

City of Sherwood Planning Commission Packet for January 25, 2022

Supplemental Exhibits for the Record

Current as of 1/24/22 at 7 pm

LU 2021-009 Cedar Creek Plaza Apartments

- Exhibit YY – Testimony from Todd Fisher
- Exhibit ZZ – Testimony from Chris Koback

EXHIBIT YY to LU 2021-009

From: [toddmgr](#)
To: [Eric Rutledge](#)
Cc: [Siobhan Fisher](#); Cox@coxgroupdpdx.com; [Chris Koback](#)
Subject: Fwd: Cedar Creek Plaza parking and Deacon Development proposed apartment complex
Date: Sunday, January 23, 2022 1:04:37 PM
Attachments: [CedarCreekPadExecSummary Flyer.pdf](#)
[We sent you safe versions of your files.msg](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you are expecting this email and/or know the content is safe.

Mimecast Attachment Protection has deemed this file to be safe, but always exercise caution when opening files.

Todd Fisher
Owner of Lot 3 in Cedar Creek Plaza

Todd Fisher wrote:

Dear Mr. Rutledge,

Thank you for including us in the list of those who wish to testify regarding the application by Deacon Development to modify the Development from a hotel to an apartment complex.

I want to be clear that as the owner of Lot 3 I do not consent to the application proposing an Apartment complex to replace the previously approved hotel on Lot 2.

Deacon Development is attempting to utilize Lot 3's consent in this application. Deacon Development made their application for this change and did not disclose this to me as the buyer. They do not have the right to use Lot 3's consent since they do not own Lot 3.

Regards and thanks,

Todd Fisher
818 207-5041

Begin forwarded message:

From: toddmgr <todd.mgr@gmail.com>
Subject: Fwd: Cedar Creek Plaza parking and Deacon Development proposed apartment complex
Date: January 18, 2022 at 11:03:39 AM PST
To: Harold Cox <cox@coxgroupdpdx.com>

Todd Fisher wrote:

Hello Harold:

Please see what I emailed Eric Rutledge over the weekend.

Thanks for the update on the date change. I just left Eric a phone message regarding my concern.

I'll try to reach you by phone today. Feel free to call me when convenient at 818 207-5041.

Regards,
Todd

Begin forwarded message:

From: toddmgr <todd.mgr@gmail.com>
Subject: Cedar Creek Plaza parking and Deacon Development proposed apartment complex
Date: January 16, 2022 at 1:11:56 PM PST
To: Eric Rutledge <rutledge@sherwoodoregon.gov>

Todd Fisher wrote:
Regarding Cedar Creek Plaza Retail Development
Sherwood, OR

Dear Mr. Rutledge,
I am the managing partner for Lake Bowman MHP, LLC which recently purchased building B in Cedar Creek Plaza Retail Development. Our tenants are Mud Bay, RNG Veterinary Services, LLC, and Sofia's Cafe.

I was told that Deacon Development, LLC was proposing to develop a Hotel on Lot #2 and they are now proposing an 84 Unit Apartment building and requesting a modification to allow them to provide a reduced number of parking spaces (92 spaces). We closed on the purchase of Building B in July 2021. I have attached the marketing flyer that was circulated to us a potential buyers. Please note in three locations in the marketing Lot #2 is to be a Hotel. It also discusses the CAM costs and maintenance of the parking area which will be complicated by this change.

Deacon Development, LLC is attempting to redefine the terms for parking that were approved when the development was proposed and approved by the city planners. This is the last piece of the development to be completed. Their plan to build an apartment complex impacts the already cramped parking situation. We are currently receiving comments and requests from our tenants regarding dedicated parking spaces. Sofia's Cafe which provides dine in and take out food has been impacted by others parking in the two spaces directly in front of their cafe.

The change of the proposed hotel to an apartment will have a negative impact on the parking. Most guests staying at a hotel arrive together in one vehicle. I have been involved in multi-family management for 40yrs and parking issues and infringements are a large part of the work and problems we manage. The proposed number of spaces is an underestimate of the number of cars that will be present if Deacon Development builds 84 units. In my experience you should be planning for 2 cars per unit plus some additional guest spaces and staff spaces. Parking demands have changed since the code was written regarding apartments. Many of our residents are permanently "Work From Home" employees now. They are not leaving the property during the day and this will impact the spaces for the retail and restaurants customers.

Rising rents has led to more people sharing units to reduce the cost of their housing expense. This means more cars per apartment unit. Many of our residents who work remotely like to have friends come and stay with them for a few days. Apartment residents sometimes have vehicles with mechanical issues and are inoperable. If a tenant has an inoperable car they will often times rent one or borrow a car while the inoperable one waits to be repaired. A hotel guest cannot leave an inoperable car in the hotel lot. It must be removed. Enforcing rules on tenants has become a difficult issue under current rules in many states. It is difficult to determine which vehicle belongs to which tenant. Tenants often replace a vehicle and don't update the management. When Deacon has completed developing the apartment complex and sells it off, they will be gone and the Cedar Creek Plaza commercial properties will be left to try to determine whose car belongs to the apartment complex and who are actual customers of the Plaza's businesses.

Ultimately I am requesting that the Deacon Development reduce the number of apartments or provide at least 168 spaces within the boundaries of Lot #2 utilizing subterranean parking. I can make an argument for more spaces than that when you include guests and staff to manage the apartment complex.

Thank you for your consideration. Please feel free to contact me if you have questions.

