

**LU 2022-012 SP / MM / CUP / LLA**

**Testimony received during initial open record period (deadline 7/5/22 at 5pm)**

Exhibit C1 – Susan Claus with 4 attachments

Exhibit C2 – Jim Claus

Exhibit C3 – Susan Claus

Exhibit C4 – Jim Claus

Exhibit C5 – Jim Claus with 1 attachment

Exhibit C6 – Seth King (Perkins Coie)

**Susan Claus**  
**22211 SW Pacific Highway**  
**Sherwood, OR 97140**

July 4, 2022

SENT VIA EMAIL

July 5, 2022

City of Sherwood  
Planning Department  
22560 SW Pine St.  
Sherwood, OR 97140

Re: LU 2022-012 SP, MM, CUP, LLA  
Applicant: Langer Family, LLC

Dear Planning Commission Members:

Please reference the following attached documents that were submitted in support of the Jim Claus letter dated June 27, 2022, which I support. The attachments include:

1. A copy of the 2010 Amended and Restated Development Agreement, wherein the Applicant elected to apply the 1995 SZCDC to development of Phase 6 of the 1995 PUD (which includes the subject property for this application);
2. A copy of the 2012 Staff Report in SUB 12-02, the application by the Applicant to subdivide the property in Phase 6, where Staff notes that the Applicant proposes no land uses in SUB 12-02, only approval to divide Phase 6 into lots;

Additionally, please find attached with this letter for the record:

3. A copy of the notation from the 2012 SZCDC showing the repeal of Chapter 16.32 of the SZCDC, which included §16.32.020(H), the section allowing the Applicant to elect between development under the current code or the code in effect when the PUD was approved in 1995.
4. A copy of Sections 2.109 (General Commercial) and 2.110 (Light Industrial) of the 1995 SZCDC, showing a "motel or



hotel" as a conditional use in the GC zone and a prohibited use in the LI zone.

It is odd that the Applicant has chosen to apply ORS 92.040 to only the mini-storage portion of this Application, but after review of the 1995 SZCDC, the reasoning becomes apparent. The 1995 SZCDC does not allow a hotel/motel in the LI zone, and only authorizes a hotel/motel as a conditional use in the General Commercial zone. If the Applicant were relying on the 1995 SZCDC for approval of the hotel/motel, the Application would have to be denied, because the use was not allowed in the LI zone, and therefore cannot be allowed today.

Alternatively, if the Applicant is relying upon the 2010 Amended and Restated Development Agreement as the basis for approval of the hotel, Section (A)(2) of that Agreement specifically provides that the Applicant and the City agreed that only those uses allowed "under the LI base zone text at the time of final approval of the PUD." That determination was based upon the language of SZCDC §16.32.020(H) in effect at the time of the 2010 Amended and Restated Development Agreement and at the time of the City's approval of SUB 12-02, which has since been repealed. The 1995 SZCDC allowed the uses in the LI zone and the outright permitted uses in the GC zone, neither of which included hotels/motels. In other words, a hotel/motel was not allowed on the subject property in 1995 when the PUD was approved, or in 2012 when SUB 12-02 was approved. Consequently, the Applicant cannot rely upon ORS 92.040 to site the hotel, since it was not allowed at that time.

Instead, the Applicant has chosen a hybrid approach - apply ORS 92.040 to a portion of the application, but apply for the remaining portion under the existing SZCDC. We're now reaching into silly territory. There is nothing in ORS 92.040 that remotely suggests that an applicant can pick and choose between which portions of the currently applicable code it wishes to apply and which it wishes to ignore in favor of an earlier version. This kind of "pick and choose" zoning was not contemplated by the legislature when ORS 92.040 was adopted (see the discussion of legislative intent in *Athletic Club of Bend, Inc. v. City of Bend*, 239 Or App 89 (2010)).

In fact, neither the Applicant nor Staff has made clear what the applicable approval criteria are for the subject Application. Staff lists the review criteria in Section I(G) of the Staff Report, yet no mention is made of the 1995 SZCDC provisions that Applicant is apparently relying upon for approval of the mini-storage component of the Application. The Applicant's submittals do not make clear when it is relying upon the 1995 code, and when it is relying upon the current code. How is the Staff and public supposed to know? Do Staff and the Applicant get to pick and choose what they want to apply and what they can ignore?

ORS 197.797(3) (b) obligates the City to list the applicable approval criteria in its public notice of the submitted Application. In this case, the City notice is insufficient, as it does not specify which current SZCDC sections apply to the application, and which of the 1995 SZCDC sections apply. In addition, ORS 197.797(5) (a) requires the applicable criteria for approval or denial of the Application to be part of the statement read to the audience at the beginning of the hearing. The Commission did not do so in this case, because no one is sure exactly what the applicable criteria are. In any event, nothing in the legislative history, text, or context of ORS 92.040 suggests that an applicant can submit a land use application relying on ORS 92.040 for uses that currently are prohibited by the current land use regulations, while at the same time applying current land use regulations to uses that were prohibited by the zoning in effect at the time of the initial subdivision approval relied upon under the statute. Somehow, that's exactly what the Applicant tries to do here. The Commission should reject this interpretation.

Please enter this letter into the record.

Sincerely,

*Susan Claus*

Susan Claus

Note also part of this letter includes the 4 attachments detailed above included in the same email sent to staff on July 5, 2022 before 5 pm.

CURRENTLY IN-USE 5-4-11

## AMENDED AND RESTATED DEVELOPMENT AGREEMENT

PARTIES

The Parties to this Amended and Restated Development Agreement ("Agreement") are the City of Sherwood, Oregon ("City") and Pamela and Clarence Langer, as to Phase 4, and the Langer Family, LLC, as to the remainder of the PUD (collectively, "Langer").

RECITALS

1. On April 26, 1995, the City approved a Preliminary Development Plan for a Planned Unit Development ("PUD") on property owned by Langer. The subject property is located generally southeast of Hwy 99W and south of the Tualatin-Sherwood Road, in the City.
2. The decision approved development of the property in eight (8) separate phases. The decision contemplated and assigned specific uses to each phase, including High Density Residential, Retail/Commercial, and Light Industrial (LI).
3. The portions of the PUD designated LI have not yet developed, except for a portion of Phase 4, which was developed as a mini-warehouse use under the General Retail Trade category of allowed uses in the LI zone. Since the approval of the PUD, the City has amended its list of permitted and conditional uses in the LI zone, subject to the City's Zoning and Community Development Code ("ZCDC") 16.32.020.H, which provides the following: "Approved PUDs may elect to establish uses which are permitted or conditionally permitted under the base zone text at the time of final approval of the PUD."
4. The PUD approval contained conditions of approval including: a requirement for a wetlands delineation prior to development of Phase 8; the construction of Adams Drive at the time of development of Phase 6; and the elimination of the then-proposed extension of Century Drive east of Adams Drive.
5. The Final Development Plan was approved August 3, 1995. Neither the Preliminary Development Plan nor the Final Development Plan approvals related to a site plan. Thus, site plan review is required for each phase as development is proposed for that phase.
6. Phases 1 through 3 and 5 have been developed, and a portion of Phase 4 was developed as above-described and is anticipated for future redevelopment. The purpose of this Agreement is to clarify and refine the intent of the Parties regarding the following issues (collectively, the "PUD Issues"):



- (a) The allowed uses of Phases 4, 6, 7 and 8 of the PUD, all of which are designated for LI uses;
  - (b) The timing of related improvements, including the construction of Adams Drive and Century Drive;
  - (c) The cost-sharing of public improvements, including the construction of Adams Drive and Century Drive; and
  - (d) Certain related matters.
7. The City and Langer previously set forth their respective commitments relative to the PUD Issues in that certain Development Agreement dated January 3, 2008 ("2008 Agreement"), which was a condition of approval to a companion Minor Change to the PUD approved contemporaneously by the City.
  8. Subsequent to entering into the 2008 Agreement, economic conditions have changed such that the Parties find it necessary to re-evaluate their respective commitments under the 2008 Agreement. The City and Langer now desire to amend and restate their commitments relative to the PUD Issues set forth below.
  9. This Agreement represents the only Agreement between the City and Langer with respect to the PUD Issues and does not preclude or require any conditions that may arise from a subsequent application for site plan review. It is the intent of the parties that the site plan review conditions should not be inconsistent with this Agreement.
  10. This Agreement is only between the City and Langer and does not affect any conditions or improvements that may be required by other jurisdictions.

## AGREEMENT

### A. PUD USES

1. Applicable Code. ZCDC 16.32.020.H, provides that "Approved PUDs may elect to establish uses which are permitted or conditionally permitted under the base zone text at the time of final approval of the PUD." The Langer PUD was approved and Phases 4, 6, 7 and 8 were assigned the Light Industrial ("LI") base zone designation on August 3, 1995.
2. Permitted and Conditional Uses. Accordingly, Langer elects to establish uses on the LI-designated phases of the PUD that were permitted or conditionally permitted under the LI base zone text applicable on August 3, 1995, including: "Uses permitted outright in the GC zone Section 2.109.02, except for adult entertainment businesses, which are prohibited." A copy of the uses permitted in the LI and GC zones on August 3, 1995 is set forth in Attachment A, attached hereto and incorporated herein by reference.

3. Election of Uses and Acceptance. The City acknowledges and accepts Langer's decision to elect to develop Phases 4, 6, 7 and 8 under ZCDC 16.32.020.H, including the ability to develop those phases for General Retail Trade under Section 2.109.02 of the 1995 ZCDC. Accordingly, the current provisions of ZCDC 16.32.030.K, which restrict retail uses in the LI zone to a maximum of 60,000 square feet, will not apply to site plan review of the PUD.

B. ADAMS DRIVE SOUTH EXTENSION

1. City Commitments. Except as otherwise provided in this section, as soon as reasonably practicable and in any event prior to Langer's construction of any portion of Adams Drive south of the PUD's southern boundary, the City, at the City's sole cost and expense, will take the following actions:
  - a. Acquire the necessary right-of-way and complete the design and engineering for construction of the extension of Adams Drive ("South Extension") south from its present terminus up to but not including the railroad crossing between the southern PUD boundary and Oregon Street ("Rail Crossing");
  - b. Obtain all necessary permits for the construction and operation of the South Extension, including without limitation, all permits associated with allowing impacts to wetlands;
  - c. Provide for the mitigation of any impacts to wetlands related to the alignment and construction of the South Extension; and
  - d. Pursuant to the City's standard timeline and procedure in such instances, accept Langer's dedication of that portion of the South Extension located within the boundaries of the PUD following final inspection approval and thereupon assume maintenance obligations for all of the South Extension.
2. Langer Commitments. Subsequent to the City's performance of its obligations set forth in Section B.1.a. to B.1.c. of this Agreement but prior to issuance of final occupancy permits for any structures included in Phases 6 or 7, Langer will substantially construct the South Extension, including the traffic circle and island at the intersection with Century Drive and the twelve-foot (12') wide multi-use path extending the length of the South Extension as identified in the City Transportation Systems Plan (the "Path"). The street will be aligned and constructed in a manner consistent with the "90-percent drawings" prepared by Hopper Dennis Jellison, PLLC dated April 2008 and on file with the City (the "South Extension Plans"). Upon completion of the construction of the South Extension, Langer will dedicate and record a public right-of-way easement to the City for Adams Drive south from its present terminus to the southern boundary of the PUD (the "South Extension Right-of-Way").

3. Alternative Commitments.
- a. Alternatively, in the event the City has completed the obligations set forth in Section B.1.a. to B.1.c. of this Agreement and the City receives or accrues funding equal to the cost estimate for the construction of the South Extension prior to the time Langer has substantially commenced the obligations set forth in Section B.2. of this Agreement, the City may, in its sole discretion, elect to construct the South Extension, including the traffic circle and island at the intersection with Century Drive, the Path, and if warranted, the traffic signal at Tualatin-Sherwood Road, at the City's sole expense. In the event the City undertakes construction of the South Extension, the City will deliver written notice ("Written Election") to Langer of the City's intent in accordance with Section I.7. of this Agreement prior to undertaking construction of the South Extension.
- b. The City will issue a Notice to Proceed to the selected bidder(s) ("Contractor") for completion of the physical construction of the South Extension within ninety (90) days after delivery of the Written Election to Langer ("Commencement Date"). In the event the City fails to issue the Notice to Proceed by the Commencement Date and Langer has obtained final site plan approval for either Phases 6 and/or 7 by said date, the City will forfeit its right to undertake construction of the South Extension, and Langer will re-assume the obligation to substantially construct the South Extension in accordance with Section B.2. of this Agreement, unless Langer agrees in writing to extend the Commencement Date. If the City has not forfeited its right to undertake construction of the South Extension, the City will substantially complete the construction of the South Extension within fourteen (14) months after the Commencement Date ("Completion Date"), and in any event, prior to the issuance of an occupancy permit for any structure included in Phases 6 or 7.
- c. To ensure the Completion Date is met, the City will include the required Completion Date and penalties for late completion in the contract ("Contract") the City enters with the Contractor. The penalties shall be an amount calculated to reimburse Langer for any losses incurred by Langer due to Contractor's failure to substantially complete construction by the Completion Date when such failure prevents the reasonable use of Phases 6 or 7 for retail commercial purposes, but in any event not less than \$10,000.00 per day Langer is unable to make reasonable use of Phases 6 or 7 for commercial retail purposes. The City shall take all necessary and appropriate action to enforce the penalty provision in the Contract and forward any amounts collected to Langer within 30 days of the date the City receives payment.
- d. If the City elects to construct the South Extension under this Section B.3, the City will perform its construction activities in a manner that minimizes obstruction or interference with access to, from, or within the PUD and

Langer's construction, if any, and use of the subject property in accordance with the PUD. The City will mobilize, conduct, and maintain all construction activities, equipment and materials on and around the PUD in such manner to allow use of the South Extension and access between the PUD and the South Extension through all access driveways. The City's agreement to perform its construction activities consistent with this section is a material inducement for Langer to enter this Agreement as it will facilitate Langer's timely completion of the PUD in accordance with Langer's agreement with its end users of the PUD.

- e. If the City elects to construct the South Extension, Langer will take the following actions prior to the City's commencement of construction:

(A) Grant the South Extension Right-of-Way to the City, provided the City shall bear the expense of preparing the legal description for the South Extension Right-of-Way.

