height, landscaping, parking, circulation, and other dimensional standards as governed by the City's zoning and development code. That application was submitted to the City for review in 2012. The proposal was subject to the rules that were in place at the time the application was filed. The City is not able to, by law, apply rules that were not in the Code at the time the application was submitted. Theoretically, the citizens and the City could have made laws in the past to limit the size and dimensions of development in a manner that would not have permitted the type of development proposed, but neither the citizens nor the elected officials have pushed for that type of legislation in the past.

**10. What process did the developer go through to develop the site?**

According to the development code, projects over 40,000 square feet in size are subject to review by the Planning Commission and appeals are made to the Sherwood City Council. This process involves a neighborhood meeting being held before the application is submitted to the City, a public and agency comment period, and a public hearing with the City's Planning Commission. The applicant held a neighborhood meeting regarding the development at St. Francis School back in February of 2012. Property owners within 1,000 square feet including several subdivisions along SW Langer Farms Parkway were invited. According to the sign in sheet for the meeting, there were approximately 25 citizens that attended the meeting.

In July 2012 Gramor Development submitted an application for site plan approval for the commercial development for 190,000 square feet of retail space including a 145,000 square foot general retail tenant. Once the application was deemed complete, notice was sent out to the public and affected agencies for review and comment.

**11. What was the public notice that was provided?**

Public Notice was mailed on August 31, 2012 to approximately 455 property owners of record (based on the tax assessor records data) within 1000 feet of the project. In addition, notice was published in the Gazette, the Times and posted on the public notice boards at the Library, City Hall, Senior Center, Albertsons, and YMCA and on the development site

**12. Did the public get a chance to provide input?**

Yes. The public received notice as part of the initial neighborhood meeting and via the public notice mentioned above in question #8. The public notice contained the public hearing dates and opportunities to provide input. While the applicant did not indicate who the tenant was, there was certainly speculation by the public that it was Walmart and much of the testimony assumed that Walmart would be the tenant. The Planning Commission considered the matter over the course of three public meetings on September 23rd, October 23rd, and November 6, 2012. During the course of the hearing, the record was left open on two separate occasions to receive additional testimony. The application materials, including traffic studies were available to the public and the public provided comments based on the applicant's materials and staff recommendation.

The Planning Commission deliberated and decided to conditionally approve the proposal after considering the public testimony and evidence. They based their decision to approve the development on the analysis and findings of fact contained in the Planning Commission decision.

In addition to the required public notice process, this topic was covered in the Sherwood Gazette and the Oregonian on several occasions.

**13. Why aren't they required to say who the tenant is?**

Our local laws do not require developers to state who the tenants will be and many times applicants build projects "on spec" with the expectation that they will get tenants in once the project is approved or built. This is especially true for office buildings but also true for retail establishments. When the City reviews a proposed project, we review the use

type and consider traffic impacts, parking needs etc. Provided the use assumptions remain the same, it does not matter who the tenant is. If the use proposed is different than what the developer received approval for, it would not be permitted without additional review. For example, if an applicant came in for approval of a retail building and decided later to lease it to a movie theater, this would be inconsistent with the use review and would not be permitted.

**14. Did the City know who the tenant was and not tell anyone?**

No. The City did not know who the tenant was until the day of the announcement.

**15. Why am I just now hearing about this?**

With the announcement of the anchor tenant came new interest and awareness of the project. To avoid this in the future, the City encourages residents to check out the City website and local notice boards regularly for public notices. If you see a public notice sign on a property, check into what is being proposed. If you receive a public notice in the mail share this information with your friends and neighbors. In addition, the City has near term plans to begin using social media to help better engage the public on projects at the time that their input can be most effective. Unfortunately, at this point, because the decisions have been made, there is nothing that can be done to change the land use decision itself or the site design/layout unless the developer applies for changes.