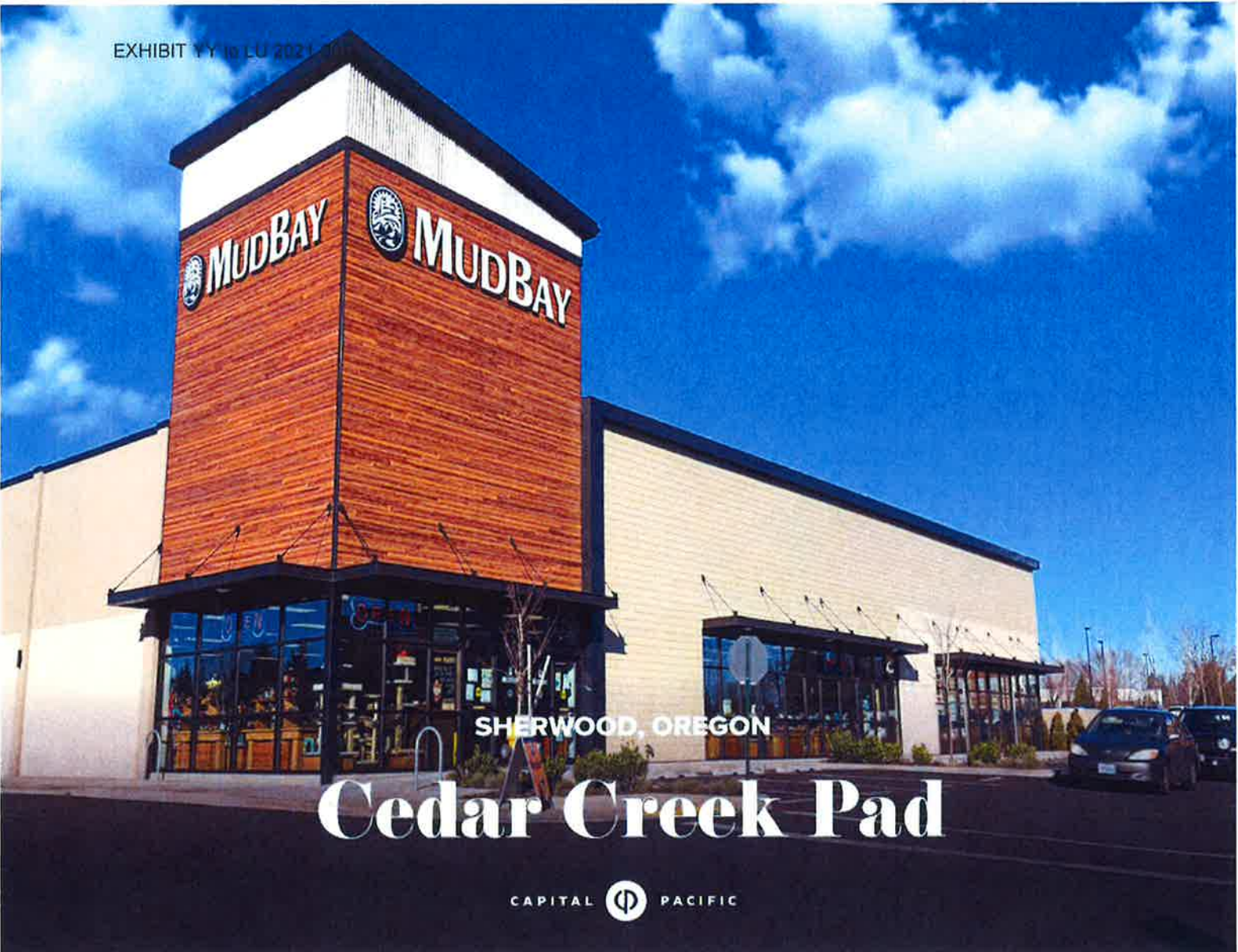
Regards,
Todd Fisher

EXHIBIT YY to LU 2021-009

818 207-5041

todd_mgr@gmail.com

EXHIBIT YY to LU 2021



MUDBAY MUDBAY

SHERWOOD, OREGON

Cedar Creek Pad

CAPITAL  PACIFIC



THE
ACKERLY
SENIOR
LIVING

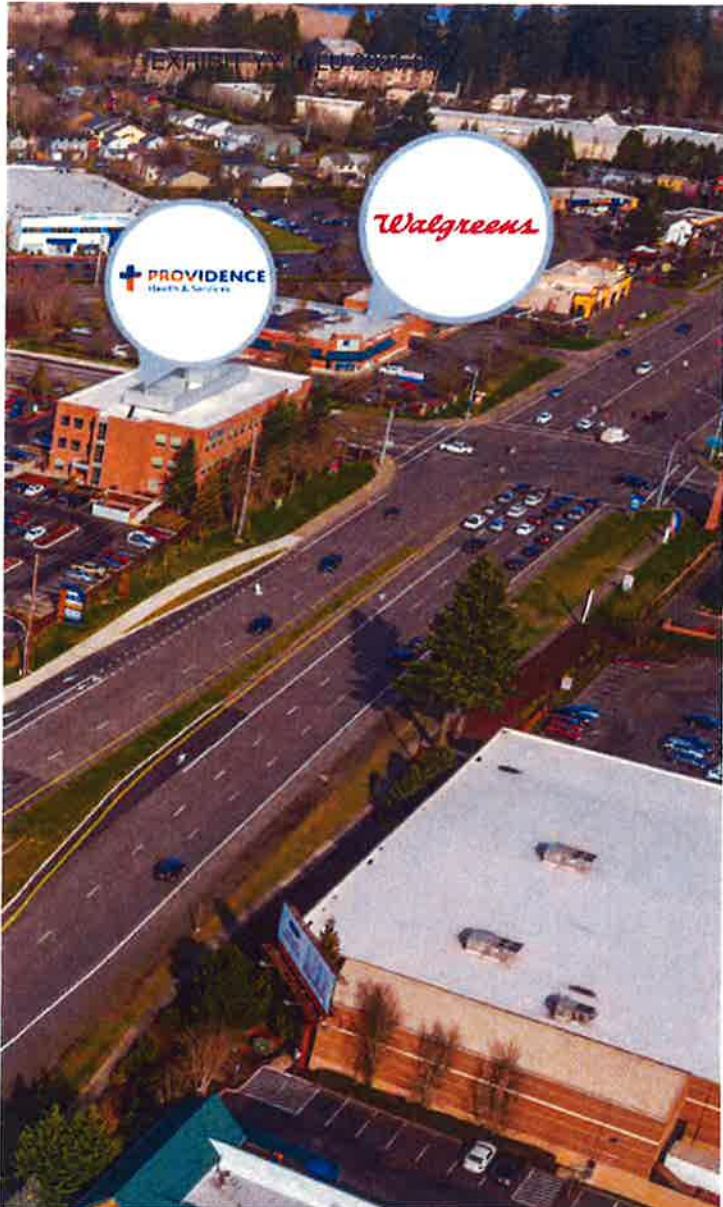
CEDAR
CREEK
PAD

INCOMING
HOTEL



LUNA NAILS & SPA
SABYE THAI
CUPCAKE COUTURE





CEDAR CREEK PAD

THE OFFERING

Located Within a High Quality Mixed Use Center

THE OFFERING provides the opportunity to acquire a three-tenant retail asset fully occupied by Mud Bay, R+G Veterinary, and Sophias Cafe located within the Cedar Creek Plaza, a Class A mixed-use center. All tenants operate under NNN leases with varying rental increases. The Property benefits from strong surrounding demographics and co-tenancy provided by an adjacent 137-unit senior housing development and a 3-story Providence Health Service building with a ground level urgent care. The Property is well-positioned with excellent visibility off Highway 99, located in Sherwood, OR, one of the state's fastest-growing cities.

INVESTMENT HIGHLIGHTS

- PART OF A HIGH QUALITY MIXED USE CENTER THAT INCLUDES SIX ADDITIONAL RETAIL PADS, A MEDICAL CENTER, AS WELL AS A SENIOR HOUSING DEVELOPMENT.
- HIGH PURCHASING POWER IN THE TRADE AREA WITH AVERAGE INCOMES IN EXCESS OF \$120,000 VS PORTLAND METRO AVERAGE OF \$86,000.
- SHERWOOD IS ONE OF THE FASTEST GROWING CITIES IN WASHINGTON COUNTY AND THE PORTLAND MSA.
- SOPHIAS CAFE CHOSE CEDAR CREEK TO EXPAND THEIR PRESENCE TO A THIRD LOCATION IN THE PORTLAND METRO AREA.
- EXPOSURE AND SIGNAGE VISIBLE FROM HIGHWAY 99, THE PREEMINENT ARTERIAL CONNECTING TO THE WORLD-RENOWNED WILLAMETTE VALLEY WINE REGION.



EXHIBIT YY to LU 2021-009



\$4,990,000

PRICE

6.00%

CAP

LEASEABLE SF 8,563 SF

LAND AREA 44,011 SF

OCCUPANCY 100%

PRICE PER SF \$583

YEAR BUILT 2018

**PARKING ±232 Spaces;
27.0/1,000 SF***

**ADDRESS 16784 SW Edy Rd
Sherwood, OR 97140**

** Tenant benefits from additional parking provided via a Cross-Easement Parking Agreement with the larger center.*

EXHIBIT YY to LU 2021-009



EXHIBIT YY to LU 2021-009

CEDAR CREEK PAD

ABOUT THE TENANT

About Mud Bay

MUD BAY is a northwest pet supply retailer, highly specialized in offering dog and cat related products, with a focus on high quality, all while having one of the largest selections of natural foods for dogs and cats in the U.S. The company is based out of Olympia, WA with continued growth in the northwest, as the retailer has expanded steadily over the last few decades, primarily opening in neighborhoods.

Mud Bay converted ownership to an Employee Stock Ownership Plan (ESOP) in 2015, providing their staff long-term stake ownership in the company, reflective of Mud Bay's culture of empowering and investing in their employees. Through this investment in the company, Mud Bay has grown into the largest pet retailer headquartered in the Pacific Northwest and one of the top 20 pet retailers in the country.

60

OF PACIFIC
NORTHWEST
STORES

5

NEW STORES
OPENED IN 2020



THE
ACKERLY
SENIOR
LIVING

PROVIDENCE
Health & Services

CEDAR
CREEK
PAD

INCOMING
HOTEL

planet
fitness

Orangetheory
Starbucks

LUNA NAILS & SPA
SABYE THAI
CUPCAKE COUTURE

HOPS & DROPS
A Neighborhood Serving Place

IHOP
SHERWOOD EYE
HEALTH

CEDAR CREEK PLAZA

The current declarant of Cedar Creek Plaza is Deacon Development, who still owns one remaining pad outside of this current asset. Cedar Creek Plaza consists of a Providence Health Services, Planet Fitness, five retail pads (consisting of both national, regional, and local tenants), and an adjacent 137-unit senior housing development.

TENANTS

- CUPCAKE COUTURE
- HOPS N DROPS
- IHOP
- LUNA NAILS & SPA
- MUD BAY
- ON POINT COMMUNITY CREDIT UNION
- PROVIDENCE HEALTH SERVICES
- SABYE THAI
- SHERWOOD EYE HEALTH
- STARBUCKS
- SOPHIAS CAFE
- R+G VETERINARY
- PLANET FITNESS

Q: DO ANY TENANTS HAVE EXCLUSIVE USES OR CO-TENANCY CLAUSES?

A: No Tenants have a co-tenancy clause, yet the following tenants do have an exclusive:

- Planet Fitness
- IHOP
- Sherwood Eye Health
- Hops n' Drops
- Sabye Thai
- Luna Nails
- R+G Veterinary
- Starbucks
- Sophias Cafe



EXHIBIT 1.1 - 01/2021-008



EXHIBIT YY to LU 2021-009

Within 5 Miles

CEDAR CREEK PAD

LOCATION OVERVIEW

108,973

**2019
POPULATION**

117,108

**2024
PROJECTED
POPULATION**

\$120,243

**AVERAGE
HOUSEHOLD
INCOME**

\$99,278

**MEDIAN
HOUSEHOLD
INCOME**

3,240

**TOTAL
BUSINESSES**

38,011

**TOTAL
EMPLOYEES**

 **PARCEL LINE**



CONNECTIVITY

Portland Connectivity

SHERWOOD IS A GROWING SUBURB OF THE PORTLAND MSA, less than 20 miles from Portland's Central Business District - the city hugs the west and east portions of Highway 99, a commuter highway connecting directly to I-5, driving traffic into downtown Portland. Sherwood is a suburb of Portland with an affluent demographic base and has seen growth due to the increasing size of Portland. Oregon sustained the third highest growth rate in history in 2018, according to a Portland State University study, mostly due to the growth of Portland and its surrounding neighborhoods.

Distance To

CITY	MILES	MINS
Portland	17 miles	26 min
Salem	36 miles	40 min



CONNECTIVITY



NEW DEVELOPMENTS

SHERWOOD IS ONE OF THE FASTEST-GROWING CITIES IN OREGON with the ninth highest population density, driving the need for additional housing and increased amenities. This has led to a brand-new high school currently under development. Despite the increasing population and need for additional housing, Sherwood has a lack of developable land for retail and housing purposes as most is zoned light industrial. In addition, Sherwood has revised the application for expansion and is intending on reapplication for the Urban Growth Boundary.

