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City of  
**Sherwood**  
Oregon

Home of the Tualatin River National Wildlife Refuge

# NOTICE OF APPEAL TYPES III & IV

TAX LOT:  
MAP NO:  
CASE NO:

TO: Planning Commission

APPEAL BY: Jim CLaus / SUSAN CLaus  
(Appellant's Name)

ON FILE # SP 13-01 at 17680 SW Handley # 22065 SW Pacific Hwy  
(address/tax lot number) SHERWOOD

The undersigned in the above-entitled matter <sup>22nd</sup> does hereby appeal from that certain decision of the Hearings Officer rendered on the ~~5th~~ day of November, 2013, upon the following grounds: *(Please provide on a separate sheet the reasons why you think the Appeal Authority should render a different decision than that rendered by the Hearing Authority).*

*This appeal fee is excessive and violates Goal #1 for Community Involvement in Land Use Planning. LUBA Fee is only \$400. How can you justify charging \$3394?*

[Signature] Susan Claus  
Appellant

Date Signed: Dec 6, 2013

2221 SW Pacific Hwy  
Address

503-625-5265  
Phone No.

### To be filled out by City Staff

Received by: BRAD Kilby  
(authorized Staff member)

Date: 12/6/13

\* Fee: \$ 3,394

Receipt No.: 972168

\* See City of Sherwood current Fee Schedule, located at [www.ci.sherwood.or.us](http://www.ci.sherwood.or.us). Click on City Government/Departments/Finance.

*Justify charging \$3394 for a Local Appeal? I am paying this fee in protest*

BEFORE THE SHERWOOD PLANNING COMMISSION  
OF THE CITY OF SHERWOOD, OREGON

Regarding an application for site plan approval to ) expand an existing parking lot at 17680 SW Handley ) Street onto a separately owned tax parcel at 22065 SW ) Pacific Highway in the City of Sherwood, Oregon ) _____) ) _____)	PETITION FOR REVIEW Case No. SP 13-01 Applicants: Nathan & Polly Doyel of Handle Properties, LLC and Nathan Doyel of Knob Properties, LLC
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A. DATE

This petition for review is being filed on December 6, 2013 by 5:00 pm per the date and time given as a deadline by Brad Kilby, Planning Manager of the City of Sherwood in an email dated November 25, 2013 at 5:11 pm addressed to Jim Claus.

B. BRIEF BACKGROUND

In December of 2006, the Cedar Brook Professional Building, TL #1600 received site plan approval to build a 14,054 sq.ft. two story building for dental offices. TL #1600 is located on approximately 8/10ths of an acre. The site plan approval for this building only contained 38 on site parking spaces. The Hearings Officer at the time, directed that ten additional spaces be found off site in order to meet minimum parking requirements for the site. The applicant also had the choice to decrease the size of the office building. The site itself could not be built with adequate parking given the building that Mr. Doyel decided to build. Mr. Doyel chose to keep the building the same size and find parking off site.

After the dental office building was built, it was leased to several different businesses. Current tenants include Pacific Family Dental, Bittner Dentistry for Kids, Sherwood Oral Surgery, and Wilson Orthodontics per the signage located outside the building. These businesses lease space from Nathan and Polly Doyel through their Handle Properties LLC ownership. Nathan Doyel is half owner of Pacific Family Dental business along with Ben Aanderud. Both Doyels and Aanderud are active in the business community as well as involved in the local politics of the town.

In October of 2012, Nathan Doyel bought TL#2100 through Knob Properties, LLC. After purchasing this two acre property, he illegally took out vegetation and replaced much of the useable site area with extensive gravel. He also cut trees, added a walk way between TL #2100 and TL #1600, and then allowed many of the employees of the dental offices to enter/exit off 99W and park their vehicles on TL #2100. He was reported to code enforcement and city officials several times. After seventeen months of violating the original site plan of TL #1600 and doing illegal, non-permitted work on TL #2100.

Doyel has asserted that the street parking that was part of his original approval has been taken over by other people and is no longer available. The original site plan approval has been violated and is non conforming not only to the approval but also to current code standards.

### C. DESCRIPTION OF THE LAND USE ACTION

Nathan Doyel made an application for site plan review that involved two separate tax lots: TL #1600 2S130 CD located at 17680 SW Handley Street and TL#2100 2S13BA located at 22065 SW Pacific Highway, in Sherwood, Oregon. The application itself has fundamental flaws in its description of what the site plan is for, as well as noting Pacific Family Dental as an applicant rather than a mere tenant of the building-- the site plan runs with the property-- not the tenant, or does it? If the tenant leaves or the business is sold, what happens to the site plan?

Nathan Doyel is requesting to add offsite parking for TL #1600 by using 1/2 acre, approximately 50% of the buildable land from TL #2100 two acre parcel as well as altering the original site plan for Cedar Brook Professional Building. He is tying both properties together with one site plan, instead of each property standing alone with its own site plan, a total of 8/10th of an acre. The two parcels together contain not quite three acres. The electric transformer vault and existing solid waste/recycling facility for TL #1600 is being moved on to TL #2100. The resulting amount of parking to be dedicated to TL #1600 is over one acre. Maybe he didn't want to pay for two site plan fees; the problem is however, the Hearings Officer has merged both tax lots into "the site" (See p.1 Summary in Final Order, Case No. SP 13-01.) It also appears that TL #1600 has been illegal for seven years.

The proposed land use action is at least partially in response to illegal, unpermitted activities by Doyel on TL #2100 including cutting trees, increasing the non-conformity of TL #2100 by adding heavy vehicle parking/storage to the site, removing vegetation and installing an illegal graveled "parking lot" area, and illegal accessing of 99W for parking purposes over a 17 month period by employees of the dental offices located at Cedar Brook Professional Building. He also built a gravel walkway between the two lots so the employees of the dental offices could walk between the two parcels to access the office building. Additionally, in violation of the landscaping and visual corridor plans he "topped" the trees along Pacific Highway located on the Cedar Brook Professional Building site because they were blocking part of his sign. The trees are now effectively prevented from producing a canopy, producing another code violation.



Figure 1: TL #2100 Illegal Parking Lot, Street View



Figure 2: TL #2100 Image Before Illegal Work

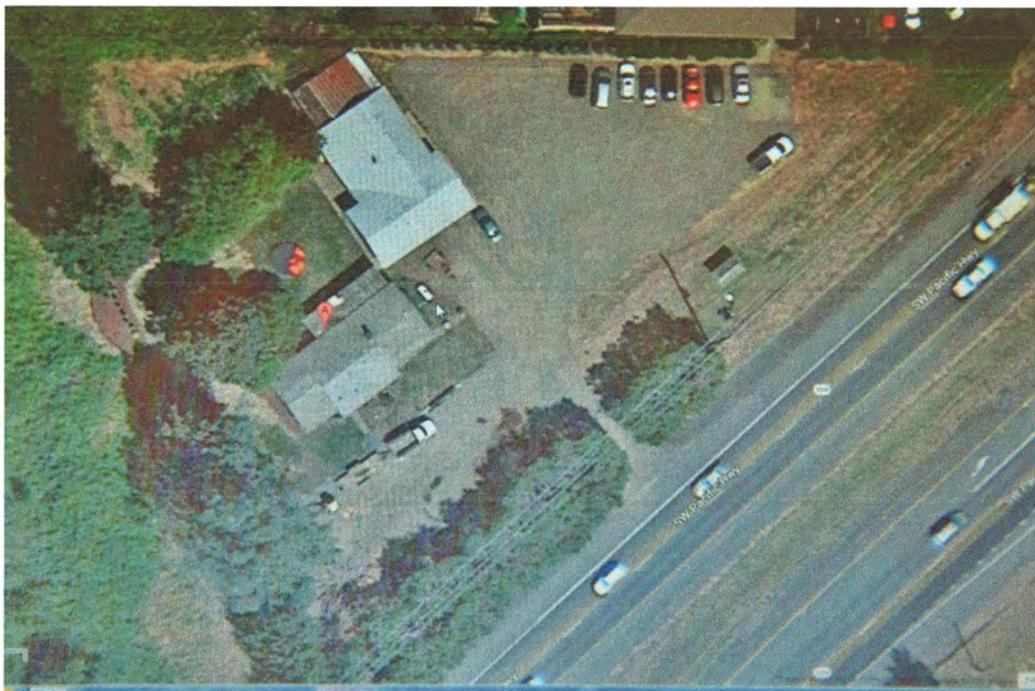


Figure 3: TL #2100 Image After Illegal Work



Figure 4: TL #1600 with Visual Corridor Trees "topped"  
 (Note contrast with similar trees to left in photo and their height)



Figure 5: View of TL #2100- Highlighted

Orange= Parking Lot for TL #1600 benefit, Hatched Pink= 25 ft visual corridor  
 Pink = Existing House and graveled parking areas  
 Blue = Vegetative Corridor, Hatched Blue = Estimated Cedar Brook Way Extension

#### D. PETITIONER'S REQUEST OF THE PLANNING COMMISSION

For this Petition For Review, according to Section 16.76.040, the Planning Commission "may act to affirm, reverse, remand, or amend the action being reviewed. The action of the Appeal Authority (Planning Commission) shall be the final City of Sherwood action on the application, unless remanded to the Hearing Authority. Upon remand, the decision of the Hearing Authority shall be the final City of Sherwood action."

Petitioner is requesting that the Planning Commission **REVERSE** the action from the hearing officer and asking that SP 13-01 be denied. The two properties TL #1600 and TL #2100 are being merged for parking purposes as well as for utility and garbage storage purposes. Changes are requested to the original 2006 site plan on TL #1600 that now expands the site plan to include part of TL #2100, yet this is not designated in the application as a separate site plan review or modification to the original site per the site planning practices as outlined in Section 16.90 et.seq. of the municipal code. That site plan is NOT in compliance with its original approvals and appears to have been illegal from the date of occupancy. This SP 13-01 file is and has always been incomplete for code purposes to process the site planning for TL #2100 and #1600. Both sites have to be site planned because changes are requested to be made to the original site plan for TL #1600 as well as site planning for TL #2100. As it stands now, both sites are tied together and have been developed-- with millions of dollars being spent. This isn't just a negligible development of a parking lot. It involves the entire three acres of both sites. The code has been cherry picked to give the impression that this isn't full site development. Looking at the highlighted areas on Figure 5, between the house and heavy equipment storage, the parking lot for the benefit of TL #1600, the vegetative corridor, and the Cedar Brook Way Extension, there's not much more that can be squeezed on to the site. Also, viewing the adjoining TL #1600 in conjunction with TL #2100, there is full development of the Cedar Brook Professional Building. With all of the development now, and the parking lot given for the benefit of TL #1600 that represents 50% of the usable land for TL#2100-- how is the Cedar Brook Way roadway dedication not justified now? The city and applicant are attempting to make the argument that at some point in the future with only 50% of the usable tax lot #2100 available it will have a major redevelopment that will justify the Cedar Brook Way extension-- how? Look at the site planning requirements for the Cedar Brook Professional Building-- it was so under parked from the 2006 approvals that it is non-conforming and required MORE land from the neighboring parcel to achieve code compliance in the parking standards-- and it is located on 8/10th of an acre. Now TL#2100 will have all of approximately 1/2 an acre to build on-- if the house is torn down and not converted to a commercial use-- as it appears to be now.

The Hearings Officer gave an approval to TL #2100 based on a variety of conditions. Instead of dealing with the copious amounts of illegal, non-permitted actions of the applicant, the hearings officer made an improper judgment call that he did not have code authority to deal with the land use planning issues involved in SP 13-01. On the contrary, Petitioner asserts that a logical remedy exists within the code to deal with non-compliance matters in site plans, See Section 16.90.030 A & B. Specifically the hearings officer could use the remedy of Revocation "Any departure from approved plans shall be cause for revocation or applicable building and occupancy permits. Furthermore, if, in the City's determination, a condition or conditions of site plan approval are not or cannot be satisfied, the site plan approval, or building and occupancy permits, shall be revoked."

Doyel deliberately and willfully made changes to the original site plan including topping the trees in the visual corridor, modifying the pedestrian access on TL #1600 to include allowing illegal pedestrian access from TL #2100's illegal parking lot that he created without permits, and expanded the parking for TL #1600 via TL #2100's illegal conversion from vegetation to a graveled area. Doyel testified that the parking spaces in front of the dental building that were designated with the dental building are now not available because other people such as neighboring apartment dwellers are using them. The original site plan from 2006 is non-conforming on TL #1600. TL #2100 is non-conforming and in all probability both are illegal. Neither site is becoming conforming with this site plan application. For instance, Sherwood's municipal code Section 16.98.020 does not allow for off site storage of solid waste and recycling: "All uses shall provide solid waste and recycling storage receptacles which are adequately sized to accommodate all solid waste generated on site. (emphasis added). All solid waste and recycling storage areas and receptacles shall be located out of public view. Solid waste and recycling receptacles for multi-family, commercial, industrial and institutional uses shall be screened by six (6) foot high sight-obscuring fence or masonry wall and shall be easily accessible to collection vehicles. The applicant is proposing to move the solid waste/recycling from TL #1600 on to TL #2100 and build a vegetation fence blocking the "site line" to enter 99W.

The Hearings Officer and city staff have incorrectly allowed an approval for these two tax lots without providing the proper public infrastructure according to city code. Chapter 16.104.020 states that "The precise alignment and location of a public improvement shall be established during the land use process and shall be depicted on public improvement plans submitted and approved pursuant to Section 16.108 and other applicable sections of this Code." By attempting to characterize this merged site plan as piecemeal, the general and specific land use plans for Sherwood are being violated as well as expanding Doyel's illegal uses. Mr. Doyel is developing these lots yet is not being required to dedicate a public road way designated in the Sherwood Transportation Plan.

Knob Properties, LLC owns TL #2100 which will have the new parking lot. On page 14 of his Final Order, the hearings officer said that the parking lot 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." Again the Sherwood city code does not define "commercial" or "commercial parking lot" however the hearings examiner infers from the code that commercial activities such as the parking lot cannot be rented or leased-- including charging the building tenants Pacific Family Dental, Bittner Dentistry For Kids, Wilson Orthodontics, Sherwood Oral Surgery or any other building tenant rent or increased rent based upon the addition of the new parking lot. Knob Properties should not be able to rent or lease to Handle Properties either as it would create a commercial relationship/use of the parking lot. The condition of approval should have expressly stated that no renting, leasing, or value exchange of any kind can occur regarding the entire parking lot because it has not been reviewed as a commercial parking lot. As the hearings officer also states on p. 14 of his Final Order, "the parking lot expansion is intended solely to provide additional parking for the existing dental office building on tax lot 1600." It cannot provide that additional parking at a cost (rent, lease, barter, or any other form of remuneration) to the dental office building owners or tenants. Approval of this application does not allow Mr. Doyel or Knob Properties as owners of the lot to receive rent, lease, barter or any other form of remuneration for the use of the parking lot. The Planning Commission either needs to AMEND the hearing officer's

condition of approval to specify the same, or needs to REVERSE the hearings officer's Final Order. Of course, central to this problem is Doyel hides the facts of his multi-tenant incoming generating commercial activities.

This parking lot must stay with TL #1600 or Cedar Brook Professional Building is in violation of current parking standards-- it can never again rely on its own land and the public parking spaces to be in compliance at the nonconforming amount of 48 spaces. Sherwood code does not allow old site plan standards to revert if for some reason, the parking lot use agreement with TL #2100 ceases. The hearings officer and therefore the city has taken the applicant at its word that Knob Properties will not charge rent, lease, barter or any other form of remuneration for the use of the parking lot on TL #2100. This should be a basis for REVOCATION of the site plan if Doyel tries to receive any form of remuneration for the non-commercial parking lot on TL #2100 and he admits in the report that the new parking area will be for "employees and patrons" of his tenants but apparently we are to trust that they will not pay rent for the use of the parking lot.

For these and many other reasons further discussed in this Petition and accompanying comments to the Hearings Officer's Final Order, Petitioner is requesting REVERSAL of the hearing officer's final order.

#### E. ADOPTED FINDINGS OF FACT

The contract Hearing Officer, an attorney and AICP planner, Mr. Joe Turner produced a Final Order for Case No. SP 13-01 signed and dated November 22, 2013. In his 68 page Hearing Officer Final Order he includes his Adopted findings of fact. His Final Order is attached to this Petition of Review as Exhibit 1. Petitioner also attaches a copy of the Final Order with Petitioner's comments inserted in red ink with the word COMMENT: preceding each set of comments as Exhibit 2.

Additionally, Planning Manager Kilby has confirmed that the entire record for SP 13-01 is made part of this appeal proceeding and will be given to each of the Planning Commission members. Per Sherwood Municipal Code 16.76.030 "the record of the land use action and any City Staff review of the issues subject to the appeal shall be made a part of the record before the Appeal Authority." It is appellant's understanding that the planning commission members will each be receiving a copy of the entire record for this Petition of Review. Petitioner's records of objections to this SP 13-01 are additionally contained throughout the entire record.

