NOTICE OF DECISION

TAX LOT:	2S129DC00900
CASE NO:	LU 2022-004 MM Sentinel Storage – Appeal
DATE OF NOTICE:	August 3, 2022

Applicant
Langer Storage 2, LLC
15585 SW Tualatin-Sherwood Rd.
Sherwood, OR 97140

Appellant
Jim and Susan Claus
22211 SW Pacific Hwy
Sherwood, OR 97140

NOTICE

You are receiving this notice because you are the applicant, appellant, or because you provided testimony on the application. **On July 19, 2022, the Sherwood City Council AFFIRMED the Planning Commission decision and approved land use application 2022-004 MM Sentinel Storage II.** The approval is for a new 3-story self-storage building at 21900 SW Langer Farms Parkway.

INFORMATION: The full land use record can be viewed at:
https://www.sherwoodoregon.gov/planning/project/lu-2022-004-mm-sentinel-storage-major-modification
or can be obtained by contacting Eric Rutledge, Associate Planner, at 503-625-4242 or rutledgee@sherwoodoregon.gov

APPEAL

Pursuant to SZCDC § 16.76.040, this is the City's final decision on the matter. Pursuant to ORS 197.830, any person who appeared before the local government orally or in writing on this matter may file an notice of intent to appeal to the Oregon Land Use Board of Appeals no later than 21 days from the date of this notice.

I, Eric Rutledge, for the Planning Department, City of Sherwood, State of Oregon, in Washington County, declare that the Notice of Decision LU 2022-004 MM was placed in a U.S. Postal receptacle, or transmitted via electronic mail, on August 3, 2022 before 5pm.

E.R.

Eric Rutledge, Associate Planner

SENTINEL STORAGE II MAJOR MODIFICATION

CASE FILE NO. LU 2022-004 MM

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On July 19, 2022, the City Council held an on the record hearing to consider an appeal of a site plan modification request for a self-storage building that was approved by the Sherwood Planning Commission ("Commission"). After considering all of the arguments and evidence presented, the City Council found the application met all applicable provisions of the Sherwood Zoning and Community Development Code ("SZCDC") and correctly interpreted ORS 92.040 related to the permitted uses on the property and ORS 197.797(6)(b) related to the hearing procedures.

These findings specifically incorporate the Commission findings dated May 11, 2022, the Staff Report for Land Use Appeal Hearing dated July 12, 2022, as well as the supplemental explanation provided below. Where there is any conflict between those documents, these findings shall control.

Background Information

A. Applicant: Langer Storage 2, LLC ("Applicant")
15585 SW Tualatin-Sherwood Rd.
Sherwood, OR 97140

Owner: Langer Storage 2, LLC
15585 SW Tualatin-Sherwood Rd.
Sherwood, OR 97140

Appellants: Jim and Susan Claus ("Appellants")
22211 SW Pacific Hwy
Sherwood, OR 97140

B. Site Location: 21900 SW Langer Farms Parkway

C. Current Zoning: Light Industrial PUD

D. Review Type: Type IV Major Modification / Appeal

E. Public Notice: Notice of the appeal hearing was provided in accordance with § 16.72.020 of the Sherwood Zoning and Development Code (SZDC) as follows: notice was distributed in five locations throughout the City, posted on the property, and mailed to property owners within 1,000 feet of the site on or before June 24, 2022. Newspaper notice was also provided in a newspaper of local circulation on June 30 and July 14, 2022.

Application Summary

The application proposed development of a new 3-story, 575-unit self-storage building in an existing self-storage development (Sentinel Storage II) located at 21900 SW Langer Farms Parkway. The original site improvements were reviewed and approved through City of Sherwood land use approvals SP 16-06 and MLP 16-02. The site is zoned Light Industrial Planned Unit Development (LI – PUD) and currently contains four storage buildings, a recreational vehicle storage canopy, site landscaping, paved circulation, trash service, lighting, and other improvements. The existing recreational vehicle canopy is proposed to be removed and replaced with a three-story self-storage building. The facility is accessed by a gated entrance and a private driveway on the east side of SW Langer Farms Parkway; both access points are planned to remain unchanged.