(B) Grant to the City reasonable temporary construction easement(s) to allow the City to complete its construction commitments, provided Langer's grant of an easement(s) may be conditioned to ensure that the City's use of the PUD property does not unreasonably interfere with Langer's use and development of the PUD.

(C) If Langer has not yet constructed the stormwater facility on Phase 8 as provided in Section F.1 of this Agreement ("Stormwater Facility"), allow temporary location of stormwater detention and treatment from the South Extension on Phase 8 in either a temporary facility ("Temporary Facility") or the existing stormwater facilities located on Phase 7 and Phase 8 ("Existing Facilities"). To the extent that the Temporary Facility or the Existing Facilities will require any expenses for engineering, construction, design, maintenance, or modification to existing land use approvals, the City will bear the expenses. If applicable, Langer and the City shall execute and record appropriate easement documents or amendments to the existing easement for the Existing Facilities to formalize the parties' respective obligations under this subsection (C).

(D) Use reasonable best efforts to avoid damaging the Path during construction and development of the PUD, provided that if Langer causes any such damage, Langer shall, at its sole expense, repair and replace the Path back to its original condition.



C. ADAMS DRIVE NORTH EXTENSION

1. City Commitments. Except as otherwise provided in this section, as soon as reasonably practicable and in any event prior to Langer's construction of any portion of Adams Drive north of the PUD's northern boundary, the City, at the City's sole cost and expense, will take the following actions:
  - a. Acquire the necessary right-of-way for and complete the surveying, design, and engineering for construction of an extension of Adams Drive ("North Extension") from the north side of the intersection with Tualatin-Sherwood Road, north to the existing stub road connecting to Highway 99W, with the alignment to curve east around the PGE substation and connect to the east end of the Home Depot stub road. The street will be aligned and constructed in a manner consistent with the "60-percent drawings" prepared by Harper Hoff Peterson Righellis Inc, dated February 2010 and on file with the City (the "North Extension Plans"). The right-of-way, design and engineering shall anticipate and include at least 43 p.m. peak-hour vehicle trips per acre from Phase 4 to accommodate redevelopment of Phase 4.
 

Any substantial changes to the alignment and cross-section shall require an amendment to this Agreement. Such amendment shall only relate to this section of the Agreement, and all other terms and conditions of this Agreement shall remain in full force and effect. A "substantial change" may include but is not limited to an increase in the number of lanes, an increase in the right-of-way width by 10 or more feet, requiring additional landscaping, medians, or pedestrian paths, shifting the alignment east or west by fifty (50) or more feet, and/or any other changes that will substantially increase the cost of construction.
  - b. Obtain all necessary permits for the construction and operation of the North Extension, including without limitation, all permits associated with impacts to wetlands, all approach and/or signal permits required by the Oregon Department of Transportation for the intersection of Highway 99W and the existing stub road, and all approach permits required by Washington County for the connection of the North Extension and Tualatin-Sherwood Road.
  - c. Provide for the mitigation of any impacts to wetlands associated with the alignment and construction of the North Extension.
  - d. Otherwise remove any legal or planning constraints to the construction of the North Extension.
  - e. Pay any extraordinary labor costs associated with Langer's performance of its obligations under Section C.2., where "extraordinary labor costs" means any



costs required by law to exceed an arms-length privately negotiated rate solely due to the nature of the improvement.

- f. Pay any extraordinary construction costs associated with Langer's performance of its obligations under Section C.2. that are attributable to extraordinary environmental or geographic conditions.
- g. Pursuant to the City's standard timeline and procedure in such instances, assume maintenance obligations for all of the North Extension following the City's final inspection approval of the North Extension.
- h. Permit Langer to assume, for purposes of completing the required traffic study, that the North Extension has been planned and funded for construction prior to development of Phases 6 and 7 pursuant to Langer's alternative commitments to construct the North Extension or make a payment in lieu thereof pursuant to Section C.2. below.
- i. Permit Langer to assume, for purposes of completing the required traffic study, that the North Extension has been planned and funded for construction prior to the redevelopment of Phases 4 pursuant to Langer's alternative commitments to construct the North Extension or make a payment in lieu thereof pursuant to Section C.2. below.
- j. The City will not require the closure of any residential access to Phase 4 from Tualatin-Sherwood Road until redevelopment of Phase 4. The City will reimburse Langer for the cost of relocating and rebuilding any access to and from the existing commercial uses on Phase 4 resulting from the closure of any access due to the construction of the North Extension, including any necessary relocation of administrative facilities associated with the commercial use.
- k. In the event Langer pays a fee in lieu of construction as described in Section C.2. below, the City will:
  - (A) Place the payment into an existing or newly-created interest-bearing City Trust and Agency Fund;
  - (B) Grant credits for transportation System Development Charges ("SDC's") otherwise payable by Langer as if Langer had constructed the North Extension; and
  - (C) Use the payment-in-lieu exclusively for the construction of the North Extension. However, if the City has not entered into a contract for the construction of the North Extension or any portion thereof within five (5) years after Langer deposits the fee with the City, the City shall return the fee-in lieu, together with any interest thereon to Langer, Langer's successor or a

person designated by Langer's successor, minus any amount provided as a credit against transportation SDC's under paragraph (B) above. This Agreement does not constitute a "contract for construction of the North Extension" for purposes of this subsection.

2. Langer Commitments. Langer agrees to take the following actions with respect to the North Extension:
  - a. Subsequent to the City's performance of its obligations set forth in Section C.1. of this Agreement but prior to issuance of the final occupancy permit for any structure included in the development of Phase 6, Langer will substantially construct the North Extension consistent with the alignment and cross-section described in Section C.1.a. of this Agreement. However, in the event the City exercises its option to construct the South Extension under Section B.3. of this Agreement, Langer will substantially construct the North Extension prior to issuance of the final occupancy permit for any structure included in the development of Phases 6 or 7.
  - b. Alternatively, in the event the City has not substantially performed the obligations set forth in Section C. 1.a. to C.1.d. of this Agreement by a date that is sixty (60) days after Langer submits construction drawings for public improvements associated with the development of Phase 6 to the City, Langer shall submit a fee in lieu of construction in an amount equal to the cost estimate for the construction of the North Extension prior to the issuance of an occupancy permit for any structure included in the development of Phase 6. Langer's timely deposit of a fee in lieu under this paragraph shall fully satisfy Langer's obligations under Section C.2.a. of this Agreement and shall trigger the City's performance of its commitments under Section C.1.k. of this Agreement. In the event the City exercises its option to construct the South Extension under Section B.3. of this Agreement, the references to "Phase 6" in this subparagraph b. shall be replaced with "Phases 6 or 7."
  - c. In the event the City refunds the fee-in-lieu as described in Section C.1.k(C) of this Agreement prior to the redevelopment of Phase 4, and subsequent to the performance of the City's other obligations under Section C.1., Langer will substantially construct the North Extension consistent with the alignment and cross-section provided by the City prior to the issuance of an occupancy permit for any structure included in the redevelopment of Phase 4. In the event the City is still in possession of the fee-in-lieu at the time Phase 4 redevelops, the City will refund the fee to Langer, including any interest thereon, or will not require the construction of the North Extension as a condition of redevelopment.

D. RAIL CROSSING

1. City Commitments. As soon as reasonably practicable, the City, at the City's sole cost and expense, will take the following actions with respect to the Rail Crossing:
  - a. Acquire the necessary right-of-way for the Rail Crossing;
  - b. Obtain all required crossing or other permits from ODOT Rail and any other applicable agencies associated with the Rail Crossing;
  - c. Complete the design, engineering, and construction of the Rail Crossing; and
  - d. Use all reasonable best efforts to complete these actions and connect the South Extension to Oregon Street via the Rail Crossing no later than the date of issuance of occupancy permits for the development of Phases 6 and 7; provided, however, the failure to complete these actions by such date shall not be grounds to deny the issuance of such occupancy permits.
2. Langer Commitments. None.

E. CENTURY DRIVE

1. Langer Commitments. Langer agrees to take the following actions with respect to Century Drive:
  - a. Prior to issuance of final occupancy permits for any structure located in Phase 6 or Phase 7, design and substantially construct a reasonably direct vehicular connection between the existing terminus of Century Drive on the western boundary of the PUD and existing City right-of-way at the eastern boundary of the PUD ("Century Drive Connection"). The Century Drive Connection shall be constructed to the adjusted street standard described in Section E.2.a. below.
  - b. Following construction, dedicate a right-of-way easement to the City for the Century Drive Connection.
  - c. Provide the City with copies of receipts of eligible expenses where "eligible expenses" is defined to include all hard and soft costs of labor and materials associated with all aspects of the design, engineering, and construction, including applicable consultant fees, of the Century Drive Connection that exceed the cost of designing and constructing the Century Drive Connection as a standard parking lot drive aisle ("Eligible Expenses").

2. City Commitments. The City agrees to take the following actions with respect to Century Drive:
  - a. To work with Langer to achieve an adjustment to the relevant City street standards so that the nature, location, and design of the Century Drive Connection requires the minimum necessary right-of-way to provide a vehicular connection and includes traffic calming measures such as restrictions on through traffic for trucks.
  - b. Reimburse Langer for all undisputed Eligible Expenses within thirty (30) days after the City receives the receipts described in Section E.1.c.. City will immediately contact Langer regarding any disputed expenses and attempt to resolve the dispute within 90 days of the date the receipt containing the expense is received by the City. Any disputed expense that remains unresolved after 90 days shall be submitted to mediation as provided in Section I.12. of this Agreement; and
  - c. Pursuant to the City's standard timeline and procedure in such instances, accept Langer's dedication of the Century Drive Connection following final inspection approval and thereafter assume maintenance obligations for same.

#### F. STORMWATER FACILITY

1. Langer Commitments.
  - a. Prior to issuance of a final occupancy permit for the first structures located in Phases 6 or 7, Langer will design and substantially construct the "Stormwater Facility on Phase 8 (including any necessary portions of Phase 6), to accommodate existing stormwater detention and treatment for the PUD (including development of Phases 6, 7 and 8), and any detention and treatment associated with the South Extension and the Century Drive Connection. In conjunction with this construction, Langer retains the right to terminate use of the Existing Facilities and any Temporary Facility constructed pursuant to Section B.3.c. of this Agreement, provided the stormwater detention and treatment functions of the Existing Facilities and any Temporary Facility are incorporated into the Stormwater Facility and subject to any written agreements relating to the Existing Facilities. Langer retains the right to expand the Stormwater Facility to serve other public rights-of-way and uses outside the PUD in Langer's sole discretion, provided such expansion otherwise complies with City standards, including without limitation, awarding credits for SDC's.
  - b. Following construction, Langer will dedicate the Stormwater Facility to the public for use as a stormwater detention and treatment facility.

2. City Commitments.
  - a. The City agrees to work with Langer, to the extent allowed by law, to issue any land use approvals related to termination of the Existing Facilities through an administrative process, to facilitate any related process for the vacation of any prior public dedications associated with the Existing Facilities, and to modify the existing recorded easement document among Langer and the City relating to the Existing Facilities.
  - b. The City agrees to accept the dedication of the Stormwater Facility following final inspection approval and thereafter assume the maintenance obligations for same.

G. RENAMING OF ADAMS DRIVE

1. Langer Commitments. Prior to Langer's dedication of any portion of Adams Drive as described in this Agreement, Langer will submit a petition to the City to rename the completed portion of Adams Drive in accordance with the street name standards of ZCDC 16.108.010.4.A-C. Langer agrees to select a single name for Adams Drive from the southern end of the South Extension to the northern end of the North Extension.
2. City Commitments.
  - a. Provided the petition is submitted in the manner described in ZCDC 16.108.010.3, the City will support a petition received from Langer to rename the completed portion of Adams Drive.
  - b. If the petition is approved by the City Council, the City shall install standard City street signage identifying Adams Drive by its new name.

H. TRANSPORTATION CHARGES, FEES, AND CREDITS

1. Transportation Development Tax. The calculation and assessment of any Transportation Development Tax ("TDT"), including any TDT credits, will be made according to the Washington County TDT ordinance. Improvements to Tualatin-Sherwood Road will be creditable towards Washington County TDT's as allowed in Washington County's ordinance. It is the parties' mutual understanding that this ordinance provides full TDT credits for turn lanes and 50% or 66.67% for traffic signals for a four- and three-leg intersection, respectively. The City's commitment to this provision is a material inducement for Langer's agreement to complete the various public improvements set forth in this Agreement.

For the purpose of determining the number of weekday trips generated by all commercial land uses in Phases 4, 6, 7, and 8 of the PUD, the land use



category "Shopping Center" from ITE Trip Generation, 7th Edition, shall be applied to the Washington County TDT Ordinance for the calculations of the Washington County TDT.

2. Transportation SDC's.

The City shall calculate and assess the Project with SDC's and credits for SDC's, pursuant to the City's Municipal Code, as it may be amended from time to time, and subject to any resolutions adopted by the City implementing same.

For the purpose of determining the number of weekday trips generated by all commercial land uses in Phases 4, 6, 7, and 8 of the PUD, the land use category "Shopping Center" from ITE Trip Generation, 7th Edition, shall be applied to the City's SDC ordinance for the calculations of the City's SDC's.

3. Credits.

- a. Langer shall be entitled to seek SDC credits from the City and TDT credits from Washington County for all qualifying improvements and right-of-way dedications made by Langer, subject to the then applicable provisions of Oregon law and applicable ordinances. To the extent allowed by law, the City shall apportion SDC and TDT charges in the manner that maximizes the beneficial use of any resulting credits for Langer. In the event the City amends its SDC ordinance to eliminate the Transportation SDC prior to Langer's redemption of otherwise valid SDC credits, the City shall exercise good faith and best efforts to provide Langer a financial benefit in an amount equal to the value of any unredeemed credits in a manner consistent with applicable law, provided the City is not obligated to ensure such benefit or other return on the unredeemed credits.
  - b. The City hereby determines that, for purposes of qualifying for and administering SDC and TDT credits, Langer's construction of public improvements and dedication of right-of-way to the City pursuant to this Agreement are existing condition(s) of approval of the PUD, as it has been modified by the Minor Change approved in 2007.
4. Highway 99W Capacity Allocation Program. For purposes of calculating whether the trips associated with the regulated activities in Phases 6, 7, and 8 of the PUD exceed the trip limit of ZCDC 6.306.D.4, the City shall aggregate the trips and acreage of all such phases. As a result, the trips associated with the regulated activities of a single phase may exceed the trip limit that would otherwise apply if that phase were calculated individually, provided that the trips associated with all regulated activities for Phases 6, 7, and 8 do not exceed the trip limit in the aggregate. At each phase of development of the PUD, the number of reserve trips for the remaining phases will be identified in the applicable Trip Allocation Certificate.

