J.CLAUS COMMENTS IN RED INSERTED TO ADDRESS ISSUES IN THE FINAL ORDER of the hearings officer:

BEFORE THE LAND USE HEARINGS OFFICER
OF CITY OF SHERWOOD, OREGON

Regarding an application for site plan approval to expand an existing parking lot at 17680 SW Handley Street onto an adjacent parcel at 22065 SW Pacific Highway in the City of Sherwood, Oregon	FINAL ORDER Case No. SP 13-01 (Pacific Dental Parking Lot)

A. SUMMARY

1. The applicants, Handle Properties, LLC & Knob Properties LLC, request site plan approval to expand the existing 38-space parking lot at 17680 SW Handley Street (also known as tax *lot* 1600 2S130CD) onto the adjacent property at 22065 SW Pacific Highway (also known as tax lot 2100 2S13BA) (collectively, the "site"). The proposed expanded parking lot will have a total of 73 parking spaces. The applicants will also relocate the existing solid waste/recycling facility and an electTic trnnsformer vault. The s1te and surrounding properties to the southwest, north, across SW Handley Street, and east, across Highway 99, are zone GC (General Commercial). Properties to the n0lihwest and northeast are zoned LDR-PUD (Low Density Residential, Planned Unit Development). Properties to the south, across Highway 99, are zoned MDRH (Medium Density Residential High). Tax lot 1600 is currently developed with a 14,054 square foot office building. Tax lot 2100 is developed with a single-family residence, shop and well house. Tax lot 2100 also contains a gravel parking area that was constructed without required permits. The applicants will remove the shop and gravel parking lot and retain the single-family residence and well house on tax lot 2100. Additional basic facts about the site and surroundings and applicable approval standards are provided in the City of Sherwood Staff Rep01lto the hearings officer dated October 17,2013 (the "Staff Report") incorporated herein by reference, except to the extent modified by or inconsistent herewith.

COMMENT: Petitioner objects to several of the characterizations and description omissions in the hearing officer's summary. The gravel parking area was illegal. There was a commercial beauty salon on site that is being proposed to be demolished. None of Doyel's illegal activities are summarized. The hearings officer misidentifies "the site" as TL #1600 and the parking lot from TL #2100 and mischaracterizes this site plan application. How much of the two sites is involved throughout this final order varies. Many of the accompanying issues in this order involve both parcels, yet only one site plan has been submitted. The two parcels remain in separate ownership but forever tied together in attempts to cure illegalities and non-conformities.

2. City of Sherwood Hearings Officer Joe Turner (the "hearings officer")

EXHIBIT 2

conducted a public hearing about the application. City staff recommended that the hearings officer approve the application subject to conditions of approval in the Staff Report. The applicants accepted those findings and conditions without objections or corrections. Two persons testified orally or in writing in favor of the application and three persons testified orally or in writing in opposition. Contested issues in the case include the following:

a. Whether the hearings officer is required to reopen the record to accept Mr. Claus' November 7, 2013 letter;

b. Whether the City provided adequate public notice of the application and hearing;

c. Whether the Code requires unity of ownership of the properties proposed for development;

d. Whether past violations on the site and the City's failure to take immediate enforcement action, are relevant to the approval criteria for this development;

e. Whether the proposed use is permitted in the CG zone;

f. Whether the applicants can be required to extend SW Cedar Brook Way as a condition of this approval;

g. Whether approval of this development will limit or preclude the future extension of SW Cedar Brook Way;

h. Whether the proposed development will cause or exacerbate drainage problems on adjacent properties;

i. Whether the applicants are required to prove a need for additional parking;

j. Whether the development complies with Code limits on the minimum and maximum number of parking spaces;

k. Whether the development complies with landscaping requirements, including visual corridor requirements along the site's Highway 99 frontage; and

l. Whether the development can comply with the noise limits of the Code.

3. Based on the findings and conclusions in this final order, and subject to the conditions of approval listed or incorporated by reference at the conclusion of this final order, the hearings officer approves the application in this case.

B. HEARING AND RECORD HIGHLIGHTS

1. The hearings officer received testimony at the duly noticed public hearing about this application on October 24, 2013. All exhibits and records of testimony are filed at the City of Sherwood Planning Department. The hearings officer announced at the beginning of the hearing the rights of persons with an interest in the matter, including the right to request that the hearings officer continue the hearing or hold open the public record, the duty of those persons to testify and to raise all issues to preserve appeal rights and the manner in which the hearing will be conducted. The hearings officer disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the hearings officer of selected testimony and evidence offered at the public hearing.

2. At the hearing, City planner Brad Kilby summarized the Staff Report. He noted that the City received four new exhibits, including separate requests from Mr. Claus and Ms. Claus that the hearing officer hold the record open.

a. He noted that the applicants proposed to expand the existing 38-space parking lot onto the adjacent property to the south. The expanded parking lot will provide

a total of 73 parking spaces. The site is zoned GC and parking is an allowed use in the OC zone. The applicants will also relocate the masting solid waste enclosure on tax lot 1600 and modify the existing stormwater facility on the south boundary of tax lot 1600.

b. The applicants will retain the existing single-family residence and remove the existing shop on tax lot 2100. The residence will retain its existing access to Highway 99. No access is proposed between the parking lot and Highway 99.

c. The applicants proposed to provide a landscaped visual conidor between the new parking lot and Highway 99. The applicants can rely on the existing vegetation to provide a visual con'idor on the remainder of the site until it is redeveloped in the future.

d. The applicants are required to comply with CWS stormwater and erosion control requirements. The proposed development will have no impact on the existing erosion concel1'ls noted by Mr. Claus.

e. CWS issued a service provider letter requiring the applicants restore the vegetated corridors on the site to "good" condition or better.

f. SW Cedar Brook Way, a designated collector street, is stubbed near the no lhwest corner of the site, abutting the west botmda:ry of tax lot 1600 and the north boundary of tax lot 2100. The applicants did not propose to extend this street through the site as part ofthis project. The City cannot require the applicants extend Cedar Brook Way as a condition of this approval, because the cost of the road extension would exceed the roughly proportional impacts of the proposed development. The proposed parking lot will only serve the existing office building on tax Jot 1600. It will not generate any new vehicular trips or change the existing accesses. Therefore it will have no impact on the City's transportation system and will not increase the need for extension of Cedar Brook Way. The City will require the extension of this street when the site is further developed. Cedar Brook Way is designated as a collector street. Therefore SDC credits will be available to offset the cost of extending the street.

g. The applicants' tenant on tax Lot 2100 constructed a gravel surfaced parking lot on tax lot 21 00 without required pe1mits. The City enforcement section has been working with tenant and the applicants for roughly 17 months to bri ng the property into compliance.

h. He argued that Mr. Doyel is the owner of the site and has the authority to sign the application.

iHe testified that be was not aware of any ODOT or CWS concerns regarding right-of-way dedication for this project, Uc spoke with ODOT staff the day of the hearing and they did not raise any concerns.

j. The GC zone requires a minimum 10,000 square foot lot size. Therefore the one-acre of developable area on tax lot 2100 could be divided into four separate lots.

k. The applicants are required to plant trees and other vegetation within the vegetated corridor on the site. Construction of the Cedar Brook Way extension will require removal of some of that vegetation. However those impacts are unavoidable, because there is no specific alignment plan for the Cedar Brook Way extension.

3. City engineering associate Craig Christensen testified that the applicants will collect stormwater runoff from the site and discharge it into existing stom1 drains located near SW Handley Street. The proposed development will not increase the volume of stormwater flowing into the drainage corridor on the west boundary of the site.

