



## MEMORANDUM

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DATE: January 7, 2014  
TO: Planning Commission  
FROM: Brad Kilby, AICP, Planning Manager  
SUBJECT: SP 13-01, Appeal of the Pacific Family Dental Parking Lot Expansion

On November 22, 2013, the Sherwood Hearings Officer conditionally approved SP13-01, also known as the Pacific Family Dental Parking Lot Expansion.

The Hearings Officer is an independent contractor with a background in land use law, appointed by the City Council to review and make decisions on conditional uses, variances, site plan reviews for projects measuring between 15,001 and 40,000 square feet of floor area, parking or seating capacity, and subdivisions less than 50 lots in size.

In this case, the Hearings Officer held a duly noticed public hearing on October 24, 2013. At the end of the hearing the hearings officer held the record open for one week, until October 31, 2013, to allow any person an opportunity to submit additional argument and evidence. The hearings officer held the record open for a second week, until November 7, 2013, to allow the applicant an opportunity to submit a final argument, without any new evidence.

On December 6, 2013, Jim and Susan Claus filed a timely appeal of the decision with the City of Sherwood.

### **Background**

On July 19, 2013, the applicant filed an application to pave the northeast corner of tax lot 2100 to provide additional parking for the Pacific Family Dental Office Building and bring the gravel parking lot up-to-code with paving and landscape improvements in accordance with City of Sherwood standards. The gravel parking lot was constructed without permits, and the City had been working with the property owner to bring the property into compliance.

Currently, tax lot 1600 is used as a professional dental office that was approved in 2006 (SP 06-07) as a "medical and dental office" use,

which is a permitted use within the GC zoning district. The proposed parking lot extension would be an accessory use to the existing office and would, therefore, be an outright permitted use subject to site plan approval.

Currently, Lot 2100 is developed with a single-family residence and associated outbuildings. According to the application, the portion of Lot 2100 not associated with this request will continue to include the single-family residence. The residential use is a pre-existing non-conforming condition since single-family residences are not permitted unless for a security person or for a different form of residence normally associated with a conditional use. This property is also zoned General Commercial (GC).

The properties are located at 17680 SW Handley Street and 22065 SW Pacific Highway, on the west side of Pacific Highway. The properties are identified as tax lot 1600 on Washington County Assessor Map 2S130CD and tax lot 2100 on Washington County Assessor Map 2S131BA.

The Hearings Officer approval allows the applicant to expand the existing parking lot onto an adjacent parcel of land. The existing parking lot includes 38 onsite parking spaces. With the expansion, 73 total parking spaces will be provided.

### **Appellant Issues**

The appellant is requesting that the Planning Commission reverse the Hearings Officers decision and deny SP 13-01. Mr. and Mrs. Claus submitted a narrative as part of their appeal application. It is difficult to clearly summarize their specific grounds for appeal and what errors they believe the Hearings Officer made in his decision. Staff has attempted to summarize the issues below.

The narrative provides information that is not fully accurate, but staff is not going to attempt to go through their appeal line by line to refute every misstatement, as much of the information is not relevant to application being reviewed. We are happy to answer any specific questions the Commission has if it is not addressed in this memorandum. The following is our understanding of the issues raised by the appellant and what they believe are grounds for reversal:

1. The application was improperly processed as a new site plan and should have been processed as a major modification or whole new site plan for both properties.
2. The original site plan approval is being violated and is not conforming to the original approval and the current code standards.
3. The application is flawed in its description and is incomplete.
4. By approving this application, the Hearings Officer has created a situation that allows the applicant to add offsite parking for the dental

offices on the adjacent property, and that by doing so, over 50% of the buildable land will be developed requiring full site plan review of each lot separately.