I. TERMS AND CONDITIONS

1. Further Assurances. Each party shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of its obligations hereunder in good faith, to carry out the intent of the parties hereto.
2. Modification of Amendment. No amendment, change or modification of this Agreement shall be valid, unless in writing and signed by the parties hereto.
3. Relationship. Nothing herein shall be construed to create an agency relationship or a partnership or joint venture between the parties.
4. Waiver of Default or Condition. In the event a party defaults in the performance of one or more of its obligations under this Agreement or in the event of the failure of a condition precedent to be satisfied under this Agreement, the nondefaulting party or beneficiary of the condition may, in its discretion, waive, as applicable, the default or satisfaction of condition hereunder and rescind any consequence of such default or failure of a condition, and in case of any such waiver or rescission, the parties shall be restored to their former positions and rights hereunder respectively, but no such waiver or rescission shall extend to or affect any subsequent or other default or condition precedent, or impair any right consequent thereon. No such waiver or rescission shall be in effect unless the same is in writing and signed by the nondefaulting party.
5. Burden and Benefit; Assignment. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the parties and their successors and assigns and shall run with the land. Neither party may assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.
6. Applicable Law. This Agreement shall be interpreted under the laws of the State of Oregon.
7. Notices. All notices, demands, consents, approvals and other communications which are required or desired to be given by either party to the other hereunder shall be in writing and shall be faxed, hand delivered, or sent by overnight courier or United States mail at its address set forth below, or at such other address as such party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered, three days after mailing by United States Mail or upon receipt if sent by courier; provided, however, that if any such notice or other communication shall also be sent by telecopy or fax machines,

such notice shall be deemed given at the time and on the date of machine transmittal.

8. Merger. This Agreement contains the entire agreement among the parties hereto with respect to the subject matter hereof and cannot be amended or supplemented except by a written agreement signed by all parties.
9. Rights Cumulative. All rights, remedies, powers and privileges conferred under this Agreement on the parties shall be cumulative of and in addition to, but not restrictive of or in lien of, those conferred by law.
10. No Third Party Beneficiaries. None of the duties and obligations of any party under this Agreement shall in any way or in any manner be deemed to create any rights in, any person or entity other than the parties hereto.
11. Force Majeure. The parties shall use reasonable diligence to accomplish the purpose of this Agreement but shall not be liable to each other, or their successors or assigns, for damages, costs, attorneys' fees (including costs or attorneys' fees on appeal) for breach of contract, or otherwise for failure, suspension, diminution, or other variations of services occasioned by any cause beyond the control and without the fault of the parties. Such causes may include but shall not be limited to acts of God, acts of terrorism or the public enemy, acts of other governments (including regulatory entities or courts) in their sovereign or contractual capacity, fires, floods, epidemics, quarantines, restrictions, strikes, or failure or breakdown of transmission or other facilities ("Force Majeure"). If any party is delayed, hindered, or prevented in or from performing its respective obligations under this Agreement by any occurrence or event of Force Majeure, then the period for such performance shall be extended for that period that such performance is delayed, hindered, or prevented.
12. Mediation. Should the parties arrive at an impasse regarding any of the provisions of this Agreement, the parties agree to submit to the dispute to mediation prior to the commencement of litigation. The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement, either party may apply to the Presiding Judge, Washington County Circuit for appointment of a mediator. Each party shall share equally in the fees and costs of the mediator. Each party shall be responsible for its own attorneys fees and other expert fees. Mediation shall be at Portland, Oregon unless the parties agree otherwise. Both parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement of both the City and Langer and failure to comply with this requirement is a material breach of this Agreement. The schedule and time allowed for mediation will be mutually acceptable. If the dispute is not resolved by mediation, either party may file a lawsuit to resolve the dispute in a court with proper jurisdiction located in Washington County,

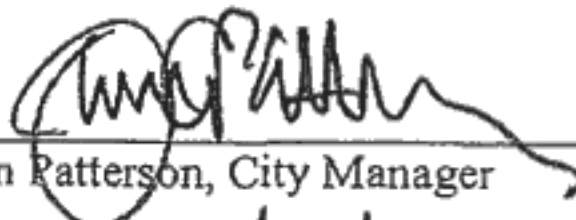


Oregon. Any trial shall be to the court without a jury. In the event of any such mediation or litigation, each party shall bear its own attorneys' fees and costs.

13. Conditions Precedent to Langer's Performance. Langer's commitments set forth in this Agreement are conditioned entirely upon the City's performance of all of its commitments that are precedent to the City's commitments under and in accordance with this Agreement, and the City's timely issuance of a PUD modification for the subject property.
14. Conditions Precedent to City's Performance. City's commitments set forth in this Agreement are conditioned entirely upon Langer's performance of all of its commitments that are precedent to the City's commitments under and in accordance with this Agreement.
15. Nature of Agreement. The City hereby confirms that it has approved and executed this Agreement pursuant to its governing charter and not pursuant to ORS 94.504 *et seq.*, and does further confirm that this Agreement does not constitute or concern the adoption, amendment, or application of the Statewide Planning Goals, a comprehensive plan provision, or a land use regulation, the City and Langer acknowledging and agreeing that any and all land use approvals required for the PUD are to be obtained (or have been obtained) in due course on another date in accordance with all applicable laws and regulations.
16. Amendment and Restatement. The Parties intend that this Agreement acts as a full and amended restatement of the original 2008 Agreement. Upon this Amended and Restated Agreement taking effect, the original 2008 Agreement shall no further force or effect.
17. Duration. This Agreement expires not later than January 1, 2015; provided, however, the expiration date of this Agreement shall be automatically extended to January 1, 2017 in the event that on January 1, 2015, Langer is not in material default of any provisions of this Agreement, has substantially built out Phase 7, and has obtained a certificate of occupancy for at least one (1) structure in Phase 6.

IN WITNESS WHEREOF,

For the City of Sherwood:

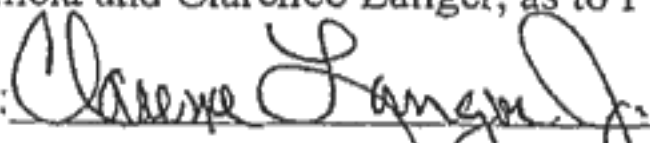
  
\_\_\_\_\_  
Jim Patterson, City Manager

James A. Patterson  
City Manager  
Sherwood, Oregon 97140

Date: 8/7/2010

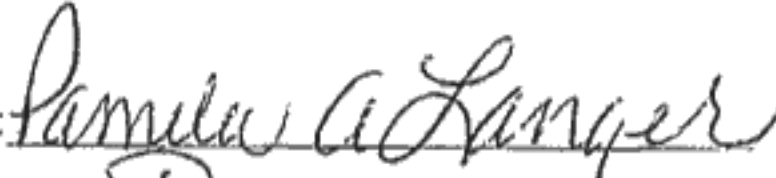
For Langer:

Pamela and Clarence Langer, as to Phase 4:

By:   
\_\_\_\_\_  
Clarence Langer Jr.

Print Name: CLARENCE LANGER JR.

Date: 8-6-10

By:   
\_\_\_\_\_  
Pamela A. Langer

Print Name: Pamela A. Langer

Date: August 6, 2010

Langer Family, LLC, as to remainder of PUD:

By:   
\_\_\_\_\_  
Clarence Langer Jr.

Print Name: CLARENCE LANGER JR.

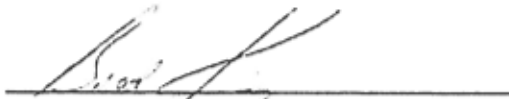
Title: Manager

Date: 8-6-10

**CITY OF SHERWOOD  
Staff Report & Notice of Decision**

**Date: June 21, 2012  
File No: SUB 12-02  
Langer Farms Subdivision**

Pre-App. Meeting: December 12, 2011  
App. Submitted: March 30, 2012  
App. Complete: April 27, 2012  
120-Day Deadline: September 1, 2012



Brad Kilby, Senior Planner

**Proposal:** The applicant has requested preliminary subdivision approval to divide  $\pm$  55.09 acres into five individual lots and two tracts for future development consistent with the Sherwood Village Planned Unit Development, File No. PUD 95-1. The Planned Unit Development was approved in 1995 without a preliminary plat.

**I. BACKGROUND**

**A. Applicant/Owner:**

Langer Family, LLC  
14958 SW Tualatin-Sherwood Road  
Sherwood, OR 97140

**Applicant's Representative:**

AKS Engineering & Forestry  
13910 SW Galbreath Drive  
Suite 100  
Sherwood, OR 97140

**B. Location:** The property is located on the south side of SW Langer Farms Parkway, West of Tualatin-Sherwood Road, and east of SW Oregon Street. The property is identified as tax lot 300 on Washington County Assessor Map 2S129D.

**C. Parcel Size:** The subject property is approximately 55.09 acres in size.

**D. Existing Development and Site Characteristics:**

The existing use of the site is agriculture. The current crop appears to be a grass or grain crop. The property is generally rectangular in site, and includes a gently rolling landscape. There is a delineated natural resource and buffer area in the southeast portion of the site. The buffer and resources includes some trees and riparian landscape materials. This specific proposal does not include any physical impacts into the resource area.

Bonneville Power Administration (BPA) and Portland General Electric (PGE) have power lines and associated easements through the northeast corner of the site. The subject property has frontage onto SW Tualatin-Sherwood Road, and SW Langer Farms Parkway. SW Century Blvd. stubs into the property from the east and west. Finally, the property contains two existing storm water ponds. One of the ponds is located in the north east portion of the site, and the other is located in the south and west portion of the site. The existing ponds serve off-site developments.

- E. Site History: The site has been owned and farmed by the Langer family since the late 1800's. This particular piece of property is made up of phases 6, 7, and 8 of the Sherwood Village PUD that was approved by the Sherwood City Council in 1995. All future development is subject to the conditions of the approved Planned Unit Development and any subsequent amendments.
- F. Zoning Classification and Comprehensive Plan Designation: The property is zoned PUD-LI. Although the property carries a Light Industrial zoning designation, the City Council, at the request of the property owner, approved a modification to the PUD in File number PUD 07-01. That decision confirmed that the PUD could elect pursuant to Section 16.32.020.H. of the Sherwood Zoning and Community Development Code (SZCDC), to develop Phases 4, 6, 7, and 8 with uses that would have been allowed under the Light Industrial (LI) base zone text applicable on August 3, 1995 (when the City approved the PUD Final Development Plan). At that time, Retail Commercial (RC) uses were also allowed in the Light Industrial zone. Although no specific land uses are proposed with this subdivision request, the applicant has attended two pre-application conferences with the City about developing the property with commercial uses.
- G. Adjacent Zoning and Land Use: The subject site is currently being farmed. Properties to the south and east of the site include lands that are zoned Light Industrial. Billet manufacturing is located directly south of the site, and there are two light industrial uses adjacent to the northeast property line. The remaining properties to the east of the site are zoned LI and are not currently developed. Properties located to the west of the property, on the west side of SW Langer Farms Parkway, include lands developed with commercial, residential and public and institutional uses. Some of the commercial and residentially developed properties to the west were developed in earlier phases of the Langer PUD.
- H. Review Type: According to section 16.72.010.2.i, subdivisions between 4-10 lots require a Type II review with a decision made by City Staff after consideration of public comments. An appeal would be heard by the City of Sherwood Planning Commission so long as the person appealing had provided comments during the 14-day public comment period, and it is filed within (14) days after the decision has been mailed.
- I. Public Notice and Hearing: Notice of the application was mailed to property owners within 1000 feet, posted on the property and in five locations throughout the City on April 25, 2012 in accordance with the notice provisions of Section 16.72.020 of the SZCDC.
- J. Review Criteria: Sherwood Zoning and Community Development Code, 16.40(Planned Unit Development), 16.58.010 (Clear Vision), 16.70 (Administrative Procedures), Division VI - 16.104-16.118 (Public Infrastructure), Division VII 16.120 (Subdivisions), 16.128 (Land Division Design Standards), and Division VIII 16.144 (Wetland, Habitat and Natural Areas).

## II. PUBLIC COMMENTS

Public notice was mailed, posted on the property and in five locations throughout the City on April 25, 2012. Staff has received the following comments.

**R. James Claus of 22211 SW Pacific Highway** submitted comments opposing the subdivision proposal. Mr. Claus alleges that the proposed subdivision violates the PUD Code requirements. Specifically, he maintains that the City can only allow changes in the plan that are necessary with the terms of the preliminary approvals, that the code requires that the preliminary subdivision be processed concurrently with the PUD, that the time has passed to allow them to submit a subdivision proposal, that the traffic survey used to gain approval did not contemplate the traffic that could result from future commercial development of the site, that the City has modified the original PUD without citizen input, and that a staff level review is not the correct process for processing the proposed subdivision. A copy of Mr. Claus' full comments is incorporated into the record.

**Staff Response:** Staff will address each one of the items raised in Mr. Claus' below:

- *The City can only allow changes in the plan that are necessary with the terms of the preliminary approvals...*

**Staff Response:** Mr. Claus is referring to Code section 2.202.02(E) which is now Section 16.40.020(E), which states, "Approval of the Preliminary Development Plan shall not constitute final acceptance of the PUD. Approval shall, however, be binding upon the City for the purpose of preparation of the Final Development Plan, and the City may require only such changes in the plan as are necessary for compliance with the terms of preliminary approvals." This provision is titled the Effect of Decision under the overall heading for Preliminary Development Plan. First, the City is not requiring the proposed subdivision, and the Final Development Plan was approved in 1995. It is unclear why Mr. Claus feels that this is relevant to the proposed development.