Planning Commission Review and Decision

The Commission held the initial evidentiary hearing on April 26, 2022 and a continued hearing on May 10, 2022. At the conclusion of the May 10 hearing, the Commission unanimously approved the application based on the staff report dated April 19, 2022 with minor revisions to the findings and conditions of approval. The full Commission decision and findings are included as Attachment 3 to the Staff Memo.

Testimony in opposition to the application was received and considered by the Commission prior to issuing a decision. The testimony in opposition to the application focused on the self-storage use and vesting rights pursuant to ORS 92.040. The Commission determined that the proposed self-storage use is permitted on the property until August 28, 2022, based on the land use history and 10-year vesting period provided pursuant to ORS 92.040.

City Council Review and Decision

At the appeal hearing on July 19, 2022, all members of the City Council were present except Councilor Renee Brouse. Council President Tim Rosener called on City Attorney

Josh Soper to introduce the item and explain the order of proceedings. City Attorney Josh Soper then discussed the substantive and procedural parameters of the hearing, including that the appeal was on the record, no new evidence was allowed, testimony was limited to the appeal issues, and only persons who participated in the proceedings below were allowed to participate in the City Council appeal hearing.

City Attorney Josh Soper asked City Council members to disclose any ex parte contacts and any disqualifying conflicts of interest or bias. City Councilor Taylor Giles declared that he attended the Commission proceedings for this matter as City Council liaison but did not participate in that meeting. Council President Rosener declared that he rented a storage unit in one of Applicant's facilities but said it would not affect his ability to remain impartial in the matter. Councilor Kim Young stated the same. Mayor Keith Mays also declared that he rented two storage units at another one of the Applicant's facilities and that he has met one of Applicant's attorneys in an unrelated context.

No one challenged the jurisdiction of the City Council as a whole to hear and decide the matter. Jim Claus challenged Mayor Mays' impartiality in the matter on the grounds of: (1) personal animus against Mr Claus allegedly demonstrated by Mayor Mays' directing City staff members to target him and to steer buyers away from purchasing his property; (2) an actual conflict of interest based upon past participation in official City matters that benefited the Langer family; and (3) an unspecified financial interest that Mr. Claus would pursue with the State Ethics Commission if Mayor Mays participated in the hearing. In response, Mayor Mays disagreed with the facts and allegations stated by Mr. Claus. Mayor Mays stated he was not biased or conflicted but he was happy to recuse himself. The City Attorney asked Mayor Mays if he had any bias that would prevent him from rendering a decision based upon the evidence and criteria in this case. Mayor Mays responded "no." Nevertheless, in an abundance of caution, Mayor Mays recused himself from participating or voting in this matter. The City Council finds that, under the circumstances, including Mayor May's explicit statement that he could remain impartial in the matter, Mayor Mays was not legally obligated to recuse himself. Moreover, the City Council finds that his absence did not deny anyone the right to a fair proceeding or the right to a timely decision in this matter.

The hearing commenced with a staff report presented by Eric Rutledge, Associate Planner. After that, Mr. and Mrs. Claus and attorney Jeff Kleinman presented for Appellants. Seth King then presented for Applicant. Next, the City Council accepted rebuttal from Appellants followed by surrebuttal from Applicant. Although the

announced procedure was for each side to have 30 minutes to present its respective case, the City Council granted an additional two minutes to Appellants due to a short disruption in the remote meeting technology that may have occurred during their presentation. No one objected on the record to the City Council's procedures, as adjusted, or to the technological disruption.

At the conclusion of the presentations, the City Council asked City staff questions pertaining to the issues and arguments on appeal. Then, City Council President Rosener closed the public hearing. After deliberations, the City Council approved a motion to tentatively deny the appeal and approve the application by a 5-0 vote, with the City Council directing staff to prepare findings of fact for the City Council President to sign.

City Council Findings on Appeal Issues

Appellants' Appeal Issue 1: "The Planning Commission misinterpreted ORS 92.040 as it applies to the application and the factual history of the subject property. ORS 92.040 does not allow the applicant to ignore the provisions of the Sherwood Zoning and Community Development Code to site a use that is expressly prohibited by the code on the subject property."

City Council Determination on Appellants' Appeal Issue 1: Appellants contend that self-storage is not a permitted use in the Light Industrial zone and that ORS 92.040 does not allow the Applicant to obtain approval for and construct the proposed self-storage development in conjunction with the application.