**16. Did Council approve of this? Doesn't Councilor Langer have a conflict of interest since this is his property?**

The Council approved the Planned Unit development in 1995 and reaffirmed the Planned Unit Development in 2007. Councilor Langer was not on the City Council at the time of either of those decisions. The site plan was reviewed and approved by the Planning Commission and is not required to be reviewed by the City Council. If it had been reviewed by City Council, Councilor Langer would have been encouraged to recuse himself from the conversation due to a conflict of interest. It is not uncommon for elected officials and other decision makers to have a conflict of interest which is why there are rules and guidelines on how to deal with a conflict when it arises. For more information on the rules governing bias and conflict of interest, you can refer to the Oregon Government Ethics Commission ([www.oregon.gov/ogec](http://www.oregon.gov/ogec)).

**17. Did Planning Staff reject an appeal that was filed during the Planning Commission process?**

No. An appeal was filed for the Langer subdivision to the Planning Commission; which was a separate action and application from the commercial development site plan. The Planning Commission upheld staff's decision to approve the subdivision. The Planning Commission decision to uphold the staff decision on the subdivision was appealed to the Land Use Board of Appeals (LUBA); however it was withdrawn by the appellant before any motions were filed and hearings held. No appeals were filed, or attempted to be filed, for the Langer Commercial Development.

**18. Where can I find the list of uses that were permitted in 1995 that apply to this property?**

A copy of the use classifications from 1995 are located on the City website under the [www.sherwoodoregon.gov/walmart-plans-open-store-sherwood](http://www.sherwoodoregon.gov/walmart-plans-open-store-sherwood) page under the title "Permitted Uses for General Commercial and Light Industrial in 1995"

**19. Where can I find the conditions that were applied to this development and whether they are met?**

The conditions of approval are at the end of the decision; however for convenience a separate document with just the conditions of approval has been added to the [www.sherwoodoregon.gov/walmart-plans-open-store-sherwood](http://www.sherwoodoregon.gov/walmart-plans-open-store-sherwood) page under the title "Walmart Conditions of Approval."

**Did the approval consider the impacts?**

The review included a staff report, agency input from ODOT, Washington County, Clean Water Services, TVF&R and others, public input and review and hearing by the Sherwood Planning Commission. The impacts that by law could be considered were reviewed. Specifically, a project must meet applicable criteria of the code. The Development Code and city staff hold developers to very high standards to ensure quality development in Sherwood. There are strict design standards in place for building things such as design, placement and landscaping. The City scrutinizes the traffic, public

improvements, design, layout, etc. of the development to ensure that it is of a high quality consistent with Sherwood values. The following is a brief discussion of the impact concerns raised and how the concerns have been addressed in the Planning Commission's decision.

## **20. Traffic**

Kittelson and Associates prepared a traffic study for the entire development that evaluated the traffic impacts based on the International Traffic Engineers (ITE) category for a Shopping Center (ITE 820). Initially City staff and the public both raised concerns regarding this classification, and requested that the developer supplement the information with an analysis of the project under the classifications for a Discount Store (ITE 815) and a Discount Superstore (ITE 813). The primary difference between ITE 813 (discount superstore) and ITE 815 (discount store) is the inclusion of a full-service grocery department. The applicant supplemented the traffic report with the requested information, and the City's traffic consultant, DKS and Associates, a reputable traffic firm, evaluated the information and concluded that review under the other two categories would not generate any additional traffic impacts beyond those that were discussed in the original Traffic impact Analysis.

The traffic impacts and required mitigation took into account the already planned and funded widening of Tualatin Sherwood Road and construction of 124<sup>th</sup> avenue from Tualatin Sherwood Road to Tonquin Road. These projects, as well as other transportation improvements already planned and funded, will improve current traffic conditions once constructed. In addition to the projects already planned and funded to improve existing traffic conditions, the Gramor development project must mitigate for traffic impacts created as a result of their development. As part of the land use approval the applicant is required to construct:

- the extension of SW Century Blvd from SW Langer Farms Parkway to SW Century Blvd;
- the extension of SW Langer Farms Parkway from SW Tualatin-Sherwood Road to Highway 99,
- install a new traffic signal at the intersection of SW Tualatin-Sherwood Road with SW Langer Farms Parkway,
- the extension of two storage lanes for turning movements on Pacific Highway (ODOT facility).