#### F. STATEMENT OF HOW THE PETITIONER IS AGGRIEVED

Petitioner is aggrieved at the outrageous and excessive fee to appeal this local decision to another local body. The state's Land Use Board of Appeals only charges \$400 for an appeal of a land use decision to the LUBA judges. The City is violating GOAL #1 of the Oregon's Statewide Planning Goals and Guidelines that are designed not to "chill" citizen involvement in the local land use planning process. Additionally, according to ORS 215.422(1)(c):

The governing body may prescribe, by ordinance or regulation, fees to defray the costs incurred in acting upon an appeal from a hearings officer, planning commission or other designated person. The amount of the fee shall be reasonable and shall be no more than the average cost of such appeals or the actual cost of the appeal, excluding the cost of preparation of a written transcript. The governing body may establish a fee for the preparation of a written transcript. The fee shall be reasonable and shall not exceed the actual cost of preparing the transcript up to \$500.

The city has not proven that the fee being charged is reasonable or that it is "no more than the average cost" of such appeals. The Planning Manager merely cites the current fee schedule for the city, which charges 1/2 of the cost of the application fee charged to the applicant. Petitioner requests that the Planning Commission reduce this excessive fee to bring it in line with the spirit and intent of Goal #1 and ORS 215.422 (1) ( c). Petitioner also requests a refund of the appeal fee in the case that the Planning Commission reverses, remands, or amends the action being reviewed.

The code language presented to describe and direct the local appeal has problems. This appeal requirement is a typical example. The word "aggrieved" is not defined in the code. What does aggrieved mean in the context of achieving a successful appeal at the local level? Petitioners have objected to the vague, arbitrary and capricious words in the Sherwood code repeatedly. We have complained that this vague, arbitrary and unreasonable language on such words as "abut" simply give the city staff, paid consultants and contract agents a right to manipulate our property and civil rights in an arbitrary, capricious and unreasonable fashion. It does not meet due process and equal treatment tests. Using such language in code documents that can jail people and violate due process and equal treatment is inappropriate. These are the same codes we are forced to deal with in the Doyel matter. Put another way, you are making political decisions based on zoning applications based on who the individual or applicant has supported as elected officials. While I apologize for this statement and would hope it is not true but believe it is, in short it is my opinion and belief it is true, it demonstrates one way we are "aggrieved" in this current SP 13-01 decision.

Petitioner is also aggrieved in several ways by this land use application and land use process as it has unfolded. There has been unequal treatment of the Sherwood Municipal Code interpretations by city staff resulting in 14th Amendment violations. The City chose to specify a road on the Transportation System Plan (TSP) known as Cedar Brook Way. In this land use process, the staff, specifically the Community Development Manager Julia Hadjuk, and Planning Manager Brad Kilby, decided not to require that Cedar Brook Way be put in or the right of way dedicated. Staff stated that the road requirement would be an exaction requiring the city to pay and therefore they would not be requiring the road or dedication of the right of way. No evidence was presented by the applicant or the city to justify not requiring the dedication. Per Chapter 6 Goal #3, Policy #16, Strategy #6 of the city's Comprehensive Plan, the city is supposed to " provide specific guidelines for determining the proportional benefit contribution associated with the requirements (or non-requirement-- Petitioner's comment) for street dedication and the construction of off-site transportation improvements." Petitioners have asked for and never been responded to regarding the analysis used by the applicant and the city that resulted in the non-requirement of the Cedar Brook Way road or dedication. They constructively merged both TL #1600 and #2100 in the SP 13-01 application; yet they try to claim that the millions of dollars spent on the Cedar Brook Professional Building and now its parking upgrades do not justify the Cedar Brook Way road

dedication. Per Section 16.106.020 "all developments containing or abutting an existing or proposed street, that is either unimproved or substandard in right-of-way width or improvement, shall dedicate the necessary right-of-way prior to the issuance of building permits and/or complete acceptable improvements prior to issuance of occupancy permits."

Staff has made some assertions that Cedar Brook Way is not needed by the Doyel lots. The problem however, is that TL #2100 was paid for its highway access some years ago. The legal access for TL #2100 is Cedar Brook Way. Doyel is proposing to change the access for TL #2100 to Handley Drive through TL#1600's parking lot. The hearings officer notes that "the site takes access from SW Handley Street." However, the legal road access for TL #2100 is Cedar Brook Way. Doyel bought TL #2100 knowing of these constraints. Attempting to constructively change the legal access of TL#2100 through the parking lot of TL #1600 and on to Handley Drive cannot be done unless the properties are legally merged or conditions noted that the access for the TL #2100 land associated with the TL#1600 parking lot is only for parking lot purposes and cannot at a future date be opened up to allow other parts of TL #2100 to access Handley Street.

IF THE CITY IS SERIOUS ABOUT CEDAR BROOK WAY as a viable road through this district, then it cannot allow a favored party like Nathan Doyel to deconstruct the development code to avoid dedication and/or building of this road. It is on the TSP plan for the city and has been used as a foil by the city in the past to STOP development of Petitioners property. Petitioner is asking at a minimum from the Planning Commission for the dedication of the Cedar Brook Way road to the southern end of TL #2100 where the property meets Petitioners property. Additionally, Doyel has paid over \$500,000 in impact fees -- why can't some of that be rebated?

Petitioner is being forced to appeal the decision because Petitioner believes that the city is constructively inversely condemning Petitioners property by mandating Cedar Brook Way be placed on Petitioners property upon development, but not requiring the extension of Cedar Brook Way by the Doyel properties during the land use process. On page 49 of the hearings officer's order, there is mention that "future extensions of the street system" are not physically precluded by the proposal. The hearing officer fails to mention however that Petitioner or any other private party does not have condemnation authority or the ability to force a sale or transaction upon a neighbor. Doyel is developing his two parcels now, yet not being required to build a TSP mandated road. Petitioner has no ability to extend Cedar Brook Way on property owned by Mr. Doyel by law. Doyel is now in control of Claus' property and can ask any price of Claus or other neighbors to "sell" his Cedar Brook Way right -of-way. Petitioners are exhausting administrative remedies, trying to resolve and avoid the inverse condemnation the city is forcing on Petitioners property which will result in more than 50% diminution of value to Petitioner's property by this act alone.

The staff violated the city's Community Development plan and general land use plan as well as the transportation system plan by not requiring the roadway to be built. The Sherwood municipal code does not give the staff the flexibility to make an arbitrary determination to not require a TSP mandated road. The two Doyel properties abut the Cedar Brook Way extension. At the time of the original application, Doyel did not build Cedar Brook Way the entire length of the abutting property. Per the city code, when the road abuts the applicant is supposed to build to the next property, . For this application'

purposes, Cedar Brook Way should have been extended to the Claus property at TL #2S131BA-02000. In the 2006 application process, the City already assessed the Doyel Cedar Brook Professional Building approximately \$500,000 toward the street impact fees. Much of that money has already been collected from Doyel by the city. They should have street monies to pay for the land dedication and to offset the street construction. Instead, the city is attempting to allow Doyel to expand his two non-conforming sites and make it easy for Doyel to continue his uses in perpetuity while stopping the Cedar Brook Way extension for the district.

Petitioners have lived on adjoining TL #2S131BA-02000 for almost thirty years. As part of the City of Sherwood's general land use plan, the city has mandated via their Transportation System Plan (TSP) that a road, Cedar Brook Way, be built through a handful of properties located along Pacific Highway and along Handley Street. Petitioners were told (and confirmed in writing by Julia Hajduk) by city staff during pre-application meetings for the Claus property that the city would require "cross easements" from the neighboring properties for the Cedar Brook Way extension to insure that the neighbors would have access to this so called Cedar Brook Way road that staff has used to stop development of the Claus property. All things being equal, staff policy of cross easements for the neighbors should have applied to the Doyel properties as part of the development application process. Instead, staff, the city contract attorneys, and the Hearings Officer have determined that no cross easements, no dedication, no road construction is required for the Doyel properties as well as allowing--if not encouraging illegal activities by Doyel. If the staff is not going to enforce a TSP mandated road, then the general and specific plans of the municipal code are being violated.

The spirit and intent of the city's site planning process has been willfully violated by Mr. Doyel when he decided to perform extensive site work on TL #2100 without any approved site plan or permits mandated by Municipal Code Sections 16.90.010-16.90.030. Mr. Doyel illegally cut down trees on TL #2100 and illegally trimmed trees in the visual corridor for TL #1600. He removed vegetation from TL #2100 and made graveled parking areas on the high ground of the site--- increasing the non conformity of TL #2100 and also of TL #1600. His activities were reported to the staff several times by neighbors during a 17 month period of time for his illegal, non-permitted actions. Staff chose to ignore his illegal behavior. Only when the state police were going to be brought into the problem to deal with the illegal behavior did the local code enforcement officer obtain permission to write a cease and desist letter in August of 2013 did Mr. Doyel cease allowing his employees and his tenants' employees to park their cars on TL #2100 and enter/exit on 99W.

The City of Sherwood has a local municipal zoning code that is part of the city's general plan. As such, the city has enacted ordinances governing the land use activities in the town. The city's general plan also contains rules and procedures for the land use activities as well as penalties and legal consequences for parties who decide to unilaterally make changes to their property without city review and approval.

Both tax lots need their own site plan reviews-- unless the parcels are being merged. The Doyel application did not provide full site plan review criteria for TL #2100 or for TL #1600. The SP 13-01 designates a site plan approval for part of the two tax lots and the hearings officer collectively calls them "the site." TL #2100 however, was only partially addressed in the site plan process. According to Section 16.90.020 of the code, "site plan review shall be required prior to any substantial change to a site

or use, issuance of building permits for a new building or structure, or for the substantial alteration of an existing structure or use" TL #1600 will now have more than one acre of parking assigned and the entire TL# 2100 developed.

#### G. SPECIFIC GROUNDS RELIED UPON IN REQUESTING A REVIEW

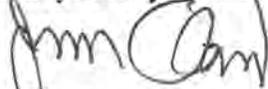
The Sherwood municipal code outlines an appeal process to request a review of the Hearings Officer's decision. It is found in Section 16.76. Per this section of the code, the Petitioner is requesting a review of the Hearing Officer's Final Order for SP-13-01.

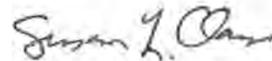
#### H. SOME PROPOSED FINDINGS OF FACT FOR REVERSAL

Petitioner offers several proposed findings of fact to assist the Planning Commission in reversing the hearings officer's decision. This is by no means a complete listing.

1. Nathan Doyel unilaterally and knowingly violated city code and the 99W visual corridor when he cut trees down, "topped" trees that were in the way of his business sign,
2. Doyel allowed employees of the dental site to enter/exit off of 99W and park their cars illegally for some 17 months.
3. Doyel bought the property at 22065 with knowledge of the requirement to extend Cedar Brook Way upon development.
4. Doyel is allowing his tenant at 22065 to park heavy construction equipment on site in areas that previously had vegetative cover.
5. Doyel's original permit on TL #1600 has been non-conforming and illegal.
6. Doyel violated 99W ingress and egress for both TL #2100 and #1600.
7. Doyel violates the state well regulations on TL #2100.
8. Doyel and his partner still illegally is parking on TL #2100 while this process is ongoing.
9. Doyel has damaged adjacent water drainage and wetlands buffers.
10. Doyel violated the vegetative corridor.

Thank you for your time in reviewing these matters.

  
Jim Claus



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

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

**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 electric transformer vault. The site and surrounding properties to the southwest, north, across SW Handley Street, and east, across Highway 99, are zone GC (General Commercial). Properties to the northwest 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 Report to the hearings officer dated October 17, 2013 (the "Staff Report") incorporated herein by reference, except to the extent modified by or inconsistent herewith.

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

EXHIBIT 1

- 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 GC zone. The applicants will also relocate the existing 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 corridor between the new parking lot and Highway 99. The applicants can rely on the existing vegetation to provide a visual corridor 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 concerns 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 northwest corner of the site, abutting the west boundary 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 of this 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 lot 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 2100 without required permits. The City enforcement section has been working with tenant and the applicants for roughly 17 months to bring the property into compliance.

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

i. He testified that he was not aware of any ODOT or CWS concerns regarding right-of-way dedication for this project. He 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 storm 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.

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 stormwater 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.

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.

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.

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.

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, until he threatened to contact the state police. The City never imposed daily fines for the violation and never prohibited Mr. Platt 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 on tax lot 2100 is an illegal use. However the City plans to allow Mr. Platt to continue parking his vehicles and equipment in the illegal 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 existing illegal parking use. Therefore the existing parking use should have been included in the application. The applicants should be required to remedy the existing violation and restore the site to its preexisting condition before this application is approved.

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.

f. If the applicants are not required to extend Cedar Brook 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.

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 land 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.

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 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 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 argument 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)(c) provides:

If the 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 file 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, “[s]ubmitted 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 letter 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 issues were raised in public comments submitted prior to, during, and after the public hearing in this case.<sup>1</sup>

##### 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 property. 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.

##### 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 continue to be used together.

##### Change of use, act of parceling, or lot line adjustment:

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<sup>1</sup> 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 currently 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 of land, a premise or a building 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.” In this case the applicants are proposing a “change to a parcel of land...” A portion of tax lot 2100 will be changed from residential to commercial parking lot. However that change will not “create[] a change in vehicular trip generation 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.

Future Lot line adjustment:

The applicants are not currently seeking a lot line adjustment. If the applicants submits 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. The hearings officer has no authority to impose a condition of approval prohibiting approval of a lot line adjustment on this site.

The existing medical office building is nonconforming 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 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 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 SZDC 16.48, which requires that alterations of non-conforming uses bring the use into compliance with current Code requirements.

Allegations that the traffic analysis for the existing dental office underestimated 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.

Self imposed hardship

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

### 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.

### 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.

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 address 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. If 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.<sup>2</sup>

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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<sup>2</sup> ORS 197.522 provides as follows:

A local government shall approve an application for a permit, authorization or other approval necessary for the subdivision or partitioning of, or 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 of reasonable conditions of approval.

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 permits 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.

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.

Handley 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.

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

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" between the impacts of the proposed development and the need for this street extension. *Nollan v. California 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.

The Clauses may be correct that expansion of the parking lot onto tax lot 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.

#### 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.

#### Alteration of the nonconforming use:

The existing single-family residence on tax lot 2100 is a nonconforming use. Single-family residences are not permitted 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.

#### 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.

#### 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. In this instance, the properties are zoned General Commercial (GC)**

**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 northeast corner of tax lot 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 permitted 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 are 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.

The applicants cannot transfer this parking area to another use in the future. The existing office building is nonconforming with respect to the minimum parking requirements of the current code.<sup>3</sup> 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 would 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 16.22.020, 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 proposing 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.

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<sup>3</sup> 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.

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 SZDC 16.22.030.A. In theory, 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.

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.<sup>4</sup> No new buildings or structures are being proposed as part of this project.<sup>5</sup> 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, VIII 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**

<sup>4</sup> 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.”

<sup>5</sup> 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.

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, storm 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.

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 groundcovers that would be planted upon approval. Specifically, the plan states that prior to ground disturbance, an erosion control permit is required through the City. Additionally, a maintenance plan describing 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 approval, the applicants shall submit evidence-demonstrating compliance with the required conditions provided by Clean Water Services File Number 13-001610, **Exhibit K**. This includes obtaining City of Sherwood Building Department approval for any grading or erosion control plans.

- 5. 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 Program<sup>6</sup> and this standard is not applicable to the proposed development.

Mr. Claus argued that the applicants are trying to “offset his mistake” of providing inadequate parking for the existing dental office. p. 15 of Exhibit P. The hearings officer finds that the applicants’ subjective purposes for building this parking lot are irrelevant. There is no dispute that the dental office does not comply with the minimum parking requirements of the current Code. The existing dental office complied with the minimum parking requirements of the Code in effect when the use was originally approved. Those requirements have since changed. The proposed parking lot expansion will bring the use into compliance with the minimum and maximum parking requirements of the current Code.

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<sup>6</sup> Provides, in relevant part:

The following types of projects and activities are specifically excluded from the provisions of this program:

...

3. Changes in use that do not increase the number of trips generated by the current use.

Mr. Claus argued that the applicants are seeking this approval so they can then apply for a lot line adjustment. p. 15 of Exhibit P. Assuming Mr. Claus' allegations are correct, they are irrelevant. If the applicants or their successors in interest submit an application for a lot line adjustment in the future, the City will review that application subject to the criteria in effect when the application is filed.