1. T-S CORPORATE

APPROVED - 5 INDUSTRIAL BUILDINGS, APPROX. 535,000 SF

2. TROUVAILLE BREWING

APPROVED

3. PARKWAY VILLAGE SOUTH

**UNDER CONSTRUCTION
FIVE-LOT SUBDIVISION WITH 92,000 SF INDOOR ENTERTAINMENT AND 32,000 SF FOR RETAIL.**

4. DENALI LANE PUD

APPROVED - SEVEN-LOT SINGLE FAMILY SUBDIVISION.

5. THE SPRINGS PUD

APPROVED - TWO NEW BUILDINGS TO PROVIDE COMBINED 93 ASSISTED-LIVING UNITS.

6. OREGON STREET TOWNHOMES

**UNDER CONSTRUCTION
25 TOWNHOMES ACROSS 1.2 ACRES.**

7. PINE STREET MIXED-USE

THREE-STORY MIXED-USE BUILDING ACROSS 0.1 ACRES WITH RETAIL AND A RESTAURANT ON THE GROUND FLOOR WITH MULTIFAMILY ABOVE.

8. HAMPTON INN

UNDER CONSTRUCTION

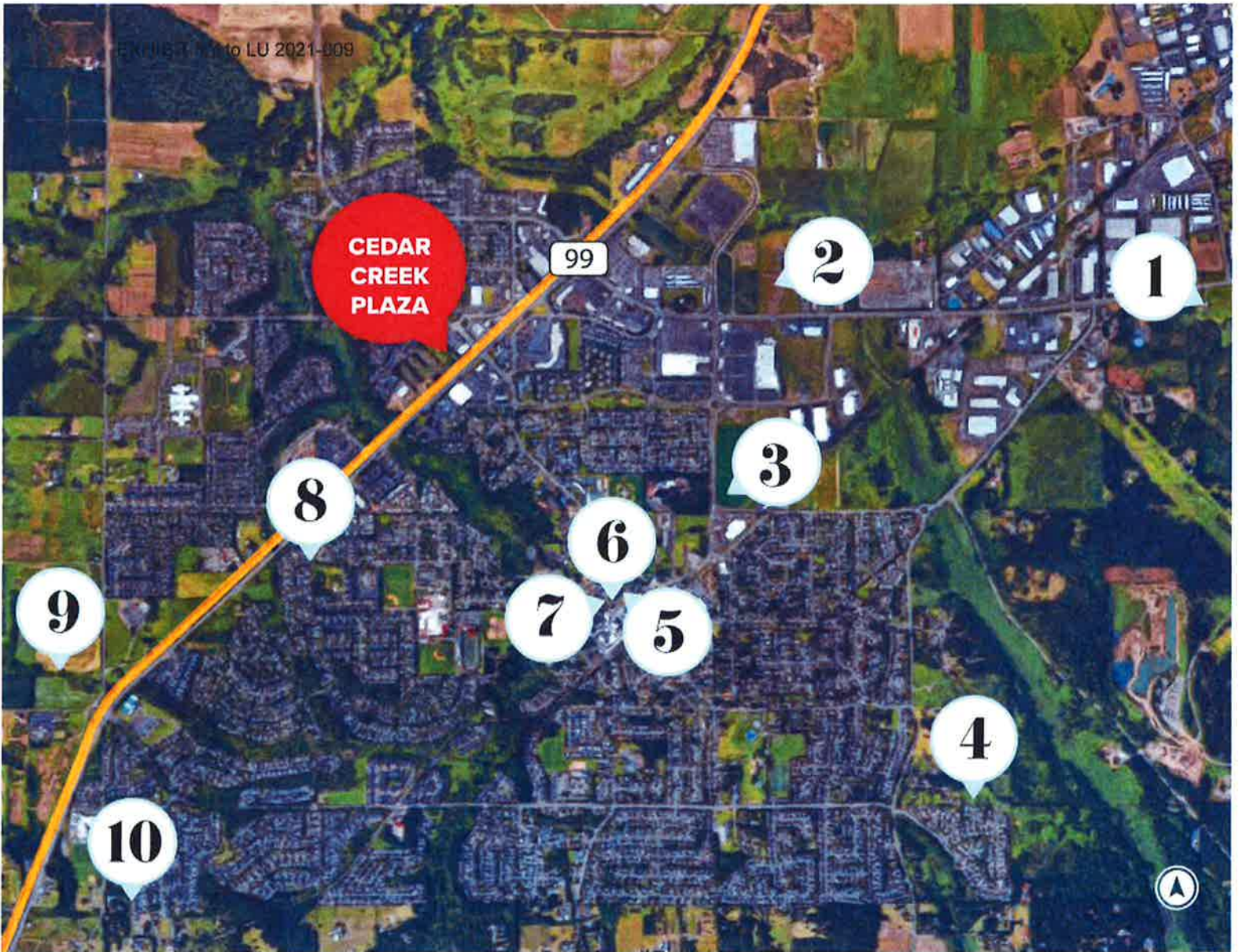
9. SHERWOOD HIGH SCHOOL

BRAND NEW \$182M, 73-ACRE CAMPUS SCHEDULED TO OPEN 2020-2021.

10. MIDDLETON ESTATES SUBDIVISION

UNDER REVIEW - 12-LOT SINGLE FAMILY SUBDIVISION ACROSS 1.98 ACRES.

EXHIBIT 1.1 to LU 2021-009



FINANCIAL SUMMARY

PRICE		\$4,990,000
CAPITALIZATION RATE		6.00%
CASH FLOW SUMMARY		
SCHEDULED INCOME		PER SF
Base Rent for the Period of:	5/1/2021 - 4/30/2022	\$34.66 \$296,760
Operating Expense Reimbursement		\$8.96 \$76,710
Equals: Scheduled Gross Income		\$43.61 \$373,470
Total Effective Gross Income (EGI)		\$43.61 \$373,470
OPERATING EXPENSES		PER SF
CAMS		\$3.67 \$31,425
Property Taxes		\$3.15 \$26,968
Insurance		\$0.15 \$1,246
Management Fee	4.0% of EGI	\$1.66 \$14,256
Total Operating Expenses		\$8.63 \$73,895
NET OPERATING INCOME		\$34.98 \$299,575

TENANT INFO			LEASE TERMS			CURRENT RENT		RENT INCREASES		OPTIONS
TENANT NAME	SIZE	% OF SF	RENT START	LEASE EXPIRATION	LEASE TYPE	MONTHLY BASE RENT	RENT PSF	DATE OF INCREASE	MONTHLY BASE RENT	
Mud Bay, Inc.	4,918	57.43%	12/1/19	11/30/29	NNN	\$14,098	\$34.40	12/1/24	\$15,508	3, 5-Yr 180 Days Notice 10% Per Period
<small>Comments: Annually, the tenant shall provide a signed copy of the gross sales from the preceding year.</small>										
R+D Veterinary Services, LLC	2,441	28.57%	8/31/21	8/31/31	NNN	\$7,120	\$38.00	8/1/22	\$7,263	2, 5-Yr 180 Days Notice
<small>Comments: Rent Commencement begins 6 months after Delivery. Store opening, or Certificate of Occupancy, expected Delivery is 2/22/2021. Rent abatement period not reflected in the analysis. Annually, the tenant shall provide a signed copy of the gross sales from the preceding year. Personal Guarantee until tenant's financial conditions is shown to be at least equal to the Guarantors' collective financial conditions</small>										
Sophias Cafe Inc.	1,204	14.06%	4/8/21	8/30/38	NNN	\$3,512	\$38.00	8/1/22	\$3,600	1, 5-Yr 120 Days Notice
<small>Comments: Rent Commencement begins 4 months after Delivery. Store opening, or Certificate of Occupancy, expected Delivery is 2/8/2021. Rent abatement period not reflected in the analysis. Annually, the tenant shall provide a signed copy of the gross sales from the preceding year. Personal Guarantee.</small>										
TOTALS	8,563	100%				\$24,730	\$34.66			
Occupied	8,563	100%				\$24,730	\$34.66			

OPERATING EXPENSES

	PROJECTED OPERATING EXPENSES			REIMBURSEMENTS
	TOTAL	PER SF	NOTES	IN-PLACE
CAMS	\$31,425	\$3.67	1	\$31,425
PROPERTY TAXES	\$26,968	\$3.15	2	\$26,968
INSURANCE	\$1,246	\$0.15	1	\$1,246
MANAGEMENT	\$14,256	\$1.66	3	\$17,071
TOTAL EXPENSES	\$73,895	\$8.63		\$76,710

NOTES:

- 1) Based on the 2021 Operating Budget.
- 2) Based on 2020 Washington County Tax Assessment.
- 3) Based on 4% of EGI. Reimbursements include Admin Fees.