- *The code requires that the preliminary subdivision be processed concurrently with the PUD*
- *The time has passed to allow them to submit a subdivision proposal*
- *Staff Level review is not the correct process for processing the proposed subdivision*

**Staff Response:** This proposal does not constitute a substantial change to the PUD, rather, it is a subdivision of land which routinely happens in commercial and industrial developments. The subdivision was not filed at the same time that the PUD was processed in 1995, but that should not preclude a property owner from dividing their property if it meets the standards the community puts into place. Had there been a subdivision requested at the time the PUD was being considered in 1995, the City would have requested that it be reviewed concurrently.

According to the City Attorney's office, "A PUD decision under 16.40 is a separate and distinct decision from a subdivision decision under 16.120. Section 16.40.020.B.5 states, "If the PUD involves the subdivision of land ..." Apparently, this particular PUD did not when it was approved in 1995 – it was a straight PUD that did not include a subdivision. The code section goes on to say that when the PUD also involves a subdivision, the two decisions shall be processed concurrently. This affirms the interpretation that they are separate decisions, albeit when they are proposed concurrently, they need to be processed concurrently. In fact, the City has reviewed other subdivisions within this same PUD since the final development plan was approved.

Furthermore, the PUD approval is an overlay zone that is applied to a property. In this instance, the boundaries of the PUD are not changing, the applicant is not asking for any land use that

would be inconsistent with the prior approvals, and the prior approvals did not identify which land was devoted to a specific use. There is not an increase in density because it is not a residential development. Therefore, this does not constitute a modification to the PUD. It is simply a subdivision of land. According to 16.120.030.1.a, "A subdivision application for 4-10 lots will follow a Type II process." Subdivisions are processed in accordance with the administrative provisions spelled out in Section 16.72.

Therefore, this application does not constitute a major or minor modification to the approved PUD, and the subdivision can be reviewed as a Type II staff level subdivision.

*The traffic survey used to gain approval did not contemplate the traffic that could result from future commercial development of the site*

**Staff Response:** All newly proposed developments within the boundaries of the PUD have been required to provide a traffic study, and there is no reason that the City would not require a traffic study for any future proposed developments. This subdivision, in and of itself, does not generate any new traffic. Certainly, future development will be required to provide a traffic study at the time of application consistent with the developers' agreement. Given the pace of growth in the Portland Metro area over the past 20 years, it is highly unlikely that the information provided within the original PUD could still be relied upon.

*The City has modified the original PUD without citizen input*

**Staff Response:** The only modification that staff is aware of to this application is file number PUD 07-01. That decision confirmed that commercial uses would be allowed, and spelled out the community's expectations for future improvements associated with the PUD. That application was processed in accordance with the development code Section 16.40.040.B.2 which specifies that minor changes to a Final Development Plan may be approved by the Council **without further public hearing or Commission review**, provided that such changes do not increase densities, change boundaries or uses, or change the location or amount of land devoted to specific uses. It is not clear to staff how this is germane to the proposal at hand which is in fact, being made after a public comment period in which one public comment was received on this matter.

### III. AGENCY COMMENTS

Staff sent e-notice to affected agencies on April 25, 2012. The following is a summary of the comments received. Copies of full comments are included in the record unless otherwise noted.

#### **SHERWOOD ENGINEERING DEPARTMENT:**

Engineering staff has reviewed the information provided for the above cited project. Further review will occur with individual land-use applications for the subdivided lots. The project(s) will need to meet the standards established in the City of Sherwood Engineering Design and Standard Details Manual and Clean Water Services (CWS) Design & Construction Standards Manual, in addition to requirements established by other jurisdictional agencies providing land-use comments. City Engineering Department comments are as follows:

#### **Transportation**

There are no improvements proposed with the subdivision, although the subdivided lots must have the ability to access public rights-of-way per the development code of the applicable agency prior to recording of the final subdivision plat map. Individual traffic studies will be



required with each subsequent development land-use application. All traffic impact analyses shall address the City of Sherwood Capacity Allocation Program (COS Ordinance 2000-1104 codified by SMC 16.107.070) while considering the Development Agreement as amended and restated by Sherwood Resolution 2010-033. Development Agreement term H.4 (Highway 99W Capacity Allocation Program) states:

For purposes of calculating whether the trips associated with the regulated activities in Phases 6, 7, and 8 of the PUD exceed the trip limit of ZCDC 6.306.D.4 (renumbered as ZCDC 16.107.070), the City shall aggregate the trips and acreage of all such phases. As a result, the trips associated with the regulated activities of a single phase may exceed the trip limit that would otherwise apply if that phase were calculated individually, provided that the trips associated with all regulated activities for Phases 6, 7, and 8 do not exceed the trip limit in the aggregate. At each phase of development of the PUD, the number of reserve trips for the remaining phases will be identified in the applicable Trip Allocation Certificate.

Prior to City approval of the subdivision, the applicant shall submit a plan identifying the separate acreages of PUD Phases 6, 7 and 8, less the 100-year floodplain and the SW Century Drive right-of-way. City staff will use the information shown on the plan to aggregate the CAP trip limit for comparison during future site plan reviews.

It is suggested that the applicant evaluate the intent of and any discrepancies between the original and amended PUD decisions, amended & restated Development Agreement, and the City Transportation System Plan, particularly: the location of public streets, site access points, vehicular and pedestrian circulation, traffic study areas, if subsequent traffic studies for Phases 6/7/8 consider whether the North Extension has been planned or funded prior to development or redevelopment, and editions of the ITE Trip Generation manual.

A public right-of-way and eight foot wide public utility easements shall be shown on the preliminary and final recorded subdivision plat map for the extension of SW Century Drive.

See comments from Washington County DLUT on right-of-way dedications, improvements and access to/from SW Tualatin-Sherwood Road.

**Staff Response:** Planning staff discussed these comments with Engineering staff, the discrepancy lies in the issue that the approved Final PUD Plan showed three access points from SW Langer Farms Parkway into the site. This proposal shows three access locations, and the extension of SW Century Blvd. The Engineering Division is not opposed to the access locations, but felt that it should be pointed out that there are realistically four accesses into the site. Certainly, the applicant was not aware that the extension of SW Century Blvd was going to be placed into the Transportation System Plan, and there were no specific discussions in any of the staff reports or decisions for the preliminary or final PUD approvals discussing the limitations of the access points along SW Langer Farms Parkway.

Furthermore, there is plenty of language within the PUD file to suggest that many of the decisions related to traffic would be deferred to review of individual development proposals as they were submitted to the City. Since the applicant could not have anticipated the reintroduction of the extension of SW Century Blvd. into the Transportation System Plan (TSP), it is completely understandable that there would be at least three accesses from SW Langer Farms Parkway into the site.

### Sanitary Sewer

There are no sanitary improvements being proposed with the subdivision application, although the subdivided lots must have the ability to connect (by gravity) to the public sanitary system when development occurs. All public conveyance easements, if required for gravity service, shall be shown or referenced on the subdivision plat map. Prior to recordation of the final plat map, the applicant shall submit detailed plans that clearly label each lot number's connection to the public system and elevations that show gravity service is achievable.

If retaining walls or slopes are necessary to support the public sanitary system, then wall and/or slope easements shall be granted to the City with actual site development, not with the subdivision plat map.

**Staff Response:** Sewer service has been stubbed to the parent parcel, so it is available. The developer will be required to determine how to best serve the site with sewer, loop and/or extend the system as necessary as proposals for future development on the site evolve.

#### Water

There are no water improvements being proposed with the subdivision, although the subdivided lots must have the ability to connect to the public water system when development occurs. The applicant shall submit detailed plans that clearly label each lot number and how it will connect to the public system prior to recordation of the final plat map.

If retaining walls or slopes are necessary to support the public water system, then wall and/or slope easements shall be granted to the City with actual site development, not with the subdivision plat map. Public water easements must be established around water meter and fire flow vaults during site development.

**Staff Response:** Water service has been stubbed to the parent parcel with the recent completion of SW Langer Farms Parkway, so it is available. The developer will be required to determine how to best serve the site with water, loop and/or extend the system as necessary as proposals for future development on the site evolve.

#### Storm Sewer

There are no storm improvements being proposed with the subdivision, although the subdivided lots must have the ability to connect to the public storm system (by gravity) when development occurs on any subdivided lot. The preliminary subdivision plat map shows a 15' wide public storm drainage easement over Tract 'A' and Lot 4 for the benefit of existing and future upstream development. The preliminary subdivision plat also shows a 15' wide public storm drainage easement over Lot 1 and a small portion of Lot 2, but has a note 'to be dedicated with development of Lots 1-3'. Development Agreement term F.1.a (Stormwater Facility – Langer Commitments) states:

Prior to issuance of a final occupancy permit for the first structures located in Phases 6 or 7, Langer will design and substantially construct the "Stormwater Facility" on Phase 8 (including any necessary portions of Phase 6), to accommodate existing stormwater detention and treatment for the PUD (including development of Phases 6, 7, and 8), and any detention and treatment associated with the South Extension and Century Drive Connection. In conjunction with this construction, Langer retains the right to terminate use of the Existing Facilities and any Temporary Facility constructed...



In addition, City infrastructure mapping indicates the storm drainage easement shown over Lot 1 and Lot 2 is intended to convey flows from existing upstream development and public rights-of-way.

Based on the materials submitted by the applicant, the Development Agreement, and City infrastructure mapping, the regional storm facility will treat runoff from all of the subdivided lots, proposed rights-of-way, as well as existing upstream development and public rights-of-way. Although construction can be deferred until future site development, all of the tracts, public storm drainage and access easements shown on the preliminary plat map must be dedicated to the City with the subdivision plat.

If retaining walls or slopes are necessary to support the public storm system, then wall and/or slope easements shall be granted to the City with actual site development, not with the subdivision plat map.

Grading and Erosion Control:

No early grading is proposed with this subdivision. Site grading will exceed 5 acres of disturbed area for all phases of development. Therefore, a 1200-C permit is required. The 1200-C permitting process can be initiated through the City of Sherwood Engineering Department. It is likely DEQ (via CWS) will require that all phases of development on and around tax lot 300 be authorized under the same 1200-C permit.

The memorandum from CWS dated May 8, 2012 indicates that a CWS Storm Water Connection Permit (SWCP) must be obtained prior to plat approval and recordation. CWS typically requires a 1200-C permit prior to issuing a SWCP. Contact CWS to obtain a SWCP.

Other Engineering Issues:

The subdivision includes new property lines within Bonneville Power Administration (BPA) and/or Portland General Electric (PGE) transmission line easements. The applicant must coordinate with those entities to determine when they will issue a land use agreement to the developer, prior to final plat approval and recordation or with individual site plan review, or both.

The applicant may be required to install infrastructure for Sherwood Broadband as noted in City Ordinances 2005-17 and 2005-74 during future phases of development, but not with the subdivision plat.

Per CWS requirements, tracts or easements shall be established over wetlands and vegetated corridors with the subdivision plat. See conditions of the CWS Service Provider Letter (SPL) and land-use comments memo dated May 8, 2012.

WASHINGTON COUNTY:

1. **The applicant is not proposing access to SW Tualatin-Sherwood Road. To implement the County's access-spacing standards, the applicant will be required to record a motor vehicle access restriction along the subject site's entire frontage of SW Tualatin-Sherwood Road for the purposes of implementing the access spacing standards.**
2. Consistent with statewide pedestrian circulation/linkage goals of the Transportation Planning Rule and the County's R&O 86-95 (road safety requirements), the County normally requires sidewalk installation as a minimum road safety improvement along site frontage of all County-maintained roads. Sidewalks further establish future street profiles, demarcate County or City right-of-way, and address drainage issues. Sidewalk

requirements are not generally waived, even when sidewalk is not currently present on neighboring properties. Rather, even non-contiguous sidewalk is considered to provide some measure of pedestrian refuge and ideally, makes possible eventual connection of sidewalks (as surrounding development takes place and is likewise conditioned to provide sidewalk). Additionally, the Washington County Road Design and Construction Standards require provision of adequate drainage along a site's frontage of a county road.

**The applicant is required to construct a half-street improvement, including illumination, to an A-2 County standard along the subject site's frontage of SW Tualatin-Sherwood Road OR pay a fee-in-lieu (Contact Dan Erpenbach at 503-846-7877).**

*Note: For half street improvements, an applicant shall provide street lighting consistent with County engineering standards and procedures and the requirements of the electrical utility company providing service to the area. The applicant shall ensure the construction, maintenance and power costs of street light facilities through the annexation and petition for service to an existing County service district for lighting or other funding method approved by the County Engineer.*

- 3 The statewide Transportation Planning Rule requires provision for adequate transportation facilities in order for development to occur. Accordingly, the County has classified roads and road segments within the County system based upon their function. The current Transportation Plan (regularly updated) contains adequate right-of-way, road width and lane provision standards based upon each roadway's classification. Subject right of way is considered deficient if half-width of the existing right of way does not meet that determined necessary within the County's current transportation plan.

**The applicant is required to dedicate additional right-of-way to provide 49 feet from centerline of SW Tualatin-Sherwood Road, including adequate corner radius at the intersection.**

**Staff Response:** The comments from Washington County have been considered, and to the extent that they are applicable to the proposed development, the conditions of approval have been incorporated into this report. The request for a non-access easement along the property's frontage with Tualatin-Sherwood Road, according to Naomi Voegel, Associate Planner with Washington County Operations, is not intended to prevent the existing access location that is used to maintain the water quality facility on the northeast corner of the site. Because that location is provided with a mountable curb, Washington County does not view that as a formal access to the site.

**CLEAN WATER SERVICES (CWS):**

CWS provided comments that essentially require that a Storm Water Connection Permit Authorization be obtained. The District also requires that the application comply with the requirements of the Amended service provider letter 12-000162.

**Staff Response:** The CWS conditions of approval have been incorporated into this report where appropriate.

**TUALATIN VALLEY FIRE AND RESCUE (TVFR):**

TVFR provided comments that do not specifically identify any deficiencies within the proposal, but rather outline the districts expectations for access, the provision of hydrants, and

infrastructure that would aid the district in providing services to the site. The comments are attached to this decision, and to the extent that they apply, the applicant will be required to satisfy the standards of TVFR in final design and construction of the subdivision.

Kinder Morgan Energy, ODOT, Pride Disposal, the Tualatin Valley Water District, NW Natural Gas, and Portland General Electric were all provided an opportunity to comment on this proposal, but did not provide comments. It is incumbent upon the applicant to coordinate the final design of the subdivision with any of the above affected agencies.

