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May 10, 2022

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VIA ELECTRONIC MAIL TO RUTLEDGEE@SHERWOODOREGON.GOV

Chair Jean Simson
City of Sherwood Planning Commission
c/o Community Development Department
22560 SW Pine St
Sherwood, OR 97140

**Re: Sentinel Storage II Site Plan Modification Application
City File No. LU 2022-004 MM
Applicant's Response to Claus Testimony**

Chair Simson and Members of the Planning Commission:

This office represents the Langer family in their Sentinel II Site Plan Modification application (City File No. LU 2022-004 MM) ("Application"), which is pending before the City of Sherwood ("City") Planning Commission. This letter responds to opposition testimony presented by Jim and Susan Claus at the April 26, 2022 Planning Commission meeting. For the reasons explained below, the contentions raised by Mr. and Mrs. Claus lack merit. The Planning Commission should deny their contentions and approve the Application.

I. Applicant Responses.

A. Mr. Claus misconstrues ORS 92.040 and the Development Agreement.

1. The Development Agreement does not modify the vesting provisions of ORS 92.040.

When a city approves a subdivision for land inside an urban growth boundary, the city's laws in effect at the of subdivision application govern development on the land "unless the applicant elects otherwise." ORS 92.040(2). The City may establish a time period not to exceed 10 years for how long vesting under the subdivision lasts. ORS 92.040(3).

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The subject property is located inside the UGB, and the Langers submitted an application to subdivide it in 2012, which the City ultimately approved. In conjunction with the subdivision, the Langers did not elect for the City to apply different standards to development of the property. Therefore, the standards in effect at the time of the 2012 application, which included the standards applicable through the Amended and Restated Development Agreement among the City and Langers (“Development Agreement”), governed development on the property for a 10-year period of time. That is the beginning and the end of the analysis required under ORS 92.040(2) and (3) in this case.

Although Mr. Claus contends that the Langers’ agreement that the standards applicable pursuant to the Development Agreement would expire in 2017 was a waiver by the Langers of the full 10-year vesting period under ORS 92.040, and as a result, when the Development Agreement expired in 2017, the standards vested under ORS 92.040 also expired, he is mistaken. None of the provisions of the Development Agreement expressly or by implication indicate that the Langers waived any rights they had under ORS 92.040 when they entered the Development Agreement.

Likewise, in the absence of any express provisions that the election under the local code provision memorialized in the Development Agreement constituted an election under ORS 92.040, there is no reasonable argument that the City intended the Development Agreement to shorten the 10-year vesting period under ORS 92.040(3).

Finally, the plain text of ORS 92.040 does not provide an exception that the vesting period under the statute is modified based upon an earlier development agreement.

For all of these reasons, the Planning Commission should deny Mr. Claus’ contention on this issue.

2. Hypothetical Development Scenario.

Additionally, the Planning Commission need not worry itself with the hypothetical scenario identified in Section 3 of Mr. Claus’ letter because the Planning Commission’s task tonight is to decide about an actual, not a hypothetical, application. Moreover, Mr. Claus’ hypothetical scenario involved a development agreement with no expiration date. It is undisputed that the Development Agreement in the present case had an

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expiration date. Therefore, the far-fetched scenario Mr. Claus outlines could not happen with this development.

3. Group B Decision.

Finally, Mr. Claus misapplies the decision by the Land Use Board of Appeals (“LUBA”) in *Group B, LLC v. City of Corvallis*, ___ Or LUBA ___ (LUBA No. 2015-019, August 25, 2015). Correctly construed, LUBA stated in that decision 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 subdivision 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. *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 Langer Planned Unit Development. See p. 9 of the decision for City File No. SUB 12-02 (Langer Farms Subdivision) addressing use issues. Accordingly, the City is barred for a 10-year period from applying different or conflicting standards to the Langers’ future development of the property, which would include new use standards that would prohibit uses allowed under the base zone at the time of final approval of the Langer Farms Planned Unit Development. For these reasons, the Planning Commission should deny Mr. Claus’ contentions regarding the *Group B* decision.

B. The identity of the landowner is irrelevant because the benefit of the Development Agreement was not personal to any particular individual or entity.

Mrs. Claus contends that that the Development Agreement was personal to Pamela and Clarence Langer and Langer Family, LLC. She is mistaken. Section 5 of the Development Agreement provided that the benefits and burdens of the agreement “shall run with the land.” In other words, they were not personal to any particular individual or entity but would bind/benefit whoever owned the land. As a result, there is no need to sort through the various Secretary of State entity documents provided by Mrs. Claus to understand who manages the Langer entities or how they relate to one another. The Planning Commission should deny Mrs. Claus’ contention on this point.

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II. Conclusion.

For all of these reasons, the Planning Commission should deny the contentions raised by Mr. and Mrs. Claus and approve the Application.

We have asked City staff to place a copy of this letter in the official record for this matter and to place a copy before you at tonight's meeting. Please consider it before making your decision on the Application. Thank you for your consideration of this request.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Seth J. King', with a stylized, cursive script.

Seth J. King

cc: Eric Rutledge (via email)
Josh Soper (via email)
Matt Langer (via email)
AKS Engineering & Forestry (via email)