CEDAR CREEK PAD
REIMBURSEMENTS

TENANT NAME	SIZE	PRO RATA	CAMB	PROPERTY TAX	INSURANCE	MGMT	ADMIN FEE	ADMIN COLLECTED	NOTES	TENANT TOTALS
EXPENSE TOTAL			\$31,428	\$26,988	\$1,246	\$4,256				
Mud Bay, Inc.	4,918	57.43%	\$18,048	\$15,488	\$716	\$8,188	16%	\$2,815	1, 2	\$45,255
R+G Veterinary Services, LLC	2,441	28.51%	\$8,958	\$7,688	\$355	\$4,054	0%	\$0	1, 3	\$21,065
Sophias Cafe Inc.	1,204	14.06%	\$4,419	\$3,792	\$175	\$2,004	0%	\$0	1, 3	\$10,390
TOTAL:	8,563	100.00%	\$31,425	\$26,968	\$1,246	\$14,256		\$2,815		\$76,710

NOTES:

- 1) Controllable CAM capped at 5% annually after the greater Cedar Creek Plaza's first stabilized year (85%+ occupied), Lease also charges a 15% Administration Fee.
- 2) Lease charges a 15% Administration Fee.
- 3) Reimbursements do not account for rent abatement periods.

EXHIBIT YY to LU 2021-009
CEDAR CREEK PAD

LEASE ABSTRACT MUD BAY, INC.

Premise & Term

TENANT	Mud Bay, Inc.
LEASABLE SF	4,918
LEASE TYPE	NNN
RENT COMMENCEMENT	12/1/2019
LEASE EXPIRATION	11/30/2029
TERM	10 Years
OPTIONS	3,5-Year - 180 Days' notice

Maintenance & Repair

TENANT'S OBLIGATIONS

Tenant is responsible for all interior maintenance of the premises including HVAC and interior mechanical operating systems.

LANDLORD'S OBLIGATIONS

Landlord is responsible for the capital-related expenses for the roof and structure and the repairs and maintenance to the foundation. HVAC repair and replacement are reimbursed by the tenant (up to \$1,000 per year).





Expenses

TAXES

Tenant is responsible for 100% reimbursement of their share of Property Taxes, Landlord's insurance policies, and all common area maintenance and repair, including a management fee and a 15% administration fee.

CAMS

Controllable CAM (all expenses excluding taxes, insurance, utilities, snow removal, and security) is capped at 5% of the first stabilized year (85%+ occupancy of the Retail Center and property taxes have been assessed to reflect this occupancy). Cap amount shall increase annually and cumulatively by 5%.

Lease Provisions

SALES REPORTING

Tenant to provide a financial statement to Landlord no more than once annually, within 10 days upon request of Landlord

LEASE ABSTRACT R+G VETERINARY SERVICES, LLC

Premise & Term

TENANT	R+G Veterinary Services, LLC
LEASABLE SF	2,441
LEASE TYPE	NNN
RENT COMMENCEMENT	5/1/2021
LEASE EXPIRATION	4/30/2031
TERM	10 Years
OPTIONS	2,5-Year - 180 Days' notice
GUARANTEE	Personal Guarantee until tenant's finances equal or exceed the combined financial conditions of the Guarantors.

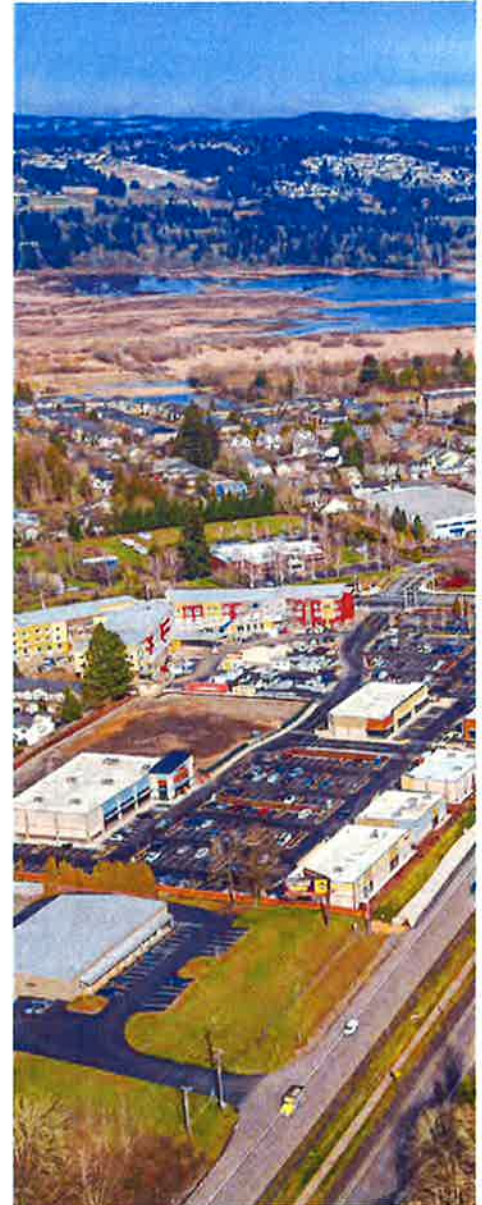
Maintenance & Repair

TENANT'S OBLIGATIONS

Tenant is responsible for all interior maintenance of the premises including HVAC and interior mechanical operating systems.

LANDLORD'S OBLIGATIONS

Landlord is responsible for the capital-related expenses for the roof and structure and the repairs and maintenance to the foundation. HVAC repair and replacement are reimbursed by the tenant.





Expenses

TAXES

Tenant is responsible for 100% reimbursement of their share of Property Taxes, Landlord's insurance policies, and all common area maintenance and repair, including a management fee.

CAMS

Controllable CAM (all expenses excluding taxes, insurance, utilities, snow removal, and security) is capped at 5% of the first stabilized year (85%+ occupancy of the Retail Center and property taxes have been assessed to reflect this occupancy). Cap amount shall increase annually and cumulatively by 5%.

Lease Provisions

SALES REPORTING

Tenant to provide a financial statement to Landlord no more than once annually, within 10 days upon request of Landlord.

EXHIBIT YY to LU 2021-009
CEDAR CREEK PAD

LEASE ABSTRACT SOPHIAS CAFE, INC.

Premise & Term

TENANT	Sophias Cafe, Inc.
LEASABLE SF	1,204
LEASE TYPE	NNN
RENT COMMENCEMENT	5/1/2021
LEASE EXPIRATION	4/30/2028
TERM	7 Years
OPTIONS	1,5-Year - 120 Days' notice
GUARANTEE	Personal

Maintenance & Repair

TENANT'S OBLIGATIONS

Tenant is responsible for all interior maintenance of the premises including HVAC and interior mechanical operating systems. HVAC repair and replacement are reimbursed by the Landlord.

LANDLORD'S OBLIGATIONS

Landlord is responsible for the capital-related expenses for the roof and structure and the repairs and maintenance to the foundation.





Expenses

TAXES

Tenant is responsible for 100% reimbursement of their share of Property Taxes, Landlord's insurance policies, and all common area maintenance and repair, including a management fee.

CAMS

Controllable CAM (all expenses excluding taxes, insurance, utilities, snow removal, and security) is capped at 5% of the first stabilized year (85%+ occupancy of the Retail Center and property taxes have been assessed to reflect this occupancy). Cap amount shall increase annually and cumulatively by 5%.

Lease Provisions

SALES REPORTING

Tenant to provide a financial statement to Landlord no more than once annually, within 10 days upon request of Landlord

CC&RS

CC&Rs are in place for the larger shopping center, Cedar Creek Plaza, that permit cross-easement access across and through all parcels for vehicle and pedestrian access, and shared parking. A Declaration of Easements and Restrictive Covenants with the adjacent Providence and Senior Housing tracts also permit cross-easement access across and through all parcels, yet do not permit shared parking.

ACCESS

Cross-easement access and parking rights are provided for pedestrian and vehicular traffic to guests, patrons, invites of Owners (tenants and their employees).

RESTRICTED USES

The CC&Rs restrict uses that are typical of Class A retail, which include but are not limited to the following: industrial, billiard parlor, game hall, gun range, flea market, marijuana or related products, recycling facility, dry cleaning (dry cleaning pickup site permitted), and auto repair.

TENANT USES

Exclusive Uses

TRACT	EXCLUSIVE	RESTRICTED TRACT	EXEMPTIONS
Deacon Development Parcels	Fitness & Hotel	Sr. Housing	Senior housing, hospital patients
Sr. Housing Parcel	Senior Housing	Deacon Parcels	
Providence Parcel	Hospital or urgent care clinic	Sr. Housing & Deacon	Medical or dental offices that provide health care to customers.

MAINTENANCE & REPAIR

Individual Parcels

Parcel owners are responsible for all maintenance and repair required of their own parcel, and to keep their parcel and portion of the private roadway abutting their parcel lighted. There are three monument/pylon signs, of which the underlying parcel owner is solely responsible for its maintenance, repair, replacement, and lighting.

Private Roadway

Parcel owners are responsible for maintaining their portion of the private roadway crossing their parcel, including sweeping, snow removal, and restriping; general maintenance excludes capital expenses. If a capital expense is required, Providence (or a successor) will appoint a Maintenance Director to obtain bids, manage work, and bill necessary parcel owners.

CAMS - GREATER SHOPPING CENTER

The Declarant (Deacon Development), is responsible for the maintenance and repair of the common elements of the greater shopping center, including the parking areas shared by more than one parcel, roadways, driveways, sidewalks, walkways, landscaping, and storm water systems. Responsibilities include the maintenance and repair of lighting, decorating, security, snow removal, landscaping, irrigation systems, signage, storm drainage, utilities, and parking lot maintenance and repair, including parking lot resurfacing, repaving, striping, and cleaning, alongside Declarant's premium for general liability insurance and a management fee. Declarant to provide an annual statement to each parcel owner by April 15th annually

CAM SHARE

Each Parcel owner is responsible for the direct payment of property taxes for their underlying parcel, and the maintenance and repair for all buildings and utility lines located on their parcel, and for maintaining a liability insurance parcel. Each parcel is billed their share based on the GLA on their parcel in relation to the total GLA of the center.