#### **IV. APPLICABLE CODE STANDARDS**

##### **Chapter 16.32 Light Industrial (LI)**

###### **A. 16.32.020 Permitted Uses**

**The following uses are permitted outright, provided such uses meet the applicable environmental performance standards contained in Division VIII. Incidental retail sales, limited to 10% of the total floor area of a business, may be permitted as a secondary function of a permitted or conditional use, subject to the review and approval of the Hearing Authority.**

**STAFF ANALYSIS:** The property is currently in agricultural use, and the subdivision does not include a proposal to use the land any differently. It should be noted, that staff has been in contact with the applicant, and they have indicated that they do intend to submit an application in the near future for commercial uses on the site. Section 16.32.020.H states, "PUDs, new and existing, subject to the provisions of Chapter 16.40. New PUDs may mix uses which are permitted within the boundaries of the PUD. 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."

**FINDING:** At the time that the PUD was approved, general retail uses were permitted within the Light Industrial district, so there would be no reason that the applicant couldn't propose commercial development on the site in the future. Since the subdivision does not include proposals for any new uses on the subject site, the development complies with this section.

###### **B. 16.32.050 Dimensional Standards**

**No lot area, setback, yard, landscaped area, open space, off-street parking or loading area, or other site dimension or requirement, existing on, or after, the effective date of this Code shall be reduced below the minimum required by this Code. Nor shall the conveyance of any portion of a lot, for other than a public use or right-of-way, leave a lot or structure on the remainder of said lot with less than minimum Code dimensions, area, setbacks or other requirements, except as permitted by Chapter 16.84.**

###### **A. Lot Dimensions**

**Except as otherwise provided, required minimum lot areas and dimensions shall be:**

- 1. Lot area: 10,000 sq ft**

2. **Lot width at front property line: 100 feet**
3. **Lot width at building line: 100 feet**

**STAFF ANALYSIS:** The proposed subdivision creates five lots and two tracts. The tracts, Tract A and Tract B, are for the purposes of protecting the natural resource on site, and to establish an area for a regional water quality facility, and are not buildable lots. Lot 1 is 13.99 acres in size, and has frontage onto three public streets. There are several front lot lines with the proposed lot, but the longest one is approximately 444.21 feet in length. Lot 2 is approximately 3.65 acres and has more than 1,050 feet of frontage onto two public streets. Lot 3 is approximately 2.35 acres in size and has more than 700 feet of frontage onto two public streets. Lot 4 is 21.97 acres in size and has more than 2,000 feet of frontage onto two public streets. Lot 5 is 6.93 acres in size and is provided access through a 40-foot wide access easement. The lot width at the front property line is more than 500 feet.

**FINDING:** It is feasible that, given the size of the lots, that the lot width at the building lines can be satisfied with future development on every one of the lots. Compliance with setbacks and heights will be verified at the time the properties are developed. The dimensional standards are satisfied to the extent that they apply to this subdivision.

#### **C. 16.32.060 Community Design**

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

**STAFF ANALYSIS:** The applicable standards that are listed in the Community Design section are addressed elsewhere in this narrative. As proposed, it is feasible that future development on the proposed lots would be able to satisfy the standards, and any proposed development will be evaluated against those standards that are found to be applicable.

#### **Chapter 16.40 Planned Unit Development**

**STAFF ANALYSIS:** The subject property has an approved PUD overlay. Initially approved in 1995, development on the property is subject to the provisions of that approval, any approved modifications, and the associated Developers Agreement. There are no approval criteria within Chapter 16.40 that can be directly attributed to this proposal. The standards of this chapter are only applicable to review and approval of the Preliminary Development Plan, the Final Development Plan, and any modifications. In this instance, the property is being subdivided outside of the PUD process, and does not preclude the applicant from satisfying the intent of the PUD, nor relieve them of their commitments to make the public improvements called for in that approval. This constitutes a development action on Phases 6, 7, and 8 of the proposed development. Consistency with the applicable requirements of the approved 2010 Development Agreement is discussed throughout this report. Consistency with the approved development standards and design guidelines apply to proposals for actual physical development of the property, and will be evaluated at such time that those applications are filed.

#### **Chapter 16.58 Clear Vision and Fence Standards**

**16.58.010 Clear Vision Areas**

- A. A clear vision area shall be maintained on the corners of all property at the intersection of two (2) streets, intersection of a street with a railroad, or intersection of a street with an alley or private driveway.**
- B. A clear vision area shall consist of a triangular area, two (2) sides of which are lot lines measured from the corner intersection of the street lot lines for a distance specified in this regulation; or, where the lot lines have rounded corners, the lot lines extended in a straight line to a point of intersection, and so measured, and the third side of which is a line across the corner of the lot joining the non-intersecting ends of the other two (2) sides.**
- C. A clear vision area shall contain no planting, sight obscuring fence, wall, structure, or temporary or permanent obstruction exceeding two and one-half (2 1/2) feet in height, measured from the top of the curb, or where no curb exists, from the established street center line grade, except that trees exceeding this height may be located in this area, provided all branches and foliage are removed to the height of seven (7) feet above the ground on the sidewalk side and ten (10) feet on the street side.**

The following requirements shall govern clear vision areas:

- 1. In all zones, the minimum distance shall be twenty (20) feet.**
- 2. In all zones, the minimum distance from corner curb to any driveway shall be twenty-five(25) feet.**
- 3. Where no setbacks are required, buildings may be constructed within the clear vision area.**

**STAFF ANALYSIS:** The proposed subdivision does not include any physical improvements that would preclude future development on each of the lots from complying with the provisions of this Chapter.

**FINDING:** It is feasible that the development can comply with the clear vision standards stated above. Compliance with the provisions of this chapter will be evaluated with future development proposals associated with the property.

**Chapter 16.70 General Provisions****16.70.010 Pre-Application Conference**

**Pre-application conferences are encouraged and shall be scheduled to provide applicants with the informational and procedural requirements of this Code; to exchange information regarding applicable policies, goals and standards of the Comprehensive Plan; to provide technical and design assistance; and to identify opportunities and constraints for a proposed land use action. An applicant may apply at one time for all permits or zone changes needed for a development project as determined in the pre-application conference.**



**STAFF ANALYSIS:** Although not a requirement, the applicant requested and attended a pre-application conference with City staff on December 12, 2011 to discuss partitioning, subdividing, and developing the property.

#### **16.70.020 Neighborhood Meeting**

**A. The purpose of the neighborhood meeting is to solicit input and exchange information about the proposed development.**

**B. Applicants of Type III, IV and V applications are required to hold a meeting, at a public location for with adjacent property owners and recognized neighborhood organizations that are within 1,000 feet of the subject application, prior to submitting their application to the City. Affidavits of mailing, sign-in sheets and a summary of the meeting notes shall be included with the application when submitted. Applicants for Type II land use action are encouraged, but not required to hold a neighborhood meeting.**

**STAFF ANALYSIS:** The applicant held a neighborhood meeting on February 8, 2012 at St. Francis Church to discuss the overall development of the PUD site including a partition, a subdivision, and potential development of the site. Approximately 25 people attended. Twenty one of the attendees signed the attendance roster, and the applicant has provided a summary of the meeting and the items raised by the public. Concerns included added truck traffic on Langer Farms Parkway, speeding on Langer Farms Parkway, access to Tualatin-Sherwood Road from the extension of Century Drive, a desire for future development to attract store brands that appeal to teenagers, concerns about competition with existing businesses as a result of any commercial development on the property, the amount of existing vacant commercial space in Sherwood, a desire for additional transit service, disruption of wildlife, and disruption of existing views. To the extent that the development code addresses any of the concerns, staff has taken them into consideration in this decision.

It should be noted that SW Langer Farms Parkway is a collector intended to provide another route into Sherwood. Traffic laws on the right-of-way are enforced by the Sherwood Police Department, and currently the right-of-way does not restrict truck traffic. Future development proposals on the site include individual traffic impact reports that will better inform the decision makers on the impacts associated with those specific proposals. If the traffic in some way deteriorates the acceptable functionality of the street systems, then the Engineering Division may impose mitigation measures to help offset those impacts. The property is approved for commercial and light industrial type developments, and will most likely be developed in that manner.

All future development proposals will be required to meet the dimensional requirements including heights, setbacks, and to the extent they apply, the design guidelines that were approved with the Final PUD approval. There are no protected scenic corridors within the City's Comprehensive Plan, so it is likely that any development on the subject site will affect the existing views of those who live adjacent to the site, and have become accustomed to the views the existing farmland provides, but that land is within the City limits and is set aside for development.

**FINDING:** Although not required to host a neighborhood meeting by code, the applicant did in fact hold a neighborhood meeting on February 8, 2012 and provided the materials along with

this application that demonstrate that they complied with the requirements for neighborhood meetings.

## **Division VI. Public Infrastructure**

### **16.104 General Provisions**

**To ensure the health, safety, and the economic stability of the community, and to establish a quality system of public improvements, the City shall require any buildings or other development for which public facilities and public rights-of-way are not fully provided or improved to current City standards, to install said improvements. Except as otherwise provided or authorized, private improvements serving substantially the same function as equivalent public facilities shall generally be provided and improved to the standards established by this Code and other City regulations.**

**STAFF ANALYSIS:** As agreed to within the approved development agreement, the applicant is required to provide the right-of-way and ultimately construct the extension of SW Century Blvd. from its eastern terminus at the roundabout in SW Langer Farms Parkway to the western terminus at the west property line. The applicant is also required to dedicate the vegetated corridor and Natural Resource in Tract A, and to dedicate and construct the regional storm water facility located in Tract B. As proposed, the applicant is proposing to dedicate all three of these areas, and to defer construction of the improvements until such time that they are constructing improvements with future development.

#### **16.104.020 Future Improvements**

**The location of future public improvements including water, sanitary sewer, storm water, streets, bicycle and pedestrian paths, and other public facilities and rights-of-way, as depicted in the Transportation System Plan (TSP) Chapters 4, 5, 6 and 7 of the Community Development Plan are intended as general locations only. The precise alignment and location of a public improvement shall be established during the land use process and shall be depicted on public improvement plans submitted and approved pursuant to § 16.108 and other applicable sections of this Code. (Ord. No. 2011-011, § 1, 10-4-2011)**

#### **16.104.030 Improvement Procedures**

**Except as otherwise provided, all public improvements shall conform to City standards and specifications found in the Engineering Design Manual and installed in accordance with Chapter 16.108. The Council may establish additional specifications to supplement the standards of this Code and other applicable ordinances. Except for public projects constructed consistent with an existing facility plan, a public improvements shall not be undertaken until land use approval has been granted, a public improvement plan review fee has been paid, all improvement plans have been approved by the City, and an improvement permit has been issued.**

**STAFF ANALYSIS:** The City of Sherwood completed the extension of SW Langer Farms Parkway in 2012 funded primarily by Washington County Major Streets Transportation Improvement Program (MSTIP). As part of that construction, sewer, water, and access from SW Langer Farms Parkway were stubbed to the property. In accordance with the approved development agreement for the PUD, the right-of-way for the future extension of SW Century

Boulevard will be dedicated to the City with this application. When it is constructed, utilities will be extended through the site to accommodate future development on this site, and the adjacent properties. The specific locations of where and how the utilities will be provided onto the property will be evaluated and approved at such time that proposals for actual development of the lots are submitted and reviewed.

**FINDING:** The applicant has either proposed, or has been conditioned through prior approvals to provide needed public infrastructure with proposed development of the site. Adequate water, sewer and access are available to the property. Stormwater for all future development on site will be captured and treated in a new regional stormwater facility that the applicant will construct as part of any future development proposal for the site. The applicant will also be responsible for future construction of SW Century Blvd to City standards under the requirements of the approved Developers Agreement. This criterion is satisfied.

### **16.106 Transportation Facilities**

#### **16.106.020 Required Improvements**

##### **A. Generally**

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

**STAFF ANALYSIS:** There are no physical improvements being proposed with the subdivision. The proposed subdivision is adjacent to two existing streets, SW Tualatin-Sherwood Road, and SW Langer Farms Parkway. The extension of a third public street, SW Century Blvd is required with future development as a condition of the approved development agreement that is binding upon the PUD. The right-of-way for that street will be dedicated with the subdivision.

**FINDING:** Since SW Langer Farms Parkway was only recently constructed, it is found to be constructed to standard. The developer will dedicate the right-of-way necessary for the future extension of SW Century Blvd. Improvements to the overall system may be warranted with future development. The development agreement requires the property owner to provide an individual traffic study for each development application. The City Engineer has determined that no improvements to the adjacent City streets are warranted by this proposal.

Tualatin-Sherwood Road is a County facility and therefore subject to restrictions imposed by county regulations. The county recognizes that the applicant is not proposing any access to SW Tualatin-Sherwood Road, but has requested the following conditions to ensure that the County's access-spacing standards, and the Transportation Planning Rule as it applies, through the county's regulations, to developments that front County rights-of-way are enforced.

It should be noted that the first condition would potentially restrict access to an existing driveway used to access a storm water quality facility in the northeast corner of the site. For this reason, the condition that the county has requested be imposed has been modified by City staff in a manner that allows the applicant to discuss the issue with County staff.

##### **Conditions:**



1. Prior to final plat approval, the applicant shall dedicate the necessary right-of-way needed to construct SW Century Drive.
2. Prior to final plat approval, the applicant shall establish the public right-of-way and 8' public utility easement for and adjacent to SW Century Drive on the face of the plat.
3. Prior to final plat approval, the following shall be represented on the plat and recorded with Washington County:
  - a. Dedication of additional right-of-way to provide 49 feet from centerline of SW Tualatin-Sherwood Road.
  - b. Dedication of additional right-of-way to provide adequate corner radius at the intersection of SW Tualatin-Sherwood Road.
  - c. Provision of a non-access reservation along SW Tualatin-Sherwood Road frontage, except at the existing access point(s) approved in conjunction with this land use application.

### **16.106.030 Location**

#### **A. Generally**

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

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

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

**STAFF ANALYSIS:** Figure 8-8 of the Sherwood Transportation System Plan (TSP) illustrates the future extension of Century Blvd. The approved Developer's Agreement associated with the original PUD calls for the dedication and ultimate construction of Century Blvd. The applicant has proposed to dedicate the right-of-way for Century Drive, and defer final construction plans, financial assurance, permits and construction of the street until such time that specific development proposals are provided for the property. The applicant has provided a preliminary plan and profile, and has demonstrated on Sheet 6, that it is feasible for the construction to occur within the right of way area given that the end points for SW Century Drive are already established by prior construction.