5. The Hearings Officer improperly determined that he did not have authority to deal with the code compliance issues and the "copious amounts of illegal, non-permitted actions of the applicant".
6. By approving this application the Hearings Officer is allowing the applicant to provide solid waste and recycling storage receptacles to be stored off-site, rather than on-site as required by section 16.98.020.
7. That the Hearings Officers decision did not adequately require the solid waste and recycling storage to be properly screened.
8. That the Hearings Officers decision violates the general and specific land use plans by not calling for the right-of-way dedication for Cedar Brook Way as designated in the City's adopted Transportation System Plan.
9. That the Hearings Officers conditions did not go far enough to ensure that the parking lot was not being commercially rented, leased, bartered, or used without any other form of remuneration to anyone including tenants of the building.
10. That by not requiring the Cedar Brook Way right-of-way dedication, the City and the applicant are inversely condemning the appellants property and devaluing the property by more than 50%.

The appellant has included the Hearings Officers final order as (Exhibit 1) to their appeal application. The appellant also includes, as (Exhibit 2) their own comments throughout the order to bolster the allegations listed above.

Within the findings of that final order, staff believes the Hearings Officer has addressed their issues as noted or expanded upon in the below table:

<b>Appeal issue number</b>	<b>Page addressed on in Hearing Officer decision</b>	<b>Additional comments</b>
<i>1. The application was improperly processed as a new site plan and should have been processed as a major modification or whole new site plan for both properties.</i>	<i>Not Addressed</i>	<i>It is not clear to staff how this would be relevant. Whether the application was reviewed as Major Modification to a site plan, a separate site plan, or a minor modification to a site plan has no bearing on the Hearings Officers decision. Procedurally, a major modification and a site plan would be processed in the same manner, and as proposed would have been reviewed by the Hearings Officer. The site plan review included both properties not unlike many commercial developments where multiple properties are included as part of an application.</i>
<i>2. The original site plan approval is being violated and is not conforming to the original approval and the current code standards.</i>	<i>Pages 5, 8, 10, and 13</i>	
<i>3. The application is flawed in its description and is incomplete.</i>	<i>Pages 2, 3, 4,7, 8, and 12</i>	<i>The Claus' raise concerns that the description of what the site plan is for as well as who is listed as the applicant. The application describes the development activity as a parking lot expansion. The applicant's narrative describes it as a parking lot expansion. It is not clear how this is a flawed description, or how it is incomplete. As long as the owner or someone with the owners signature signs and is aware of the application, it does not matter who is listed as the applicant. The applicant is not always the property owner.</i>
<i>4. By approving this application, the Hearings Officer has created a situation that allows the applicant to add offsite parking for the dental offices on the adjacent</i>	<i>Pages 3, 5, 6, 8, 9,</i>	

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<i>property, and that by doing so, over 50% of the buildable land will be developed requiring full site plan review of each lot separately.</i>		
<i>5. The Hearings Officer improperly determined that he did not have authority to deal with the code compliance issues and the "copious amounts of illegal, non-permitted actions of the applicant".</i>	<i>Pages 5, 9, and 10</i>	<i>The Code does not provide the Hearings Officer with the authority to conduct code compliance activities outside of his role as a review body who is charged with ensuring the proposed development is compliant with the standards of the development code.</i>
<i>6. By approving this application the Hearings Officer is allowing the applicant to provide solid waste and recycling storage receptacles to be stored off-site, rather than on-site as required by section 16.98.020.</i>	<i>Pages 44 and 45</i>	
<i>7. That the Hearings Officers decision did not adequately require the solid waste and recycling storage to be properly screened.</i>	<i>Page 28</i>	<i>In commercial developments, it is not uncommon for there to be shared facilities when crossover easements and agreements are in place. Crossover easements were conditioned within the Hearings Officers final order.</i>
<i>8. That the Hearings Officers decision violates the general and specific land use plans by not calling for the right-of-way dedication for Cedar Brook Way as designated in the City's adopted Transportation System Plan.</i>	<i>Pages 3, 5, 11, and 46-50</i>	
<i>9. That the Hearings Officers conditions did not go far enough to ensure that the parking lot was not</i>	<i>Pages 8, 13, 14, and 66</i>	<i>The applicant proposed parking that is accessory to the dental offices, and has never represented that the parking lot is a commercial parking lot. If he includes</i>