- 6. For developments that are likely to generate more than 400 average daily trips (ADTs), or at the discretion of the City Engineer, the applicants shall provide adequate information, such as a traffic impact analysis or traffic counts, to demonstrate the level of impact to the surrounding street system. The developer shall be required to mitigate for impacts attributable to the project. The determination of impact or effect and the scope of the impact study shall be coordinated with the provider of the affected transportation facility.**

**FINDING:** The proposed parking lot extension will not increase vehicular traffic to the site. No changes are proposed for the existing office building that would cause an increase in vehicular traffic to the site. Therefore, this standard is not applicable to the proposed development.

Mr. Claus appears to be raising an issue about whether the proposed parking lot is "needed." p. 16 of Exhibit P. However, whether additional parking is "needed" to serve the existing dental office building is irrelevant. The only relevant issue is whether or not the application complies with the applicable approval criteria.

- 7. The proposed office, retail, multi-family, institutional or mixed-use development is oriented to the pedestrian and bicycle, and to existing and planned transit facilities. Urban design standards shall include the following:**
  - a. Primary, front entrances shall be located and oriented to the street, and have significant articulation and treatment, via facades, porticos, arcades, porches, portal, forecourt, or stoop to identify the entrance for pedestrians. Additional entrance/exit points for buildings, such as a postern, are allowed from secondary streets or parking areas.**
  - b. Buildings shall be located adjacent to and flush to the street, subject to landscape corridor and setback standards of the underlying zone.**
  - c. The architecture of buildings shall be oriented to the pedestrian and designed for the long term and be adaptable to other uses. Aluminum, vinyl, and T-111 siding shall be prohibited. Street facing elevations shall have windows, transparent fenestration, and divisions to break up the mass of any window. Roll up and sliding doors are acceptable. Awnings that provide a minimum 3 feet of shelter from rain shall be installed unless other architectural elements are provided for similar protection, such as an arcade.**

**FINDING:** This approval criterion only applies to buildings. No new buildings are proposed with this application. The parking lot will serve the existing dental office on tax lot 1600. No changes are proposed for the existing building, which is already oriented to Handley Street. The proposed parking lot extension would be located behind or to the side of the existing building depending on the frontage, but the parking is not proposed between the building and existing right-of-way. Therefore, this standard is not applicable to the proposed development.

Mr. Claus argues that any development on tax lot 2100 must connect to SW Cedar Brook Way, p. 16 of Exhibit P. However the plain language of this approval criterion does not support such a requirement. This criterion only applies to buildings, and no new buildings are proposed.

## **16.92 – Landscaping**

### **16.92.010 – Landscape Plan**

**All proposed developments for which a site plan is required pursuant to Section 16.90.020 shall submit a landscaping plan which meets the standards of this chapter. All areas not occupied by structures, paved roadways, walkways, or patios shall be landscaped or maintained according to an approved site plan.**

**FINDING:** The proposed landscape plan meets the standards of this chapter based on the following findings. This standard is satisfied.

### **16.92.020 – Landscaping Materials**

#### **A. Type of Landscaping**

**Required landscaped areas shall include an appropriate combination of native evergreen or deciduous trees and shrubs, evergreen ground cover, and perennial plantings. Trees to be planted in or adjacent to public rights-of-way shall meet the requirements of this Chapter. Plants may be selected from the City's "Suggested Plant Lists for Required Landscaping Manual" or suitable for the Pacific Northwest climate and verified by a landscape architect or certified landscape professional.**

**ANALYSIS:** The proposed landscaping includes the addition of perimeter landscaping and six landscape islands, and the applicants are proposing to maintain all existing on-site landscaping. The proposed plants include a combination of evergreen and deciduous species including trees, shrubs and groundcover. However, it is not clear that the proposed plants are "native." This standard could be easily met if the landscape architect submits a letter certifying that the plants are included on the City's "Suggested Plant Lists for Required Landscaping Manual" or are native plants suitable for the Pacific Northwest climate.

**FINDING:** The hearings officer cannot confirm that the proposed plants comply with the selection requirements of this section. However the hearings officer finds that this

standard can be met if the applicants submit a letter certifying that the plants are native and/or most appropriate for the site or if they modify the plant list to provide the required native plants.

**CONDITION:** Prior to final site plan approval, the applicants shall submit a letter from the landscape architect certifying that the plants are native and/or are the most appropriate for the site or if they modify the plant list to provide the required native plants.

**B. Plant Materials Selection and Preparation**

- 1. Required landscaping materials shall be established and maintained in a healthy condition and of a size sufficient to meet the intent of the approved landscaping plan. Specifications shall be submitted showing that adequate preparation of the topsoil and subsoil will be undertaken.**
- 2. Landscape materials should be selected and sited to produce a hardy and drought-resistant landscape area. Selection of the plants should include consideration of soil type, and depth, the amount of maintenance required, spacing, exposure to sun and wind, the slope and contours of the site, and compatibility with existing native vegetation preserved on the site.**

**FINDING:** The proposed landscaping plan states how the new landscape materials will be established and maintained in a healthy condition and sufficient size. The landscaping plans do not indicate how the topsoil or subsoil preparation will be undertaken. This standard is not met, but can be met as conditioned below.

Mr. Claus' argued that the applicants' contractors and engineers should be required to explain the prior grading and construction impacts on this site. p. 21 of Exhibit P. However the applicants' past activities on this site are not relevant to this approval criterion. It could be argued that grading and gravel filling on this site altered the soil conditions in a way that will prevent the establishment and survival of required landscaping. However the hearings officer finds that it is feasible to prepare the topsoil and subsoil in the planting areas to ensure the establishment and survival of required landscaping. If necessary, the applicant can add soil amendments or replace the existing soil within landscaped areas to provide adequate growing conditions.

**CONDITION:** Prior to final site plan approval, the applicants shall submit additional information on how the topsoil or subsoil preparation will be undertaken to ensure that the new landscape plants will receive the appropriate nutrients and soil conditions to survive.

- C. Existing Vegetation - All developments subject to site plan review as per Section 16.90.020 and required to submit landscaping plans as per Section 16.92.020 shall preserve existing trees, woodlands and vegetation on the site to the maximum extent possible, as determined by the Commission, in addition to complying with the provisions of Section 16.142.060.**

**FINDING:** The applicants have noted that they are proposing to maintain all existing landscaping. The landscape plan preserves vegetation to the maximum extent possible. Therefore, this standard is satisfied.

Mr. Claus notes that the applicants previously removed much of the existing vegetation, including trees, on this site to accommodate construction of the gravel parking area. p. 21 of Exhibit P. This appears to be true, based on the photographs submitted by the Clauses. See pp. 2 & 3 of Exhibit P. That clearing and grading activity may constitute a code violation. However those past actions are not relevant to the application before the hearings officer. No additional vegetation removal is proposed with this application. The City can only address prior violations through its enforcement processes. Those prior clearing activities will not preclude compliance with this approval criterion.

**D. Non-Vegetative Features - Landscaped areas as required by this Chapter may include architectural features interspersed with planted areas, such as sculptures, benches, masonry or stone walls, fences, rock groupings, bark dust, semi-pervious decorative paving, and graveled areas. Impervious paving shall not be counted as landscaping. Artificial plants are prohibited in any required landscaped area.**

**FINDING:** The proposed plans show a mixture of existing trees, shrubs and low growing ground cover. No hardscapes are proposed to be counted towards the landscape requirement for this development. Therefore this standard is satisfied.

Mr. Claus asserts that, "This is a clear acknowledgement that [this is] treated as a separate lot and development from the 17680 Handley lot." p. 21 of Exhibit P. However Mr. Claus failed to show any correlation between his argument and this approval criterion or explain how this finding is "acknowledgement" that the applicant and/or staff are treating tax lots 1600 and 2100 as separate developments.

Landscaping, including any hardscaping or architectural features, on tax lot 1600 was reviewed when the dental office was originally approved. No changes are proposed to those existing landscaped areas, except along the southern edge of the existing parking lot on tax lot 1600. There is no hardscaping, architectural features or other features listed in this criterion within the existing landscaped areas that will be altered by this development.

#### **16.92.030 - Site Area Landscaping and Perimeter Screening Standards**

##### **A. Perimeter Screening and Buffering**

- 1. Perimeter Screening Separating Residential Zones – A minimum six-foot high sight-obscuring wooden fence, decorative masonry wall, or evergreen screen, shall be required along property lines separating single and two-family uses from multi-family uses, and along property lines separating residential zones from commercial, institutional/public or industrial zones subject to the provisions of Chapter 16.48.020 (Fences, Walls and Hedges).**

- a. **For new uses adjacent to inventoried environmentally sensitive areas, screening requirements shall be limited to vegetation only to preserve wildlife mobility. In addition, the Review Authority may require plants and other landscaping features in locations and sizes necessary to protect the privacy of residences and buffer any adverse effects of adjoining uses.**

**FINDING:** The site is zoned commercial and it abuts residential zoned properties at the northwest corner of tax lot 2100, west of Cedar Brook Way. Screening is required to separate this commercially zoned property from the abutting residential zoned property. However the northwest corner of the site is a protected drainageway and vegetative buffer.

SZDC 16.92.030.B(7) allows for reduction or modification of the landscape standards when necessary to protect environmentally sensitive areas. Therefore the applicant should not be required to provide a fence or hedge in this location. The applicants are required to plant additional vegetation to enhance the vegetative buffer. In addition, the proposed development on this site is located more than 100 feet from these residential zoned properties, The hearings officer finds that this physical separation, combined with the required mitigation plantings within the vegetative buffer, will provide adequate screening and buffering between the development on this site and adjacent residential zoned properties.

There is an existing single-family residence in the southwest corner of the site. The applicants proposed to provide a hedge comprised of trees, evergreen shrubs, and groundcover between the proposed parking lot and the existing residence on tax lot 2100. The proposed evergreen shrub that would form a substantial portion of the hedge is identified as the Pacific Wax Myrtle, which has the potential to grow up to 30 feet in height without pruning, which would exceed the six (6) foot height requirement and will protect the privacy of persons residing in the residence on the site. This standard is satisfied.

Mr. Claus argued that the applicants should be fined for the prior illegal clearing and grading performed on the site. p. 22 of Exhibit P. That may be appropriate. However, as discussed above, the hearings officer has no authority to impose fines or take other enforcement action. The applicants' past actions are not relevant to the approval criteria for this development application.

## **2. Perimeter Landscape Buffer**

- a. **A minimum ten (10) foot wide landscaped strip comprised of trees, shrubs and ground cover shall be provided between off-street parking, loading, or vehicular use areas on separate, abutting, or adjacent properties.**

- b. **The access drives to a rear lots in the residential zone (i.e. flag lot) shall be separated from abutting property(ies) by a minimum of forty-two-inch sight-obscuring fence or a forty-two-inch to an eight (8) feet high landscape hedge within a four-foot wide landscape buffer. Alternatively, where existing**

**mature trees and vegetation are suitable, Review Authority may waive the fence/buffer in order to preserve the mature vegetation.**

**FINDING:** The landscape plan identifies a ten (10) foot wide hedge comprised of trees, evergreen shrubs, and groundcovers between the proposed parking lot and the existing dwelling on tax lot 2100. The proposed evergreen shrub that would form a substantial portion of the hedge is identified on the landscape plan as the Pacific Wax Myrtle, which has the potential to grow up to 30 feet in height without pruning, which would exceed the eight (8) foot height requirement. This standard is satisfied.

## **B. Parking Area Landscaping**

**Purpose** The standard is a landscape treatment that uses a combination of trees, shrubs, and ground cover to provide shade, storm water management, aesthetic benefits, and screening to soften the impacts of large expanses of pavement and vehicle movement. It is applied to landscaped areas within and around the parking lot and loading areas.

### **2. Definitions**

**a. Parking Area Landscaping:** Any landscaped area on the site that is not required as perimeter landscaping § 16.92.030 (Site Landscaping and Screening).

### **b. Canopy Factor**

(1) Landscape trees are assigned a canopy factor to determine the specific number of required trees to be planted. The canopy factor is calculated based on the following formula:

**Canopy Factor = Mature Height (in feet) × Canopy Spread (in feet) × Growth Rate Factor × .01**

(2) **Growth Rate Factor:** The growth rate factor is three (3) for fast-growing trees, two (2) for medium growing trees, and one (1) for slow growing trees. The growth rate of a tree is identified in the "Suggested Plant Lists for Required Landscaping Manual."

### **3. Required Landscaping**

There shall be at least forty-five (45) square feet parking area landscaping for each parking space located on the site. The amount of required plant materials are based on the number of spaces as identified below.

**FINDING:** According to the applicants' landscape plan and statement, the parking lot expansion site area would remove two parking stalls and add 37 new parking stalls. This would require a minimum of 1,665 square feet (45 square feet x 37 =

1,665 square feet) of parking area landscaping. The applicants are proposing 2,025 square feet of landscaping, which exceeds the requirement. This standard is satisfied.

**4. Amount and Type of Required Parking Area Landscaping**

**a. Number of Trees required based on Canopy Factor**

**Small trees have a canopy factor of less than forty (40), medium trees have a canopy factor from forty (40) to ninety (90), and large trees have a canopy factor greater than ninety (90);**

**(1) Any combination of the following is required:**

- (i) One (1) large tree is required per four (4) parking spaces;**
- (ii) One (1) medium tree is required per three (3) parking spaces; or**
- (iii) One (1) small tree is required per two (2) parking spaces.**
- (iv) At least five (5) percent of the required trees must be evergreen.**

**(2) Street trees may be included in the calculation for the number of required trees in the parking area.**

The applicants propose the following parking lot landscape trees:

Type of Tree	Number of Trees	Canopy Factor	Category of Tree	Parking space #
Incense Cedar	4	90	Medium	12 (4 x3)
Imperial Honey Locust	10	32	Small	20 (10 x 2)
Shore Pine	2	12	Small	4 ( 2 x 2)

**Total Combination of Trees = 36 parking spaces**

The applicants provided a combination of small and medium trees to account for 36 parking spaces. The applicants have proposed 37 parking spaces with their application and thus the landscape plan will need to be revised to include one (1) additional tree to address this deficiency in the number of required landscape trees within the parking lot.

**FINDING:** Based on the above discussion, the applicants have not met this standard but can do so with the following condition.

**CONDITION:** Prior to final site plan approval, provide a landscape plan that shows the appropriate combination of trees to satisfy the parking lot landscaping standard.

Mr. Claus appears to argue that the applicants should be required to restore the illegally graded areas on the site prior to approval of this application. p. 24 of Exhibit P. However, as discussed above, such prior activities are not relevant to this development application. The Code does not require applicants to remedy alleged violations prior to approval of new development on a site.

**b. Shrubs:**

**(1) Two (2) shrubs are required per each space.**

**(2) For spaces where the front two (2) feet of parking spaces have been landscaped instead of paved, the standard requires one (1) shrub per space. Shrubs may be evergreen or deciduous.**

**FINDING:** The applicants have provided a landscape plan that shows 74 shrubs and therefore meets this criterion.

**c. Ground cover plants:**

**(1) Any remainder in the parking area must be planted with ground cover plants.**

**(2) The plants selected must be spaced to cover the area within three (3) years. Mulch does not count as ground cover.**

**FINDING:** The applicants have provided a landscape plan that shows ground cover plants throughout the remainder of the landscaped area and therefore meets this criterion.

**5. Individual Landscape Islands Requirements**

**a. Individual landscaped areas (islands) shall be at least ninety (90) square feet in area and a minimum width of five (5) feet and shall be curbed to protect the landscaping.**

**b. Each landscape island shall be planted with at least one (1) tree.**

**c. Landscape islands shall be evenly spaced throughout the parking area.**

**d. Landscape islands shall be distributed according to the following:**

**(1) Residential uses in a residential zone: one (1) island for every eight (8) contiguous parking spaces.**

**(2) Multi or mixed-uses, institutional and commercial uses: one (1) island for every ten (10) contiguous parking spaces.**

**(3) Industrial uses: one (1) island for every twelve (12) contiguous parking spaces.**

**e. Storm water bio-swales may be used in lieu of the parking landscape areas and may be included in the calculation of the required landscaping amount.**

**FINDING:** According to the applicants' landscape plan, each landscape island would be a minimum of five feet wide and at least ninety (90) square feet in area. Additionally, each island contains one tree and is spaced evenly throughout the parking area. One landscape island is proposed for at least every ten (10) contiguous parking spaces. All landscape islands are proposed as having curbs to protect the landscaping. This standard is satisfied.

#### **6. Landscaping at Points of Access**

**When a private access-way intersects a public right-of-way or when a property abuts the intersection of two (2) or more public rights-of-way, landscaping shall be planted and maintained so that minimum sight distances shall be preserved pursuant to Section 16.58.010.**

**FINDING:** The proposed application does not propose any changes to the existing site access or sight distances where the private access-ways abut SW Handley Street. This standard is satisfied.