4. Planner Chris Goodell, engineer Monty Hurley, and property owner Nathan Doyel testified on behalf of the applicants, Handle Properties, LLC & Knob Properties LLC.

a. Mr. Goodell summarized the proposed development. He noted that the City approved the existing office building and parking lot on tax lot 1600 several years ago. With this project, the applicants intend to expand the parking lot onto the adjacent property to the south, tax lot 2100. The applicants will remove the existing shop building on tax lot 2100. The applicants will plant additional landscaping within the parking lot and within the visual and vegetative corridors on the site. The applicants will collect stormwater runoff from impervious areas of the site and convey it to on-site catchbasins. The applicants will discharge treated stormwater runoff into Cedar Creek, several hundred feet north of the site.

COMMENT: This is an admission that they are destroying the buildings and taking them out and expanding the trucking. They are increasing the non-conformity. Doyel and his experts recognize that as well as destroying a commercial use of a beauty salon.

b. Mr. Hurley testified that the applicants will modify and expand the existing stormwater facilities on the site to accommodate additional runoff from the expanded parking lot. The applicants will collect stormwater from the parking lot and convey it to an on-site swale for treatment. Treated stotmwater is then piped north to a Cedar Creek tributary. Runoff from this site will have no impacts on the drainage way west of the site.

COMMENT: This is a violation of state well standards. The swale and parking lot are too close to the pump house.

c. Mr. Doyel testified that the proposed parking lot is needed to provide additional off-street parking for patients and employees of the existing dental office on the site. Construction of the apartment complex north of the site increased the demand for on-street parking in the area.

COMMENT: See photos. This is a mere assertion with no proof. In the file there is evidence otherwise. He and his business partner testified that they were losing business because they didn't have enough parking. They were required by code as admitted in this document to give details about the business to give calculations for

parking. No information supplied on their activities.

5. David Emami testified in support of the application. He agreed with Mr. Doyel that the apartment complex north of the site has increased the demand for on-street parking in the area.

6. Robert James Claus testified in opposition to the application. He requested the hearings officer hold the record open for two weeks to allow him an opportunity to submit additional testimony and evidence.

a. He noted that the original public notice for this application listed "Pacific Family Dental" as the applicant, not Handel LLC or Knob LLC. Pacific Family

Dental is a tenant, not an owner of the property. Pacific Family Dental is an LLC owned by Ben Aanderud and Nathan Doyel. Therefore there is no unity of interest.

COMMENT: The hearing examiner misunderstands and misstates. Julia Hadjuk allowed Doyel after the 2006 Norr hearing to go in there with illegal parking. That is in the record. He did not ask for a variance or conditional use permit, he simply used it illegally. Two of the parking spaces that Ms. Hajduk allowed on public property were not authorized by the hearing officer.

b. The existing dental office on tax lot 1600 was built without sufficient offsite parking. That use is now nonconforming with regard to parking. He argued that the applicants were able to create a nonconforming situation without a variance. The lack of adequate on-site parking on tax lot 1600 is a self-imposed hardship. The law prohibits approval of a variance to relieve the applicants of that hardship.

c. He noted that Knob LLC is owned by Nathan Doyel alone. CWS staff told him that Mr. Doyel keeps his properties in separate ownerships in order to avoid unity of title, which allows him to avoid dedication requirements that would solve all of the problems.

COMMENT: The hearing examiner misinterpreted. There were ways to do this application legitimately such as a lot line adjustment and then he would have been developing under a different standard. Kilby told CWS that Doyel refused the lot line adjustment because it would have required dedication of the Cedar Brook Way extension. He has never had any intention of dedicating the road extension.

d. He argued that the applicants or the applicants' tenant, Corey Platt. graded tax lot 2100 and constructed a gravel-surfaced parking lot without required permits and approvals. Mr. Platt used the parking lot for parking and sale of heavy construction equipment and vehicles. The City allowed this use to continue for more than six months, wltil he threatened to contact the state police. The City never imposed daily fines for the violation and never prohibited Mr. PJatt from parking his vehicles and equipment on tax lot 2100. The City is confusing nonconforming uses with illegal uses. The existing single-family residence on tax lot 2100 is a nonconforming use. The existing parking lot oh tax lot 2100 is an illegal use. However the City plans to allow Mr. Platt to continue parking his vehicles and equipment in the jJlegal parking lot in the front yard of the single-family residence on tax lot 2100. The current application is incomplete because it does not include the existing, illegal, equipment parking use on tax lot 2100. The applicant, or his predecessor in title, sold the ingress and egress rights for tax lot 2100 to ODOT. ODOT continues to allow highway access for the residential use, but not for commercial access for parking and storage of construction equipment. The applicants and the City had constructive and actual notice of the existi ng illegal parking use. lbcrefore the existing parking use should have been included in the application. The applicants should be requfred to remedy the existing violatjon and restore the site to its preexisting condition before this application is approved.

COMMENT: This is a misstatement from the Hearings Officer. Doyel misrepresents the facts to get it to fit to the code. He is aided and abetted by the city

in misrepresenting the facts. TL #2100 and TL #1600 had complete illegal construction of a parking area, tear down a legitimate commercial use (beauty salon), they topped the trees, they illegally expanded the parking for the house for the construction equipment. They made both lots more non-conforming. Doyel expanded his illegal parking-- all without permits. Still they are not applying for those permits with this. It appears Kilby completely misrepresented the statements to ODOT and told them Platt was using it as a house and not an equipment storage yard. They tore down uses, in order to build the parking lot. The remaining one acre is entirely developed.

e. CWS is reviewing the erosion problem on his property. The "borrow pit" along the Highway 99 frontage of tax lot 2100 caused additional stormwater to flow into the drainageway on his east boundary, causing additional erosion problems.

COMMENT: This is an admission of truth. With the graveling of the front yard, photos were presented that shows the falseness that drainage is not being increased. The graveled areas, the city says increases storm water fees and charges for it.

f. If the applicants are not required to extend Cedar Drook Way as a condition of this approval, it may never occur. That would violate the City's specific and general plans, which require the extension of Cedar Brook Way through this site. Although tax lot 2100 contains two acres of land, only one acre is developable. The remainder is a protected drainageway and vegetated corridor that cannot be developed. The proposed parking lot will consume roughly 0.48-acres of tax lot 2100. The existing single-family residence consumes the remainder of the developable area on the site. Therefore, if this application is approved, this site will be fully developed and Cedar Brook Way will never be extended. Failure to extend Cedar Brook Way will result in

inverse condemnation of properties west of the site, which have no alternative access for development.

COMMENT: One acre developable. That is a misstatement. It is for parking lot or buildings. The remaining is in wetlands, buffer, or easements. It is not available to Doyel to put buildings on.

7. Susan Claus noted that Cedar Brook Way must be extended across tax lot 2100 to allow properties to the west to develop. However there is no "game plan" or map illustrating how that street will be extended. The City's TSP does not include a plan for funding the extension of this street. The City is relying on developers, including the applicant, to extend this street. However the costs of constructing the street extension must be roughly proportional to the impacts of development. Approval of this project will reduce the amount of laud available for development. Although tax lot 2100 contains two-acres of land, only one acre is developable. The proposed parking lot will consume roughly half of the developable area of this site, severely reducing the amount of land for future development that is needed to fund the extension of Cedar Brook Way.

a. The City argued that the applicants cannot be required to extend Cedar Brook Way as a condition of this development, but they failed to provide any evidence in support of that statement.

b. CWS required the applicants to plant trees and other vegetation within the vegetated corridor on the site. However the future construction of Cedar Brook Way will require removal of those plantings.

c. The existing office use on tax lot 1600 is nonconforming with regard to off-street parking requirements.

COMMENT: The point was that this applicant has an obligation along with the city -- they already have the fees to fund the Cedar Brook extension. By combining these two areas and defining them, they are obligated to fund the street. They have created their own obligation. Separation of the ownerships doesn't lessen the obligation. They run as a unit. City has the money to pay for it. Bring the balance of 17680 with the 22065 need to bring into conformity under new code guidelines.

8. At the end of the hearing the hearings officer held the record open for one week, until October 31, 2013, to allow any person au 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 applicants an opportunity to submit a final argument, without any new evidence.