The Appellants are correct that self-storage is not a permitted use under the current Light Industrial code; however, the Commission found, and for the reasons explained below, the City Council agrees, that the self-storage use is permitted on the property in conjunction with the application pursuant to ORS 92.040 and the standards applicable to the property at the time the application to subdivide was filed.

In relevant part, ORS 92.040 provides:

> "(2) After September 9, 1995, when a local government makes a decision on a land use application for a subdivision inside an urban growth boundary, only those local government laws implemented under an acknowledged comprehensive plan that are in effect at the time of

application shall govern subsequent construction on the property unless the applicant elects otherwise.

"(3) A local government may establish a time period during which decisions on land use applications under subsection (2) of this section apply. However, in no event shall the time period exceed 10 years, whether or not a time period is established by the local government."

As discussed further below, the City has not established an alternative time period; therefore, the statutory 10-year time period is applicable.

The subject property is part of Phase 8 of the Sherwood Village PUD that was approved by the Sherwood City Council in 1995. The subject property was also part of a 5-lot subdivision in 2012 known as the Langer Farms Subdivision. The Commission found that based on the development code in effect at the time of the 2012 subdivision, the standards permitting the self-storage use apply to development applications submitted until August 28, 2022. This determination was made based on the land use approvals issued for the property and provisions of ORS 92.040, which City staff summarized as follows:

- **PUD 95-1 (Sherwood Village PUD) -** approved on August 1, 1995

  When the Sherwood Village PUD was approved in 1995, a Light Industrial zoning was applied to the subject property. Permitted uses in the Light Industrial zone at this time included uses permitted outright in the General Commercial zone, including mini-warehousing (SZCDC § 2.110.02(J) (1995)).

- **Amended and Restated Development Agreement** - entered on or about August 7, 2010

  This agreement ("Development Agreement") was between the City and the owner of the subject property. By its terms, it restated an earlier agreement between the parties from 2008. At the time of entering the Development Agreement, properties within the City's Light Industrial base zone with a PUD overlay approval could be developed with uses allowed at the time of final approval of the PUD, provided the landowner elected to do so: "Approved PUDs may elect to establish uses which are permitted or conditionally

permitted under the base zone text applicable at the time of final approval of the PUD." (*former* SZCDC § 16.32.020(H)). As relevant to this proceeding, in the Development Agreement, the landowner elected to develop uses on the property that were allowed at the time of approval of the PUD in 1995.

- **SUB 12-02 (Langer Farms Subdivision)** - submitted on March 30, 2012 and approved on August 28, 2012

  As noted, through the Development Agreement, the landowner had elected to establish uses on the property that were allowed in the base zone at the time of approval of the PUD in 1995. The SZCDC provision permitting this election (*former* SZCDC § 16.32.020(H)) was still in effect when the then-applicant applied for the Langer Farms Subdivision in 2012. Mini-warehousing was a permitted use in the LI zone at the time of the 1995 final PUD approval. Therefore, under the code in effect at the time the subdivision application was submitted, and based upon the election exercised by the landowner in the Development Agreement, mini-warehousing was a permitted use on the subject property. Furthermore, pursuant to ORS 92.040, upon approval of this subdivision application, the property became vested in the standards in effect at the time of the subdivision application for a period of 10 years.

- **SP 16-06 (Sentinel Storage II)** – approved on September 28, 2016

  The applicant applied for a new self-storage development (Sentinel Storage II) in July 2016. The City had amended the SZCDC on August 7, 2012 to remove the language referenced above that allowed approved PUDs to establish uses that were permitted in the base zone at the time of final PUD approval. As a result, mini-warehousing was not a permitted use on this property under the code in effect in 2016. While the use was no longer permitted in the Light Industrial zone, the application was approved by the Commission with a finding that determined the code allowing for self-storage use on the property was vested for a period of 10 years from the date of the 2012 subdivision approval based on the land use approval history for the property and pursuant to ORS 92.040. No testimony in opposition to the application or the vesting determination was received, no appeal was filed and that decision is final.

The application on appeal is a proposed Major Modification to the 2016 Site Plan approval in order to remove a canopy structure and replace it with a storage building.