#### **7. Exceptions**

**a. For properties with an environmentally sensitive area and/or trees or woodlands that merit protection per Chapters 16.142 (Parks, Trees and Open Space) and 16.144 (Wetland, Habitat and Natural Areas) the landscaping standards may be reduced, modified or "shifted" on-site where necessary in order to retain existing vegetation that would otherwise be removed to meet the above referenced landscaping requirements.**

**FINDING:** There are no environmentally sensitive areas and/or trees or woodlands located on the disturbed portion of the subject site. The stream and associated vegetated corridor running along the west edge of the property will be protected and remediated as required by Clean Water Services. This standard is satisfied.

Mr. Claus testified that the applicants and their contractor cleared vegetation within the vegetated corridor. p. 25 of Exhibit P. However, as discussed above, such prior activities are not relevant to the approval criteria for this development application. In addition, the

applicants are required to plant additional vegetation within the vegetated corridor, which may mitigate the prior activities to some extent.

Mr. Claus further argued that CWS did not take further enforcement action, because CWS staff assumed that the applicants had proper permits for placement of gravel on the site. *Id.* Based on Mr. Claus' testimony, CWS' alleged assumption is incorrect. The applicants did not have permits to grade and gravel the site. However those past actions are not relevant to the approval criteria for this application.

- b. The maximum reduction in required landscaping buffer permitted through this exception process shall be no more than fifty (50) percent. The resulting landscaping buffer after reduction may not be less than five (5) feet in width unless otherwise permitted by the underlying zone. Exceptions to the required landscaping may only be permitted when reviewed as part of a land use action application and do not require a separate variance permit.**

**FINDING:** The applicants will reduce the required landscaping to some extent by not providing a hedge between the site and the adjacent residential zoned properties to the northwest. However that reduction will not reduce the required landscaping by more than fifty percent. This standard is satisfied.

#### **C. Screening of Mechanical Equipment, Outdoor Storage, Service and Delivery Areas.**

**All mechanical equipment, outdoor storage and manufacturing, and service and delivery areas, shall be screened from view from all public streets and any adjacent residential zones. If unfeasible to fully screen due to policies and standards, the applicants shall make efforts to minimize the visual impact of the mechanical equipment.**

**FINDING:** According to the applicants' statement and landscape plan, a transformer and garbage/recycling area would be relocated within the parking lot expansion area. Based on the landscape plan it appears that the transformer would be screened using landscape plantings while the garbage/recycle area would be screened using fencing or a wall. This criterion is satisfied.

Mr. Claus argued that solid waste cannot be located on a separate property from the use it is intended to serve. Locating the waste facility on tax lot 2100 would require an exception to the landscape code and violates the site plan approval for the existing development on tax lot 1600. p. 26 of Exhibit P. However Mr. Claus failed to identify any regulations that would be violated by the proposed relocation of the waste facility. The applicant is required to record easements that will allow the office building on tax lot 1600 to utilize the waste facility on tax lot 2100.

#### **D. Visual Corridors**

**Except as allowed by subsection 6. above, new developments shall be required to establish landscaped visual corridors along Highway 99W and other arterial and collector streets, consistent with the Natural Resources and Recreation Plan Map, Appendix C of the Community Development Plan, Part II, and the provisions of Chapter 16.142( Parks, Trees, and Open Space). Properties within the Old Town Overlay are exempt from this standard.**

**FINDING:** The applicants have proposed a visual corridor along the section of Highway 99W adjacent to the new parking lot area, but not the entirety of the site. Therefore, this standard has not been met. The applicants can meet this standard by planting additional landscaping along the site's Highway 99 frontage. The applicants can rely on existing vegetation on the undeveloped portions of the site to meet this standard. However the applicant must demonstrate that the combination of existing and newly planted vegetation is sufficient to meet the requirements of the Code.

Mr. Claus argues that the applicants cut trees within the existing visual corridor on tax lot 1600 to increase visibility of his sign, p. 26 of Exhibit P. This activity may be a violation of the Code, but it is not relevant to the approval criteria for this application. However the visual corridor requirement applies to the site's entire Highway 99 frontage, including the portion of tax lot 1600 that abuts Highway 99. Therefore the applicants may need to plant additional vegetation within the existing visual corridor on tax lot 1600 if necessary to mitigate for prior clearing activities and bring the entire site into compliance with this standard.

Mr. Claus further argued that the applicants cannot be trusted to comply with the conditions of approval. *Id.* Failure to comply with the conditions of approval can preclude final approval of the proposed development and can also be a basis for further enforcement. But the hearings officer cannot assume that the applicant will not comply and deny the application on that basis. The City can ensure compliance by withholding required approvals and/or through its enforcement process.

**CONDITION:** Prior to final site plan approval, submit landscape plans that show a visual corridor along the site's entire Highway 99W frontage that is consistent with the standard. The applicants can rely on existing vegetation on the undeveloped portions of the site to meet this standard.

## **16.92.040 Installation and Maintenance Standards**

### **A. Installation**

**All required landscaping must be in-ground, except when in raised planters that are used to meet minimum Clean Water Services storm water management requirements. Plant materials must be installed to current nursery industry standards. Plant materials must be properly supported to ensure survival. Support devices such as guy wires or stakes must not interfere with vehicular or pedestrian movement.**

**FINDING:** According to the applicants' statement and landscape plan, all plants and plantings shall conform to the City of Sherwood's design standards and to American Nursery Standards ASN 1260.1. Additionally, plants shall be installed in ground in a sound workman-like manner in accordance with standards adopted by the Oregon Landscape Contractors Board (OLCB), and properly maintained to ensure survival according to industry standards. This standard is satisfied.

**B. Maintenance and Mitigation of Landscaped Areas**

- 1. Maintenance of existing non-invasive native vegetation is encouraged within a development and required for portions of the property not being developed.**
- 2. All landscaping shall be maintained in a manner consistent with the intent of the approved landscaping plan.**
- 3. Any required landscaping trees removed must be replanted consistent with the approved landscaping plan and comply with § 16.142, (Parks, Trees and Open Space).**

**FINDING:** According to the applicants' statement and landscape plan, all landscaping will be maintained in a manner consistent with the intent of the approved landscaping plan and in accordance to industry standards. The applicants indicated that care would be taken to not disturb existing plantings that are to remain and if disturbance occurs, the area would be restored and repaired to existing conditions. No landscaping trees are proposed for removal. This standard is satisfied.

Mr. Claus argued that the application should be denied based on the applicants' prior illegal actions in cutting trees within the visual corridor, clearing and grading the site, and placing gravel to create an unpermitted parking area. p. 27 of Exhibit P. However, as discussed above, the applicants' past behavior is not relevant to the applicable standards for site plan approval in the SZDC. The use must comply with the conditions of approval, and the failure to do so can be a basis for further enforcement. The hearings officer cannot assume that the applicants will not comply with the conditions and deny the application on that basis.

**C. Irrigation**

**The intent of this standard is to ensure that plants will survive the critical establishment period when they are most vulnerable due to lack of watering. All landscaped areas must provide an irrigation system, as stated in Option 1, 2, or 3.**

- 1. Option 1: A permanent built-in irrigation system with an automatic controller installed.**
- 2. Option 2: An irrigation system designed and certified by a licensed landscape architect or other qualified professional as part of the landscape plan, which provides sufficient water to ensure that the plants become established. The**

system does not have to be permanent if the plants chosen can survive independently once established.

3. **Option 3: Irrigation by hand.** If the applicants chooses this option, an inspection will be required one (1) year after final inspection to ensure that the landscaping has become established.

**FINDING:** According to the applicants' statement and landscape plan, all new landscape areas are to be irrigated with water-efficient automatic irrigation. This standard is satisfied.

#### **D. Deferral of Improvements**

Landscaping shall be installed prior to issuance of occupancy permits, unless security equal to one hundred twenty-five (125) percent of the cost of the landscaping is filed with the City. "Security" may consist of a performance bond payable to the City, cash, certified check, or other assurance of completion approved by the City. If the installation of the landscaping is not completed within one (1) year, the security may be used by the City to complete the installation.

**FINDING:** According to the applicants' statement the required landscaping shall be installed prior to issuance of permits or a security equal to 125% of the cost of the landscaping will be filed with the City. The hearings officer finds that this standard can be met with the recommended condition below.

**CONDITION:** Prior to final approval, the required landscaping shall be installed or a security equal to 125% of the cost of the landscaping will be filed with the City.

### **16.94. Off-Street Parking and Loading (relevant sections)**

#### **16.94.010 - Generally**

##### **A. Off-Street Parking Required.**

No site shall be used for the parking of vehicles until plans are approved providing for off-street parking and loading space as required by this Code. Any change in uses or structures that reduces the current off-street parking and loading spaces provided on site, or that increases the need for off-street parking or loading requirements shall be unlawful and a violation of this Code, unless additional off-street parking or loading areas are provided in accordance with Section 16.94.020, or unless a variance from the minimum or maximum parking standards is approved in accordance with Chapter 16.84 Variances.

**ANALYSIS:** The applicants are proposing to pave a gravel parking area that was illegally constructed in the northeast corner of tax lot 2100 and increase the number of parking stalls serving Pacific Family Dental from 38 parking stalls to 73 parking stalls. The existing building currently used by Pacific Family Dental is approximately 14,504 square feet. The current development code requires at least 4.1 parking spaces per 1,000 square

feet for “general retail or personal service” uses resulting in a minimum of 60 required parking stalls and a maximum of 90 parking stalls.

**FINDING:** In this instance, the applicants are proposing to provide 73 parking stalls, which exceeds the minimum required but does not exceed the maximum allowed.

SZDC 16.94.010.E(2) provides that the applicant may rely on adjacent on-street parking spaces. This Code section is permissive. The applicant may, but is not required to, rely on adjacent on-street parking. In this case, there are ten on-street parking spaces on the section of Handley Street abutting the site. Even if these spaces are counted towards the parking requirements as allowed by SZDC 16.94.020.B(5), the use still complies with the maximum parking requirements of the Code. This standard is satisfied.

Mr. Claus argues parking is not allowed as a stand alone activity in the GC zone. Parking is only allowed as an activity that is accessory to another use. pp. 29 and 30 of Exhibit P. That is exactly what the applicants have proposed in this case; parking as an activity that is accessory to the existing dental office building on tax lot 1600.

#### **B. Deferral of Improvements**

**Off-street parking and loading spaces shall be completed prior to the issuance of occupancy permits, unless the City determines that weather conditions, lack of available surfacing materials, or other circumstances beyond the control of the applicants make completion impossible. In such circumstances, security equal to one hundred twenty five (125) percent of the cost of the parking and loading area is provided the City. "Security" may consist of a performance bond payable to the City, cash, certified check, or other assurance of completion approved by the City. If the installation of the parking or loading area is not completed within one (1) year, the security may be used by the City to complete the installation.**

**FINDING:** There are no new or altered buildings involved in this application. The proposed parking lot is intended to serve the existing dental office building on the site. Therefore no occupancy permits are required, and deferral of the proposed improvements is not proposed or relevant to this situation. This criterion is satisfied.

Mr. Claus argues that this application cannot be approved, because the two tax lots that make up the site are in separate ownerships and could be separately conveyed, p. 29 of Exhibit P. The hearings officer finds that fact that the two properties are in separate ownerships is not relevant to the applicable approval criteria for this application. 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 continue to be used together.

#### **C. Options for Reducing the Required Parking Spaces**

**FINDING:** No reduction in required parking spaces is requested. Therefore, this standard is satisfied.

**D. Prohibited Uses.**

**Required parking, loading and maneuvering areas shall not be used for long-term storage or sale of vehicles or other materials, and shall not be rented, leased or assigned to any person or organization not using or occupying the building or use served.**

**FINDING:** The proposed parking area will only serve the existing dental office building on tax lot 1600. The applicants do not propose any required parking, loading, or maneuvering areas to be used for storage or rented, leased, or assigned to any person or organization not using or occupying the building or use served. This is prohibited by condition of approval 9, discussed above. The applicants are not proposing to continue parking and storing heavy equipment within the proposed parking lot. This standard is satisfied.

Mr. Claus states, "This is complete nonsense. What he is proposing to do is to tear up an area that was not used as anything but a half acre field by the Williams and he is proposing to assign that to a separate property, namely 17680 Handley. There is no possible way that he can make the statement in his application." p. 29 of Exhibit P. The hearings officer cannot find any connection between Mr. Claus' statement and this approval criterion. The fact that the tax lots that make up the site are in separate ownerships will not preclude compliance with this requirement. Mr. Claus may be referring to the prior actions of the applicants' tenant, where heavy equipment was stored on the illegally created gravel area on tax lot 2100. However, as discussed above, storage of heavy equipment is not proposed as part of this application.

**E. Location.**

**4. Residential off-street parking spaces.**

**a. Shall be located on the same lot or development as the residential use.**

**b. Shall not include garages or enclosed buildings with the exception of a parking structure in multifamily developments where three (3) or more spaces are not individually enclosed. (Example: Underground or multi-level parking structures).**

**5. For other uses, required off-street parking spaces may include adjacent on-street parking spaces, nearby public parking and shared parking located within five hundred (500) feet of the use. The distance from the parking, area to the use shall be measured from the nearest parking space to a building entrance, following a sidewalk or other pedestrian route. The right to use private off-site parking must be evidenced by a recorded deed, lease, easement, or similar written notarized letter or instrument.**

**6. Vehicle parking is allowed only on improved parking shoulders that meet City standards for public streets, within garages, carports and other**

**structures, or on driveways or parking lots that have been developed in conformance with this code. Specific locations and types of spaces (car pool, compact, etc.) for parking shall be indicated on submitted plans and located to the side or rear of buildings where feasible.**

- a. All new development with twenty (20) employees or more shall include preferential spaces for either car pool and vanpool designation.**
- b. Existing development may redevelop portions of designated parking areas for multi-modal facilities (transit shelters, park and ride, and bicycle parking), subject to meeting all other applicable standards, including minimum space standards.**

**FINDING:** The site contains existing parking directly adjacent to the existing office building on tax lot 1600, which is owned by the applicants. The proposed parking extension would also be located directly adjacent to the existing office building on tax lot 2100, which is also owned by the applicants. This standard is satisfied.

Mr. Claus appears to argue that the existing, gravel surfaced, parking lot on tax lot 2100 is illegal, because it was not properly engineered, the design was not reviewed and approved by the City, and required fees were not paid. Therefore the applicants cannot use the existing gravel parking lot. p. 30 of Exhibit P. The hearings officer finds that Mr. Claus is correct that the applicants cannot legally use the existing gravel parking lot. However that is not what the applicants have proposed. With this application, the applicants are proposing to remove the illegal gravel surfaced parking area and replace it with an approved, properly engineered, paved and landscaped parking lot.

#### **F. Marking**

**All parking, loading or maneuvering areas shall be clearly marked and painted. All interior drives and access aisles shall be clearly marked and signed to show the direction of flow and maintain vehicular and pedestrian safety.**

**FINDING:** The applicants' statement indicates that all parking lot markings required by the City of Sherwood would be implemented. However, the site plans do not clearly identify where all parking, loading or maneuvering areas would be marked or painted.

**CONDITION:** Prior to final site plan approval, applicants shall submit additional information clearly identifying where all parking, loading or maneuvering areas will be marked or painted.

#### **G. Surface and Drainage**

- 1. All parking and loading areas shall be improved with a permanent hard surface such as asphalt, concrete or a durable pervious surface. Use of pervious paving material is encouraged and preferred where appropriate considering soils, location, anticipated vehicle usage and other pertinent factors.**

**2. Parking and loading areas shall include storm water drainage facilities approved by the City Engineer or Building Official.**

**FINDING:** According to the applicants' statement, the proposed parking lot will be paved in asphalt. Additionally, as shown on the landscape plan, the existing private stormwater facility located on tax lot 1600 will be relocated to tax lot 2100 on the western edge of the proposed parking lot extension. A Stormwater Report submitted by the applicants has been included in the record as Exhibit J. The City Engineer recommended additional conditions of approval to address the proposed amendments to the stormwater facilities to ensure that this standard is satisfied. The hearings officer finds that the recommended conditions are warranted and should be included.

**H. Repairs**

**Parking and loading areas shall be kept clean and in good repair. Breaks in paved surfaces shall be repaired. Broken or splintered wheel stops shall be replaced. Painted parking space boundaries and directional symbols shall be maintained in a readable condition.**

**FINDING:** The applicants agree to maintain the parking and loading areas clean and in good repair. The City can ensure compliance with that agreement through its enforcement process. This standard is satisfied.

**16.94.020 - Off-street parking standards**

**A. Generally**

**Where square feet are specified, the area measured shall be the gross building floor area primary to the functioning of the proposed use. Where employees are specified, persons counted shall be those working on the premises, including proprietors, during the largest shift at peak season. Fractional space requirements shall be counted as a whole space. The Review Authority may determine alternate off - street parking and loading requirements for a use not specifically listed in this Section based upon the requirements of comparable uses.**

**FINDING:** The existing building currently used by Pacific Family Dental is approximately 14,504 square feet. The current development code requires a minimum 4.1 and a maximum 5.1 parking spaces per 1,000 square feet for "general retail or personal service" uses, resulting in a minimum of 60 required parking stalls and a maximum of 90 parking stalls. The 73 parking spaces proposed on this site is consistent with the minimum and maximum parking requirements of the Code. This standard is satisfied.