EXHIBIT YY to LU 2021-009



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Our brokers collaborate.

KEVIN ADATTO

SEAN TUFTS

MICHAEL HORWITZ

SCOTT FRANK

SEAN MACK

DAVID GELLNER

LANCE SASSER

PETER DUNN

MICHAEL LOWES

MAGGIE WOLK

AUSTIN COHN

MEET THE ENTIRE TEAM [HERE](#).



HATHAWAY LARSON

Koback • Connors • Heth

January 24, 2022

VIA EMAIL

City of Sherwood Planning Commission
22560 SW Pine Street
Sherwood, OR 97140
planningcommission@sherwoodoregon.gov

Re: Case File LU 2021-009 MM-Cedar Creek Multifamily Development

Dear Commission Members:

This firm represents the owners of three properties in the Cedar Creek Plaza: Bob Barman, H & C Holdings, LLC, and Jaffe Sherwood, LLC. On December 3, 2021, we submitted a letter opposing the application to Eric Rutledge, who at that time advised that to be included in the staff packet to the Planning Commission the letter had to be submitted that date. Subsequently, the hearing was postponed, and we understand that the final preparation of the hearing packet was delayed. On January 14, 2022, staff issued its revised report for the January 25, 2022 hearing. Rather than restate here the text in our December 3, 2021 letter, we incorporate that letter by reference. The purpose of this letter is to respond to staff's comments on our December 3, 2021 letter and to address developments since that date.

Procedural Issues

- 1. The Planning Commission should take the time necessary to carefully evaluate all of the written material submitted by all participants.*

The first issue we address is the hearing procedures. As we understand the protocol in the current Covid climate, parties interested in participating in the hearing must submit written comments no later than 24 hours before the hearing. Staff will read those comments into the record. In addition, parties with the technical abilities to participate on video may also speak at the hearing, but the time is limited. One option that may be presented for you is to close the hearing on January 25th and begin deliberations toward a decision. We urge you not to do that. Under the current protocol, written material has more significance and the process of having staff read written comments is not adequate to provide meaningful participation. We feel it is critical that the Planning Commission take time

Christopher P. Koback
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(503) 303-3107 direct
(503) 303-3101 main

January 24, 2022

Page 2

after the written material is all in the record to carefully evaluate all of the material before completing deliberations and making a decision. As we explained in our December 3, 2021 letter and will explain further below, your decision will have a substantial impact on both the other owners in the development, their tenants, the employees who rely on those businesses, and the broader public.

2. *The current owner of Lot 3, which was included in the application, does not consent to any decision on the application that impacts Lot 3.*

Second, we believe there is a recent factual development that impacts whether the Planning Commission can issue any decision on the current application. The application included three separate parcels commonly identified as Lot 2, Lot 3, and Lot 7. For each of those parcels, the applicant included a separate land use application, and each application had the written consent of the owner at the time. For Lot 3, Steve Deacon, as Manager of Deacon Development, LLC, signed the authorization.

Deacon no longer owns Lot 3. In July 2021, Deacon conveyed that parcel to Lake Bowman MHP, LLC (Todd and Siobhan Fisher). We understand that the owner of Lot 3 is not consenting to the city continuing to process any application that includes its property. We further understand that this issue was brought to staff's attention. Staff seems to be taking the position that because Deacon owned the property at the time the application was submitted, the city must continue to process the application even if it does so over the objection of the current owner of Lot 3. Although not entirely clear, it appears perhaps that staff is confusing this situation as raising an issue under the "Goal Post" rule embodied in ORS 227.173(3).

ORS 227.178(3) is limited to changes in applicable regulations after an application is submitted. Its plain text provides:

If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted and the city has a comprehensive plan and land use regulations acknowledged under ORS 197.251, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted. (Emphasis added).

ORS 227.178(3) does not address changes in facts that are relevant to the local government's authority to make a decision on property for which consent is withheld. *DLCD v. Jefferson County*, 220 Or App 518, 188 P3d 313 (2008). (The death of a Measure 37 claimant was a change in fact not subject to the goal post rule). A change in ownership of Lot 3, like a death of a claimant in *DLCD v. Jefferson County*, is a change in fact. There is no plausible argument that it presents a change in any relevant approval criteria. The city has no code provision that authorizes any land use decision making body to render a decision that applies to property owned by a party who does not consent to the application or to any decision being rendered. SDC 16.70.040 provides only

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that the city will not accept an application that does not include the sanctioned city forms and is authorized by the owner. That provision is simply a submittal requirement and does not remotely purport to give any city decision maker authority to render a decision affecting property owned by a party who does not consent to the decision. It is questionable whether constitutional law allows the city to disregard ownership rights in that manner.

The simple fact is in July 2021, Deacon sold Lot 3 and the current owner does not consent to the city making any land use decision that involves its property. Deacon should have negotiated in the sale a provision requiring the owner to consent to Deacon continuing the application, but Deacon either did not think of that or did not bother. However, that omission does not mean the city can ignore the property rights of the current owner. If the city renders any decision on the current application, we submit that the decision will be void.

Indeed, the current owner has submitted written comments voicing opposition to the application, and for good reason. As we explained in our December 3, 2021 letter, as Deacon was processing the initial site plan application, it represented that Lot 2 was to be developed with a hotel. The traffic study was based on there being a hotel on Lot 2. Our clients invested money in reliance on the representation made by Deacon in that prior hearing process.

Deacon has not changed its tactics. In marketing Lot 3 this summer, Deacon expressly represented in marketing material provided to the Fishers that Lot 2 was going to be developed with a hotel, not an apartment. What makes it worse than before is that in May 2021, Deacon had formally applied for approval of the apartment. It had to know that it was misrepresenting a material fact to the current owner of Lot 3. Deacon had already applied to modify the site plan to develop Lot 2 with an apartment building.

SDC 16.02.020 identifies several purposes served by the regulations in Chapter 16. Not listed among them is to assist one party in taking advantage of material misrepresentations made to sell property. Moreover, it is not one of the functions of the Planning Commission to aid a party who makes material misrepresentation while a land use application is pending.

Substantive Issues

- 1. The 2017 Approval requires that Lot 2 be developed with a hotel and the application fails to present a basis to remove that specific condition.*

Another related issue raised by staff's response to our December 3, 2021 letter is whether Deacon's representation in 2016/2017 about the hotel rose to the level of a specific condition of approval even though there was no formal condition requiring Lot 2 to be developed with a hotel. Staff shrugs this issue off summarily commenting that the modification process is apparently the mechanism to change conditions. Respectfully, we think staff is missing a critical point. In *NE Medford Neighborhood Coalition v. City of Medford*, 53 Or LUBA 277 (2007), LUBA held that

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when an application states that the proposed development is for a specific type of development, specific conditions of approval limiting the use to that proposed are not necessary.

Staff's response on this issue is that the application is going through a Major Modification review process which permits changes to the original approval and any specific conditions of approval placed on the application. Revised Staff Report, p. 11. SDC 16.90.030.A.1 allows an applicant to seek modification of conditions in a site plan modification application. However, in this matter, the applicant never provided any justification for changing a specific condition of approval. The application seeks a modification based on the premise that in 2016/2017 there was never any use proposed or approved on Lot 2. The application seeks a modification of the site plan from a vacant lot to an apartment. There is no way to read the application to include a request to modify a condition of approval to replace a hotel with an apartment.

Consequently, staff missed the critical point. The Planning Commission must first determine whether the specific representation Deacon made in 2016/2017 and on which other parties relied, created a specific condition of approval requiring that Lot 2 be developed with a hotel. In making that determination, we feel it is important that the Planning Commission carefully evaluate the continued specific representations Deacon made in 2016 to the public (including future purchasers of lots in Cedar Creek) and to the current owner of Lot 3 in the summer of 2021. If the Planning Commission agrees that under *NE Medford Neighborhood Coalition v. City of Medford*, Deacon's representation created a binding condition that Lot 2 be developed with a hotel, we submit that Deacon must demonstrate why under the code it should be allowed to remove that specific condition of approval requiring that Lot 2 be developed as a hotel.

The applicant would have to present specific evidence to show why that specific condition of approval should now be removed after the other uses in the commercial center were developed based upon that condition being part of the approval. It cannot proceed under the premise that it is modifying the site plan from a vacant lot to an apartment. There are important questions that the applicant and staff do not address in this application. Why is it appropriate to remove an important condition that was relied upon by other in investing substantial sums of money in a development, based on that condition? What code provisions support removing that specific condition that required a specific development on Lot 2? How does removing that condition advance the basic purposes set forth in SDC 16.02.020?

2. *Minimum parking requirements are not met.*

After walking away from most, if not all, of its prior analysis on parking, staff recites that it concurs that in the applicant's Final Parking Study that concludes that the city's minimum parking requirements have been met. We disagree. There are still many unresolved issues over whether the proposal can satisfy the minimum parking requirements. The only way staff could try to support its new concurrence with the applicant is by ignoring its previous conclusion on how the

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2017 CC&Rs restrict residents parking on the Ackerly and Providence Tracts and, revising how it calculated the number of required parking spaces for the proposed apartments.