C. **PROCEDURAL** ISSUES

1. The hearings officer finds that Mr. Claus' November 7, 2013 letter was untimely and therefore must be excluded from the record.

a. Pursuant to the. Clauses' requests, and as required by ORS 197.763(6)(a), the hearings officer held the record open for one week, until October 31,

2013, to allow any party an opportunity to submit additional argwnent and evidence.

b. The hearings officer held the record open for a second week, until November 7, 2013, to allow the applicants an opportunity to submit a final argument. without any new evidence, as required by ORS 197.763(6)(e).

c. ORS 197.763(6)(e) provides:

> Ifthe hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may fiJe a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (7) of this section.

d. Mr. Claus submitted a letter on November 7, 2013, after the record was closed to the public. Mr. Claus stated that his letter was, "[sJubmitted in response to comments made by Susan Claus." ORS 197.763(c) only requires that the hearings officer reopen the record to allow the parties an opportunity to respond to new evidence. Comments alone, without any new evidence, are not a sufficient basis to reopen the record. Ms. Claus' letter did not introduce any new evidence that Mr. Claus could respond to, and Mr. Claus's Jetter did not identify any new evidence. Therefore the hearings officer is not required to reopen the record to accept Mr. Claus' November 7.2013. That letter must be excluded from the record as untimely.

D. PUBLIC COMMENTS

The following jssues were raised in public comments submitted prior to, during, and after the public hearing in this case.[1]

Public Notice

Mr. Claus argued that the City's original public notice for this application listed "Pacific Family Dental" as the applicant, not Handel LLC or Knob LLC, who are the listed owners of the tax lots that are the subject of this application. Pacific Family Dental is a tenant, not an owner of the propeity. Section 16.72.030 of the Sherwood Zoning and Development Code (the "SZDC") sets out the requirements for public notices. The Code does not require that the notice include the name of the applicants. Therefore failure to include the name of the property owners or applicants in the notice is irrelevant.

COMMENT: Correct. But the code doesn't give you the right to falsify who the various entities are in the land use process. Doyel has also used tenant names on the land use application. Nobody wants to get sued when they are not involved.

Unity of ownership:

The fact that the two tax lots that make up the site are owned by two different entities is irrelevant. Nothing in the Code requires unity of ownership. The applicants are required to record a joint access and maintenance easement between lots 1600 and 2100 for the purposes of providing legal access to the accessory parking area as well as maintaining the water quality facility and trash enclosure. Although the two parcels can be owned by separate entities, the easements will ensure that they contlnue to be used together.

COMMENT: Sadly, he is missing the point. He is implying no unity between the office and the parking lot. He cannot do that. The same standard has to apply. Doyel

is trying to cure two illegal sites. He is not accomplishing either one. Once the sites are combined, you can't make part of the sites legal and parts of the sites more illegal. He is tearing down legitimate uses, not doing anything to bring the second site to the basic code requirements. That limited view of the code cannot be tolerated.

The hearings officer said that these actions make "the site" more conforming. He should tear down the house, add the landscaping areas, and put in the visual corridor. Some is more conforming, some is more non conforming. Using the word "the site" interchangeable brings confusion. He acts as if all of TL #2100 is not together.

Change of use, act of parceling, or Lot line adjustment:

I Mr. Claus raised a number of issues by inserting comments and arguments into the Staff Report findings. See Exhibit P. In order to ensure that all of the issues are directly addressed, the hearings officer responded to those issues in the findings provided for the specific Code criteria where *Mr.* Claus raised those issues, even if they repeated issues discussed in the "Public Comments" section of this Final Order.

The Clauses argued that this application "[i]s either a change of use, an act of parceling or a lot line adjustment."p. 2 of Exhibit B. However they failed to provide any support for this argument.

No parceling is proposed. The site curtent1y consists of two separate lots. Approval of this application will not alter that condition.

The use will not alter the existing lot lines, so it will not result in a lot line adjustment.

SZDC 16.22.030.A defines, "Change in Use" as, "A change to a parcel ofland, a premise or a buildi ng which creates a change in vehicular trip generation activities, which changes the minimum parking requirements of this Code, or which changes the use classification as defined by this Code or the Uniform Building Code." Inthis case the applicants are proposing a "change to a parcel ofland..."A p01lion of tax lot 2100 will be changed from residential to commercial parking lot. However that change will not "create[] a change in vehicular trip generati on activities..., change[] the minimum parking requirements of this Code... or ...change[] the use classification as defined by [the SZDC] or the Uniform Building Code." Therefore this application does not constitute a change in use.

COMMENT: By the hearing officer's own admission it is changing the use. And changing the traffic count. You can tie the use up to another parcel of land, he has changed the use and therefore has to do a traffic study.

Future Lot line adjustment:
The applicants are not cUJTently seeking a lot line adju stment. If the applicants submits a request for a lot line aqjustment in the future, the City will review that request based on the laws in effect when the application is filed. The hearings officer has no authority to impose a condition of approval prohibi ting approval of a lot line adjustment on this site.

The existing medical office building *is* nonconforming IT IS ILLEGAL NON-CONFORMING with respect to parking:
When the office use was approved, the Code required a minimum 3.9 parking spaces per 1,000 square feet of gross Jeasable area, or 48 parking spaces. See p. 13 of the December 22, 2006 "Report and Decision of the Hearings Officer, File No: SP *06-0T'* attached to Exhibit P. The applicants developed the office building with the minimum number of parking spaces, 38 on-site spaces and 10 on-street spaces. The current code requires a minimum 4.1 parking spaces per 1,000 square feet, or 60 parking spaces and a maximum 90 spaces. Approval of this application will bring the use into compliance with current parking requirements, creating a total of 73 on-site parking spaces. Therefore this application is consistent with SZOC 16.48, which requi res that alterations of non-conforming uses bring the use into compliance with current Code requirements.

COMMENT: Here is admission that they did not comply with the code the first time around. It never should have been occupied. The site is illegal. They are applying for a parking lot, we know the visual corridor has been damaged-- illegally cut the trees, He has to conform to this code and the visual corridor. The transportation trips moving on the parcel, that is where he needs the traffic study-- that parcel did not have those

trips before.

Allegations that the traffic analysis for the existing dental office tmdercstimated the number of vehicle trips the use would generate are irrelevant. The dental office building was approved and no changes are proposed to the existing building with this application. Therefore the City has no authority to require a new traffic study or traffic counts at this time.

COMMENT: The hearing officer misses the point. He is creating trips on a new parcel of ground where there were no trips previously.

Self imposed hardship

The applicants are not seeking a variance or adjustment. Therefore the self.imposed hardship standard is inapplicable.

COMMENT: They did not seek a variance. They simply went in and illegally did a variety of changes to the two sites. They didn't even try to get any land use approvals. These are illegal acts from the day he opened the building.

Need for additional parking

The Clauses argued that there is no need for the proposed parking lot expansion. Adequate parking is already available within the existing parking lot on tax lot 1600 and on public streets north of the site. However the applicants are not required to demonstrate a need for the proposed development. The proposed development will bring the site into compliance with current minimum parking requirements and it will not exceed the maximum number of parking spaces allowed by the current code.

COMMENT: He needs more parking per the report itself. The applicant and city staff are picking and choosing which parts of the code they want to use-- it all has to be made conforming. There is no physical description of the building. Turn down the site plan application for incompleteness. More information has to be given in order to make the calculations, and land use decisions for these two sites.

Illegal grading and gravel parking lot construction:

There is no dispute that the applicants and/or his tenant, Corey Platt, removed trees and other vegetation and graded tax lot 2100 to create a gravel surfaced parking area without required permits and approvals. Tenants of the applicants' dental office building used a portion of this area for passenger vehicle parking and Mr. Platt used other areas for parking of heavy construction equipment. Access to the gravel parking area was provided from the existing residential driveway to Highway 99. Those activities are a violation of the Code. However they are not relevant to this application, because the construction and use of the gravel surfaced parking lot and use of the existing driveway to Highway 99 is not proposed as part of this application.