**B. Dimensional and General Configuration Standards**

- 1. Dimensions For the purpose of this Chapter, a "parking space" means a stall nine (9) feet in width and twenty (20) feet in length. Up to twenty five (25) percent of required parking spaces may have a minimum dimension of eight (8) feet in width and eighteen (18) feet in length so long as they are signed as compact car stalls.**

**FINDING:** Based on the applicants' site plan and statement, each of the proposed parking spaces is nine (9) feet wide by twenty (20) feet deep. This standard is satisfied.

**2. Layout**

**Parking space configuration, stall and access aisle size shall be of sufficient width for all vehicle turning and maneuvering. Groups of more than four (4) parking spaces shall be served by a driveway so as to minimize backing movements or other maneuvering within a street, other than an alley. All parking areas shall meet the minimum standards shown in the following table and diagram.**

**FINDING:** Based on the applicants' site plan and statement, the proposed parking space configuration and maneuvering aisle size (24 feet minimum) is sufficient to allow for backing movements and other maneuvering on site. This standard is satisfied.

**3. Wheel Stops**

**Parking spaces along the boundaries of a parking lot or adjacent to interior landscaped areas or sidewalks shall be provided with a wheel stop at least four (4) inches high, located three (3) feet back from the front of the parking stall as shown in Appendix G. Wheel stops adjacent to landscaping, bio-swales or water quality facilities shall be designed to allow storm water run-off.**

**FINDING:** Based on the applicants' site plan and statement, the proposed parking stalls are twenty (20) feet in length and provide wheel stops in order to prevent vehicles from overhanging onto sidewalks or damaging interior landscaped areas. The wheel stops are shown on the site plan as having spaces in between each one to provide the passage of water. This standard is satisfied.

**4. Service Drives**

**Service drives shall be clearly and permanently marked and defined through use of rails, fences, walls, or other barriers or markers, and shall have minimum vision clearance area formed by the intersection of the driveway center line, the street right-of-way line, and a straight line joining said lines through points fifteen (15) feet from their intersection.**

**FINDING:** Based on the applicants' site plan and statement, no changes are proposed for the existing access points onto Handley Street from the site. The new parking area will obtain access through lot 1600. This standard is satisfied.

**C. Bicycle Parking Facilities**

**1. Location and Design**

- a. Bicycle parking shall be conveniently located with respect to both the street right-of-way and at least one (1) building entrance (e.g., no farther away than the closest parking space). Bike parking may be located inside the main building or near the main entrance.**



**On-site facilities shall be provided that accommodate safe and convenient pedestrian access within new subdivisions, multi-family developments, planned unit developments, shopping centers and commercial districts, and connecting to adjacent residential areas and neighborhood activity centers within one half mile of the development. Neighborhood activity centers include but are not limited to existing or planned schools, parks, shopping areas, transit stops or employment centers. All new development, (except single family detached housing), shall provide a continuous system of private pathways/sidewalks at least 6 feet wide.**

**ANALYSIS:** All proposed pedestrian and bicycle access into and along the perimeter of the site is existing. As proposed, the site provides safe, marked, and to the extent practical, convenient pedestrian access.

**FINDING:** The use of the site and the office building are existing and are proposed to remain unchanged after the proposed parking lot expansion. Therefore, the above standard is not applicable.

Mr. Claus argues that the applicants cannot comply with this criterion, because the two tax lots that make up the site are in separate ownerships. p. 33 of Exhibit P. The fact that the tax lots that make up the site are in separate ownerships will not preclude compliance with this requirement. The applicants are required to record a joint access and maintenance easement between lots 1600 and 2100 for the purposes of providing legal access between the accessory parking area and the office building it will serve.

Mr. Claus argues that the applicants should be required to construct a sidewalk along the site's Highway 99 frontage. p. 33 of Exhibit P. The City cannot constitutionally require the applicants to construct additional sidewalks as a condition of approval of this application. In order to require the applicant to dedicate land and/or construct public improvements, the City must demonstrate an "essential nexus" between the impacts of the proposed development and the need for the required improvements. *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 107 S.Ct. 3141 (1987). In this case, the proposed parking lot expansion will not generate additional pedestrian and bicycle traffic that would create a need for a sidewalk. Parking lots do not generate traffic separate from the uses they serve. 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 pedestrian and bicycle traffic, and there is no essential nexus between the impacts of the proposed development and a condition requiring construction of a sidewalk along the site's Highway 99 frontage.

In addition, the City failed to bear the burden of proof that the cost of constructing a sidewalk along the site's Highway 99 frontage would be roughly proportional to the impact of the use. *Dolan v. City of Tigard*, 114 S. Ct. 2309, 2322, 512 U.S. 374, 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).

## **B. Maintenance**

**No building permit or other City permit shall be issued until plans for ingress, egress and circulation have been approved by the City. Any change increasing any ingress, egress or circulation requirements, shall be a violation of this Code unless additional facilities are provided in accordance with this Chapter.**

**FINDING:** According to the applicants' statement, and as shown on the site plan, an existing pedestrian connection was provided with the original construction of the dental office and existing site ingress and egress is unchanged by the proposed parking lot. Therefore, this standard is satisfied.

Mr. Claus argues that the applicants cannot rely on the existing ingress, egress and circulation on tax lot 1600 to satisfy this criterion for a parking lot on tax lot 2100, because there is no connection between the two tax lots. pp. 33 and 34 of Exhibit P. The hearings officer finds that there will be significant physical and legal connections between the two tax lots. The proposed parking lot will physically connect to the existing parking lot on tax lot 1600. All ingress to and egress from the new parking lot will utilize the existing driveway accesses onto SW Handley Street. No new ingress and egress points are proposed. In addition, the applicants are required to record a joint access and maintenance easement between lots 1600 and 2100. Although the two parcels can be owned by separate entities, the easements will ensure that they continue to be used together,

Mr. Claus further argues that the applicant, "[h]as to supply fill services to this site which he isn't doing." p. 34 of Exhibit P. The hearings officer cannot determine what Mr. Claus means by, "fill services" and how this argument relates to this approval criterion.

### **C. Joint Access**

**Two (2) or more uses, structures, or parcels of land may utilize the same ingress and egress when the combined ingress and egress of all uses, structures, or parcels of land satisfied the other requirements of this Code, provided that satisfactory legal evidence is presented to the City in the form of deeds, easements, leases, or contracts to clearly establish the joint use.**

**FINDING:** The applicants are proposing to access the parking lot on lot 2100 through lot 1600. The parking is proposed as accessory to the dental office use, and it will be necessary to maintain legal access between the two parcels for this specific use, so the applicants should be conditioned to provide and record a joint access agreement over the portion of tax lot 2100 and 1600 in support of the parking area. Therefore, the following condition is warranted.

Mr. Claus here argues parking is not allowed as an accessory use in the GC zone. Parking is only allowed as a commercial use, with parking spaces leased or rented to uses located within 500 feet. p. 34 of Exhibit P. As discussed above, the applicants are not proposing parking as a separate, stand alone, use. The proposed parking is intended solely as an accessory use that will serve the existing dental office building on tax lot 1600. The existing dental office building is a permitted use in the GC zone. Parking is permitted, and required, for such uses.

Mr. Claus argued that the applicants are seeking to avoid required dedications and fees by obtaining this approval and then requesting a lot line adjustment in the future. *Id.* However those concerns are not relevant to the applicable approval criteria for this application. The applicants are not required to dedicate right-of-way as a condition of this application, because the proposed use will not generate any additional traffic. The applicants did not request a lot line adjustment with this application. If the applicants submit such an application in the future, it will be reviewed subject to the regulations in effect at that time.

**CONDITION:** Prior to final approval, the applicants shall provide City staff with proof that an joint access and maintenance easement is provided 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.

Mr. Claus appears to argue that the City cannot ensure compliance with this condition of approval, based on the City's lack of prior enforcement. *Id.* Mr. Claus argues the applicants should be required "[t]o present to hearings officer as to what he is doing." As discussed above, the City's enforcement process is separate from the development process. Nothing in the Code requires that the applicants explain their past violations prior to approval of a development application. As noted above, the applicants must comply with the conditions of approval, and the failure to do so can be a basis for further enforcement. But the hearings officer cannot assume that the applicants will not comply, or that the City will not enforce compliance, and deny the application on that basis. The applicants' prior actions are not relevant to this approval criterion.

#### **D. Connection to Streets**

- 1. Except for joint access as per 16.96.010, all ingress and egress to a use or parcel shall connect directly to a public street, excepting alleyways.**
- 2. Required private sidewalks shall extend from the ground floor entrances or the ground floor landing of stairs, ramps or elevators to the public sidewalk or curb of the public street which provides required ingress and egress.**

**FINDING:** The proposed parking lot extension would be connected to an existing parking lot on tax lot 1600 that has existing frontage along and access points to Handley Street. This standard is satisfied. Sidewalks and pedestrian access to Handley Street were required as a condition of approval for the original approval (File No. SP06-07) of the existing building on tax lot 1600. Staff has confirmed the existence of sidewalks connecting the dental office entrance to the sidewalk along the frontage of Handley Street on the northern border of tax lot 1600.

Mr. Claus appears to argue that access to any development on tax lot 2100 must be provided from SW Cedar Brook Way. p. 35 of Exhibit P. However Mr. Claus failed to identify any applicable approval criterion or City plan that supports such a requirement. The applicant proposed to access the expanded parking lot from SW Handley Street, a public street. The applicant will record a joint access agreement to facilitate such access across tax lot 1600. As discussed above, the proposed development will not generate any

new pedestrian, bicycle or vehicular traffic that could support a condition of approval requiring the extension of SW Cedar Brook Way.

**E. Maintenance of Required Improvements**

**Required ingress, egress and circulation improvements shall be kept clean and in good repair.**

**FINDING:** According to the applicants' statement, ingress and egress for all types of circulation shall remain in good repair and would be maintained over time. This standard is satisfied.

**F. Access to Major Roadways**

**FINDING:** This application does not propose ingress or egress to or from an arterial. Therefore, these standards are not applicable.

Mr. Claus argues that approval of this application will alter the City's transportation plan, because the development does not include the extension of SW Cedar Brook Way. p. 35 of Exhibit P. The hearings officer finds that the proposed development will not preclude the extension of SW Cedar Brook Way. The proposed parking lot is located in the eastern portion of tax lot 2100. Adequate area remains in the northwest corner of tax lot 2100 to accommodate the needed right-of-way and improvements for this future street extension, consistent with adopted City plans.

**G. Service Drives**

**Service drives shall be provided pursuant to Section 16.94.030.**

**FINDING:** Based on the applicants' site plan and statement, an existing paved access provides vehicular access onto SW Handley Street. This standard is satisfied.

**16.96.030 - Minimum Non-Residential Standards**

**Minimum standards for private, on-site circulation improvements in non-residential developments:**

**A. Driveways**

**1. Commercial: Improved hard surface driveways are required as follows:**

Required Parking Spaces	# Driveways	Minimum Width	
		One-Way Pair	Two-Way
1 - 49	1	15 feet	24 feet
50 & above	2	15 feet	24 feet

**3. Surface materials are encouraged to be pervious when appropriate considering soils, anticipated vehicle usage and other pertinent factors.**

**FINDING:** Based on the applicants' site plan and statement, a 24-foot wide and two-way paved parking area drive aisle is proposed to serve the extended parking area. This standard is satisfied.

Mr. Claus argues that SW Handley Street is designated as a local feeder street and it was not designed to accommodate additional traffic from development on this site. p. 35 of Exhibit P. However, as discussed above, the proposed parking lot will not generate any additional pedestrian, bicycle or vehicular traffic. The parking lot will only serve the existing dental office building on tax lot 1600 and no changes are proposed to that existing building that would generate additional traffic. Therefore the proposed development will not increase the volume of traffic on SW Handley Street.

#### **B. Sidewalks and Curbs**

- 1. A private pathway/sidewalk system extending throughout the development site shall be required to connect to existing development, to public rights-of-way with or without improvements, to parking and storage areas, and to connect all building entrances to one another. The system shall also connect to transit facilities within 500 feet of the site, future phases of development, and whenever possible to parks and open spaces.**
- 2. Curbs shall also be required at a standard approved by the Hearing Authority. Private pathways/sidewalks shall be connected to public rights-of-way along driveways but may be allowed other than along driveways if approved by the Hearing Authority.**
- 3. Private Pathway/Sidewalk Design. Private pathway surfaces shall be concrete, asphalt, brick/masonry pavers, or other pervious durable surface. Primary pathways connecting front entrances to the right-of-way shall be at least 6 feet wide and conform to ADA standards. Secondary pathways between buildings and within parking areas shall be a minimum of four (4) feet wide and/or conform to ADA standards. Where the system crosses a parking area, driveway or street, it shall be clearly marked with contrasting paving materials or raised crosswalk (hump). At a minimum all crosswalks shall include painted striping.**
- 4. Exceptions. Private pathways/sidewalks shall not be required where physical or topographic conditions make a connection impracticable, where buildings or other existing development on adjacent lands physically preclude a connection now or in the future considering the potential for redevelopment; or pathways would violate provisions of leases, restrictions or other agreements.**

**FINDING:** Based on the applicants' site plan and statement, there is an existing pedestrian connection that connects the building entrance and parking lot and the public right-of-way. There are no adjacent public parks and open spaces and/or future phases of development identified with this proposal. This standard is satisfied.

## 16.96.040 – On-Site Vehicle Circulation

### A. Maintenance

**No building permit or other City permit shall be issued until plans for ingress, egress and circulation have been approved by the City. Any change increasing any ingress, egress or circulation requirements, shall be a violation of this Code unless additional facilities are provided in accordance with this Chapter.**

**FINDING:** Ingress and egress locations were approved by the City with the original construction of the dental office. Existing site ingress and egress would be unchanged by the proposed parking lot. This standard is satisfied.

Mr. Claus argues that it is not feasible to comply with this criterion because two tax lots that make up the site are in separate ownership. P. 36 of Exhibit P. However, as discussed above, the applicants are required to record an easement a joint access and maintenance easement between lots 1600 and 2100 to ensure legal access between the accessory parking area and the office building it will serve. All ingress to and egress from the new parking lot will utilize the existing driveway accesses onto SW Handley Street. No new ingress to and egress points are proposed. Mr. Claus failed to identify how the proposed development is in violation of “the transportation specific plan.” *Id.*

### B. Joint Access [See also Chapter 16.108]

**Two (2) or more uses, structures, or parcels of land are strongly encouraged to utilize jointly the same ingress and egress when the combined ingress and egress of all uses, structures, or parcels of land satisfy the other requirements of this Code, provided that satisfactory legal evidence is presented to the City in the form of deeds, easements, leases, or contracts to clearly establish the joint use. In some cases, the City may require a joint access to improve safety, vision clearance, site distance, and comply with access spacing standards for the applicable street classification.**

**FINDING:** According to the applicants’ statement, the proposed parking lot extension area is to be utilized only by the employees and patrons of the existing Pacific Family Dental. There are two existing uses on the site, residential and commercial, and both uses have separate existing access points for ingress and egress. The commercial use has access onto Handley Street while the residential use has access onto Highway 99. In order to ensure that the access from tax lot 1600 to tax lot 2100 is legally provided, a condition requiring an easement has been required above. Meeting the conditions of approval can feasibly satisfy this standard.

### C. Connection to Streets

- 1. Except for joint access per this Section, all ingress and egress to a use or parcel shall connect directly to a public street, excepting alleyways.**

2. **Required private sidewalks shall extend from the ground floor entrances or the ground floor landing of stairs, ramps or elevators to the public sidewalk or curb of the public street which provides required ingress and egress.**

**FINDING:** Based on the applicants' site plan and statement, the existing Pacific Family Dental building has adequate sidewalks that extend from the ground floor entrance to the public sidewalk and ingress and egress to SW Handley Street. The proposed parking area will connect to the public street through the same ingress as the existing office building. This standard is satisfied.

#### **D. Maintenance of Required Improvements**

**Required ingress, egress and circulation improvements shall be kept clean and in good repair.**

**FINDING:** The applicants have indicated that ingress and egress for all types of circulation on the site shall remain in good repair. The applicants intend to meet this standard over time. This standard is satisfied.

Mr. Claus argued that the applicants cannot ensure ongoing compliance with this criterion because tax lot 2100 can be conveyed separately from tax lot 1600. p. 37 of Exhibit P. The hearings officer finds that the required access and maintenance easement will ensure that tax lot 2100 will continue to serve the office use on tax lot 1600 and allow maintenance of any and all landscaping, vehicle parking, maneuvering and access areas and other improvements proposed in this development.