Applying the law to the facts noted above, the City Council finds that the City's approval of the 2012 Langer Farms Subdivision approved a subdivision for property located within an urban growth boundary after September 9, 1995. Accordingly, by the plain text of ORS 92.040(2) quoted above, only those laws in effect at the time of the 2012 application, which included the 1995 PUD/Light Industrial use standards (which permit self-storage uses) as exercised by the landowner through the Development Agreement, govern subsequent construction on the property until August 28, 2022 (10 years after the date of the Langer Farms Subdivision approval), unless the landowner elects otherwise. The Applicant has not elected otherwise.

The City has not adopted an ordinance limiting the duration of the protections under ORS 92.040(3). Nevertheless, Appellants contend that when the City and Applicant entered into the Development Agreement, they established a shorter time period than the standard 10-year period granted by ORS 92.040(3) because, by its terms, the Development Agreement has now expired.

The City Council does not agree with the Appellants' contention because the Development Agreement was entered in 2010, while the subdivision occurred in 2012. The Development Agreement makes no mention of a subdivision or ORS 92.040 because it did not foresee the future subdivision and did not proactively waive the Applicant's rights under state law. Therefore, the City Council finds that there is no evidence the parties intended in the Development Agreement to establish a vesting period of less than 10 years for purposes of ORS 92.040(3).

Additionally, to the extent the Appellants' appeal questions whether Applicant could receive the benefit of the Development Agreement at all, the City Council finds that the Development Agreement ran with the land and was not personal to any particular individual or entity for the reasons stated in Section B of the May 10, 2022 letter from Seth King, which reasons are incorporated herein by reference. Appellants did not refute these reasons. As a result, the City Council finds that Applicant could receive the benefits (and burdens) of the Development Agreement.

For the reasons stated above, the City Council finds that, although mini-warehousing or self-storage is not a permitted use in the LI zone under the current development code, this use is permitted on the subject site until August 28, 2022.

The City Council denies Appellants' additional contentions regarding this appeal issue. For example, although the Appellants' counsel contends that ORS 92.040(3) does not establish a default 10-year period for the vesting of standards in conjunction with a subdivision, the City Council finds that this contention misconstrues the plain text of this subsection of the statute (quoted above). The City Council finds that, correctly construed, ORS 92.040(3) authorizes a local government to establish a time period limiting how long the protections under ORS 92.040(2) apply to a particular subdivision application. It then provides that even if no time period is established by the local government, the protections under ORS 92.040(2) apply to a particular subdivision for no more than 10 years. The City Council finds that its interpretation of this subsection is consistent with the interpretation offered by the Oregon Court of Appeals after it reviewed the legislative history of the statute:

> "However, the protection provided to developers by subsection (2) may not exceed a period of 10 years, and local governments can shorten the duration of that protection of they choose to do so. ORS 92.040(3)."

The Athletic Club of Bend, Inc. v. City of Bend, 239 Or App 89, 97, 243 P3d 824 (2010).

The City Council further denies the Appellants' contention that the City shortened the duration of the protections under ORS 92.040(2) in the 2012 subdivision and 2016 site plan approvals for the property. First, although the Appellant correctly notes that Condition 4 of the 2012 subdivision decision (City File No. SUB 12-02) provided that the approval was "valid for a period of two (2) years from the date of the decision notice," the City Council finds that the approval in SUB 12-02 was only for the tentative subdivision plan and thus the condition established a time period for preparing and recording the final plat for the subdivision. It did not either expressly or by implication establish an end date to the protections of ORS 92.040(2). In fact, the City Council finds that this contention does not make sense in the context of SUB 12-02 because the entire two-year clock could have expired before recording the final plat yet the legislative history of ORS 92.040 notes that the goal of the statute is to protect all construction on the site, not just the initial subdivision:

> "'HB 2658[A] makes it clear that *all phases of construction are protected from mid-stream local government rule changes, not just the act of subdividing or partitioning.*'"

The Athletic Club of Bend, Inc., 239 Or App at 96 (quoting testimony from Jon Chandler, general counsel for the Home Builders Association of Metropolitan Portland, to the Senate Committee on Water and Land Use) (italics in original). Moreover, the City Council finds that although the 2016 site plan approval was also valid for two years, that time period is irrelevant under ORS 92.040(2) and (3), which, by its terms, pertains only to subdivisions. For all of these reasons, the City Council denies the Appellant's contentions that the City has limited the duration of the protections provided to Applicant under ORS 92.040(2) by virtue of the 2012 subdivision approval to less than 10 years.