COMMENT: We understand that the hearing officer cannot enforce the code, but a hearings officer can and should revoke Doyel's permits. He is only supposed to rule how the code complies. There is a non conforming house that expanded all the parking-- illegally. The code doesn't allow it unless apparently your name is Nathan Doyel.

The hearings officer's jurisdiction is limited to review of the proposed development. The hearings officer has no authority to impose fines, issue stop work orders or take other actions to addJess alleged violations. Enforcement authority is given to the city manager or the manager's delegate. SZDC 15.28.030.

The Code does not prohibit the review and approval of a development application on a property with an existing code violation. Based on the plain meaning of the words in the law, the past behavior of the applicants are not relevant to the applicable standards for site plan approval. Tf the applicants sustain the burden of proof that the application does comply with the approval standards, or if it can comply provided certain conditions are imposed, the hearings officer must approve the application as a matter of law.[2]

The City has been working with the property owner over the course of the seventeen months to bring the property into compliance. The proposed development will eliminate this violation. The applicants will replace a portion of the gravel parking area with an approved asphalt parking lot. All access to the parking lot will come from Handley Street. No access proposed between the new parking lot and Highway 99. The City can address

any remaining violations through its enforcement process.

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2 ORS 197.522 provides as follows:

> A local government shall approve an application for a pennit, authorization or other approval necessary for the subdivision or partitioning of, *ot* construction on, any land that is consistent with the comprehensive plan and applicable land use regulations or shall impose reasonable conditions on the application to make the proposed activity consistent with the plan and applicable regulations. **A local government may deny an application that is inconsistent with the comprehensive plan and applicable land use regulations and that cannot be made consistent through the imposition ofreasonable conditions of approval.**

COMMENT: Doyel has expanded the nonconformity. He has expanded the vehicles. It is inconsistent with the general plan. Doyel bought the property knowing that Cedar Brook Way had to be built. He forced the issue with his illegal activities. Certain government officials have aided him. He is now trying to "legitimize" his earlier behavior, but he is still not following the code and solving all the land use problems he created.

As noted in the Staff Report, the site cannot be legally used for any type of commercial use, other than the proposed parking lot and existing dental office, without prior authorization and proper pemlits from the City of Sherwood. Both, the property owner and the renter have been made aware of these requirements. If it is subsequently found that a commercial use is operating on that lot, including parking and storage of heavy equipment, then the property owner will be subject to code enforcement and face violations of up to $500 a day pursuant to section 16.02.040 of the Sherwood Zoning and Community Development Code.

COMMENT: It is not a matter if it is a commercial use-- it is open and notorious. Corey Platt acknowledged it. The hearings officer cannot ok the change of use when there are illegal activities on the site. The permits should be revoked for both TL #1600 and #2100.

Lack of enforcement:
The hearings officer understands the Clauses frustration with the City's enforcement process. The illegal grading and parking activities have been occurring for roughly 17 months. However the hearings officer has no authority to address those concerns. The hearings officer has no enforcement authority and no ability to compel the City to take any enforcement action. The Clauses may be able to request mandamus or take other legal action to force the City to enforce its regulations. But the hearings officer has no authority to do so in this proceeding.

Violation of prior approval:
Ms. Claus argued that the applicants failed to install signage noting the planned extension of Cedar Brook Way as required by the conditions of approval for the existing office building. p. 8 of Ms. Claus' October 31, 2013 letter. To the extent the applicants are in violation of the conditions of prior approval, it is an enforcement issue. *It* is not relevant to the approval criteria for this application.

COMMENT: The hearings officer does have the ability to revoke the site plan per Sherwood code Section 16.90.030 (B) when conditions of site approval are not satisfied such as variance, exception, conditional use permits, etc. They mandate revocation if the conditions are not satisified.

1landJey Drive storm drain:
Mr. Claus noted that the existing storm drain inlet on Handley Drive was set too low, which caused significant erosion on his property west of the site. Exhibit B. Mr. Claus argued that the proposed development will exacerbate this condition. Staff appear to agree that the existing storm drain inlet was improperly installed. P. 3 of the Staff Report. However this is an existing condition. The proposed development will not exacerbate the problem. The applicants will collect and treat stormwater from this site and pipe it to an

outfall north of the site. The proposed development will not direct any stormwater onto the Clauses property or into the existing, improperly installed, storm drain inlet noted by Mr. Claus.

COMMENT: Photos in the file and on the Petition for Review show that areas have been paved where it previously had vegetation. The house is more nonconforming now than it was before because it has converted areas to provide additional parking and storage for the tenant occupying the house.

Based on Mr. Claus' testimony, runoff from the illegal gravel parking lot and other illegally graded areas of the site (the "borrow pit") may be flowing onto the Clauses property, contributing to the erosion problem. However that existing, illegal, impact is not relevant to this application. The proposed parking lot may alleviate the runoff problems to some extent, by replacing the existing gravel area with a paved parking lot and properly engineered stormwater facilities that will divert stormwater runoff away from the Clauses property. Existing gravel areas located outside of the proposed development may continue to drain onto the Clauses property. However those impacts are not relevant to the approval criteria for this application. The City can only address impacts from the existing illegal grading and construction through its enforcement process.

Approval of this development will preclude future extension of Cedar Brook Way: SW Cedar Brook Way, a designated collector street, is currently stubbed to the north boundary of tax lot 2100, near the western boundary. This street will eventually extend across tax lot 2100 and properties to the west, providing a connection to Highway 99. The Clauses expressed concerns that approval of the proposed parking lot expansion on tax lot 2100 will delay or preclude this street extension. The Clauses noted that the City can only require a developer to pay for the extension of this street if the cost of the street extension is roughly proportional to the impact of a proposed development. The proposed parking lot will consume much of the developable area of tax lot 2100. Less developable area means less development to fund this street extension. Failure to extend this street will result in inverse condemnation of properties west of the site, which have no alternative access for development

COMMENT: The hearings officer misapplies the Nollan case to the Doyel circumstances. The guy wanted a building permit for his house. They added an easement for the public to get to the beach. That is not the same thing as knowing before purchasing that a collector street was required.

The hearings officer understands the Clauses' concerns. However they are not relevant to the approval criteria for this application. The City cannot constitutionally require the applicants to extend SW Cedar Brook Way as a condition of this approval, because there is no "essential nexus" belween tbe impacts of the proposed development and the need for this street extension. *Nollan v. Calffornia Coastal Comm'n,* 483 U.S. 825, 107 S.Ct. 3141 (1987). While there may be a public need for the extension of SW Cedar Brook Way, the development proposed in this case will not create or exacerbate that need. The proposed parking lot expansion will not generate additional traffic that would utilize this street. Parking lots do not generate traffic separate from the uses they serve. In this case, the parking lot will serve the existing dental office building on tax lot 1600. No changes are proposed to that existing building. Therefore the proposed development will not generate any additional traffic, and there is no essential nexus between the impacts of the proposed development and a condition requiring the extension of SW Cedar Brook Way. In addition, in order to impose such a condition of approval the City must bear the burden of proof that the cost of the extension is roughly proportional to the impact of the development. *Dolan v. City of Tigard,* 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994) and *Koontz V St. Johns River Water Management District,* U.S. Supreme Court Slip Opinion, No. 11-1447, (June 25, 2013). The City failed to provide any evidence to that effect. The City could not make such a showing because the proposed parking lot *will* not generate any additional traffic impacts that could justify the cost of extending SW Cedar Brook Way.

COMMENT: They are taking more than one acre of the two acres in deed restrictions. East Cedar Brook Way, the easements on that property being used for public benefit and purpose. Admits it is an exaction. Doyel can make an exaction demand on the city and hire a lawyer. It is his obligation. Why is staff still bending over backwards to accommodate Doyel?