#### **E. Service Drives**

**Service drives shall be provided pursuant to Section 16.94.030.**

**FINDING:** Based on the applicants' site plan and statement, an existing paved access provides access on SW Handley Street. This existing service drive is unchanged by the proposed parking lot. This standard is satisfied.

### **Chapter 16.98 – ON-SITE STORAGE**

#### **16.98.010 – Recreational Vehicles and Equipment**

**Recreational vehicles and equipment may be stored only within designated and improved off-street parking areas. Such areas shall meet the screening and landscaping requirements of Section 16.92.030.**

**FINDING:** According to the applicant, on site storage of recreational vehicles and equipment is not proposed as part of the parking lot extension. Therefore, this standard is not applicable.

#### **16.98.020 – Solid Waste Storage**

**All uses shall provide solid waste storage receptacles which are adequately sized to accommodate all solid waste generated on site. All solid waste storage areas and receptacles shall be located out of public view. Solid waste receptacles for multi-family, commercial and industrial uses shall be screened by six (6) foot high sight-obscuring fence or masonry wall and shall be easily accessible to collection vehicles.**

**FINDING:** Based on the applicants' site plan and statement, the existing solid waste and recycling receptacle enclosure would be relocated. All solid waste and recycling receptacles would be screened from view and would be easily accessible to collection vehicles. Comments submitted by Pride Disposal Company on October 1, 2013, stated that several additional requirements would need to be met prior to the approval of the site plan. The following requirements should be added as conditions of approval to ensure compliance with this approval criterion.

**CONDITION:** Prior to final site plan approval, the applicants shall submit evidence of the following information:

- The enclosure needs to have inside measurements of 20 feet wide and 10 feet deep.
- There should be no center post at the access point in the center of the enclosure.
- The gates will need to allow for the full 20 feet needed to access the enclosure. They should be hinged in front of the enclosure walls to allow for the full 20 feet width. This will also allow for the 120-degree opening angle that is required.
- The gates need cane bolts and holes put in place for the gates to be locked in the open and closed position. The holes for the gates to be held open need to be at the full 120-degree opening angle.
- No roof on the enclosure.

Mr. Claus argued that solid waste cannot be located on a separate property from the use it is intended to serve. p. 38 of Exhibit P. However he failed to identify any section of the Code that prohibits such an arrangement. The applicants are required to record an easement to ensure that improvements on tax lot 2100, including the solid waste facilities, are available to serve the existing use on tax lot 1600.

#### **16.98.030 – Material Storage**

**FINDING:** According to the applicant, no materials, hazardous or otherwise, are proposed to be stored. Therefore, this standard is not applicable.

#### **16.98.040 – Outdoor Sales and Merchandise Display**

**FINDING:** According to the applicant, outdoor sales and/or merchandise displays are not proposed with this development. Therefore, this standard is not applicable.

#### **Division VI. Public Infrastructure**

**The applicable provisions of Chapter 6 include: 16.106 (Transportation Facilities), 16.110 (Sanitary Sewers), 16.112 (Water Supply), 16.114 (Storm Water), 16.116 (Fire Protection), and 16.118 (Public and Private Utilities)**

Compliance with the standards in these sections is discussed below:

**16.106 – Transportation Facilities**

**16.106.020 – Required Improvements**

**A. Generally**

**Except as otherwise provided, all developments containing or abutting an existing or proposed street, that is either unimproved or substandard in right-of-way width or improvement, shall dedicate the necessary right-of-way prior to the issuance of building permits and/or complete acceptable improvements prior to issuance of occupancy permits.**

**FINDING:** SW Cedar Brook Way (half street improvements and right-of-way) exists adjacent to the west side of Tax Lot 1600 and dead ends at the north end of Tax Lot 2100 toward the western end of the property. The City of Sherwood's TSP has established SW Cedar Brook Way as a Collector status street that will extend southward from SW Handley Street to its eventual connection to Highway 99 (SW Pacific Highway). Therefore SZDC 16.106.020.A requires the applicant dedicate right of way and construct improvements for the extension of this street across the northwest corner of tax lot 2100. However, as discussed above, the City cannot constitutionally require such dedication and improvements as a condition of this approval. In order to require an applicant to dedicate land or build improvements, the City must demonstrate an "essential nexus" between the impacts of the proposed development and the need for the required improvements. *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 107 S.Ct. 3141 (1987). In other words, the City must show that the proposed development will create or exacerbate a need for the required improvements. In this case, the proposed parking lot expansion will not generate additional traffic that would create a need for the extension of SW Cedar Brook Way. Accessory parking lots do not generate traffic separate from the uses they serve. 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, the City failed to bear the burden of proof that the cost of dedicating right-of-way and constructing an extension of SW Cedar Brook Way through tax lot 2100 would be roughly proportional to the impact of the use. *Dolan v. City of Tigard*, 114 S. Ct. 2309, 2322, 512 U.S. 374, 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).

Should the applicants decide to provide dedication for the extension of SW Cedar Brook Way, credits against Transportation System Development Charges (SDC) and the Washington County Transportation Development Tax (TDT) are available for the future development of Tax Lot 1600. These credits are available for 7 years from the date of dedication to the city at which time the credits will expire. If the applicants decide to provide dedications, it should consist of the following to be consistent with the TSP:

- Dedication of public right-of-way (58-foot width) from the end of SW Cedar Brook Way at the north property line of Tax Lot 2100 to the southwest property line of Tax Lot 2100.
- Dedication of 20-foot wide slope easement to the City of Sherwood along the northwest side of the dedicated right-of-way and a 12-foot wide slope easement along the southeast side of the dedicated right-of-way.
- Dedication of 8-foot wide PUE along each side of the dedicated right-of-way.

This standard is satisfied.

Mr. Claus argues that the applicants are proposing prohibited alteration of the existing nonconforming single-family residential use on tax lot 2100. p. 39 and 40 of Exhibit P. The hearings officer finds that modification of the existing nonconforming residential use is allowed. SZDC 16.48.060.A prohibits the modification of structures devoted to a nonconforming use, except where the modification will accommodate a change to a conforming use. In this case the applicants proposed to completely remove the existing detached garage on tax lot 2100 in order to accommodate the proposed parking lot, a permitted use in the GC zone. Therefore the proposed modification is consistent with SZDC 16.48.060.A. The existing single-family residence on tax lot 2100 is a completely separate structure and no changes are proposed to that structure.

Mr. Claus again refers to the prior grading activity on tax lot 2100. p. 40 of Exhibit P. However, as discussed above, that past activity is not relevant to the applicable approval criteria for this application. Grading for construction of the proposed parking lot extension will have no impact on the future extension of SW Cedar Brook Way.

Mr. Claus again notes that tax lots 1600 and 2100 are in separate ownership. *Id.* That is irrelevant, as discussed above.

Mr. Claus argues that Handley Street was not designed to accommodate additional traffic. *Id.* However, as discussed above, the proposed development will not generate any additional traffic.

Mr. Claus is correct that this Code section requires the extension of SW Cedar Brook Way as a condition of development on tax lot 2100. *Id.* However, as discussed above, the City cannot constitutionally require the extension of this street as a condition of approval of this development. Denial of this development for failure to provide this street extension would constitute an unconstitutional taking. *Koontz.*

Mr. Claus appears to argue that prior grading activities on the site will preclude the extension of SW Cedar Brook Way. *Id.* Unfortunately, Mr. Claus' argument on this point is confusing and the hearings officer cannot determine exactly what he is arguing here. All grading and construction activities proposed for this project are located on the eastern portion of tax lot 2100 and on tax lot 1600. See the applicants' "preliminary grading and erosion control plan," Plan Sheet 4. No grading or development is proposed in the

western portion of tax lot 2100, where SW Cedar Brook Way will be extended in the future. The applicants' prior grading activities are not relevant to this application.

**B. Existing Streets**

**Except as otherwise provided, when a development abuts an existing street, the improvements requirement shall apply to that portion of the street right-of-way located between the centerline of the right-of-way and the property line of the lot proposed for development. In no event shall a required street improvement for an existing street exceed a pavement width of thirty (30) feet.**

**FINDING:** The site takes access from SW Handley Street. As discussed above, it would be difficult to justify additional improvements or right-of-way dedication with this development. This standard is satisfied.

Mr. Claus argues that the applicants are attempting to block the development of adjacent properties. However there is no substantial evidence in the record of such intent. Even if there were, the applicants' subjective intent is not relevant to the applicable approval criteria for this development. The hearings officer understands that the Clauses would like the applicants or the City to extend SW Cedar Brook Way across tax lot 2100, because that would facilitate development on their property west of the site. However, as discussed above, the City cannot require the applicants to dedicate right-of-way and construct the street extension as a condition of this approval, because there is no nexus between the impact of the proposed development and the need for the street extension, nor is the cost of the dedication and construction roughly proportional to the impacts of the development.

**16.106.030 - Location**

**A. Generally**

**The location, width and grade of streets shall be considered in their relation to existing and planned streets, topographical conditions, and proposed land uses. The proposed street system shall provide adequate, convenient and safe traffic and pedestrian circulation, and intersection angles, grades, tangents, and curves shall be adequate for expected traffic volumes. Street alignments shall be consistent with solar access requirements as per Chapter 16.156, and topographical considerations.**

**FINDING:** No new streets are proposed with this development. Therefore this standard is inapplicable.

**B. Street Connectivity and Future Street Systems**

- 1. Future Street Systems. The arrangement of public streets shall provide for the continuation and establishment of future street systems as shown on the Local Street Connectivity Map contained in the adopted Transportation System Plan (Figure 8-8).**

**ANALYSIS:** As previously discussed in this Final Order, no changes are proposed to alter the existing access to the site from Handley Street. The proposed parking lot extension is not in a location that would physically hinder the continuation or establishment of SW Handley Street as shown in the TSP. No new streets, or extension of existing streets, is proposed or required.

**FINDING:** As discussed above, future extensions of the street system is not physically precluded by the proposal. Approval of this development will have no effect on the continuation of the planned street system as shown on the Local Street Connectivity Map contained in the adopted Transportation System Plan (Figure 8-8); therefore this standard is met.

Mr. Claus appears to argue that the applicant, working with City staff, can block the future extension of SW Cedar Brook Way. However Mr. Claus failed to identify how the applicants and/or the City could legally do so. In addition, Mr. Claus' allegations are irrelevant to this approval criterion. As proposed, this development will not preclude the future extension of SW Cedar Brook Way.

#### **16.106.040 – Design**

##### **J. Transit Facilities**

**Development along an existing or proposed transit route, as illustrated in Figure 7-2 in the TSP, is required to provide areas and facilities for bus turnouts, shelters, and other transit-related facilities to Tri-Met specifications.**

**Transit facilities shall also meet the following requirements:**

- 1. Locate buildings within 20 feet of or provide a pedestrian plaza at major transit stops.**
- 2. Provide reasonably direct pedestrian connections between the transit stop and building entrances on the site.**
- 3. Provide a transit passenger landing pad accessible to disabled persons (if not already existing to transit agency standards).**
- 4. Provide an easement or dedication for a passenger shelter and underground utility connection from the new development to the transit amenity if requested by the public transit provider.**
- 5. Provide lighting at a transit stop (if not already existing to transit agency standards).**

**FINDING:** There are no existing or proposed transit routes adjacent to or near this site. Transit facilities are not currently available to the site, and do not appear to be necessary for this development. This standard is not applicable.

## **16.110 – Sanitary Sewers**

### **16.110.010 – Required Improvements**

**Sanitary sewers shall be installed to serve all new developments and shall connect to existing sanitary sewer mains. Sanitary Sewers shall be constructed, located, sized and installed at standards consistent 16.110.**

**FINDING:** The site is already provided with public sanitary sewer service. Sanitary sewer exists within SW Cedar Brook Way and SW Handley Street and no new connections are proposed. This criterion is not applicable to the proposed development.

## **16.112 – Water Supply**

### **16.112.010 – Required Improvements**

**Water lines and fire hydrants conforming to City and Fire District standards shall be installed to serve all building sites in a proposed development in compliance with 16.112.**

**FINDING:** Water lines exist within SW Cedar Brook Way and SW Handley Street which connect to an existing water line within Highway 99 through an existing public utility easement within Tax Lot 1600.

The water line within SW Cedar Brook Way south of SW Handley Street stops short of the north property line of Tax Lot 2100 by approximately 30 feet. Therefore, if water service from the water main within SW Cedar Brook Way is necessary for Tax Lot 2100, then the water main within SW Cedar Brook Way will be required to be extended to the north property line of Tax Lot 2100.

Sherwood Municipal Code does not allow water connections between separate tax lots unless approved by the City Engineer.

Tax Lot 1600 has existing domestic service from the main in SW Handley Street. If Tax Lot 2100 connects to the existing ground water well for irrigation, then a reduced pressure backflow assembly would be required behind the existing water meter of Tax Lot 1600. This is required to protect the water main within SW Handley Street from potential cross connection contamination.

Sherwood Municipal Code Section 13.10.075 states “In general, all water line extensions shall extend the entire distance between opposite boundaries of the property to be served and shall be located within public right-of-way unless the city determines it necessary to construct water lines on public easements across private property. The city may elect to have installed a larger main than needed for the applicant's service requirements. When it does, the city will bear the additional cost of all piping, fittings, valves and other materials and equipment used.” This indicates that if public water service is being

installed for Tax Lot 2100, then the water main within Highway 99 shall be extended to the southwest corner of Tax Lot 2100.

If a water main is extended throughout the frontage of the property, the existing home will be required to be connected to public water and the well shall either be abandoned or backflow prevention shall be installed behind the new water meter to protect the water main from potential cross connection contamination. City policy requires a plumbing permit to be obtained through the Building Department for all private water line construction (irrigation is exempt).

Engineering staff has identified some deficient easements for existing water services that need to be remedied by the proposed development. The following conditions are warranted to ensure that public lines and services are preserved. Near Highway 99 the existing water main within Tax Lot 2100 is less than 7.5 feet from the existing public utility easement line. A portion of the existing water vault within Tax Lot 2100 is located outside of the existing public utility easement.

**CONDITION:** Prior to final approval, a public water line easement shall be dedicated to the City on the outside of the existing public utility easement to give a minimum easement width of 7.5 feet from the existing water main.

**CONDITION:** Prior to final approval, a new water vault easement shall be dedicated to the City on the outside of the existing public utility easement to give a minimum easement width of 5 feet around the outside of the existing water vault.

#### **16.114 – Storm Water**

##### **16.114.010 – Required Improvements**

**Storm water facilities, including appropriate source control and conveyance facilities, shall be installed in new developments and shall connect to the existing downstream drainage system consistent with the Comprehensive Plan, the requirements of the Clean Water Services water quality regulations and section 16.114.**

##### **16.114.020 – Design Standards**

###### **A. Capacity**

**Storm water drainage systems shall be sized, constructed, located, and installed at standards consistent with this Code, the Storm Drainage Master Plan Map, Chapter 7 of the Community Development Plan, other applicable City standards, the Clean Water Services Design and Construction standards R&O 04-9 or its replacement, and hydrologic data and improvement plans submitted by the developer.**

Water quality treatment is required for all existing and newly constructed impervious areas on both tax lots. The proposed parking lot expansion would increase the amount of

impervious surface on the site. There is an existing water quality facility on the site that is proposed for relocation from its current location to the western edge of the proposed parking lot extension area. The applicants have stated that the relocated stormwater conveyance and disposal system would be prepared in accordance with the above listed standards. The Stormwater Report prepared by AKS Engineering & Forestry, LLC has been included with this staff report as Exhibit J. Compliance with Clean Water Service standards has been conditioned previously in this Final Order.

Per Clean Water Services and City of Sherwood standards, a 45% credit of storm SDC is available for the construction of storm water treatment facilities and a 55% credit of storm SDC is available for the construction of storm detention facilities.

City policy requires a plumbing permit to be obtained through the Building Department for all private storm sewer construction. The existing storm pipe outlet discharging into the east end of the existing water quality swale is buried below the flow line of the swale. There are some unknowns related to the reconfiguration of the system, therefore the following conditions are warranted to ensure that the development complies with the design and construction standards.

**FINDING:** Storm sewer exists within SW Handley Street and no new connections are proposed. Therefore, no new public storm improvements are required. There are some unknowns related to the reconfiguration of the existing private storm system, therefore the following conditions are warranted to ensure that the development is compliant with the design and construction standards.

Mr. Claus argues that the applicants' stormwater calculations fail to account for the construction of an illegal gravel parking lot on tax lot 2100. However, as discussed above, the applicants' prior activities are not relevant to the approval criteria for this application. CWS can review the applicants' stormwater analysis to ensure that the proposed storm sewer facilities can accommodate any stormwater runoff that may flow into the proposed parking lot from the portions of tax lot 2100 that are not part of the current development proposal. Prior grading activities by the applicants that may be generating additional stormwater flows outside of the proposed parking lot are not relevant to this approval criterion, because such impacts are not proposed with this development. If such stormwater impacts are occurring as a result of prior grading activities, they can only be addressed through the City's or CWS' enforcement processes.