**FINDING:** The City has evaluated the proposal and agrees that the actual construction of the street can be deferred until such time that physical development of the property occurs given that the right-of-way area is already established, and is agreeable to the applicant's dedication of the right-of-way on the face of the plat.

**2. Connectivity Map Required.** New residential, commercial, and mixed use development involving the construction of new streets shall be submitted with a site plan that implements, responds to and expands on the Local Street

**Connectivity map contained in the TSP.**

- a. **A project is deemed to be consistent with the Local Street Connectivity map when it provides a street connection in the general vicinity of the connection(s) shown on the map, or where such connection is not practicable due to topography or other physical constraints; it shall provide an alternate connection approved by the decision-maker.**
- b. **Where a developer does not control all of the land that is necessary to complete a planned street connection, the development shall provide for as much of the designated connection as practicable and not prevent the street from continuing in the future.**
- c. **Where a development is disproportionately impacted by a required street connection, or it provides more than its proportionate share of street improvements along property line (i.e., by building more than 3/4 width street), the developer shall be entitled to System Development charge credits, as determined by the City Engineer.**

**STAFF ANALYSIS:** The applicant is only proposing to subdivide the property at this point in time. As mentioned previously in this decision, the applicant is proposing to dedicate the right-of-way for SW Century Boulevard. The applicant has provided a Conceptual Circulation Plan that generally demonstrates compliance with the Local Street Connectivity Map in the Sherwood TSP. It will be incumbent upon future development proposals to demonstrate compliance with this section as it applies to future development of proposed lot 4, because the TSP shows a north-south local connection.

**FINDING:** As proposed, the subdivision would not preclude the owner's ability to provide a connection consistent with the TSP local connectivity map; however, the applicant is not requesting approval of any development within the area of the site that calls for the connection discussed above. It is feasible for future development on the property to satisfy this condition.

3. **Block Length.** For new streets except arterials, block length shall not exceed 530 feet. The length of blocks adjacent to arterials shall not exceed 1,800 feet.
4. **Where streets must cross water features identified in Title 3 of the Urban Growth Management Functional Plan (UGMFP), provide crossings at an average spacing of 800 to 1,200 feet, unless habitat quality or length of crossing prevents a full street connection.**
5. **Where full street connections over water features identified in Title 3 of the UGMFP cannot be constructed in centers, main streets and station communities (including direct connections from adjacent neighborhoods), or spacing of full street crossings exceeds 1,200 feet, provide bicycle and pedestrian crossings at an average spacing of 530 feet, unless exceptional habitat quality or length of crossing prevents a connection.**
6. **Pedestrian and Bicycle Connectivity.** Paved bike and pedestrian accessways consistent with cross section standards in Figure 8-6 of the TSP shall be provided on public easements or right-of-way when full street connections are not possible, with spacing between connections of no more than 300 feet. Multi-use paths shall be built according to the Pedestrian and Bike Master Plans in the adopted TSP.
7. **Exceptions.** Streets, bike, and pedestrian connections need not be constructed when any of the following conditions exists:
  - a. **Physical or topographic conditions make a street or accessway connection**

- impracticable. Such conditions include but are not limited to freeways, railroads, steep slopes, wetlands or other bodies of water where a connection could not reasonably be provided.
- b. Buildings or other existing development on adjacent lands physically preclude a connection now or in the future considering the potential for redevelopment; or
  - c. Where streets or accessways would violate provisions of leases, easements, covenants, restrictions or other agreements existing as of May 1, 1995, which preclude a required street or accessway connection.

**STAFF ANALYSIS:** This proposal does not include the creation of any new streets not already accounted for by the TSP. There is no identified bicycle or pedestrian connections in the TSP that are not already provided for within the existing right-of-way. It should be noted that the site is limited by the presence of the wetlands in Tract A, a major arterial to the north, a collector to the west, and existing industrial development directly south of the site.

**FINDING:** Existing site conditions and pre-existing development on adjacent properties may deter full street connectivity on a portion of the site. A conceptual circulation plan is provided with the preliminary plans to illustrate how the site can conceptually meet the standards, however, the site is zoned for light industrial and commercial uses, so it is unlikely that a full street connection would be necessary beyond what is called for in the TSP. It will be incumbent upon the property owner to demonstrate that the existing conditions preclude full connectivity, and if so, how pedestrian or bicycle connections can be made for future proposals for development. These criteria are not applicable to the proposed subdivision.

#### **16.106.040 Design**

Standard cross sections showing street design and pavement dimensions are located in the City of Sherwood Transportation System Plan, and City of Sherwood's Engineering Design Manual.

##### **16.106.040.C. Future Extension**

Where necessary to access or permit future subdivision or development of adjoining land, streets shall extend to the boundary of the proposed development and provide the required roadway width. Dead-end streets less than 100' in length shall comply with the Engineering Design Manual.

A durable sign shall be installed at the applicant's expense. The sign shall notify the public of the intent to construct future streets. The sign shall read as follows: "This road will be extended with future development. For more information contact the City of Sherwood at 503-625-4202."

**STAFF ANALYSIS:** As discussed previously in this report, the applicant has proposed to dedicate right-of-way that would allow for the construction of a public street that extends from the east terminus of SW Century Drive to the west terminus. Once constructed, this Century Blvd. will be complete.

**FINDING:** Because the applicant has proposed to dedicate the right-of-way with this application, and the signs called for in the standard above are already in place, this standard is satisfied.

**16.106.040 .J. Transit Facilities**

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

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

**STAFF ANALYSIS:** There are no existing or proposed transit routes adjacent to or near this site. Tri-Met has indicated that due to costs, some of the existing Sherwood transit service will be cut.

**FINDING:** Transit facilities are not necessary at this site at this time, as there would be no service available. This criterion is not applicable to the proposed subdivision.

**16.110 - Sanitary Sewers****16.110.010 Required Improvements**

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

**STAFF ANALYSIS:** There is sanitary sewer service in the adjacent street and available to the subdivision. It will be incumbent upon future development proposals to illustrate how service is provided for each new development proposal.

**FINDING:** no public sanitary easements are required with the subdivision plat as the service is already stubbed to the lots. When it becomes necessary to provide service to an individual lot or convey existing flows from upstream development the applicant will be required to provide easements to accommodate the construction and maintenance of the line. This criterion is satisfied.

**16.112- Water Supply****16.112.010 Required Improvements**

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

**STAFF ANALYSIS:** There is water service in the adjacent street and available to the subdivision. It will be incumbent upon future development proposals to illustrate how service is provided for each new development proposal.

**FINDING:** Because the public water is stubbed to the property line for future development, there is no need to extend the water or provide easements with the subdivision plat. When it becomes necessary to provide service to an individual lot the applicant will be required to provide easements to accommodate the construction and maintenance of the line. This criterion is satisfied.

### **16.114 - Storm Water**

#### **16.114.010 Required Improvements**

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

**STAFF ANALYSIS:** The Preliminary Subdivision Plat map shows a 15' wide public storm drainage easement over Tract 'A' and Lot 4 for the benefit of existing and future upstream development. The Preliminary Subdivision Plat also shows a 15' wide public storm drainage easement over Lot 1 and a small portion of Lot 2, but has a note 'to be dedicated with development of Lots 1-3'. City infrastructure mapping indicates this easement will convey flows from existing upstream development and public rights-of-way, therefore both portions of the 15' public storm easement will be required with the subdivision plat. If public storm easements are required and retaining walls or slopes are necessary to support and the storm infrastructure, then separate wall or slope easements shall be established with the public storm easements, unless approved otherwise by the City Engineer.

Construction of a regional storm water treatment facility is required under the development agreement, and proposed by the applicant during the development of Phase 6, 7 or 8. Construction can be deferred until future site development. The Preliminary Subdivision Plat shows a 'Regional Stormwater Facility' at the east corner of Lot 5 located in Tract 'B', a '20' Wide Storm Drainage and Access Easement' over Lot 5, and '26' Wide Storm Drainage and Access Easement' over Lot 4.

**FINDING:** Since construction of the regional facility will be required for any development upon Phase 6, 7 or 8, particularly to convey and treat upstream flows from and across Lot 4, Lot 1, Lot 2 and existing public rights-of-way, Tract 'B', the 20' and 26' wide storm and access easements should be included with the subdivision plat.

Individual Storm Water Connection Permits (CWS) will be required with subsequent development, not with the subdivision plat.

### **16.116 Fire Protection**

#### **16.116.020 Standards**

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

**All fire protection facilities shall be approved by and meet the specifications of the Fire District, and shall be sized, constructed, located, and installed consistent with this Code, Chapter 7 of the Community Development Plan, and other applicable City**

standards, in order to adequately protect life and property in the proposed development.

#### **B. Fire Flow**

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

#### **C. Access to Facilities**

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

#### **D. Hydrants**

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

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

**STAFF ANALYSIS:** As indicated earlier in this decision, water service and hydrants were provided with the construction of SW Langer Farms Parkway. The land is not proposed to be developed at this time, and there are no structures on the existing site at this time.

**FINDING:** The fire district comments do not indicate that any additional services need to be provided with this proposal. Their comments are incorporated into this decision for reference. It will be incumbent upon applicants to demonstrate compliance with this section with future development proposals. These criteria are satisfied.

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

#### **16.118.020 Standards**

- A. Installation of utilities shall be provided in public utility easements and shall be sized, constructed, located and installed consistent with this Code, Chapter 7 of the Community Development Code, and applicable utility company and City standards.**



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

**STAFF ANALYSIS:** There is no physical development proposed with this subdivision. There are utilities around the entire site that are readily available for future development of the site. Public utility easements will be provided where required to ensure that there is adequate room for franchise utilities.

**FINDING:** No new utility extensions are necessary with this request. The applicant is showing an 8-foot public utility easement around the lots as required. Utilities are available to the property and will be extended as future development is proposed on the site.

#### **16.118.030 Underground Facilities**

**Except as otherwise provided, all utility facilities, including but not limited to, electric power, telephone, natural gas, lighting, cable television, and telecommunication cable, shall be placed underground, unless specifically authorized for above ground installation, because the points of connection to existing utilities make underground installation impractical, or for other reasons deemed acceptable by the City.**

**STAFF ANALYSIS:** As indicated previously, there is no need for new utilities with this subdivision proposal. All existing and adjacent utilities were placed underground when the SW Langer Farms Parkway was constructed in 2011. There are above ground PGE or BPA powerlines along SW Tualatin-Sherwood Road, that cannot be undergrounded because of the load they carry. If the opportunity arises in the future to underground the facilities, it is likely that those providers will do it themselves.

**FINDING:** There are overhead utilities on the property, but they carry an electrical load that is not conducive to undergrounding. Future proposals for new development will be required to provide underground facilities when extending utilities where applicable. This criterion is satisfied.

#### **16.120 Subdivisions**

##### **16.120.040 Approval Criteria: Preliminary Plat**

**No preliminary plat shall be approved unless:**

- A. Streets and roads conform to plats approved for adjoining properties as to widths, alignments, grades, and other standards, unless the City determines that the public interest is served by modifying streets or road patterns.

**STAFF ANALYSIS:** SW Century Drive is conditioned to be constructed through the PUD and the approved Development Agreement. As proposed, the right-of-way for SW Century Drive will be dedicated to the public for future construction. The design and construction of that right-of-way will be consistent with this section to the extent that the provided right-of-way will not preclude the construction of that future street from complying with this standard.

**FINDING:** Because the right-of-way for SW Century Drive is being dedicated with the plat, SW Langer Farms was recently constructed, and the County has agreed to allow the applicant to either construct improvements or pay a fee in lieu of improvements to Tualatin-Sherwood Road, this criterion can feasibly be satisfied as provided the applicant meets the conditions of this decision.

**B. Streets and roads held for private use are clearly indicated on the plat and all reservations or restrictions relating to such private roads and streets are set forth thereon.**

**STAFF ANALYSIS:** As proposed or conditioned, all existing easements are indicated on the preliminary plat as required, and will be checked and verified again prior to the City's approval of the final plat.

**FINDING:** The plat illustrates all of the existing reservations or restrictions for access to the extent that they are existing. New ones may be established with future development, but for now, this criterion is satisfied.

**C. The plat complies with applicable zoning district standards and design standards in Division II, and all provisions of Divisions IV, VI, VIII and IX. The subdivision complies with Chapter 16.128 (Land Division Design Standards).**

**STAFF ANALYSIS:** Compliance with these standards have been discussed throughout this decision.

**FINDING:** As conditioned, the proposed subdivision can comply with the standards including Chapter 16.128, the Land Division Design Standards. It should be noted that this proposal does not include an application for physical development, so some of the standards listed above are not applicable to this proposal, and will need to be satisfied with future proposals for development on the individual lots.

**D. Adequate water, sanitary sewer, and other public facilities exist to support the use of land proposed in the plat.**

**STAFF ANALYSIS:** Compliance with these standards have been discussed throughout this decision.

**FINDING:** As discussed earlier in this decision, all public utilities and facilities are available to the site. This criterion is satisfied by the proposed subdivision.

**E. Development of additional, contiguous property under the same ownership can be accomplished in accordance with this Code.**

**STAFF ANALYSIS:** Approval of this subdivision as proposed, does not preclude any of the adjacent properties from being developed.

**FINDING:** There are no contiguous properties adjacent to the subject site that are under the same ownership. This criterion is not applicable to the proposed subdivision.

**F. Adjoining land can either be developed independently or is provided access that will allow development in accordance with this Code.**

**STAFF ANALYSIS:** Approval of this subdivision as proposed, does not preclude any of the adjacent properties from being developed.

**FINDING:** The proposed subdivision does not affect adjoining land from being provided with access. There are no landlocked parcels of land adjacent to this site. Future construction of SW Century Drive will improve access to the adjacent properties, but they currently have access to a public street. This criterion is satisfied.

**G. Tree and woodland inventories have been submitted and approved as per Section 16.142.060.**

**STAFF ANALYSIS:** A tree and woodland inventory has not been submitted for this proposal because there is no physical development proposed. It will be incumbent upon the property owner to demonstrate compliance with these standards with future proposals for development on the property.