In the initial staff report at pages 53-57 staff discussed parking requirements. It included a chart where it specifically concluded that the proposed apartment required 123 spaces. See page 56. It now appears that the applicant and its traffic consultants convinced staff to reverse its position and only require 110 spaces.

Staff's initial conclusion is supported by the code and the facts. Staff determined that due to the private covenants restricting residential parking on Ackerly and Providence, and the fact that many spaces were reserved for specific uses, there were not enough parking spaces available in the larger development. Staff specifically noted that "the application also does not demonstrate that the minimum parking requirements can be met on the Deacon Tract alone." Staff Report, p. 55. Staff correctly noted that the applicant could not use parking spaces on the Ackerly or Providence Tracts for residential parking and, thus, those parcels were not available for share parking by residents from Lot 2. Because those other parcels are not legally available for apartment parking, for purposes of defining the development for shared parking, staff was correct to look at only the Deacon Tract and use the apartments as the primary use. Thus, staff determined that the apartments required 123 parking spaces. See chart on page 56 of the initial staff report. Staff concluded that to consider using the Ackerly or Providence parcels to satisfy the minimum parking, the applicant had to show long-term rights to park there or reduce the number of units in the proposed apartment so all required parking can be located on Lot 2.

As far as the current record goes, we do not believe the applicant ever addressed staff's comment. It never produced any legal document that removed the restriction on residential parking on the Ackerly and Providence Tracts. Thus, staff's analysis in the initial report remains valid. The applicant must produce a new legal agreement allowing parking on the Ackerly and Providence Tracts by residents or show how all parking can be placed on the Deacon Tract. All the applicant did was recalculate the minimum parking required, as if it were not the primary use, and, thus, concluded it needed only 90% or 110 spaces. In the revised report, staff jettisons its prior analysis never explaining how the applicant could take that approach without proof of the legal right to have residential parking on those other two parcels. Staff simply abandoned its initial position without explanation.

Staff admits that the term development as used for shared parking is not defined. Yet, it now adopts the applicant's interpretation that development must mean all three tracts even though residential parking is not allowed on the Ackerly or Providence Tracts. Staff does not include any meaningful analysis applying the text and context of the relevant code provisions reciting only that other code provisions allow shared parking on other lots in other developments. That recital misses the point. If the applicant had the legal right to use the Ackerly and Providence Tracts for residential parking, staff's truncated analysis may have merit. However, staff's new pro-applicant view cannot be reconciled with staff's prior conclusion that the applicant cannot use the other two

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tracts because they did not provide evidence of a legal right to use them for residential parking. Indeed, the concept behind allowing the non-primary uses to have less parking is based on the assumption that they have the right to use all of the parking in the larger development. Here, staff agrees that residential parking is not allowed on the Ackerly or Providence Tracts. Thus, there is no justification for allowing an applicant to treat the assisted living center on the Ackerly Tracts as the primary use in the relevant development. The position we advanced is that under these circumstances, it is more appropriate to consider the commercial center on the Deacon Parcel the development for applying the shared parking provisions.

On page 11 of the Revised Report, staff stakes issue with our conclusion that the Deacon Tract (the commercial/retail center) is lacking 51 spaces based on how staff determined the minimum parking requirements. (See page 56 of the initial staff report where staff calculated the required spaces). Staff now takes issue with our argument stating that the 2017 CC&Rs allow shared parking across all three tracts for customers and guests. Thus, staff concluded that our testimony was incomplete and inaccurate.

Staff's criticism is not well founded and somewhat disingenuous. The argument we presented and the numbers we used were derived from the same points and numbers that staff used in the initial staff report. Staff expressly concluded that the 2017 CC&Rs did not allow shared parking for residents of the apartment and, therefore, the spaces on Ackerly and Providence Tracts could not be counted. Staff limited the number of spaces available to just the Deacon Tract. Staff agreed that there were not enough parking spaces on the Deacon Tract to support the proposed apartments; the apartments were short parking spaces.

Specifically, on page 55 of the initial staff report, staff concluded that there were 330 parking spaces on the Deacon Tract and that a total of 381 spaces were required with the proposed apartments. The math we used is straight-forward. $381 - 330 = 51$. Now, with no explanation that could save its credibility, staff is willing to abandon its initial analysis and simply accept anything the applicant submits. The only attempted justification staff offered is the statement that the 2017 declaration allows parking by customers and guests. The fact that the 2017 CC&Rs allow shared parking for customers and guests has no bearing on whether those tracts provide shared parking for residents on the Deacon Tract. Shared residential parking remains prohibited.

Similarly, staff attempts unsuccessfully to rebut our point that the Ackerly Tract was required to have 98 parking spaces to support the use on that parcel making it unavailable for apartment parking for an additional reason. All staff can muster is that there was a clarification that not all 98 spaces are needed for employees and staff. Some are needed for guests. So what? Staff does not, and cannot claim, that all 98 spaces are required for the assisted living facility. That conditional use was approved on the condition that it have 98 parking spaces to support the use. It does not matter for the issues in this application whether the 98 are needed only for employees or whether some are needed for guests. Staff cannot refute the fact that none of them are available for apartment residents. Staff's comment is a red herring.

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That gets to the Final Parking Plan presented by Kittelson. That plan leaves no question that to satisfy the minimum parking required, even looking at the larger combined development, including the Ackerly and Providence Tracts, the applicant must rely on spaces on the Providence Tract. The Kittelson report is consistent with staff's initial report where staff determined that the applicant had to demonstrate that the minimum number of parking spaces were available on the Deacon Tract. The plan shows on page 3 that using only the Deacon Tract, the proposed development does not satisfy the city standards, even using the incorrectly calculated reduced parking requirements for the apartments (90% of the requirement). The applicant is 39 spaces short under its own analysis. The same chart reveals that the only way the applicants can claim that there is sufficient parking is to claim that there are 79 spaces on the Providence Tract that are available. They are not available for residential parking and staff does not contend otherwise. Moreover, Providence has confirmed that it will enforce all of the rights to parking on its Tract and that its plan is for growth, which will require more parking on its Tract. We enclosed an email from the Providence property management team. Providence's position reinforces the fact that Deacon must show that all parking for the apartments must be on the Deacon Tract.

There are other flaws in the Kittelson Plan and the assumption on which it is based. We had another traffic engineer firm perform an analysis of the Kittelson plan and the overall proposal. We include a report issued by PBS. Some of the highlights of that report are:

- The applicant is relying on a city established minimum for parking and established minimum standards are often understated;
- The applicant relies on 40 spaces behind the fitness center (southwest corner of center) that are underutilized now and due to the location, will never likely be used for the apartments or any other visitor to the commercial center. Taking those 40 spaces out, the parking occupancy now exceeds 90%;
- The applicant's plan relies on apartment residents using parking that is so inconveniently located, they will never use them;
- The applicant's parking plan does not account for the fact that the commercial parking spaces relied on by the businesses is closer to the apartment entrances than some of the parking on Lot 2 making it more likely to be used by apartment residents
- The Kittelson report, specifically the site survey in September 2021 reported a high occupancy in evening hours when residents and guests of the proposed apartments will be using the commercial parking;
- The Kittelson report did not include information from existing tenant who already report problems with parking demands for spaces that support their businesses;

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- Restrictions on apartment residents and other parking management strategies require enforcement that should not be the responsibility of the commercial owners.

We urge you to carefully evaluate the applicants parking plan against the statement of tenants who need the parking in the commercial center and the PBS report.

Very truly yours,

HATHAWAY LARSON LLP

s/ Christopher P. Koback

Christopher P. Koback

CPK/ep

Enclosures

From: Laron, Bobby @ Portland [mailto:Bobby.Laron@cbre.com]
Sent: Tuesday, January 18, 2022 8:08 AM
To: Harold Cox <Cox@CoxGroupPDX.com>
Subject: RE: Cedar Creek Plaza Retail Development - Sherwood, OR

Good Morning Harold,

As a healthcare provider, we are business as usual – therefore, there is 0% reduction in business due to Covid for us. There is a caveat to this, our Sherwood medical office building is not 100% occupied, we have some shell space that will eventually be built out and our parking need will only expand from where it is today.

Thank you,

Bobby LaRon, MScM, FMP (hc/him)
Senior Commercial Property Manager
CBRE | Providence Account
4400 NE Halsey Bldg. 2, Suite 190 | Portland, OR 97213
C | +1 971 312 9516
bobby.laron@cbre.com | [LinkedIn](#) | [Twitter](#)

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How to contact the CBRE Property Management & Maintenance Team:

- **Routine Requests:** Please use the online work order portal at <https://www.mainstreamsasb.com/PRD00616CRS/>.
- **Urgent Requests:** Call the Facilities Service Center at 1 833 767-8557.