The applicant will also pay the County to construct the sites frontage improvements along the sites frontage with Tualatin-Sherwood Road. The traffic impacts of this development have been thoroughly studied.

All improvements must be complete prior to occupancy with the possible exception of the widening of Tualatin-Sherwood Road. Because Washington County is already planning for widening of Tualatin-Sherwood Road it was determined that it would be least disruptive and most efficient to have the applicant pay a fee in-lieu to the County and have the County project construct the frontage improvements at the same time as the rest of the improvements to Tualatin-Sherwood Road.

## **21. Environment**

The development must treat its storm water run-off to ensure that the water run off meets environmental standards. During construction, erosion control is required to be in place. While not explicitly required for environmental reasons, the landscaping requirements in the code and proposed with this project help to cool down the pavement and absorb pollutants in the air. There are no requirements that development here or elsewhere in the community comply with a carbon footprint limit; however that is the intent of building and energy codes regulated at the state and federal level.

The building itself, consistent with all buildings reviewed under state building code requirements must comply with certain energy codes.

## **22. Impact to local businesses**

While understandably important to the local business community, this is not and cannot be a standard to determine whether a development is allowed. This would violate free trade laws.

### **23. Quality of life concerns**

The Development Code establishes codes and standards to help ensure that development that does occur in the community is consistent with the community standards and minimizes impacts to quality of life. For example, the requirement to mitigate for traffic impacts associated with a development help protect the quality of life as does the requirement for certain aesthetic elements preventing the buildings from being too high, having landscaping, etc. In addition to the code, there are fees associated with any new development (system development charges) that help ensure that the development pays for their impact on the existing infrastructure and can be used to provide additional capacity (Parks, streets, water, storm and sewer system development charges are assessed).

### **24. Crime**

Concern about increased crime is not a criterion that the City can make land use decisions upon. While this may have been raised at the Planning Commission hearings, the City cannot deny an application because of concerns that a retail establishment may bring more crime into the community. That said, the Development Code and Comprehensive plan help ensure that development is compatible with the surrounding neighborhoods. Please also see the response from the Police Chief under #30 below

## **Options to address specific concerns associated with this development**

### **25. Can we change the regulations so that Walmart can't go in?**

No. Oregon land use laws require a clear and objective application of the rules and often does not allow room for discretion. The laws also dictate that an application to develop a piece of property (land use application) must be reviewed against the standards in effect at the time the application was submitted. In other words, a community could not receive an application for a use they didn't like or anticipate and quickly change the land use regulations to prohibit it.

### **26. Can we pass a bond and make this a park instead?**

This is a privately owned piece of property. The owner would have to be willing to sell the land to the City. While technically it might be possible, it is highly unlikely. First the City would have to put together a measure to place on the ballot. Given the time and process involved, the earliest it could most likely go on the ballot would be November 2013. The voters would have to approve the bond. The biggest obstacle would be that the property owner would have to be willing to sell the property to the City.

### **27. Can we pass a square foot cap so that they can't go in?**

No. See the response in question #19 above. The development has approval to build a 145,000 square foot anchor store. The City could change the standards to limit the square footage of retail establishments. This would apply only to future developments and would eliminate their ability to expand further in the future.

### **28. Can we prohibit overnight camping so that RV's are not permitted to park overnight in the parking lots?**

Yes. The City could consider an ordinance that prohibits overnight camping in parking lots. This would apply to the Walmart property because it would be a citywide ordinance that is not related to the land use itself.