The Clauses may be crorect that expansion of the parking lot onto tax Jot 2100 will

reduce the City's ability to require future developers to extend SW Cedar Brook Way. The proposed parking lot will reduce the amount of developable area on tax lot 2100, which will reduce the amount of development available to fund the extension of SW Cedar Brook Way. However the Code does not prohibit such impacts.

Highway 99 Frontage Improvements

The City and ODOT cannot constitutionally require the applicants to construct additional transportation improvements along the site's Highway 99 frontage as a condition of this approval for the same reasons the City cannot require the extension of SW Cedar Brook Way. There is a need for additional improvements along this section of Highway 99. However the proposed development will not generate any increase in traffic that would

create or exacerbate the need for those improvements. Therefore there is no essential nexus between the development and the needed improvements.

COMMENT: What is he saying? The sidewalk and curb and gutter don't need to be put in? This is two site plans rolled into one with responsibilities to extend public infrastructure. Doyel already knew and agreed to the extension of the Cedar brook Way. Did they cheat Doyel? He already put in $500K and a visual corridor before he decided to cut it down. Let Doyel sue the city if necessary.

Vegetated Corridor Plantings

The Clauses argued that tree planting required by CWS within the vegetated corridor on the site will limit or preclude the extension of SW Cedar Brook Way. City plans call for the extension of SW Cedar Brook Way across the vegetated corridor and drainage located on the site. However the plans do not designate a specific alignment for this road extension. Therefore it is impossible to avoid planting trees within the future right of way. However those plantings will not preclude the future extension of this street. Trees can be removed if necessary. CWS may require additional plantings to compensate for any trees that are removed, as well as to mitigate for other impacts caused by construction of this street across the vegetated corridor and drainage. Approval of this application will not preclude such mitigation.

COMMENT: Trees can be pushed over by bulldozers. Anytime you want to get rid of a tree you can. Once you put the CWS restrictions and easements however, it cannot be developed without another land use process and new and different Service Provider Letter requested by Doyel. It precludes use from developing Cedar Creek way, they are blocking it. Instead of using it to built the road it is a vegetative corridor.

Alteration of the nonconforming use:

The existing single-family residence on tax lot 2100 is a nonconforming use. Single-family residences are not pemlitted in the GC zone except for a security person or for a different form of residence normally associated with a conditional use. The applicants proposed to remove the existing detached garage and shed associated with the single-family residence. Nothing in the Code prohibits such an alteration.The Code only prohibits the enlargement, extension or relocation of nonconforming uses. 16.48.040.A. Removal of the garage will eliminate covered parking for the single-family dwelling on the site. However the Code does not require covered parking for the single-family dwellings.

COMMENT: Doyel added onsite heavy equipment/storage areas. They are expanding the parking areas, and parking cars illegally and equipment, they are tearing down a commercial use that would be allowed to function as his office-- yet they are tearing it down. They are expanding the nonconformity. He is now running the construction out of his house-- not the commercial space.

Highway 99 access:

The existing single-family residence on tax lot 2100 will continue to use the existing driveway to Highway 99. However no access is proposed to Highway 99 from the proposed parking lot or the existing dental office.

COMMENT: Doyel is developing the site- see the CWS provider letter. 13-16-10. They have altered the non-conforming use including increasing parking for heavy equipment/storage.

Site plan

Joe and Mara Broadhurst argued that this site plan application must include the entire site. Exhibit M. The hearings officer finds that the proposed plans do include the entire site. See the applicants' plan sheets. The applicants proposed to develop a portion of the site with the expanded parking lot. The applicants proposed to retain the existing, nonconforming, single-family residential use on the remainder of the site. Nothing in the Code requires that the applicants develop the entire site at once.

F.FINDINGS

Chapter 16.22 -Commercial Land Use Districts

16.22.020 -Uses

The table *(16.22.020 in the Development Code)* identifies the land uses that are permitted outright (P), permitted conditionally (C), and not permitted (N) in the

Commercial Districts. The specific land use categories are described and defined in Chapter 16.88 Use Classifications and Interpretations. Jn this instance, the properties are zoned General Commercial (GC)

COMMENT: There is no question you can have a parking lot in GC zone. Under specific conditions. The hearings officer fails to realize that is not what is occurring here. It is the admitted illegal uses/conditions at 17680 SW Handley after seven years of operation that they are attempting to expand and make somewhat conforming. What the applicant has to do now is redesign his site and correct the deficiencies or the stand alone "for rent" parking lot is not permitted.

There is additionally one very serious problem that either Turner or Kilby have dealt with. If in fact, Doyel through his solely owned LLC rents this to Pacific Family Dental LLC it is a violation of the ordinance. He is creating a "for rent" commercial parking lot. As is typical with the city and the hearing examiner, that creates special rules for the politically connected, which Doyel is, that question is not being asked. It is not just that they are not charging development fees, they have never asked Doyel to provide a notarized letter that he will not increase the rent (barter or remuneration) to his commercial tenants of the office building in order to pay the hundreds of thousands of dollars he had to borrow from Al and Nancy Williams. None of those protections are being asked for in the conditions of approval.

FINDING: The current use of tax lot 1600 as a professional dental office was identified in the SP 06-07 approval as a "medical and dental office" use, which is a permitted use within the GC zoning district. The applicants are proposing to pave the n01lheast corner of tax Jot 2100 to provide additional motor vehicle parking for the existing dental office building in accordance with City of Sherwood standards. The proposed parking lot extension is an accessory use to the existing office and therefore is an outright pennitted use subject to site plan approval.

Mr. Claus argued that parking is not a permitted use in the GC zone, except public or commercial parking (non-accessory), which is permitted as a "personal service" use. p. 11 of Exhibit P. However the applicants are not proposing to provide a stand-alone commercial parking lot as a separate and independent use. The applicants arc proposing to provide additional parking as an accessory use to serve the existing dental office use on tax lot 1600. Such professional offices, including associated parking, are a permitted use in the GC zone.

COMMENT: It is on a separate lot with separate ownership. He needs to do a traffic study on it.

The applicants cannot transfer this parking area to another use in the future.

COMMENT: This is an open misstatement regarding the parking at TL #1600. Julia Hadjuk, currently the community development director decided to ignore

the plain language and add back two off site street parking that the ealrier hearing examiner said could not go toward the ten required offsite parking spaces. She allowed Doyel and Handle Properties LLC to illegally operate that property. The site has never been conforming and due to the staff's misrepresentation about setback, landscape islands, landscape corridors, we will never know how nonconforming to the code this building was and the development.

This statement is disturbing in that the hearings officer says that if any time this parking lot is discontinued on the Williams property, his use apparently becomes illegal non-conforming. The hearing officer is suggesting that there is no mechanism for a citizen to enforce site plan violations. Since Doyel and the city have classic unclean hands, it is not ultra varies for him to require an automatic mechanism to enforce this code when Doyel violates it again.

The existing office building is non conforrning with respect to the minimum parking requirements of the current code.3 The proposed parking lot expansion will bring the site into compliance with the minimum parking requirements of the current code. SZDC 16.22.030.A prohibits any modification or conveyance of any portion of a lot when such modification or conveyance wou1d reduce the required parking below the minimum required by the Code. Therefore the applicant cannot transfer this parking lot to another use because doing so would cause the dental office to fall out of compliance with the minimum parking requirements of the Code.

The Clauses argued that the parking lot is an accessory use that must be enclosed , citing the table of uses included in SZDC 1622.020. p. **11** of Exhibit P and p. 7 of Ms. Claus' October 31, 2013 letter, attached to Exhibit P. The table of uses included in SZDC 16.22.020 lists the following as a conditional use in the GC zone, "Any incidental business, service, processing, storage or display, not otherwise permitted that is essential to and customarily associated with a use permitted outright, provided said incidental use is conducted entirely within an enclosed building."The hearings officer finds that this provision is inapplicable to this application. The applicants are proposi llg to expand an existing parking lot to serve an existing use. The applicants are not proposing a separate, independent, use that would be subject to this requirement. Motor vehicle parking is allowed, and required , as an accessory use for most, if not all, uses permitted in the GC zone.