**FINDING:** Because there is no physical development associated with this request, this criterion is not applicable.

**H. The plat clearly shows the proposed lot numbers, setbacks, dedications and easements.**

**STAFF ANALYSIS:** The proposed preliminary plat illustrates the proposed lot numbers, dedications and easements as required.

**FINDING:** Because there is no physical development associated with the plat, setbacks are not required to be shown, and will be verified in future proposals for development. To the extent that this criteria applies to the proposal, it is satisfied. Because of the size of the lots, it is feasible for the setbacks to be met with future development.

**I. A minimum of five percent (5%) open space has been provided per § 16.44.B.8 (Townhome- Standards) or §16.142.020 (Parks, Open Spaces and Trees-Single-Family Residential Subdivisions), if applicable. (Ord. No. 2011-011, § 1, 10-4-2011)**

**STAFF ANALYSIS:** Because this property is associated with an existing Planned Unit Development, and is not associated with residential development, this standard is not applicable to the proposed development.

**FINDING:** This standard is not applicable to the proposed development.

**16.128 – Land Division Design Standards  
16.128.010 - Blocks**

**A. Connectivity****1. Block Size**

The length, width, and shape of blocks shall be designed to provide adequate building sites for the uses proposed, and for convenient access, circulation, traffic control and safety.

**2. Block Length**

Block length standards shall be in accordance with Section 16.108.040. Generally, blocks shall not exceed five-hundred thirty (530) feet in length, except blocks adjacent to principal arterial, which shall not exceed one thousand eight hundred (1,800) feet. The extension of streets and the formation of blocks shall conform to the Local Street Network map contained in the Transportation System Plan.

- 3. Pedestrian and Bicycle Connectivity.** Paved bike and pedestrian accessways shall be provided on public easements or right-of-way consistent with Figure 7.401.

**STAFF ANALYSIS:** This proposal does not include the creation of any new streets not already accounted for by the TSP. There is no identified bicycle or pedestrian connections in the TSP that are not already provided for within the existing right-of-way. It should be noted that the site is limited by the presence of the wetlands in Tract A, a major arterial to the north, a collector to the west, and existing industrial development directly south of the site.

**FINDING:** Existing site conditions and pre-existing development on adjacent properties may deter full street connectivity on a portion of the site. A conceptual circulation plan is provided with the preliminary plans to illustrate how the site can conceptually meet the standards, however, the site is zoned for light industrial and commercial uses, so it is unlikely that a full street connection would be necessary beyond what is called for in the TSP. It will be incumbent upon the property owner to demonstrate that the existing conditions preclude full connectivity, and if so, how pedestrian or bicycle connections can be made for future proposals for development. These criteria are not applicable to the proposed subdivision.

**B. Utilities Easements for sewers, drainage, water mains, electric lines, or other utilities shall be dedicated or provided for by deed. Easements shall be a minimum of ten (10) feet in width and centered on rear or side lot lines; except for tie-back easements, which shall be six (6) feet wide by twenty (20) feet long on side lot lines at the change of direction.**

**STAFF ANALYSIS:** The proposed subdivision shows the location of all existing utility easements associated with the site. An 8-foot public utility easement was dedicated along the front and side lot lines with document No. 2011-030292, and is illustrated on the plat.

**FINDING:** The Engineering division has indicated that the easement is of adequate width to accommodate utilities. As new proposals for development come in on the lots, it will be incumbent upon the applicant to ensure that adequate easements are provided to allow access and maintenance to future public utilities. This criterion is satisfied by the proposed subdivision.

**C. Drainages**

**Where a subdivision is traversed by a watercourse, drainage way, channel or street, drainage easements or rights-of-way shall be provided conforming substantially to**

**the alignment and size of the drainage.**

**STAFF ANALYSIS:** The proposed subdivision is traversed by a drainage way; therefore, this criterion is applicable. As proposed, the subdivision includes two tracts. Tract A identifies the location of the drainage way and associated corridor, and Tract B identifies the location for a future regional stormwater treatment facility.

**FINDING:** The applicant has proposed to dedicate the facilities as is conditioned in the Original PUD and associated Development Agreement. This criterion is satisfied by the proposal.

**16.128.020 - Pedestrian and Bicycle Ways**

**Pedestrian or bicycle ways may be required to connect cul-de-sacs, divide through an unusually long or oddly shaped block, or to otherwise provide adequate circulation.**

**STAFF ANALYSIS:** There are no cul-de-sacs proposed with this subdivision, and as proposed, it is untimely to evaluate the circulation given that the sizes of the lots are so large. It will be incumbent upon future applications to demonstrate compliance with this standard.

**FINDING:** As indicated previously in this decision, the site is not subject to this standard until such time that physical development is being proposed on the site.

**16.128.030 - Lots**

**A. Size and Shape**

**Lot size, width, shape, and orientation shall be appropriate for the location and topography of the subdivision or partition, and shall comply with applicable zoning district requirements, with the following exception:**

- 1. Lots in areas not served by public sewer or water supply shall conform to any special County Health Department standards.**

**STAFF ANALYSIS:** As previously discussed, the proposed lots meet or exceeds the applicable dimensional standards for lots within the Light Industrial zoning district.

**FINDING:** The approved PUD did not place any additional lot restrictions on the property. This site is served by public sewer and water. This criterion is satisfied.

**B. Access**

**All lots in a subdivision shall abut a public street, except as allowed for infill development under Chapter 16.68.**

**STAFF ANALYSIS:** Lots 1-4 directly abut one of the three adjacent public rights-of-way (SW Century Drive will be dedicated with this plat and constructed with future development). Lot 5 has direct public access through a private 40-foot wide access and utility easement as allowed in Chapter 16.68.

**FINDING:** Because the lots abut a public street, or are served by an easement to a public street, this criterion is satisfied.

**D. Side Lot Lines** Side lot lines shall, as far as practicable, run at right angles to the street upon which the lots face, except that on curved streets side lot lines shall be radial to the curve of the street.

**STAFF ANALYSIS:** With the exception of Lots 4 and 5, the side lot lines of each lot run perpendicular to SW Langer Farms Parkway. Lots 4 and 5 are not able to be perpendicular because of the onsite drainage way.

**FINDING:** To the extent that it is practical, the side lot lines run at right angles to SW Langer Farms Parkway. The proposal has satisfied this criterion.

**E. Grading**

Grading of building sites shall conform to the following standards, except when topography of physical conditions warrants special exceptions:

1. Cut slopes shall not exceed one (1) and one-half (1 1/2) feet horizontally to one (1) foot vertically.
2. Fill slopes shall not exceed two (2) feet horizontally to one (1) foot vertically.

**STAFF ANALYSIS:** No on-site grading is proposed with this subdivision.

**FINDING:** Because no grading is associated with the proposed subdivision, it will be incumbent upon future development proposals on the site to comply with this standard. It should be noted that the site is fairly flat, so it is very likely that the amount of future grading on this property will be minimal, and that it is entirely feasible for the standards listed above to be met given the topography. This criterion is not applicable to this proposal.

**Division VIII – Environmental Resources**

**16.142 – Parks and Open Space**

**STAFF ANALYSIS:** The proposed subdivision is on land that is zoned Light Industrial (L-I) with a Planned Unit Development (PUD) overlay. The PUD required the provision of open space that has already occurred for those properties developed with residential uses. The vegetated corridor is being set aside in a tract to be dedicated to the public to meet a condition of the original PUD as it pertains to open space. The following criteria are the only provisions that are applicable in this Chapter to this request.

**16.142.030.A Visual Corridors**

**A. Corridors Required**

New developments with frontage on Highway 99W, or arterial or collector streets designated on the Transportation Plan Map, attached as Appendix C, or in Section 5 of the Community Development Plan Part 2, shall be required to establish a landscaped visual corridor according to the following standards:

	Category	Width
1.	Highway 99W	25 feet
2.	Arterial	15 feet



3.

Collector

10 feet

In residential developments where fences are typically desired adjoining the above described major street the corridor may be placed in the road right-of-way between the property line and the sidewalk. (Ord. 2006-021)

**B. Landscape Materials**

The required visual corridor areas shall be planted as specified by the review authority to provide a continuous visual and/or acoustical buffer between major streets and developed uses. Except as provided for above, fences and walls shall not be substituted for landscaping within the visual corridor. Uniformly planted, drought resistant street trees and ground cover, as specified in Section 16.142.050, shall be planted in the corridor by the developer. The improvements shall be included in the subdivision compliance agreement. (Ord. 2006-021)

**C. Establishment and Maintenance**

Designated visual corridors shall be established as a portion of landscaping requirements pursuant to Chapter 16.92. To assure continuous maintenance of the visual corridors, the review authority may require that the development rights to the corridor areas be dedicated to the City or that restrictive covenants be recorded prior to the issuance of a building permit. (Ord. 2006-021)

**D. Required Yard**

Visual corridors may be established in required yards, except that where the required visual corridor width exceeds the required yard width, the visual corridor requirement shall take precedence. In no case shall buildings be sited or trees be removed from within the required visual corridor, with the exception of front porches on townhomes, as permitted in Section 16.44.010(E)(4)(c). (Ord. 2006-021)

**STAFF ANALYSIS:** The proposed subdivision does not include any physical development that would mandate the need for a visual corridor. Future development of the lots will be required to comply with the visual corridor standards along it's frontage with SW Langer Farms Parkway, a collector, and SW Tualatin-Sherwood Road, an arterial.

**FINDING:** Because the applicant is not proposing any physical development of the property at this time, and the City will have the opportunity to impose this requirement on future development proposals, this criterion is not applicable to the proposed subdivision.

**16.142.060. Street Trees**

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

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

1. **Location:** Trees shall be planted within the planter strip along a newly created or improved streets. In the event that a planter strip is not required or available, the trees shall be planted on private property within the front yard setback area or within public street right-of-way between front property lines and street curb lines or as required by the City.
2. **Size:** Trees shall have a minimum trunk diameter of two (2) inches DBH and minimum height of six (6) feet. Diameter at breast height (DBH) shall be

- measured as defined by the International Society of Arboriculture.
3. **Types:** Developments shall include a variety of street trees. The trees planted shall be chosen from those listed in 16.142.080 of this Code.
  4. **Required Street Trees and Spacing:**
    - a. The minimum spacing is based on the maximum canopy spread identified in the recommended street tree list in section 16.142.080 with the intent of providing a continuous canopy without openings between the trees. For example, if a tree has a canopy of forty (40) feet, the spacing between trees is forty (40) feet. If the tree is not on the list, the mature canopy width must be provided to the planning department by a certified arborist.
    - b. All new developments shall provide adequate tree planting along all public streets. The number and spacing of trees shall be determined based on the type of tree and the spacing standards described in a. above and considering driveways, street light locations and utility connections. Unless exempt per c. below, trees shall not be spaced more than forty (40) feet apart in any development.
    - c. A new development may exceed the forty-foot spacing requirement under section b. above, under the following circumstances:
      - (1) Installing the tree would interfere with existing utility lines and no substitute tree is appropriate for the site; or
      - (2) There is not adequate space in which to plant a street tree due to driveway or street light locations, vision clearance or utility connections, provided the driveways, street light or utilities could not be reasonably located elsewhere so as to accommodate adequate room for street trees; and
      - (3) The street trees are spaced as close as possible given the site limitations in (1) and (2) above.
      - (4) The location of street trees in an ODOT or Washington County right-of-way may require approval, respectively, by ODOT or Washington County and are subject to the relevant state or county standards.
      - (5) For arterial and collector streets, the City may require planted medians in lieu of paved twelve-foot wide center turning lanes, planted with trees to the specifications of this subsection.

**FINDING:** No new street trees are required for this proposal until such time that physical improvements of SW Century Blvd and improvements along SW Tualatin-Sherwood Road are constructed. The applicant has proposed to dedicate the rights-of-way and defer improvements until future development occurs. The County has requested that the applicant either make the improvements or pay a fee in-lieu of the improvements prior to final plat. This condition has been incorporated into this decision. Street trees were provided along the sites frontage with SW Langer Farms Parkway with that recent improvement. This criterion is not applicable to the proposed subdivision, but will be required with future development of any of the lots that require the construction or reconstruction of new public streets.

**16.142.060 - Trees on Property Subject to Certain Land Use Applications**

All site developments subject to Section 16.92.020 shall be required to preserve trees or woodlands to the maximum extent feasible within the context of the proposed land

**use plan and relative to other policies and standards of the City Comprehensive Plan, as determined by the City. Review and mitigation shall be consistent with 16.142.060 A, B, C and D.**

**FINDING:** This application is for a proposed subdivision, no physical improvements are proposed. This land has been farmed, and the majority of trees on site are located within Tract A. Future development proposals on the lots will be required to satisfy the requirements of this chapter. Because the property is zoned for commercial or light industrial uses, future development will be subject to site development review, and a more detailed analysis of how trees will be affected. This criterion is not applicable to the proposed subdivision.

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

### **16.144.020 Standards**

**A. The applicant shall identify and describe the significance and functional value of wetlands on the site and protect those wetlands from adverse effects of the development. A facility complies with this standard if it complies with the criteria of subsections A.1.a and A.1.b, below:**

**1. The facility will not reduce the area of wetlands on the site, and development will be separated from such wetlands by an area determined by the Clean Water Services Design and Construction Standards R&O 00-7 or its replacement provided Section 16.140.090 does not require more than the requested setback.**

**a. A natural condition such as topography, soil, vegetation or other feature isolates the area of development from the wetland.**

**b. Impact mitigation measures will be designed, implemented, and monitored to provide effective protection against harm to the wetland from sedimentation, erosion, loss of surface or ground water supply, or physical trespass.**

**c. A lesser setback complies with federal and state permits, or standards that will apply to state and federal permits, if required.**

**2. If existing wetlands are proposed to be eliminated by the facility, the applicant shall demonstrate that the project can, and will develop or enhance an area of wetland on the site or in the same drainage basin that is at least equal to the area and functional value of wetlands eliminated.**

**B. The applicant shall provide appropriate plans and text that identify and describe the significance and functional value of natural features on the site (if identified in the Community Development Plan, Part 2) and protect those features from impacts of the development or mitigate adverse effects that will occur. A facility complies with this standard if:**

**1. The site does not contain an endangered or threatened plant or animal species or a critical habitat for such species identified by Federal or State government (and does not contain significant natural features identified in the Community Development Plan, Part 2, Natural Resources and Recreation Plan).**

2. The facility will comply with applicable requirements of the zone.
3. The applicant will excavate and store topsoil separate from subsurface soil, and shall replace the topsoil over disturbed areas of the site not covered by buildings or pavement or provide other appropriate medium for re-vegetation of those areas, such as yard debris compost.
4. The applicant will retain significant vegetation in areas that will not be covered by buildings or pavement or disturbed by excavation for the facility; will replant areas disturbed by the development and not covered by buildings or pavement with native species vegetation unless other vegetation is needed to buffer the facility; will protect disturbed areas and adjoining habitat from potential erosion until replanted vegetation is established; and will provide a plan or plans identifying each area and its proposed use.
5. Development associated with the facility will be set back from the edge of a significant natural area by an area determined by the Clean Water Services Design and Construction standards R&O 00-7 or its replacement, provided Section 16.140.090A does not require more than the requested setback. Lack of adverse effect can be demonstrated by showing the same sort of evidence as in subsection A.1 above.