Please note that contacting team members directly may delay your service request; using the online system ensures that the request is routed and assigned correctly and quickly

EXHIBIT ZZ to LU 2021-009

EXHIBIT ZZ to LU 2021-009



January 17, 2022

Christopher P. Koback
Hathaway Larson, LLP
1331 NW Lovejoy Street, Suite #950
Portland, Oregon 97209

Via email: chris@hathawaylarson.com

Regarding: Site Parking Evaluation
 Cedar Creek Plaza
 16852 SW Edy Road
 Sherwood, Oregon 97140
 PBS Project 71881.000

Dear Mr. Koback:

PBS Engineering and Environmental Inc. (PBS) is pleased to submit this parking evaluation of Cedar Creek Plaza in Sherwood, Oregon, to Hathaway Larson, LLP. The parking evaluation is intended to assess the impacts of the proposed Cedar Creek Multifamily Development (CCMD), City of Sherwood Case File LU 2021-0009 MM, on the existing businesses located within the Cedar Creek Plaza Shopping Center.

PROJECT UNDERSTANDING AND APPROACH

The Cedar Creek Plaza development, located west of the Edy Road / Sherwood Boulevard / Pacific Highway West (OR 99W) intersection, has seen development on eight of the nine contiguous lots. See Figure 1 of the Cedar Creek Plaza site plan. The site plan originally approved in 2017 included a hotel on the one remaining vacant lot (Lot #2), and Deacon Development proposes a major modification to the site plan to allow an 84-unit apartment building in place of the anticipated hotel. See Figure 2 for the CCMD site plan. The tenants and owners of lots adjoining Lot #2 question whether Lot #2 will provide adequate parking spaces for the proposed apartment building and whether the Cedar Creek Plaza development can accommodate the parking demand for all tenants if the apartments are built as proposed.

To address the parking concerns, PBS conducted a peer review of the parking study prepared to support the apartment building. PBS also conducted an independent parking study to estimate future parking availability.

PBS understands there are concerns related to the current parking supply being insufficient at some of the commercial businesses. Customers from one business using prime parking spaces from another business raise financial concerns in addition to an economy impacted by employee recruiting and retention challenges, COVID-19, supply chain problems, and inflation. With the possibility that further parking impacts may result from the proposed CCMD, careful consideration is driving the need for this evaluation.

SCOPE

PBS' evaluation of site parking included:

- A peer review of the two site parking studies supporting the CCMD, one prepared by Harper Houf Peterson Righellis (HHPR), and the other prepared by Kittelson & Associates, Inc. (KAI).

EXHIBIT ZZ to LU 2021-009

Hathaway Larson, LLP
Cedar Creek Plaza – Site Parking Evaluation
January 20, 2022
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- PBS staff took comments from the commercial businesses related to peak parking demand at the site and to existing parking concerns of the in the commercial area of Cedar Creek Plaza.
- Review of other documentation related to the proposed apartment building's application, specifically the City of Sherwood Planning Commission packet for December 14, 2021. Relevant findings were incorporated into the PBS site parking evaluation.
- Parking utilization data for the existing site. Data collection occurred on two occasions on days and at times that had high parking demand.
- Parking adjustment investigation of the observed parking utilization for COVID-19 influences.
- Future parking demand estimate on the site with the proposed apartment building.

KAI PARKING REVIEW AND MANAGEMENT PLAN

PBS provided a peer review of the *Cedar Creek Plaza Parking Review and Management Plan*, by KAI, dated September 30, 2021. The following comments are related to the review of the sections of the report:

- The parking generation estimate reports approximately 77% of occupancy rate. The estimates are close to maximum 85% peak hour occupancy rate. If you subtract the approximately 40 underutilized parking in the southwest side of the lot, behind the fitness center, the parking occupancy exceeds 90%.
- Even if you count the underutilized spaces in the parking count, the oversupply of the parking is not intended to address overflow of parking from the apartment complex.
- The field observation that the employees should be directed to the southwest underutilized parking would require some sort of enforcement that is not the responsibility of the commercial businesses. This would likely require time-limited parking which is challenging and expensive to enforce.
- The suggested parking management strategies, such as time limited parking, should not be the responsibility of the commercial businesses. Providing the apartment tenants with guidance toward the underutilized parking on the southwest of the commercial parking has merit.

SITE PARKING EVALUATION

The site parking evaluation was conducted by the following:

- The parking evaluation includes all nine contiguous tax lots at Cedar Creek Plaza. PBS surveyed parking occupancy in three areas: the Ackerly (senior living) area (Zone A), the Providence Health area (Zone B), and the parking serving the commercial retail lots (Zone C). See the attached Figure 1 for the survey areas.
- PBS staff collected parking utilization data on Tuesday and Wednesday, January 11 and 12, 2022, during the afternoon and evening, supplemented by drone aerial photographs.
- Data collection was conducted without adverse weather impacts.
- The city's minimum parking requirements were not verified. We assume that issue will have to be resolve as part of the public review process.

PARKING INVENTORY

PBS inventoried the available parking spaces in the Cedar Creek Plaza. PBS staff counted the number of available parking spaces in the afternoon and evening during typical weekday commercial activity. See the attached aerial photos of the Cedar Creek Plaza, illustrating the parking use at between 4:30 and 5:00 pm on January 11, 2022:

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The manual parking counts covered:

- January 11, 2022, from noon to 6:30 pm
- January 12, 2022, from 5:30 to 7:30 pm

The survey collected data from three zones:

- Zone A – In close proximity to The Ackerly senior housing
- Zone B – In close proximity to Providence medical offices
- Zone C – In close proximity to the commercial buildings

See the attached Cedar Creek Plaza Site Parking Evaluation summarizing the number of parked vehicles, the number of spaces in each area, and the percentage of occupied spaces.

The parking near The Ackerly, Zone A, has approximately 50% of its parking occupied in the afternoon and evening. Based on the walking distance to the unreserved parking spaces, it will be an unlikely alternative to off-site parking overflow from the CCMD site.

The parking near Providence medical offices, Zone B, has approximately 50% to 15% of its parking occupied in the later afternoon and the evening. This is related to the offices closing at approximately 6:00 pm. After this hour, available spaces are abundant. Based on the walking distance to the unreserved parking spaces, it will be an unlikely alternative to off-site parking overflow from the CCMD site.

The parking near the commercial buildings, Zone C, has approximately 50% of its parking occupied in the afternoon and evening. A portion of this parking to the far southwest of the site (behind Planet Fitness) is underutilized. Excluding these spaces, Zone C has approximately 65% of its parking spaces available. Based on the closest proximity, this zone will be used by the apartment tenants for the off-site parking overflow.

Even with the parking spaces available, this will compress the parking tighter to the existing commercial buildings and will drive higher occupancy of prime parking spaces (spaces in front of the businesses). This increased occupancy of prime parking may have an economic impact on the existing businesses.

While on site, PBS staff discussed peak parking times demand with the commercial business managers. The times varied considerably depending on the time of day and day of week. Some managers noted the current parking impacts associated with the existing businesses.

MINIMUM PARKING REQUIREMENTS

The minimum parking requirement for the CCMD as reported in the *Cedar Creek Plaza Multi-family Project Parking*, by HHPR, dated November 29, 2021, is being checked by city staff and others. The report estimates the CCMD will supply the minimum spaces required with an average of 1.3 spaces per unit. There appears to be some discrepancy between how city staff initially determined the required minimum parking for the proposed apartment building and how the applicant has calculated that number. Notwithstanding that issue, it has been our experience that many public agencies set a relatively low minimum number of parking spaces required of multi-family development for several valid reasons. Oversupply of parking can result in excessive automobile use, additional storm drainage collection and filtration, and underutilization of parking on the extremities of the lot.

Undersupply of parking can have negative impacts related to parking spilling off-site. The applicant also proposes to provide premium parking spaces that will be available at an additional fee to the residents of the CCMD. By the

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CCMD supplying minimal number of spaces and charging an additional fee for premium parking, it is reasonable to assume residents will seek parking off-site, that is, off Lot #2.

Off-site parking challenges can be exacerbated when off-site parking spaces are located closer to a destination than on-site parking spaces in the parking lot. In the case of the CCMD apartments, if the commercial parking in the Cedar Creek Plaza is closer to the apartment unit than available parking spaces in the on-site parking, the residents are expected to park off-site, i.e., on other lots within the Cedar Creek Plaza.

The applicant estimates that, with the CCMD apartments constructed, 16 to 18 spaces will be needed in the commercial portion of Cedar Creek Plaza to meet the minimum requirements. As noted, the number of required spaces appears unsettled. The southwest and southeast entrances to the apartment building are closer to the commercial parking than to most of the on-site parking that is northwest of the building. It appears that one-quarter to one-half of the apartment units be closer to the commercial parking than to the on-parking spaces along the northwest side of the building. Thus, even assuming the applicant's numbers are correct, the commercial parking will be utilized by more than the estimated 16 to 18 parked vehicles from CCMD.

The commercial parking spaces in closest proximity to the CCMD apartment units are those directly southeast of the CCMD site. See Figure 1 for the commercial parking spaces in Zone C in closest proximity to the CCMD.

The development of Lot #2 with any allowed use, could have some positive benefit to the overall Cedar Creek Plaza. Development of a now vacant pad could bring housing for employees and customers to the commercial businesses. The magnitude of the benefit is difficult to estimate and is highly dependent on the scale of the use permitted and the adequacy of parking provided for it. While there is a well-studied relationship of the trips made among office, residential, and retail land uses at mixed-use sites such as Cedar Creek Plaza related to what is referred to "internal capture trips." A large development with inadequate parking is likely to produce negative impacts that out-weigh any benefits.

In this matter, by supplying the minimum parking, the risk is high to have negative impact on the commercial retail businesses.