COMMENT: The applicants are proposing to expand an existing parking lot to expand an existing use. It is this kind of loose language given in attempts to justify an existing use that leads the hearings officer to justify expansion over objection. If you read further, Turner steps on his words" **A condition of approval is warranted prohibiting commercial use of the parking lot on this site without further City review"** This is because the hearing officer flip flops when necessary back and forth between treating TL #1600 as a separate site and TL #2100's 1/2 acre separate but together. He is forcing a development and redevelopment of the properties including the landscape corridor but has not adequately provided conditions to prevent more abuse by Doyel of the land use process. Doyel is planning on

charging the tenants of the Cedar Brook Professional Building to use the satellite parking lot located on TL #2100. It violates the standard of the approval because it was not reviewed as a commercial parking lot.

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3 When the office use was approved, the Code required a minimum 3.9 parking spaces per 1,000 square feet of gross leasable area, or 48 parking spaces. See p. 13 of the December 22, 2006 "Report and Decision of the Hearings Officer, File No: SP 06-07" attached to Exhibit P. The current code requires a minimum 4.1 parking spaces per 1,000 square feet, or 60 parking spaces. They only had 46 spaces. Hadjuk qualified two spaces which were not to be used. It was never 10 legitimate parking spaces off site. TL #1600 has been illegal for years and the hearings officer should have employed a revocation order.

Mr. Claus argued that the illegally constructed, gravel surfaced, parking area on tax lot 2100 is not a parking lot; it is an illegal excavation. p. 17 of Exhibit P. That is correct. The existing gravel area was constructed without required permits and approvals. With this application the applicants will replace the gravel surfaced parking area with a properly constructed and approved asphalt surface parking area. Approval of this application will correct the existing violation in the redeveloped portion of tax lot 2100.

Mr. Claus argued that the applicants intend to use the parking lot as a commercial parking lot. p. 17 of Exhibit P. That is not what the applicants proposed. The parking lot expansion is intended solely to provide additional parking for the existing dental office building on tax lot 1600. As discussed above, the applicants cannot transfer this parking area to another use in the future without violating SZOC 1622.030.A. Inthe0ly, the applicants could rent or lease parking spaces that exceed the minimum requirements of the Code as a commercial parking. However this use was not reviewed as a commercial parking lot. **A condition of approval is warranted prohibiting commercial use of the parking lot on this site without further City review**.

COMMENT: Applicant is 35 new parking spaces on TL #2100. That alone would not make TL #1600 conforming. You have to add all of the spaces together to make it legal conforming since he built it. Therefore you have to bring both parcels to code. They are unified to give the conforming spaces needed to comply with the code. Doyel has already testified that most of the off street parking next to his building is being utilized by others.

Since the site plan appears to be trying to make the spaces conforming, the conformance should include the visual corridor, landscaping islands, trees, etc.

Doyel has been a bad faith actor. Why is he being rewarded? It is a self imposed hardship that he created when he made all the illegal changes to both tax lots. He never applied for permits before he made the changes. The hearings officer had the ability in the code to revoke the site plan.

The hearings officer suggests that we have to go to court to give us a way to stop Doyel's behavior. The city manager and city staff decided against enforcement for several months and are allowing the illegal uses to be modified. The Planning Commission should provide guidance to come up with some language to correct the problems. The commission cannot leave it to the staff and city manager who have refused to date to stop Doyel from using the site at his whims. Doyel and the city have unclean hands. You should not reward Doyel's rule breaking. It is a self imposed hardship. He broke the law numerous times. How can we trust a city that wouldn't enforce the code? The planning commission cannot leave matters to staff interpretation.

This standard is satisfied.

16.22.030 - Dimensional Standards

No lot area, setback, yard, landscaped area, open space, off-street parking or

loading area, or other site dimension or requirement, existing on, or after, the effective date of this Code shall be reduced below the minimum required by this Code.Nor shall the conveyance of any portion of a lot for other than a public use or right-of-way, leave a lot or structure on the remainder of said lot with less than minimum Code dimensions, area, setbacks or other requirements, except as permitted by Chapter 16.84. (Variance and Adjustments).

A. Lot Dimensions
Except as otherwise provided, required minimum lot areas and dimensions shall be:

1. Lot area: 10,000 square feet

2. Lot width at front property line: 70 feet

3. Lot width at building line: 70 feet

FINDING: The existing lot area, lot width, and width at the building line exceed the minimum requirements prescribed above. The applicants are not proposing to modify the dimensions of the existing lots. Since this request does not include a land division or reconfiguration of the lots involved, these standards are not applicable to the proposed development.

Mr. Claus argued that the applicants should be prohibited from seeking a lot line adjustment. p. 18 of Exhibit P. However he failed to cite to any provision of the Code or caselaw that would justify such a condition. The applicants are not currently seeking a lot line adjustment. If the applicants submit a request for a lot line adjustment in the future, the City will review that request based on the laws in effect when the application is filed.

B. Setbacks

Except as otherwise provided, required minimum setbacks shall be:

1.	Front yard:	None, except when abutting a residential zone, then there shall be the same as the abutting residential zone.
2.	Side yard:	None, except when abutting a residential zone, then there shall be a minimum of twenty (20) feet.
3.	Rear yard:	None, except when abutting a residential zone, then there shall be a minimum of twenty (20) feet.
4.	Height:	Fifty (50) feet.

FINDING: Setback requirements only apply to buildings and structures.[4] No new buildings or structures are being proposed as part of this project.[5] Therefore this standard is inapplicable.

16.22.060 -Community Design

For standards relating to off-street parking and loading, energy conservation, historic resources, environmental resources, landscaping, access and egress, signs, parks and open space, on-site storage, and site design, see Divisions V, VID and IX.

ANALYSIS: The applicable standards that are listed in the Community Design section are addressed elsewhere in this Final Order. As proposed, the development will meet these standards: off-street parking, energy conservation, environmental resources, landscaping, access and egress, signs, parks and open space, on-site storage, and site design. There are no historic resources on site therefore that standard is not applicable.

Chapter 16.58-Clear Vision and Fence Standards

16.58.010-Clear Vision Areas

4 SZMC 16.10.020 defines, "Setback" as "The minimum horizontal distance between a public street right-of-way line, *or* side and rear property lines, to the front, side and rear lines of a building or structure located on a lot."

5 SZMC 16.10.020 provides the following relevant definitions:

Building: Any structure used, intended for, supporting or sheltering any use or occupancy. Each portion of a structure separated by a division wall without any openings shall be deemed a separate building."

Structure: A structure must be more than one foot from grade to be considered a structure.

A. A clear vision area shall be maintained on the corners of all property at the intersection of two (2) streets, intersection of a street with a railroad, or intersection of a street with an alley or private driveway.

B. A clear vision area shall consist of a triangular area, two (2) sides of which are lot lines measured from the corner intersection of the street lot lines for a distance specified in this regulation; or, where the lot lines have rounded corners, the lot lines extended in a straight line to a point of intersection, and so measured, and the third side of which is a line across the corner of the lot joining the non-intersecting ends of the other two (2) sides.

C. A clear vision area shall contain no planting, sight obscuring fence, wall, structure, or temporary or permanent obstruction exceeding two and one-half (2 1/2) feet in height, measured from the top of the curb, or where no curb exists, from the established street center line grade, except that trees exceeding this height may be located in this area, provided all branches and foliage are removed to the height of seven (7) feet above the ground on the sidewalk side and ten (10) feet on the street side.