**CONDITION:** Prior to final approval, either the existing water quality swale shall be re-graded or the storm pipe will be re-laid to allow the pipe to discharge into the flow line of the swale.

**CONDITION:** Prior to final approval, a private stormwater facility access and maintenance covenant between the owner and the City shall be implemented and recorded with Washington County with a copy being provided to the City.

## **B. On-Site Source Control**

**Storm water detention and groundwater recharge improvements, including but not limited to such facilities as dry wells, detention ponds, and roof top ponds shall be constructed according to Clean Water Services Design and Construction Standards.**

**FINDING:** The proposed storm drainage improvements do not include dry wells, detention ponds, or roof top ponds. Therefore, these standards are not applicable.

#### **C. Conveyance System**

**The size, capacity and location of storm water sewers and other storm water conveyance improvements shall be adequate to serve the development and accommodate upstream and downstream flow. If an upstream area discharges through the property proposed for development, the drainage system shall provide capacity to the receive storm water discharge from the upstream area. If downstream drainage systems are not sufficient to receive an increase in storm water caused by new development, provisions shall be made by the developer to increase the downstream capacity or to provide detention such that the new development will not increase the storm water caused by the new development.**

**FINDING:** Per the stormwater report provided by AKS Engineering, the preliminary storm drainage improvements are adequate to serve the proposed development and accommodate upstream and downstream flow. This standard is satisfied.

#### **16.114.030 – Service Availability**

**Approval of construction plans for new storm water drainage facilities pursuant to Chapter 16.106, and the issuance of building permits for new development to be served by existing storm water drainage systems shall include certification by the City that existing or proposed drainage facilities are adequate to serve the development.**

**FINDING:** The attached stormwater report includes the necessary documentation demonstrating that the stormwater drainage facilities are adequate to serve the site. The applicants met with City Engineering staff at the pre-application conference and discussed utilizing the existing stormwater facility located on the Pacific Family Dental site. The required calculations and design are included in the Stormwater Report included with this staff report as Exhibit J. The preliminary storm drainage improvements are adequate to serve the proposed development and accommodate upstream and downstream flow provided the conditions recommended above are met.

#### **16.116 – Fire Protection**

##### **16.116.020 – Standards**

###### **A. Capacity**

All fire protection facilities shall be approved by and meet the specifications of the Fire District, and shall be sized, constructed, located, and installed consistent with this Code, Chapter 7 of the Community Development Plan, and other applicable City standards, in order to adequately protect life and property in the proposed development.

**B. Fire Flow**

Standards published by the Insurance Services Office, entitled "Guide for Determination of Required Fire Flows" shall determine the capacity of facilities required to furnish an adequate fire flow. Fire protection facilities shall be adequate to convey quantities of water, as determined by ISO standards, to any outlet in the system, at no less than twenty (20) pounds per square inch residual pressure. Water supply for fire protection purposes shall be restricted to that available from the City water system. The location of hydrants shall be taken into account in determining whether an adequate water supply exists.

**C. Access to Facilities**

Whenever any hydrant or other appurtenance for use by the Fire District is required by this Chapter, adequate ingress and egress shall be provided. Access shall be in the form of an improved, permanently maintained roadway or open paved area, or any combination thereof, designed, constructed, and at all times maintained, to be clear and unobstructed. Widths, height clearances, ingress and egress shall be adequate for District firefighting equipment. The Fire District may further prohibit vehicular parking along private accessways in order to keep them clear and unobstructed, and cause notice to that effect to be posted.

**D. Hydrants**

Hydrants located along private, accessways shall either have curbs painted yellow or otherwise marked prohibiting parking for a distance of at least fifteen (15) feet in either direction, or where curbs do not exist, markings shall be painted on the pavement, or signs erected, or both, given notice that parking is prohibited for at least fifteen (15) feet in either direction.

(Ord. No. 2010-015, § 2, 10-5-2010; Ord. 91-922, § 3; Ord. 86-851, § 3)

**FINDING:** The proposal will not impact the existing access to the office building or the existing hydrants constructed as part of the original building approval (SP 06-07). The TVFR Deputy Fire Marshal has reviewed the plans and indicated that he is not concerned with the proposed expansion. Therefore, this standard is not applicable.

Mr. Claus argued that the Fire Marshall's comments are inapplicable, because the Fire Marshall reviewed this proposal as a parking lot extension, not as a separate parking lot. The hearings officer finds that the proposed development is an expansion of the existing parking lot on tax lot 1600, not a separate, free-standing, commercial parking lot. Access to the new parking lot will be provided through the existing parking lots on tax lot 1600 via the existing driveways on Handley Street. Although tax lots 1600 and 2100 are in separate ownerships, required easements will ensure that the parking areas on the two

parcels function as a single parking lot. The proposed development may improve fire access to the building on tax lot 1600, by providing paved vehicular access behind the building.

### **16.118 – Public and Private Utilities**

#### **16.118.020 – Standards**

- A. Installation of utilities shall be provided in public utility easements and shall be sized, constructed, located and installed consistent with this Code, Chapter 7 of the Community Development Code, and applicable utility company and City standards.**
- B. Public utility easements shall be a minimum of eight feet in width unless a reduced width is specifically exempted by the City Engineer.**
- C. Where necessary, in the judgment of the City Manager or his designee, to provide for orderly development of adjacent properties, public and franchise utilities shall be extended through the site to the edge of adjacent property (ies).**
- D. Franchise utility conduits shall be installed per the utility design and specification standards of the utility agency.**
- E. Public Telecommunication conduits and appurtenances shall be installed per the City of Sherwood telecommunication design standards.**
- F. Exceptions: Installation shall not be required if the development does not require any other street improvements. In those instances, the developer shall pay a fee in lieu that will finance installation when street or utility improvements in that location occur.**

**ANALYSIS:** The site is served by existing utilities.

**FINDING:** Utilities are available to the property and, as demonstrated within the plans and narrative an existing electric transformer vault is being relocated. The applicants state that all proposed utilities shall meet 16.118.030 and 16.118.040. These standards are satisfied.

### **Division VIII. Environmental Resources**

**The applicable provisions of Chapter 6 include: 16.142 (Parks, Trees and Open Spaces), 16.144 (Wetland, Habitat and Natural Areas), 16.146 (Noise), 16.148 (Vibrations), 16.150 (Air Quality), 16.152 (Odors), and 16.154 (Heat and Glare)**

Compliance with the standards in these sections is discussed below:

### **16.142 – Parks, Trees and Open Spaces**

#### **16.142.040 - Visual Corridors**

### **A. Corridors Required**

New developments located outside of the Old Town Overlay with frontage on Highway 99W, or arterial or collector streets designated on Figure 8-1 of the Transportation System Plan shall be required to establish a landscaped visual corridor according to the following standards:

Category	Width
1. Highway 99W	25 ft.

In residential developments where fences are typically desired adjoining the above described major street the corridor may be placed in the road right-of-way between the property line and the sidewalk. In all other developments, the visual corridor shall be on private property adjacent to the right-of-way.

### **B. Landscape Materials**

The required visual corridor areas shall be planted as specified by the review authority to provide a continuous visual and/or acoustical buffer between major streets and developed uses. Except as provided for above, fences and walls shall not be substituted for landscaping within the visual corridor. Uniformly planted, drought resistant street trees and ground cover, as specified in Section 16.142.060, shall be planted in the corridor by the developer. The improvements shall be included in the compliance agreement. In no case shall trees be removed from the required visual corridor.

### **C. Establishment and Maintenance**

Designated visual corridors shall be established as a portion of landscaping requirements pursuant to Chapter 16.92. To assure continuous maintenance of the visual corridors, the review authority may require that the development rights to the corridor areas be dedicated to the City or that restrictive covenants be recorded prior to the issuance of a building permit.

### **D. Required Yard**

Visual corridors may be established in required yards, except that where the required visual corridor width exceeds the required yard width, the visual corridor requirement shall take precedence. In no case shall buildings be sited within the required visual corridor, with the exception of front porches on townhomes, as permitted in Section 16.44.010(E)(4)(c).

### **E. Pacific Highway 99W Visual Corridor**

**1. Provide a landscape plan for the highway median paralleling the subject frontage. In order to assure continuity, appropriate plant materials and spacing, the plan shall be coordinated with the City Planning Department and ODOT.**

**2. Provide a visual corridor landscape plan with a variety of trees and shrubs. Fifty percent (50%) of the visual corridor plant materials shall consist of groupings of at least five (5) native evergreen trees a minimum of ten (10) feet in height each, spaced no less than fifty (50) feet apart, if feasible. Deciduous trees shall be a minimum of four (4) inches DBH and twelve (12) feet high, spaced no less than twenty-five (25) feet apart, if feasible.**

**ANALYSIS:** The applicants are proposing non-residential development on a parcel located outside of the Old Town Overlay that has frontage on Highway 99. Therefore the applicants are required to provide a 25-foot wide visual corridor on the section of the site adjacent to the Highway 99 right-of-way.

The applicants have provided a 25-foot visual corridor along a portion of the site where it abuts the new parking area. However the applicants have not shown the appropriate type of landscaping groupings as indicated in this provision. In addition, the landscaped corridor does not extend along the entire site frontage. The applicant can rely on the existing vegetation on the site to help fulfill this criterion, but the applicant must provide sufficient existing and proposed vegetation to comply with this criterion.

**FINDING:** Based on the above discussion the applicants have not met this provision, but can do so with the following condition.

**CONDITION:** Prior to final site plan approval, provide a landscape plan that shows the appropriate visual corridor along the site's entire Highway 99W frontage that is consistent with the standard. The applicants can rely on existing vegetation on the undeveloped portions of the site to meet this standard.

Mr. Claus appears to argue that this condition fails to provide sufficient specificity for the design of the visual corridor and there is no guarantee that the final design of the visual corridor will provide adequate screening. p. 48 of Exhibit P. The hearings officer finds that SZDC 16.142.040.E(2) provides specific requirements for numbers, types and spacing of plantings within visual corridors on Highway 99. Compliance with the planting and spacing requirements of the Code will ensure an adequate visual corridor. The applicant is required to provide a visual corridor along the site's entire Highway 99 frontage.

The fact that the applicants are demolishing the detached garage on tax lot 2100 is irrelevant to this approval criterion.

The fact that the two tax lots that make up the site are in different ownerships has no affect on compliance with this criterion.

Mr. Claus argued that the applicant, “[h]as no median and [therefore] he doesn't play the visual corridor and you should lead to a rejection of the entire plan.” *Id.* The hearings officer finds that it is feasible for the applicants to comply with all of the Code requirements for visual corridors. The Code provides specific design requirements for visual corridors. The applicants can be required to comply with those requirements. There is sufficient area along the site’s Highway 99 frontage to accommodate the required corridor.

#### **16.142.060 – Street Trees**

##### **A. Installation of Street Trees on New or Redeveloped Property.**

**Trees are required to be planted to the following specifications along public streets abutting or within any new development or re-development. Planting of such trees shall be a condition of development approval. The City shall be subject to the same standards for any developments involving City-owned property, or when constructing or reconstructing City streets. After installing street trees, the property owner shall be responsible for maintaining the street trees on the owner's property or within the right-of-way adjacent to the owner's property.**

- 1. Location: Trees shall be planted within the planter strip along a newly created or improved street. In the event that a planter strip is not required or available, the trees shall be planted on private property within the front yard setback area or within public street right-of-way between front property lines and street curb lines or as required by the City.**
- 2. Size: Trees shall have a minimum trunk diameter of two (2) inches DBH and minimum height of six (6) feet. Diameter at breast height (DBH) shall be measured as defined by the International Society of Arboriculture.**
- 3. Types: Developments shall include a variety of street trees. The trees planted shall be chosen from those listed in 16.142.080 of this Code.**
- 4. Required Street Trees and Spacing:**
  - a. The minimum spacing is based on the maximum canopy spread identified in the recommended street tree list in section 16.142.080 with the intent of providing a continuous canopy without openings between the trees. For example, if a tree has a canopy of forty (40) feet, the spacing between trees is forty (40) feet. If the tree is not on the list, the mature canopy width must be provided to the planning department by a certified arborist.**
  - b. All new developments shall provide adequate tree planting along all public streets. The number and spacing of trees shall be determined based on the type of tree and the spacing standards described in a. above and considering driveways, street light locations and utility connections. Unless exempt per c. below, trees shall not be spaced more than forty (40) feet apart in any development.**

- c. A new development may exceed the forty-foot spacing requirement under section b. above, under the following circumstances:
- (1) Installing the tree would interfere with existing utility lines and no substitute tree is appropriate for the site; or
  - (2) There is not adequate space in which to plant a street tree due to driveway or street light locations, vision clearance or utility connections, provided the driveways, street light or utilities could not be reasonably located elsewhere so as to accommodate adequate room for street trees; and
  - (3) The street trees are spaced as close as possible given the site limitations in (1) and (2) above.
  - (4) The location of street trees in an ODOT or Washington County right-of-way may require approval, respectively, by ODOT or Washington County and are subject to the relevant state or county standards.
  - (5) For arterial and collector streets, the City may require planted medians in lieu of paved twelve-foot wide center turning lanes, planted with trees to the specifications of this subsection.

**FINDING:** No new street trees are required for this proposal. Street trees were provided along the site's street frontages with the original development. No new streets are proposed with this development. Therefore these standards are not applicable.

Mr. Claus again argues that the applicants should be required to extend SW Cedar Brook Way as a condition of this development approval. p. 49 of Exhibit P. However, as discussed above, the City cannot constitutionally impose such a condition of approval, because the proposed parking lot does not create the need for this street extension and the cost of the extension would exceed the impacts of the proposed development. Required street trees were installed on tax lot 1600 when the dental office was originally constructed. Tax lot 2100 currently has no street frontage, other than on Pacific Highway, where a visual corridor is required. Therefore street trees are not required at this time. Street trees can be provided in the future when SW Cedar Brook Way is extended.

#### **16.142.070 – Trees on Property Subject to Certain Land Use Applications**

**All site developments subject to Section 16.92.020 shall be required to preserve trees or woodlands to the maximum extent feasible within the context of the proposed land use plan and relative to other policies and standards of the City Comprehensive Plan, as determined by the City. Review and mitigation shall be consistent with 16.142.060 A, B, C and D.**

**FINDING:** The applicants are not proposing to remove any of the existing on-site landscaping; therefore, this standard is not applicable to the proposed development.

Mr. Claus noted that the applicants previously removed trees from the site in order to create a gravel surface parking area on tax lot 2100. While that is unfortunate, it is irrelevant to this approval criterion. Any prior illegal tree removal must be dealt with through the City's enforcement process.

#### **D. Retention requirements**

**1. Trees may be considered for removal to accommodate the development including buildings, parking, walkways, grading etc., provided the development satisfies of D.2 or D.3, below.**

**2. Required Tree Canopy - Residential Developments (Single Family Attached, Single Family Detached and Two - Family)**

**Each net development site shall provide a variety of trees to achieve a minimum total tree canopy of 40 percent. The canopy percentage is based on the expected mature canopy of each tree by using the equation  $\pi r^2$  to calculate the expected square footage of canopy for each tree. The expected mature canopy is counted for each tree regardless of an overlap of multiple tree canopies.**

**The canopy requirement can be achieved by retaining existing trees or planting new trees. Required street trees can be used toward the total on site canopy required to meet this standard. The expected mature canopy spread of the new trees will be counted toward the needed canopy cover. A certified arborist or other qualified professional shall provide the estimated tree canopy of the proposed trees to the planning department for review.**

**3. Required Tree Canopy - Non-Residential and Multi-family Developments**

**Each net development site shall provide a variety of trees to achieve a minimum total tree canopy of 30 percent. The canopy percentage is based on the expected mature canopy of each tree by using the equation  $\pi r^2$  to calculate the expected square footage of each tree. The expected mature canopy is counted for each tree even if there is an overlap of multiple tree canopies.**

**The canopy requirement can be achieved by retaining existing trees or planting new trees. Required landscaping trees can be used toward the total on site canopy required to meet this standard. The expected mature canopy spread of the new trees will be counted toward the required canopy cover. A certified arborist or other qualified professional shall provide an estimated tree canopy for all proposed trees to the planning department for review as a part of the land use review process.**

	Residential	Old Town	Commercial
Canopy Requirement	40%	N/A	<b>30%</b>
<b>Counted Toward the Canopy Requirement</b>			
Street trees included in canopy requirement	Yes	N/A	<u>No</u>
Landscaping requirements included in canopy requirement	N/A	N/A	<u>Yes</u>
Existing trees onsite	Yes x2	N/A	<u>Yes</u> <u>x2</u>
Planting new trees onsite	Yes	N/A	<u>Yes</u>

**FINDING:** The applicants have not provided details as to compliance with this criterion; however it appears likely with the amount of proposed landscaping and existing trees on site that this criterion could be satisfied with the following condition.