Developing mitigation is something the applicant should consider. Two possible options that would have a positive impact are to reduce the number of apartment units or supply more parking on the lot where the apartment is developed and put them in a location where it is more convenient for residents to use those spaces than to park in the commercial center.

FINDINGS

The development has potential to have positive benefits and negative impacts the existing commercial development depending on size and land use of the development. The apartments may be used by Cedar Creek Plaza employees as housing in proximity to their workplaces. The residents of the apartments are potential customers of the retail businesses.

The existing businesses currently experience parking impacts related to adjacent businesses. Additional CCMD parking demand in the shared parking area of the commercial area will exacerbate the existing problem.

Public agency parking regulations requiring only the minimum number of parking spaces often result in parking overflow off-site. Off-site parking can also be exacerbated by parking spaces found in closer proximity to the

EXHIBIT ZZ to LU 2021-009

Hathaway Larson, LLP
Cedar Creek Plaza – Site Parking Evaluation
January 20, 2022
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destination than on-site parking spaces. Thus, tenants may park in the shared commercial parking area if it is closer to their apartment, even with spaces available in the apartment complex parking lot.

The proposal to charge tenants an extra fee for premium parking may also result in tenants parking in the shared commercial parking.


The KAI parking survey in September 2021 reported high parking occupancy in the evening hours when residents and guests from the CCMD will utilize the shared commercial parking.

The January 2022 parking survey found moderate parking occupancy (50 to 65%) in the evening. The lower occupancy is likely lower than the September 2021 survey related to the off-peak commercial season in January.

If you have any questions or comments, please feel free to contact me.

Sincerely


John Manix, PE
Senior Traffic Engineer


Digitally signed
by John A Manix
Date:
2022.01.20
12:27:34-08'00'

cc: David Holt – PBS Engineering and Environmental Inc

Attachments: Figure 1 – Cedar Creek Plaza Site Plan
Figure 2 – Cedar Creek Multi-Family Development (CCMD)
Aerial Photos
Cedar Creek Plaza Site Parking Evaluation

JAM,DAH mo

16832 SW Edy Road
Sturtevant, Oregon

Site Parking Evaluation
Mathewson, Lamery, LLP



FIGURE 1

Site Plan
Cedar Creek Multifamily Development (CCMD)



16632 SW Edy Road
Sherwood, Oregon

Site Planning Evaluation
Hudonwy, Larson, LLP

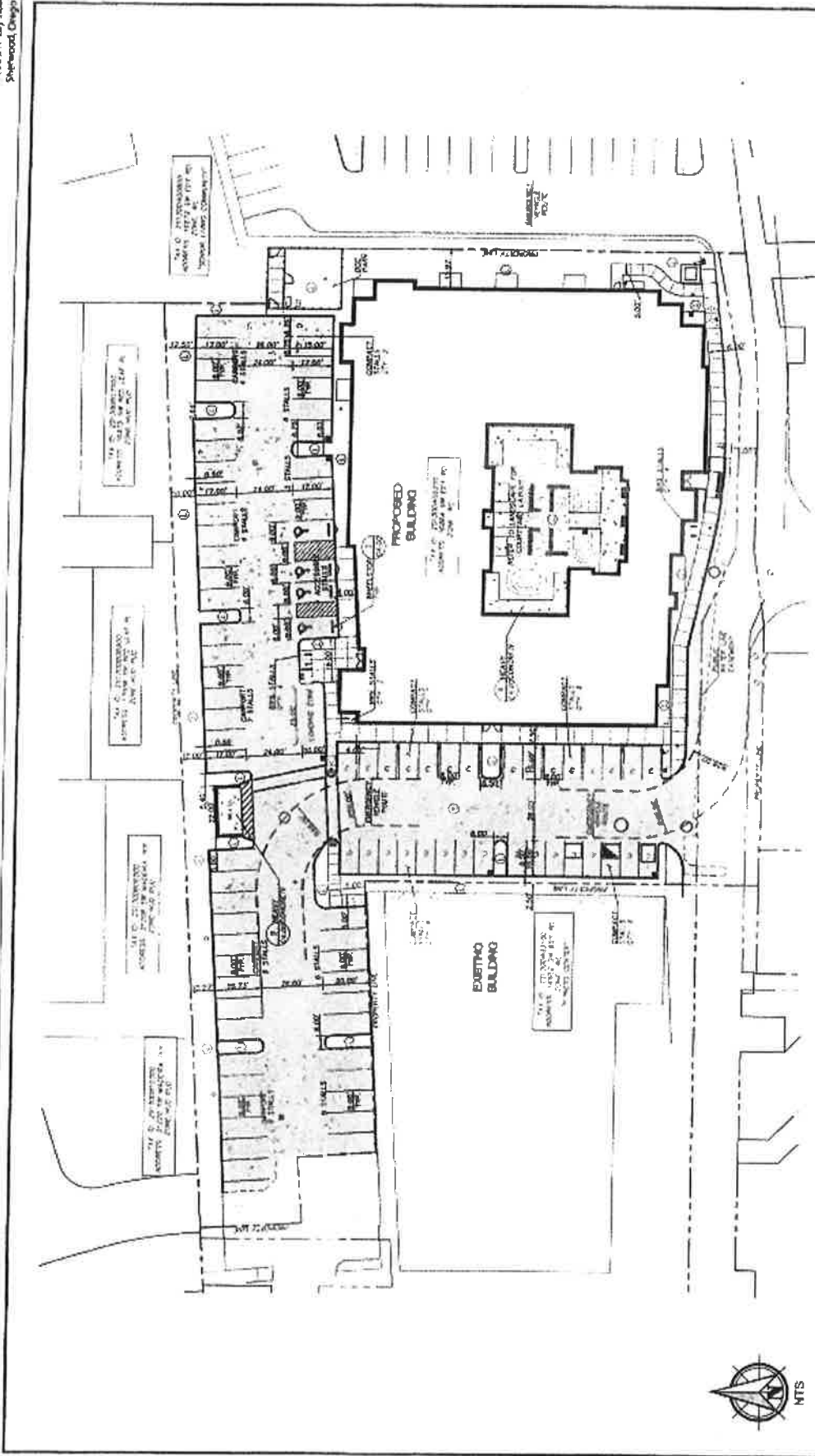


FIGURE 2

Site Plan
Cedar Creek Multifamily Development (CCMD)

January 2022
PBS Project 71481.000





Aerial Photo taken between 4:30 and 5:00 PM, January 11, 2021 looking west at the Providence medical offices and The Ackerly senior housing



Aerial Photo taken between 4:30 and 5:00 PM January 11, 2021 looking west at shared parking for the commercial business

Cedar Creek Plaza - Site Parking Evaluation

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TIME	A	B	C	TOTALS
12:00	66	124	102	292
12:30	65	108	100	273
1:00	68	113	95	276
1:30	66	121	92	279
2:00	69	120	89	278
2:30	59	124	84	267
3:00	63	113	74	250
3:30	64	111	85	260
4:00	62	107	91	260
4:30	57	96	111	264
5:00	56	90	115	261
5:30	51	77	121	249
6:00	44	50	122	216
6:30	43	39	123	205

TIME	A	B	C	TOTALS
12:00	67.3%	68.9%	44.3%	57.5%
12:30	66.3%	60.0%	43.5%	53.7%
1:00	69.4%	62.8%	41.3%	54.3%
1:30	67.3%	67.2%	40.0%	54.9%
2:00	70.4%	66.7%	38.7%	54.7%
2:30	60.2%	68.9%	36.5%	52.6%
3:00	64.3%	62.8%	32.2%	49.2%
3:30	65.3%	61.7%	37.0%	51.2%
4:00	63.3%	59.4%	39.6%	51.2%
4:30	58.2%	53.3%	48.3%	52.0%
5:00	57.1%	50.0%	50.0%	51.4%
5:30	52.0%	42.8%	52.6%	49.0%
6:00	44.9%	27.8%	53.0%	42.5%
6:30	43.9%	21.7%	53.5%	40.4%

TIME	C*	Percent
12:00	102	54.0%
12:30	100	52.9%
1:00	95	50.3%
1:30	92	48.7%
2:00	89	47.1%
2:30	84	44.4%
3:00	74	39.2%
3:30	85	45.0%
4:00	91	48.1%
4:30	111	58.7%
5:00	115	60.8%
5:30	121	64.0%
6:00	122	64.8%
6:30	123	65.1%

1/11/2022
WEATHER: CLOUDY / OVERCAST

TIME	A	B	C	TOTALS
5:30	53	54	120	227
6:00	51	35	119	205
6:30	51	30	108	189
7:00	45	24	89	158
7:30	41	20	83	144

TIME	A	B	C	TOTALS
5:30	54.1%	30.0%	52.2%	44.7%
6:00	52.0%	19.4%	51.7%	40.4%
6:30	52.0%	16.7%	47.0%	37.2%
7:00	45.9%	13.3%	38.7%	31.1%
7:30	41.8%	11.1%	36.1%	28.3%

TIME	C*	Percent
5:30	120	63.5%
6:00	119	63.0%
6:30	108	57.1%
7:00	89	47.1%
7:30	83	43.9%

1/12/2022
WEATHER: PARTLY CLOUDY

ZONE DESCRIPTIONS	# of Spots
A- Senior Living Center (Ackerly)	98
B- Providence Health	180
C- Commercial Buildings	230
C*- Commercial Buildings minus SW corner	189