The following requirements shall govern clear vision areas:

1. In all zones, the minimum distance shall be twenty (20) feet.

2. In all zones, the minimum distance from corner curb to any driveway shall be twenty-five (25) feet.

3. Where no setbacks are required, buildings may be constructed within the clear vision area.

FINDING: The proposed development *will* not create any new intersections listed in SZMC 16.58.010.A. The proposed parking lot will connect to the existing parking lot on tax lot 1600. All ingress and egress will occur via the existing intersection on SW Handley Street. Therefore this criterion is not applicable to the proposed development.

COMMENT: They are putting in a utility box and solid waste/recyclables collection boxes. There are photographs showing there is landscaping between the lots now. There are trees separating lots 1600 and 2100. Now Doyel has to remove them. If he removes them, the lot 1600 becomes non conforming and he has to re-do the site plan. A site visit by the hearings officer would have helped. Looking at the photographs would have helped.

The Clauses argued that the proposed landscaping will conflict with required clear vision areas, p. 19 of Exhibit P. However they failed to provide any evidence to that effect. No new intersections are proposed with this application. The proposed parking lot expansion will utilize the existing driveway intersections on SW Handley Street. No changes are proposed to those intersections. The proposed parking lot and associated landscaping will be located 100 feet or more any existing intersections.

16.90.030 - Site Plan Modifications and Revocation

D. Required Findings

No site plan approval shall be granted unless each of the following is found:

1. The proposed development meets applicable zoning district standards and design standards in Division II, and all provisions of Divisions V, VI and VIII.

FINDING: This standard can be met as discussed and conditioned in this final Order.

2. The proposed development can be adequately served by services conforming to the Community Development Plan, including but not limited to water, sanitary facilities, storm water, solid waste, parks and open space, public safety, electric power, and communications.

FINDING: existing water, sanitary, stonn water, solid waste, public safety, electrical power, and communications providers already serve the office building. The applicants are not proposing any new utility improvements for the proposed parking lot extension. If it is subsequently determined that water service is necessary for the purposes of providing irrigation, improvements related to water service will be required. The specifics related to this determination are discussed in greater detail later in this Final Order. As discussed and conditioned later in this Final Order, it is feasible for the applicants to satisfy this standard.

COMMENT: The hearings officer refers to those sections in the code but he obviously hasn't read them. He is required to order a revocation of the permits-- not the enforcement of the code. He has the power as the hearing authority. The code allows him to revoke the permit. This was illegal activity in which Doyel did not get permission. The hearing officer can order the revocation of all of Doyel's permits. Either Doyel comports to all of it or it is revoked. He has taken the law into his own hands. The hearing authority can revoke the existing permits. STOP it. STOP it now. It needs to be put out of business.

The driveway he is trying to build has to be built for 100 ft. They cannot meet the provisions of the code... tear out the landscaping and replace it or find another place for the driveway between lot 1600 and 2100. The front of the building could work but he has to remove the landscaping. In this case, the driveway is landscaped and blocked. Doyel needs a new site and landscaping plan.

The Clauses argued that the applicants should be required to extend public sewer and water to the existing single-family residence on tax lot 2100. However the existing single-family residence on tax lot 2100 is an existing nonconforming use. No modifications are proposed that would alter utility needs of the residence. Therefore the existing residence is not relevant to this approval criterion.

3. 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 other on-site features.

FINDING: The site is owned by Handle Properties, LLC & Knob Properties LLC. The northern portion of the site, tax lot 1600, is already developed with a dental office building, landscaping, parking and other improvements. The maintenance of structures_,

landscaping, and other on-site features have been on-going, and do not appear to be neglected. Condition of approval 5 requires ongoing maintenance in the future. This standard is satisfied.

4. The proposed development preserves significant natural features to the maximum extent feasible, including but not limited to natural drainage ways, wetlands, trees, vegetation (including but not limited to environmentally sensitive lands), scenic views, and topographical features, and conforms to the applicable provisions of Division VIII of this Code and Chapter 5 of the Community Development Code.

FINDING: According to the Natural Resource Assessment written by SWCA Consultants (Exhibit J) and corroborated by Clean Water Services there are on-site

wetlands on the western portion of tax lot 2100, which require a 50-foot-wide vegetated corridor. The proposed development will have no impact on the vegetated corridor. Clean Water Services has identified the vegetated corridor as being degraded and is requiring restoration efforts by the applicants. Included in the Natural Resource Assessment is a plan for enhancing the vegetated corridor to the specifications required by Clean Water Services. The plan includes a list of native trees, shrubs and groW1dcovers that would be planted upon approval. Specifically the plan states that prior to ground clisturbance, an erosion control permit is required through the City. Additionally, a maintenance plan descdbing a two-year maintenance period is included with the vegetated corridor planting plan. The site does not contain any additional significant natural features.

CONDITION: Prior to final site plan approva the applicants shall submit evidence demonstrating compliance with the required conclitions provided by Clean Water Services File Number 13-001610, Exhibit K. This includes obtaining City of Sherwood Builcling Department approval for any grading or erosion control plans.

S. For a proposed .site plan in the Neighborhood Commercial {NC), Office Commercial {OC), Office Retail (OR), Retail Commercial (RC), General Commercial (GC), Light Industrial (LI), and General Industrial (GI) zones, except in the Old Town Overlay Zone, the proposed use shall satisfy the requirements of Section 16.108.080 Highway 99W Capacity Allocation Program, unless excluded herein.

FINDING: The proposed parking lot extension will not increase vehicular traffic to the site. The proposed parking lot is intended to serve the existing dental office building on the site. No changes are proposed for the existing dental office building that would cause an increase in vehicular traffic to the site. Construction of a parking lot alone will not generate additional vehicle traffic. Therefore the proposed use is expressly excluded from the provisions of the Highway 99W Capacity Allocation Program6 and this standard *is* not

CONTINUATION OF CLAUS COMMENTS ON THE HEARING OFFICER'S FINAL ORDER.

NOTE: Due to a malfunction in the software, these Claus comments are not embedded in the Final Order. Instead they are included here with page reference numbers from the Final Order.

Page 17. There is no excuse given there is an open area within a 100 ft of the lot within 50 feet of the well, the swales are threatening the water quality on a well that old.

Page 17. 4 Turner is selectively reading the information submitted. The wetland study is completed falsified. The drainage area down below is in a period of rapid head ward erosion committing destructive waste. They are doing nothing about that./ The CWS is trying to call the city manger to come p with a shared plan to correct that. City Manager is not responding.

Page 17, 5. Again, he is dealing with two sites. That is why the application should be revoked. Two sites. What Turner is trying to say that Doyel doesn't really need this.. there won't be any other traffic generated by the dental office. Yet there will be multiple more trips on #TL 2100. TL #2100 between Corey Platt and the construction equipment and the physical traffic of the parking lot on TL #2100 there is increased traffic.

Doyel has already spent over $500,000 in development fees. That gives him the money to get rebates for the land and the road construction on Cedar Brook Way. Payment has been a bogus issue. The taking of wetlands and the easement, he can sue if there is a deficit. Both the Hearing Examiner and city are saying it is an exaction.

The only question here is whether in the interest of the city, that Cedar Brook Way doesn't develop-- Doyel has already paid $500,000 in impact fees. Or if in the interest of the city, they take dedication of the roadway. They have money from him and may owe him rebates. They are giving him a new application. The hearing authority can revoke the permits. It seems harsh to recommend. There are ways to solve the road problem including working with Clean Water Services and ODOT through their grant programs to obtain monies to help build Cedar Brook Way through the degraded vegetative corridor. The site plan is structured with both properties involved and nearly full development of both sites. The planning commission can put as a condition of approval to put the street in, because of the development Doyel has created. Our preference is not that you force someone out of business , but that option remains here because of Doyel's bad faith activities. He had a choice. He made it.

The earlier hearing record is part of this record because Petitioners submitted it-- not because of the staff. Conditions could be amended that require Doyel to sit down with CWS to solve the problems and find additional funding to extend Cedar Brook Way or decide it is too expensive to try to breech the vegetative corridor and incorporate its removal from the upcoming TSP amendments.