Mr. Claus again notes that the applicants removed trees and other vegetation on the site in order to construct an illegal gravel surfaced parking lot on tax lot 2100. pp. 50 and 51 of Exhibit P. However that prior clearing activity will not preclude the applicants from complying with the canopy requirement. SZDC 16.142.070.D(3) provides, “The canopy requirement can be achieved by retaining existing trees or planting new trees.” The City encourages the retention of existing trees by doubling the canopy of existing trees for purposes of computing the canopy requirement. SZDC 16142.070.E. Therefore, to the extent the prior clearing activities reduced the number of existing trees on the site, the applicants will need to plant more new trees to meet this criterion. But the prior clearing does not preclude the applicants from complying with this standard.

Mr. Claus argued that the required plantings will inhibit the extension of SW Cedar Brook Way, because the applicants will plant trees in the right-of-way for this future street extension. p. 51 of Exhibit P. The hearings officer finds that required plantings will not preclude the future street extension. CWS regulations require that the applicants plant trees in the entire vegetated corridor in order to improve the existing degraded condition of the corridor. SW Cedar Brook Way is planned to be extended across the vegetated corridor in the future. Construction of this extension will require removal of some of the required plantings when SW Cedar Brook Way is extended in the future. Those impacts are unavoidable; because there is no specific alignment plan for the Cedar Brook Way extension, it is impossible to avoid planting trees within the future right of way for this street. However those impacts will not preclude compliance with this criterion. The City and/or CWS may require additional plantings when SW Cedar Brook Way is extended the future in order to replacc/mitigate for trees removed by roadway construction.

**CONDITION:** Prior to final site plan approval, provide landscape plans that show that the site meets the tree canopy requirement of 30-percent of the entire site area.

Mr. Claus appears to argue that the City is being inconsistent in its treatment of the two tax lots that make up the site, treating them as separate parcels for purposes of street trees and as a single parcel for purposes of the canopy requirement. p. 51 of Exhibit P. The hearings officer disagrees. The street tree requirement applies to street frontages. As discussed above, only tax lot 1600 has existing street frontage that requires street trees and those frontages already comply with the street tree requirement. Tax lot 2100 has no existing street frontage, other than Highway 99. Therefore street trees are not required on that portion of the site. Both tax lot 1600 and 2100 have frontage on Highway 99 and the applicants are required to provide a landscaped visual corridor along that entire site frontage, lots 1600 and 2100. The canopy requirement of SZDC 16.142.070.D(3) must be met based on the area of the entire site. Therefore it is necessary to include both lots in the canopy cover calculation.

### **16.144 – Wetland, Habitat and Natural Areas**

#### **16.144.020 – Standards**

- A. The applicants shall identify and describe the significance and functional value of wetlands on the site and protect those wetlands from adverse effects of the development. A facility complies with this standard if it complies with the criteria of subsections A.1.a and A.1.b, below:**
- 1. The facility will not reduce the area of wetlands on the site, and development will be separated from such wetlands by an area determined by the Clean Water Services Design and Construction Standards R&O 00-7 or its replacement provided Section 16.140.090 does not require more than the requested setback.**
    - a. A natural condition such as topography, soil, vegetation or other feature isolates the area of development from the wetland.**
    - b. Impact mitigation measures will be designed, implemented, and monitored to provide effective protection against harm to the wetland from sedimentation, erosion, loss of surface or ground water supply, or physical trespass.**
    - c. A lesser setback complies with federal and state permits, or standards that will apply to state and federal permits, if required.**

**FINDING:** The applicants are not proposing to remove any of the existing on-site landscaping. According to the Natural Resource Assessment (**Exhibit I**) written by SWCA Consultants and corroborated by Clean Water Services (**Exhibit K**), there are on-site wetlands on the western portion of tax lot 2100, which require a 50-foot-wide vegetated corridor. The applicants propose no vegetated corridor impacts with this development. 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 groundcovers that would be planted upon approval. Additionally, a maintenance plan describing a two-year maintenance period is

included with the vegetated corridor planting plan. The site would not reduce the area of wetlands on the site. Therefore, this standard is satisfied.

### **16.146 – Noise**

#### **16.146.010 – Generally**

**All otherwise permitted commercial, industrial, and institutional uses in the City shall comply with the noise standards contained in OAR 340-35-035. The City may require proof of compliance with OAR 340-35-035 in the form of copies of all applicable State permits or certification by a professional acoustical engineer that the proposed uses will not cause noise in excess of State standards.**

**FINDING:** The only increase in noise due to the proposed parking lot extension would occur during construction and be of temporary duration. It is not anticipated that this development would create high levels of noise beyond what is expected in an urban area. There are not any expected adverse impacts therefore this standard is satisfied.

Mr. Claus appears to argue that construction vehicle parking activities on tax lot 2100 generate noise in violation of this standard. p. 52 of Exhibit P. Assuming that is true, it is irrelevant. No construction vehicle parking is proposed with this application.

Construction of the proposed parking lot will require the operation of construction equipment, which will generate noise. However those impacts are short term and temporary, while construction is actually occurring on the site. Once the parking lot is completed, those impacts will cease. In addition, construction noise is exempt from the noise limitations of OAR 340-035-035. See OAR 340-035-0035((5)(g)). At the hearing Mr. Claus argued that the applicants and/or Mr. Platt intends to continue parking construction equipment on the portion of tax lot 2100 outside of the parking lot. However such activities are prohibited in the GC zone and therefore would be a violation subject to enforcement action by the City.

### **16.148 – Vibrations**

#### **16.148.010 – Generally**

**All otherwise permitted commercial, industrial, and institutional uses shall not cause discernible vibrations that exceed a peak of 0.002 gravity at the property line of the originating use, except for vibrations that last five (5) minutes or less per day, based on a certification by a professional engineer.**

**FINDING:** It is not anticipated that this development would create high levels of vibration beyond what is expected in an urban area. There are no expected adverse vibration impacts therefore this standard is satisfied.

### **16.150 – Air Quality**

### **16.150.010 – Generally**

**All otherwise permitted commercial, industrial, and institutional uses shall comply with applicable State air quality rules and statutes:**

- A. All such uses shall comply with standards for dust emissions as per OAR 340-21-060.**
- B. Incinerators, if otherwise permitted by Section 16.140.020, shall comply with the standards set forth in OAR 340-25-850 through 340-25-905.**
- C. Uses for which a State Air Contaminant Discharge Permit is required as per OAR 340-20-140 through 340-20-160 shall comply with the standards of OAR 340-220 through 340-20-276.**

**FINDING:** It is not anticipated that there will be high levels of air pollution beyond what is expected in an urban area. There are no expected adverse air quality impacts therefore this standard is satisfied.

### **16.152 – Odors**

#### **16.152.010 – Generally**

**All otherwise permitted commercial, industrial, and institutional uses shall incorporate the best practicable design and operating measures so that odors produced by the use are not discernible at any point beyond the boundaries of the development site.**

**FINDING:** It is not anticipated that there will be high levels of odor or unusual beyond what is expected in an urban area. There are no expected adverse odor impacts, therefore this standard is satisfied.

### **16.152 – Heat and Glare**

#### **16.154.010 – Generally**

**Except for exterior lighting, all otherwise permitted commercial, industrial, and institutional uses shall conduct any operations producing excessive heat or glare entirely within enclosed buildings. Exterior lighting shall be directed away from adjoining properties, and the use shall not cause such glare or lights to shine off site in excess of one-half (0.5) foot candle when adjoining properties are zoned for residential uses.**

**ANALYSIS:** The applicants' lighting plan identified eight (8) new exterior lights to illuminate the proposed parking lot extension. All exterior lighting will be directed

toward the interior of the proposed parking lot and away from adjacent residential uses and the existing building.

**FINDING:** The proposed lighting plan only shows the anticipated foot-candle levels within the parking lot. It is unclear what amount of illumination, if any, would spill over onto adjacent properties. The applicants did not respond, and it is not clear from the proposed plans whether or not lighting would be added or required in these areas. Therefore, the following condition is warranted.

**CONDITION:** Prior to final site plan approval, the applicants shall submit a revised lighting plan showing that the lighting will not shine more than 0.5 foot candle from the property onto adjacent properties.

#### **D. CONCLUSION**

Based on the above findings, the hearings officer concludes that File No. SP 13-01 (Pacific Dental Parking Lot) should be approved, because the applicants sustained the burden of proof that it does or can comply with applicable approval standards of the SZDC subject to the conditions recommended by City staff, as amended consistent with the discussion above.

#### **G. DECISION**

The hearings officer hereby approves File No. SP 13-01 (Pacific Dental Parking Lot), subject to the following conditions of approval:

#### **CONDITIONS OF APPROVAL**

1. Compliance with the Conditions of Approval is the responsibility of the developer or its successor in interest.
2. This land use approval shall substantially comply with the submitted site plans dated July 15, 2013 prepared by AKS Engineering and Forestry except as indicated in the following conditions of the Notice of Decision. Additional development or change of use may require a new development application and approval.
3. The developer/owner/applicants are responsible for all costs associated with private/public facility improvements.
4. This approval is valid for a period of two (2) years from the date of the decision notice. Extensions may be granted by the City as afforded by the Sherwood Zoning and Community Development Code.

5. An on-going condition of approval is that the site be maintained in accordance with the approved site plan.
6. The continual operation of the property shall comply with the applicable requirements of the Sherwood Zoning and Community Development Code and Municipal Code.
7. A temporary use permit must be obtained from the Planning Department prior to placing a construction trailer on-site.
8. This approval does not negate the need to obtain permits, as appropriate from other local, state or federal agencies even if not specifically required by this decision.
9. Use of this parking area shall be limited to employees and patrons of the existing dental office building on tax lot 1600. Rental, lease, sale or other commercial use of the parking spaces shall not be allowed without further City review and approval.

**Prior to issuance site, grading, or erosion control permits from the Building Department:**

1. Obtain City of Sherwood Building Department approval for any grading or erosion control plans.

**Prior to Final Site Plan Approval:**

1. Submit evidence-indicating compliance with the required conditions provided by Clean Water Services File Number 13-001610, Exhibit K. This includes obtaining City of Sherwood Building Department approval for any grading or erosion control plans.
2. Provide additional information on how the topsoil or subsoil preparation will be undertaken to ensure that the new landscape plants will receive the appropriate nutrients and soil conditions to survive.
3. Submit a letter from the landscape architect certifying that the plants are native and/or are the most appropriate for the site or if they modify the plant list to provide the required native plants.
4. Provide a landscape plan that shows the appropriate combination of trees to satisfy the parking lot landscaping standard.

5. Submit landscape plans that show a visual corridor along the site's entire Highway 99W frontage that is consistent with the visual corridor standard. The applicants can rely on existing vegetation on the undeveloped portions of the site to meet this standard.
6. Submit additional information identifying how the garbage/recycle area would be screened from Handley Street.
7. Submit additional information clearly identifying where all parking, loading or maneuvering areas would be marked or painted.
8. Submit a revised lighting plan showing that the lighting will not be more than 0.5 foot candle from the property onto adjacent properties.
9. Submit evidence of the following information as requested by Pride Disposal Company:
  - a. The enclosure needs to have inside measurements of 20 feet wide and 10 feet deep.
  - b. There should be no center post at the access point in the center of the enclosure.
  - c. The gates will need to allow for the full 20 feet needed to access the enclosure. They should be hinged in front of the enclosure walls to allow for the full 20 feet width. This will also allow for the 120 degree opening angle that is required.
  - d. The gates need cane bolts and holes put in place for the gates to be locked in the open and closed position. The holes for the gates to be held open need to be at the full 120-degree opening angle.
  - e. No roof on the enclosure.
10. Provide landscape plans that showing the site meets the tree canopy requirement of 30-percent of the entire site area.

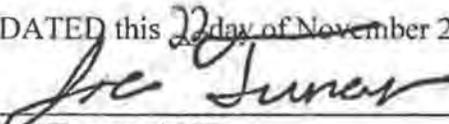
**Prior to Final Approval:**

1. Receive Sherwood Engineering Department approval of engineering plans for all public improvements and/or connections to public utilities (water, sewer, storm water, and streets) including compliance with all conditions specified in "Prior to approval of public improvement plans.
2. Provide staff with proof of a recorded 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.

3. Obtain final site plan approval from the Planning Department.
4. Re-grade the existing water quality swale or re-lay the storm pipe to allow the pipe to discharge into the flow line of the swale.
5. Provide evidence that a private stormwater facility access and maintenance covenant between the owner and the City has been implemented and recorded with Washington County with a copy being provided to the City.
6. Dedicate a public water line easement to the City on the outside of the existing public utility easement to give a minimum easement width of 7.5 feet from the existing water main within Tax Lot 2100.
7. Dedicate a new water vault easement to the City on the outside of the existing public utility easement to give a minimum easement width of 5 feet around the outside of the existing water vault within Tax Lot 2100.
8. Install the required landscaping or pay a security equal to 125% of the cost of the landscaping will be filed with the City.
9. All site improvements including but not limited to landscaping, parking and site lighting shall be installed per the approved final site plan and inspected and approved by the Planning Department.

DATED this 22 day of November 2013.



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Joe Turner, AICP  
City of Sherwood Hearings Officer

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 )                      FINAL ORDER  
expand an existing parking lot at 17680 SW Handley )                      Case No.  
Street onto an adjacent parcel at 22065 SW Pacific )                      SP 13-01  
Highway in the City of Sherwood, Oregon                      )                      (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 electric transformer vault. The site and surrounding properties to the southwest, north, across SW Handley Street, and east, across Highway 99, are zone GC (General Commercial). Properties to the northwest 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 Report to 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")

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 person testified orally or in writing in opposition. Contested issues in the case include the following:

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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 existing 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 corridor between the new parking lot and Highway 99. The applicants can rely on the existing vegetation to provide a visual corridor 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 control measures 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 northwest corner of the site, abutting the west boundary 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 of this 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 lot 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 2100 without required permits. The City enforcement section has been working with tenant and the applicants for roughly 17 months to bring the property into compliance.

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

i. He testified that he was not aware of any ODOT or CWS concerns regarding right-of-way dedication for this project. He 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 storm 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 stormwater 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, until he threatened to contact the state police. The City never imposed daily fines for the violation and never prohibited Mr. Platt 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 on tax lot 2100 is an illegal use. However the City plans to allow Mr. Platt to continue parking his vehicles and equipment in the illegal 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 existing illegal parking use. Therefore the existing parking use should have been included in the application. The applicants should be required to remedy the existing violation 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 Brook 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 land 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 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 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:

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If the 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 file 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, "[s]ubmitted 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 letter 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 issues were raised in public comments submitted prior to, during, and after the public hearing in this case.<sup>1</sup>

##### 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 property. 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 continue 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:

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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.

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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 currently 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 of land, a premise or a building 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." In this case the applicants are proposing a "change to a parcel of land..." A portion of tax lot 2100 will be changed from residential to commercial parking lot. However that change will not "create[] a change in vehicular trip generation 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 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. The hearing officer has no authority to impose a condition of approval prohibiting 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 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 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 requires 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 underestimated 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.

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**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 address 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. If 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.<sup>2</sup>

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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<sup>2</sup> 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, *or* 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 of reasonable conditions of approval.**

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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.

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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 permits 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 satisfied.

Handley 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.**

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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" between the impacts of the proposed development and the need for this street extension. *Nollan v. California Coastal Commission*, 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 correct that expansion of the parking lot onto tax lot 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.**

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#### 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 pemitted 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 siteplan 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. In 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 hearing 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 northeast corner of tax lot 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 permitted 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 are 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 earlier 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 vires for him to require an automatic mechanism to enforce this code when Doyel violates it again.

The existing office building is non conforming with respect to the minimum parking requirements of the current code.<sup>3</sup> 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 would 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 16.22.020, 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 proposing 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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<sup>3</sup> 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.

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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. In the only, 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).

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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.<sup>4</sup> No new buildings or structures are being proposed as part of this project.<sup>5</sup> 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**

<sup>4</sup> 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."

<sup>5</sup> 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.

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- 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 AU 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 away from 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, storm 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 hearing 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 complies 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

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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 groundcovers that would be planted upon approval. Specifically the plan states that prior to ground disturbance, an erosion control permit is required through the City. Additionally, a maintenance plan describing 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 approval the applicants shall submit evidence-demonstrating compliance with the required conditions provided by Clean Water Services File Number 13-001610, Exhibit K. This includes obtaining City of Sherwood Building 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 Program 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 breach 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 responsibly 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 is just 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 breaches 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 hearing 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 hearing 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 been 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 enough 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. Secondly, 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 can 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.