<b>Appeal issue number</b>	<b>Page addressed on in Hearing Officer decision</b>	<b>Additional comments</b>
<i>being commercially rented, leased, bartered, or used without any other form of remuneration to anyone including tenants of the building.</i>		<i>parking as part of the rent for the tenant space in the building, that is not uncommon, but it does not make the parking lot a non-accessory commercial parking lot. The hearings officer imposed a condition (#9) on page 66 of his approval further clarifying that this was not intended to be approved as a commercial non-accessory lot, and that any future intent to do so would require additional review by the City of Sherwood.</i>
<i>10. That by not requiring the Cedar Brook Way right-of-way dedication, the City and the applicant are inversely condemning the appellants property and devaluing the property by more than 50%.</i>	<i>Pages 3, 5, 11, and 46-50</i>	<i>The Hearings Officer addresses this issue in his findings found on Page 11 of the Hearings Officers final order. Inverse condemnation is "the taking of property by a government agency which so greatly damages the use of a parcel of real property that it is the equivalent of condemnation of the entire property. Thus the owner claims he/she is entitled to payment for the loss of the property (in whole or in part) under the constitutional right to compensation for condemnation of property under the government's eminent domain right." There is no evidence in the record to demonstrate how the value of the appellant's property is devalued at all by this decision, let alone enough to claim inverse condemnation.. As discussed in detail in the Hearing Officer decision, right of way dedication cannot be justified for the proposed parking lot because it is not roughly proportional. That said, , the City Engineer has indicated that a future extension of the Cedar Brook Way in its current alignment is not precluded by the approval.</i>

Additionally, the appellant has raised a few points as part of their discussion on how they are aggrieved by the land use decision. While not related to the Hearing Officer's decision, staff feels compelled to respond to the following issues raised:

*Statement that the appeal fee is outrageous and excessive and the Planning Commission should reduce the fee.*

Fees are reviewed and adopted by the City Council each year. While staff has input on the review fees, the final decision lies with City Council. The review of appeals for type III and IV actions by ordinance is 50% of the original fee. The intent is that fees and charges for all services be set by the City Council, and at a level whereby reasonable costs are recovered (Resolution 2013-028). Appeals are complex and take significant staff time and resources to process. Regardless, this specific issue is not relevant to the application at hand, and by no means a reason to reverse, remand, or amend the Hearings Officers decision. Additionally, it should be noted that only the City Council has the authority to waive, reduce, or refund fees per section 16.74.020.

*Statement that the Code language in general is arbitrary, capricious, and as applied, does not meet due process and equal treatment tests.*

The appellant has not demonstrated that the Code language relied upon by the Hearings Officer in reviewing and approving SP 13-01 is arbitrary, capricious, and applied in a manner that deprives a person of due process or equal treatment. The Code is intended to be clear and objective. There are processes in place used to understand any language that is open to interpretation. Any person can refute and/or appeal the language with supporting evidence that logically shows why their unbiased interpretation supports the goals and objectives of the City's Comprehensive Plan. Deference within the language is given to the legislative history and intent.

*Statement that the City has willfully ignored illegal activity on the site.*

This simply is not true. The City met with the landowner and their consultants on several occasions between the original construction of the illegal parking lot, and the submittal of this application informing them of their requirements to comply with the development code and to bring the property into compliance. It has been and continues to be the City's policy to work with the property owners to bring the property into compliance prior to taking the matter to court. If, on the other hand, the property owner has indicated that they do not intend to comply and continues the illegal activity, then enforcement proceedings move forward. Regardless, the Hearings Officer does not have the authority to conduct code compliance and an attempt to bring a non-compliant or illegal activity into compliance with the development code is not grounds to deny the application.

### **Recommendation**

Staff has reviewed the appellant's materials along with the Hearings Officers final order and recommends that the Planning Commission uphold the Hearings Officer decision finding that none of the issues raised are substantiated by evidence in the record or relevant to the land use decision.