### **29. Walmart has a reputation of paying low wages and no benefits, is there anything we can do to address that?**

Some jurisdictions, like Portland, have adopted ordinances that require employers over a certain size to provide sick leave to all employees. That is one example of a type of ordinance that could be considered by City Council. If Council collectively decided to pursue such an ordinance they would direct Staff and the City Attorney to look at how to meet State and Federal Laws and develop language to consider for adoption. Any Ordinance of this type would not be specific to Walmart but would apply to all businesses meeting the threshold established.

### **30. Walmart has lower prices because they import all their products from foreign countries. Can we regulate product source?**

Possibly but this would likely impact many business other than Walmart and would be very complicated and difficult to monitor and enforce. Trying to restrict international trade at the local level would be very difficult if not impossible.

**31. Many of the people who shop and work at Walmart are lower income and we are concerned that this will bring more people into the community that will increase crime. Is this accurate and if so, can we do anything about it?**

Sherwood Police Chief Groth requested information from jurisdictions that were cited as examples where Walmart resulted in increased crime. From the data received, the calls and activities in Woodburn, Salem, McMinnville and Cornelius are not significantly different than the calls for service at existing retail establishments in Sherwood such as Target and Kohls. For the year 2012:

Location	Total Activities	comments
Woodburn	265	total of all calls and activities at the address
Salem(3)	207	Number probably low as it doesn't appear to include traffic stops, etc.
McMinnville	263	total of all calls and activities at the address
Cornelius	385	total of all calls and activities at the address

As simple comparison:

- Sherwood Target had 336 calls for service and activities in 2012
- Sherwood Joes/Kohl's site prior to the Kohl's opening (January 1 through March 3) has 6 calls for service and activities
- Sherwood Kohl's after opening (March 3 through May 9) has had 49 calls for service and activities and is on pace for about 288, or 24 per month

**32. Will the development have to comply with the current sign standards or do the 1995 standards apply to signs as well? Can they apply for a variance to the standards?**

They will have to comply with current standards related to signs. The PUD only vested the use, not other standards. The site plan was evaluated against existing standards related parking, landscaping, building design, traffic, etc. and the review of the signs will be the same. The applicant has not indicated that they would request or need a variance to the sign standards. It is possible that a variance could be applied for to the dimensional standards of the sign but they would have to demonstrate that the criteria for a variance were met. The variance criteria can be found in Municipal Code section 16.84. The review process would be dependent on the amount of variation requested.

**33. Does traffic fall under "nuisance" in the municipal code so that it could be regulated outside of the land use process?**

Nuisances are regulated under Chapter 9.44 of the Sherwood Municipal Code, which covers such things as noxious vegetation, excessive noise, animals and failure to maintain property in a way that endangers public health. The purpose of the nuisance code is to prohibit activities that may result in a threat to public health (stagnant water, hazardous waste) or that interfere with the use and enjoyment of neighboring properties (excessive noise). It does not apply to traffic.

**34. Can the City regulate the light impacts from the development site?**

The Municipal code requires that exterior lighting be directed away from adjoining properties and may not cause glare or lights to shine in excess of one-half candlefoot beyond the property line when adjoining residential properties. The development was required to demonstrate compliance with this standard by submitting a photometric plan.

**35. Can the City limit the hours of operation?**

If Council collectively decided to pursue such an ordinance they would direct Staff and the City Attorney to look at how to meet State and Federal Laws and develop language to consider for adoption. Any Ordinance of this type would not be specific to Walmart but would apply to all businesses meeting the threshold established.

**36. Can the City regulate certain items from being sold at a location such as alcohol, fire arms or pharmaceuticals?**

See response to question #34.