PAGE 19 Section 7 A-B-C These items Doyel is in violation of and is grounds for revocation.

PAGE 20 and 21-- Section 16.92.020 landscaping materials and plant selection. Existing vegetation. What he is doing is making assumptions that the trees which have been destroyed by the repeated cutting of PGE in front of the house on 99W and the other landscape work can work to satisfy the problem.

It occurs because he is mixing and matching applications. TL #2100 and #1660 do not have a complete landscaping plan. He is ignoring it-- future development without making Doyel's building illegal is almost certain. The dental building needs that parking.

PAGE 22 -- non vegetative feature. He says that Claus made the assertion that they are treating these as if they are a separate application. That should be obvious to anyone. Lot 1600 does not meet current landscaping, architectural designs, or parking-- it doesn't meet any of it.

In order to get around the current code he needs certain numbers to be within the range of conformity. Doyel doesn't have the islands, the building design, the updated code, which he is seeking to comply to. The hearing officer should revoke the old permit. If Doyel chooses not to act responsibility based on the code, then he needs to order the nonconforming house torn down. Even though he is not conforming to the code, he can lessen the non-conformity. Instead they have expanded the parking on the nonconforming house, all of the lawn areas.

PAGE 24 Parking area landscaping: if you look at Section 16.92.030 (a). He has to put in a site obstructing fence, or ... separating residential from commercial... Again, in his findings, the hearing officer seems to have found a statement he is comfortable with "he is not a judge, he has no legal authority to enforce a code." As has been demonstrated, he admits there were several violations, but refuses to revoke the permit. Doyel is asking after he built a building, to add to the parking. He could have cut down the building size at the time. By an administrative slip he built an illegal nonconforming building. Now he comes back when he was warned from the beginning he was under parked. He is telling us all now that he really doesn't need the parking but that he isjust a good guy. A series of illegal acts to accomplish this without any legal permits. Revocation of the site plan would send a signal of how serious the Doyel breeches have been.

P.24-27 parking, landscape, in detail--- all of this through page 27 is not accurate on the landscaping because he is not making the parking and landscaping conform. He is trying to make the parking lot conforming and the dental office nonconforming. There is no use doing a great deal of work on a lot more of this. The hearings officer misses the obvious-- he can revoke the site plan for the earlier acts such as "topping off" of the trees in the front of TL #1600 along 99W or the landscaping and trees that were removed.

P. 33 Section 16.94 (D) Prohibited Uses: Read the language.... the hearings examiner is not reading the language of the code. There has to be a statement that under no circumstances is rent going to come back from any of the dental or other tenants, or Nathan and Polly Doyel as Knob Properties, that then increases rents back to the tenants. This site plan has not be reviewed as a commercial parking lot.

This is a critical condition to the approvals. What in the approval criteria is to stop Mr. Doyel from creatively finding a way to obtain rent, lease, barter or other remuneration for the use of this parking lot on TL #2100.

If Corey Platt is renting the house and allegedly told the enforcement officer that he is not running a business, he is then merely renting the nonconforming house and car parking space for that house.

(f) that condition needs to include that all of the parking needs to be marked-- including Corey Platt's. The instructions are wrong... with the non-conforming house-- you are increasing the non-conformity through the increased parking being allowed that includes the tenant's heavy equipment.

p. 36 SERVICE DRIVES one of the reasons for the unusual configuration is they are trying to preserve the highway access for the tenant, the well location, and the problem with the elevation changes. The tree hedge of the driveway is a dangerous condition. The proposal is to right up to the non conforming house. He is blocking the vision.

p. 38 Doyel is cutting the lot in half and barring access. That house can only exit to the highway and has no connections whatsoever with other developments. The parking, topography both bar access. He gets back development credits for the land and the streets. If he put easements, then they have to pay. What is the problem with giving access -- he gets credits back for the development and street. If he and Gall would cooperate, there may be ODOT money to help put in the street.. If it is an exaction, Doyel can get an attorney and the city will pay for it. Why does the hearings officer tell us to sue the city to stop illegal activities? He has code authority to revoke the site plan. He can pull the building permit and pull the application. He is empowered to do it. He is now saying that Doyel is not smart neough to get an attorney to get his permit monies back?

p.41 Access to major roadways. This site plan is not a full or complete application . The CWS Service Provider Letter covers the entirety of TL #2100. The application only deals with part of TL #2100 as evidenced in this finding by the hearings officer. Part of TL# 2100 does access 99W and the current tenant has several heavy pieces of equipment that are brought in and out of that site as well as stored on site. With the CWS letter the entire parcel of TL #2100 is covered. Both sites are developed. CWS acknowledges development. It is an illegal development and attempting to make a completely illegal dental office conform to the parking and nothing else. The hearings officer picks and chooses which aspect if the development he will treat at any time. That leaves you to his remarks about access.

The property is not supposed to access to and from any artery. That is a flat misstatement. They are continuing to enter in from the highway. They are intending to use the nonconforming house to go in and out of 99W. In violation Section of 16. 96 (F)-- they are intending to enter/exist the highway.

p. 42 B. Again what he is saying is as long as TL #1600 takes half of the buildable land of TL#2100 as long as it has circulation, TL#2100 doesn't need access. He chose the development course of the application.

p. 43. 16.96.040 The hearings examiner admits that Doyel is illegal or nonconforming legal at the best. He is proposing to mix and match sites so he can conform to the parking code. He is only doing this to conform to the current code. All of the extra landscaping and spaces is not going to help his business.

Traffic will dramatically increase-- he is saying the traffic is already there on SW Handley. It is like saying because the 99W traffic already exists, there is no increase in traffic to the individual sites-- and no traffic impact fees. If in fact he is merely moving his site plan then he has to moving the sidewalks, etc., to connect to this section. The house on the one acre are being isolated from community connection.

p. 44 On site storage Chapter 16.98

Conclusions again and again, for his own solace, recreational vehicles and equipment only may be storage in designated areas and street improvements. They are storing equipment from the tenant. They have done nothing to plan this part of the application. They should be planning Platt's parking area-- plan it now. Again the whole two acres must be dealt with.

The hearings examiner misunderstands what I am saying... He has landscaping requirements, by the time you are moving the trash receptacle around you are blocking the visual corridors. He wants to change the entrance on the Handley parking lot because he cannot meet the visual corridor standards.

Doyel needs to put the parking lot and then has to prove the 24' foot increase doesn't impact the landscaping and re-do the landscaping plan. If he moves the entrance to the front of the building, he can do it but he has to move the landscaping.

p.46 16.106 Transportation facilities

First, if the hearing examiner read 16.10.020 Doyel is required to dedicate Cedar Brook Way as part of this new effort to finally make #1600 with the use of #2100 a legal and conforming office. Since we are the people that he is abutting Cedar Brook Way to our property we are interested in seeing that dedication of that property. It is hard not to get impatient with this ongoing land use process designed to help Doyel. We had to supply the original hearing officer's decision. The city wasn't even concerned enough to supply it. Secondarily, the hearing examiner has not seen the original plans to see that the building and parking lot conform to the new code-- if he allows something from the earlier plan to be violated he is violating the General Plan. The staff had to review the earlier plan especially given the outrageous fees they charge- that plan should have been reviewed as a basic part of review. All of that aside, the point is that was he obligation and duty to have investigated the fact that they are charging high development fees that they have in the bank now-- or do they? Doyel has seven years to collect back on the dedication.

Doyel can work with the city to get his development fees back. The hearing examiner has said that this is an exaction on the rest of it landscaping, wetlands, etc. Doyel cal get a lawyer and get his money back from the city. It makes no sense.... those development credits have been paid and no more are needed... get the right of way, get the land and dedication. Stop harassing us-- Doyel should take care of his business. Why does the hearings officer suggest to us to sue to force the staff to do their job? Clauses should not have to legally force the staff and its contractors to do their job.