Further, for two reasons, the City Council denies the contention that because the Applicant has previously implemented the 2016 site plan, it cannot now be modified. First, this issue was not raised before the Commission or in the appeal statement and therefore is outside the scope of appeal. *See* SZCDC 16.76.010.A. For this reason alone, it cannot serve as a basis to uphold the appeal or deny the application. If this issue is not waived, the City Council finds that the City has established a formal process to request a modification to an approved site plan in SZCDC 16.90.030, the Applicant has submitted an application pursuant to this provision, and the City has reviewed this application and determined that it complies with the approval criteria applicable to major modifications to approved site plans set forth in SZCDC 16.90.030.A.1.b. In short, the City Council finds that the City did not commit an error in accepting and processing a request to modify the approved 2016 site plan, when accomplished in compliance with local regulations. Any challenge to the use of a site plan modification procedure is misplaced.

Finally, the City Council finds that the Appellants misconstrue the relevance of the Land Use Board of Appeals ("LUBA") decision in *Group B, LLC v. City of Corvallis*, __ Or LUBA __ (LUBA No. 2015-019, August 25, 2015). Correctly understood, LUBA reasoned that, even if specific development is not approved at the time of subdivision, if a local government approves a lot size and configuration in that decision that is premised upon a particular type or location of future development, the local government is precluded by ORS 92.040(2) from applying different or conflicting standards to that future development (unless the developer elects otherwise). *Id.* For the Langer Farms Subdivision, the City approved a lot size and configuration that was premised upon the Langers' developing uses that were permitted under the base zone at the time of final approval of the 1995 Sherwood Village PUD, including commercial uses. *See* pp. 2, 9 of the decision for City File No. SUB 12-02 (Langer Farms Subdivision) addressing use issues. In fact, the Langers' intent had already been established by their use election in

the Development Agreement. Based upon these findings in the 2012 decision, the City Council finds that the City is barred for a 10-year time period from applying new use standards that would prohibit uses allowed under the base zone at the time of final approval of the Sherwood Village PUD to the Langers' development of the property, unless the Langers elect otherwise. Although Appellants conte the City did not evaluate specific development on the subject property in conjunction with the 2012 subdivision decision, Appellants' contention is refuted by the 2012 findings discussed above. Accordingly, the City Council denies the Appellants' contentions regarding the *Group B* decision.

For all of these reasons, the City Council denies Appellants' Appeal Issue 1.

Appellants' Appeal Issue 2: "The Planning Commission erred by refusing to keep the record open at the continuance hearing, as demanded by the appellants pursuant to ORS 197.797(6)(b). The applicant and staff offered new evidence which appellants were not given the opportunity to rebut."

City Council Determination on Appellants' Appeal Issue 2: The initial evidentiary hearing before the Commission was held on April 26, 2022. The Appellants attended the initial hearing and requested the record be left open to submit additional testimony pursuant to ORS 197.797(6)(b). The Commission granted the request, leaving the record open and continuing the hearing to a date certain of May 10, 2022. At the continued hearing on May 10, the Appellants requested the record be left open again to submit additional testimony pursuant to ORS 197.797(6)(b). The Commission did not grant the request and issued a decision on the application on May 10, 2022.

The Appellants argue that new evidence was provided by the Applicant and staff at the continued hearing and therefore the record was required to be left open if requested by a participant of the hearing, pursuant to ORS 197.797(6)(b).

ORS 197.797(6)(b) states, in relevant part:

> " ...An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence,

arguments or testimony for the purpose of responding to the new written evidence."

ORS 197.797(9) establishes the relevant definitions for "argument" and "evidence" as follows:

> "(a) 'Argument' means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. 'Argument' does not include facts.
>
> "(b) 'Evidence' means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision."