## **Questions about whether this type of use and this particular tenant is really needed and whether there is a market for it**

### **37. Why Walmart?, and why not Trader Joes, Fred Meyer, or some other retailer?**

Despite the opinions that the City has a choice as to who they can and cannot allow within the City, the reality is that the City cannot. Retailers decide, based on many factors, whether or not to invest in expanding their stores. There are many factors that go into a retailer's decision to move into a new city, and more often than not, the local market and its forecasted ability to support such a venture is the final determining factor. Of course, store location is always important and research on real estate takes time and guidance by local experts. Given the capital investment required to open a new store, a bad location can be a very costly mistake. For example, a high end clothing retailer might not have the best success if it puts a store location in a geographic area whose average annual income is less than the national average. The business also needs to consider potential market saturation if it has numerous store locations within a certain mile radius. Considerations such as major highways, community centers, hospitals, schools, recreational facilities, parks, churches and major shopping districts all come into play. A business needs to be visible to the right consumers and attract their attention. Furthermore, a store's location needs to be able to attract enough consumers that make up its target market. Being in close proximity to the competition might also ensure that a business is effectively reaching the target consumer. It also encourages the development of a competitive advantage and market positioning. While there may have been other retailers that this site could have supported, ultimately it is up to the developer to choose whom to allow on their site.

### **38. Is there enough demand to support this development without destroying local business?**

This question was forwarded to Gramor Development for a response.

### **39. Why do we need a Walmart in Tigard and Sherwood?**

This question was forwarded to Gramor Development for a response.

## **Questions about what the public gets with this development that might be positive.**

### **40. What at the financial benefits this project brings to the community?**

The property is located within the Sherwood Urban Renewal District. So when the value of the property begins to increase with development, the taxes from the increased value will go to the Urban Renewal Agency. Because it is in the Urban Renewal Area (URA) the City taxes that the development is expected to raise will be used to accelerate the pay down of URA debt that has been incurred by the Urban Renewal Agency of Sherwood. Therefore development of the property will quickly lead to more tax revenue for local agencies. The Urban Renewal Agency has a maximum revenue allotment and that maximum will be met sooner because of the development. After that maximum is met (probably in 2014), then any tax revenue collected in excess of the maximum will be disbursed to the other local taxing jurisdictions.

The taxes are based on a property's assessed value. It would be pure speculation to estimate the taxes without knowing what the assessed value of the property and improvements will be. The County will assess the value of the property once the improvements are completed.

## **Other**

### **41. What is being proposed on the remainder piece south of century? Can it be high density residential?**

The City has received no proposals for development on the remainder of the property therefore we are unable to provide an answer at this time. Based on a review of the uses currently in the zone and permitted at the time of the PUD approval in 1995, high density residential would not be a permitted use.



**42. What if Walmart chooses not to locate here?**

The land use approval for a 190,000 square commercial retail center with 145,000 square foot anchor store remains valid and another tenant could locate on the property. Alternatively, the property owner or developer could submit a new application for a different site plan if they chose to do so.

**43. NEW QUESTION Is there a construction schedule?**

The City has no control over the developers schedule and is providing this based on what has been given to us. According to the developer, this is their general schedule:

- July 1 – commence site work grading efforts for Regional Storm Facility, Century Drive Extension and Private On-Site improvements
- October 11 – complete regional storm facility
- Mid-November – start building construction for all buildings except pads A and B
- May 2014 – completion of Century Drive, Adams Avenue North and On-site improvements
- July 2014 – Grand opening for Walmart and retail tenant shops

**44. NEW QUESTION How can I find out the status of the project?**

As of June 19, 2013, the developer has submitted for and received permits for site grading, site plumbing, underground fire lines, a retaining wall, and site ADA parking/accessible routes. Building permits are in review and construction of buildings will not (and cannot) occur until building permits have been submitted, reviewed and approved. The website will be updated throughout the project to inform the public about the status of permits and construction.

**45. NEW QUESTION I've heard the decision has been appealed to the Land Use Board of Appeals (LUBA), how can they continue with construction?**

Oregon law allows a developer of a project that has been appealed to LUBA to proceed at their own risk.