Based upon the language above, the City Council finds that no new written evidence was submitted at the continued hearing. While verbal arguments were provided by staff and the Applicant in accordance with the hearing procedures, no new facts were submitted into the record by staff or the Applicant during the May 10, 2022 Commission hearing.

Although Appellants never identified what new facts were received into the record during the hearing on May 10, the Appellants may be referring to a letter from the Applicant's legal counsel that was submitted to the City on May 10 (the day of the Commission's continued hearing), but prior to the hearing. Staff distributed a copy of this letter to the City Council during the appeal hearing, and the City Council members reviewed it before making a decision on this issue.

For two reasons, the City Council finds that the May 10, 2022 letter from the Applicant's counsel does not constitute new "evidence" that required the Commission to re-open the record. First, the letter (Exhibit D16 in the land use record) was received by email and posted to the City's website prior to the start of the Commission hearing and available for public review in advance. Thus, even if the letter constituted new "evidence," it was not submitted "at the continued hearing" as required to trigger re-opening the record pursuant to the plain text of ORS 197.797(6)(b).

Second, the City Council finds that the letter from the Applicant's legal counsel does not include any new facts. Rather, it is a direct response to arguments made by the

Appellants in previous testimony. The letter is titled "Applicant's Response to the Claus Testimony" and only discusses issues that were previously raised by the Appellants. The letter is limited to assertions and analysis regarding satisfying standards and policies relevant to the decision and does not constitute new "evidence" as defined in ORS 197.797(9)(b). Because the letter only included argument and not any new evidence, the City Council finds that the Commission did not err in not holding the record open to allow Appellants to respond to the letter.

The City Council denies Appellants' contentions on this issue. For example, although ORS 197.797(6)(b) required the Commission to allow for an opportunity to rebut "new evidence, arguments or testimony," the City Council finds that the plain text of this subsection provides that this "opportunity" be provided "at the continued hearing." Thus, it did not require the Commission to leave open the record for some period beyond the end of the continued hearing as the Appellants requested. Moreover, the City Council finds that the Commission provided Appellants an adequate opportunity to review the letter during the hearing and offer any rebuttal (as well as other testimony) at that hearing. As support for this conclusion, the City Council relies upon the following facts: The letter was only four pages long, the letter was responsive to issues already raised by the Appellants and thus did not cover new issues, the letter was available on the city website in advance of the hearing and in hard copy form at the May 10, 2022 public hearing, and Appellants attended and presented oral and written testimony to the Commission during the hearing. Additionally, after the Commission recessed to review the letter, the Appellants left the meeting rather than requesting an opportunity to present further rebuttal before the close of the hearing. For these reasons, the City Council denies the Appellants' contentions on this issue.

Finally, the City Council further finds that Appellants did not identify with specificity any other information submitted at the May 10, 2022 hearing that constituted new evidence that would have required holding open the record pursuant to ORS 197.797(6).

For all of these reasons, the City Council concludes that the Commission did not commit a procedural error. The City Council denies Appeal Issue 2.

Additional Issues

During the appeal hearing, the City Council received arguments and testimony pertaining to a variety of concerns that did not relate directly to the two appeal issues, including concerns about funding for construction of Langer Farms Parkway, a Walmart

store in the City, public safety, and development patterns in the City, among other issues. These arguments do not relate to the issues raised on appeal, the City Council finds that they are outside the scope of the appeal and cannot and do not serve as a basis to affirm, reverse, or remand the Commission decision. The City Council did not consider these issues further.

Finally, the City Council finds that, during the course of the proceedings, much was made of the fact that members of the Langer family are associated with the application. The City Council finds that the identity of the Applicant has no bearing in determining whether the application satisfies or does not satisfy the relevant approval criteria, and specifically in this case, the City Council finds that the fact that the Langers were involved had no bearing on their decision.

Conclusion

Based on the forgoing analysis, the City Council found the application met all applicable provisions of the Sherwood Zoning and Community Development Code and correctly interpreted ORS 92.040 related to the permitted uses on the property and ORS 197.797(6)(b) related to the hearing procedures.

Therefore, the appeal is denied, the Commission's decision is affirmed, and the application is approved.

Tim Rosener, Council President — **Date**: 3, Aug, 22
On behalf of the Sherwood City Council

Attest:

Sylvia Murphy, MMC, City Recorder