C. When the Regionally Significant Fish and Wildlife Habitat map indicates there are resources on the site or within 50 feet of the site, the applicant shall provide plans that show the location of resources on the property. If resources are determined to be located on the property, the plans shall show the value of environmentally sensitive areas using the methodologies described in Sections 1 and 2 below.

The Metro Regionally Significant Fish and Wildlife Habitat map shall be the basis for determining the location and value of environmentally sensitive habitat areas. In order to specify the exact locations on site, the following methodology shall be used to determine the appropriate boundaries and habitat values:

**FINDING:** The applicant has identified the wetlands on site, and has provided staff with a CWS service Provider Letter that spells out all of the requirements for protection as required in the Tualatin River Basin approved HCA. According to the applicant, and as verified by the Service Provider Letter, the area has been delineated in accordance with the requirements of CWS R&O 00-7. Clean Water Services has provided comments in addition to the Service Provider Letter that have been incorporated into this report. The following Condition is warranted to ensure that the applicant continues to comply with the conditions of Service Provider Letter No. 12-000162. It will be incumbent upon future development proposals on proposed Lots 4 and 5 to ensure that their impacts to the protected resources in Tract A meet the requirements of CWS.

**CONDITION:** Prior to any site work or final plat approval, the applicant shall provide the City with evidence that Clean Water Services has reviewed and approved the final plat, and met the applicable conditions imposed on the letter dated May 8, 2012 from Jackie Sue Humphreys at Clean Water Services.

### **RECOMMENDATION**

Based upon review of the applicant's submittal information, review of the code, agency comments and consideration of the applicant's revised submittal, staff finds that the proposed subdivision does not fully comply with the standards but can be conditioned to comply, approves the subdivision request subject to compliance with the following conditions of approval.

## **VI. CONDITIONS OF APPROVAL**

### **A. General Conditions**

1. Compliance with the Conditions of Approval is the responsibility of the developer or its successor in interest.
2. Development and construction on the site shall conform substantially to the preliminary plat development plans submitted by AKS Engineering and Forestry, dated April 11, 2012 except as modified in the conditions below, (and shall conform specifically to final construction plans reviewed and approved by the City Engineer, the Building Official, Clean Water Services, Tualatin Valley Fire and Rescue, Tualatin Valley Water District and Washington County). All plans shall comply with the applicable building, planning, engineering and fire protection codes of the City of Sherwood.
3. The developer is responsible for all costs associated with any remaining public facility improvements and shall assure the construction of all public streets and utilities within and adjacent to the plat as required by these conditions of approval, to the plans, standards, and specifications of the City of Sherwood. The developer shall also provide to the City financial guarantees for construction of all public streets and utilities within and adjacent to the plat, as required by the engineering compliance agreement.
4. **This approval is valid for a period of two (2) years from the date of the decision notice.** Extensions may be granted by the City as afforded by the Sherwood Zoning and Community Development Code.
5. The continual operation of the property shall comply with the applicable requirements of the Sherwood Zoning and Community Development Code and Municipal Code.
6. This approval does not negate the need to obtain permits, as appropriate from other local, state or federal agencies, even if not specifically required by this decision.

### **B. Prior to approval of the public improvement plans:**

1. All public easement dedication documents must be submitted to the City for review, signed by the City and the applicant, and recorded by the applicant with the original or a certified copy of the recorded easements on file at the City prior to release of the public improvement plans.
2. Submit the final plat for review to the Planning Department.

### **C. Prior to Approval of the Final Plat:**



1. The submittal by the applicant for final plat review and approval shall include but not be limited to the following: a final plat application; final plat review fee; narrative identifying how the required conditions of approval have or will be met; three copies of the final plat; and any other materials required to demonstrate compliance with the conditions of approval. In addition, the following specific conditions shall be met prior to approval of the final plat:
2. Prior to final plat approval, the applicant shall dedicate the necessary right-of-way needed to construct SW Century Drive.
3. Prior to final plat approval, the applicant shall establish the public right-of-way and 8' public utility easement for and adjacent to SW Century Drive.
4. Prior to final plat approval, the following shall be represented on the plat and recorded with Washington County:
  - a. Dedication of additional right-of-way to provide 49 feet from centerline of SW Tualatin-Sherwood Road.
  - b. Dedication of additional right-of-way to provide adequate corner radius at the intersection of SW Tualatin-Sherwood Road.
  - c. Provision of a non-access reservation along SW Tualatin-Sherwood Road frontage, except at the existing access point(s) approved in conjunction with this land use application.
5. Prior to any site work or final plat approval, the applicant shall provide the City with evidence that Clean Water Services has reviewed and approved the final plat, and met the applicable conditions imposed on the letter dated May 8, 2012 from Jackie Sue Humphreys at Clean Water Services.
6. Approval of the public improvement plans by the Engineering Department, and signature of a compliance agreement must be complete prior to release of the plat to the County for review. In addition, prior to final plat approval, either all on-site work must be complete or the improvements bonded or guaranteed with a cash deposit.
7. The final plat shall show the following:
  - a. The Community Development Director as the City's approving authority within the signature block of the final plat.
  - b. A 15-foot wide public utility easement for any areas where a single public utility line is located outside a public right-of-way with an increase of five (5) feet for each additional utility line.
  - c. Private access easements, utility easements and/or special use easements as required for the development of the site. A plat note shall reference an easement and maintenance agreement or similar document, to be recorded with the plat, for the joint maintenance of any common private utility lines, common driveway improvements, or other common amenity or perimeter fencing. The language of such plat note and associated document shall be reviewed and approved by the Planning Department.

**VII. Exhibits**

- A. Applicant's submittal with narrative and supporting documents dated
- B. Public testimony from R. James Claus dated May 11, 2012
- C. Letter from TVF&R dated May 9, 2012
- D. Letter from CWS dated May 8, 2012
- E. Engineering comments dated May 11, 2012
- F. Comments from Washington County DLUT dated May 15, 2012

STATE OF OREGON            )  
  )  
Washington County         )

I, Brad Kilby, Senior Planner for the Planning Department, City of Sherwood, State of Oregon, in Washington County, do hereby certify that the Notice of Decision on Case File No. SUB 12-02 Langer Farms Subdivision was placed in a U.S. Postal receptacle on June 21, 2012.



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City of Sherwood

**Exhibit A**

The applicant's submitted materials are available to be viewed at City Hall 22560 SW  
Pine Street, Sherwood, Oregon 97140

or

on the City's website at <http://www.sherwoodoregon.gov/langer-farms-subdivision>

## Chapter 16.32 - RESERVED

## FOOTNOTE(S):

<sup>(26)</sup> Editor's note— Ord. No. 2012-011, § 2, adopted August 7, 2012, amended the Code by repealing former Ch. 16.32, §§ 16.32.010—16.32.070, in its entirety. Former Ch. 16.32 pertained to the Light Industrial district, and derived from Ord. No. 86-851; Ord. No. 87-867; Ord. No. 88-979; Ord. No. 91-922; Ord. No. 93-964; Ord. No. 97-1019; Ord. No. 98-1051; Ord. No. 2000-1092; Ord. No. 2001-1119; Ord. No. 2002-1136; Ord. No. 2009-009, adopted July 21, 2009; and Ord. No. 2010-05, adopted April 6, 2010.



**2.109 GENERAL COMMERCIAL (GC)****2.109.01 Purpose**

The GC zoning district provides for wholesale and commercial uses which require larger parcels of land, and or uses which involve products or activities which require special attention to environmental impacts as per Chapter 8.

**2.109.02 Permitted Uses**

The following uses are permitted outright, provided such uses meet the applicable environmental performance standards contained in Chapter 8:

- A. Professional services, including but not limited to financial, medical and dental, social services, real estate, legal, artistic, and similar uses.
- B. General retail trade, including bakeries where product distribution is limited to retailing on the premises only.
- C. Personal and business services, including day cares, preschools, and kindergartens.
- D. Postal substations when located entirely within and incidental to a use permitted outright.
- E. Temporary uses, including but not limited to portable construction offices and real estate sales offices, subject to Section 4.500.
- F. Farm and garden supply stores, and retail plant nurseries, but excluding wholesale plant nurseries, and commercial farm equipment and vehicle sales which are prohibited.
- G. Agricultural uses such as truck farming and horticulture, excluding commercial buildings and structures, or the raising of animals other than household pets.
- H. Commercial trade schools.
- I. Motion picture and live theaters, but excluding drive-ins which are prohibited.
- J. Restaurants, taverns, and lounges.

- K. Automotive and other appliance and equipment parts sales, but excluding junkyards and salvage yards which are prohibited.
- L. Blueprinting, printing, publishing, or other reproduction services.
- M. Automobile, recreational vehicle, motorcycle, truck, manufactured home, boat, farm, and other equipment sales, parts sales, repairs, rentals or service.
- N. Wholesale trade, warehousing, commercial storage and mini-warehousing, except as prohibited in Sections 2.110.04E and 2.111.04E.
- O. Limited manufacturing, including only: beverage bottling plants, commercial bakeries, machine shops, and handicraft manufacturing.
- P. Building material sales, lumberyards, contractors storage and equipment yards, building maintenance services, and similar uses.
- Q. Veterinarian offices and animal hospitals.
- R. Agricultural uses including but not limited to farming, and wholesale and retail plant nurseries, with customarily associated commercial buildings and structures permitted.
- S. Medical, dental, and similar laboratories.
- T. Truck and bus yards and terminals.
- U. Adult entertainment businesses, subject to Section 2.208.

#### 2.109.03 Conditional Uses

The following uses are permitted as conditional uses, provided such uses meet the applicable environmental performance standards contained in Chapter 8, and are approved in accordance with Section 4.300:

- A. Special care facilities, including but not limited to hospitals, sanitariums, convalescent homes, correctional institutions, and residential care facilities.
- B. Radio, television, and similar communication stations, including transmitters.
- C. Churches and parsonages.

- D. Cemeteries and crematory mausoleums.
- E. Public and private utility buildings, including but not limited to telephone exchanges, electric substation, gas regulator stations, treatment plants, water wells, and public works yards.
- F. Government offices, including but not limited to administrative office, post offices, and police and fire stations.
- G. Public use buildings including but not limited to libraries, museums, community centers and senior centers.
- H. Private lodges, fraternal organizations, country clubs, sports and racquet clubs, and other similar clubs, but excluding golf courses which are prohibited.
- I. Motels or hotels.
- J. Residential apartments when located on the upper floors, in the rear of, or otherwise clearly secondary to a commercial building.
- K. Public recreational facilities, including but not limited to parks, playfields, and sports and racquet courts, but excluding golf courses which are prohibited.
- L. Public and private schools providing education at the elementary school level or higher.
- M. Any incidental business, service, process, storage or display, not otherwise permitted by Section 2.109, that is essential to and customarily associated with any use permitted outright.

#### 2.109.04 Prohibited Uses

The following uses are expressly prohibited:

- A. Junkyards and salvage yards.
- B. Industrial and manufacturing uses, except as specifically permitted by Sections 2.109.02 and 2.109.03.
- C. Any other prohibited use noted in Section 2.109.03.

#### 2.109.05 Dimensional Standards

No lot area, setback, yard, landscaped area, open space, off-street parking or loading area, or other site dimension or

requirement, existing on, or after, the effective date of this Code shall be reduced below the minimum required by this Code. Nor shall the conveyance of any portion of a lot, for other than a public use or right-of-way, leave a lot or structure on the remainder of said lot with less than minimum Code dimensions, area, setbacks or other requirements, except as permitted by Section 4.400.

#### A. Lot Dimensions

Except as otherwise provided, required minimum lot areas and dimensions shall be:

1. Lot area: 10,000 square feet
2. Lot width at front property line: 70 feet
3. Lot width at building line: 70 feet

#### B. Setbacks

Except as otherwise provided, required minimum setbacks shall be:

1. Front yard: None, unless the lot abuts a residential zone, then the front yard shall be that required in the residential zone.
2. Side yards: None, unless abutting a residential zone or public park property, then there shall be a minimum of twenty (20) feet.
3. Rear yard: None, unless abutting a residential zone, then there shall be a minimum of twenty (20) feet.
4. Existing residential uses shall maintain setbacks specified in Section 2.105.04.

#### C. Height

Except as otherwise provided, the maximum height of structures shall be fifty (50) feet, except structures within one hundred (100) feet of a residential zone shall be limited to the height requirements of that residential area. Structures over fifty (50) feet in height may be permitted as conditional uses, subject to Section 4.300.

**2.109.06 Community Design**

For standards relating to off-street parking and loading, energy conservation, historic resources, environmental resources, landscaping, access and egress, signs, parks and open space, on-site storage, and site design, see Chapters 5, 8 and 9.

**2.109.07 Flood Plain**

Except as otherwise provided, Section 8.202 shall apply.



**2.110 LIGHT INDUSTRIAL (LI)****2.110.01 Purpose**

The LI zoning district provides for the manufacturing, processing, assembling, packaging and treatment of products which have been previously prepared from raw materials. Industrial establishments shall not have objectionable external features and shall feature well-landscaped sites and attractive architectural design, as determined by the Commission.

**2.110.02 Permitted Uses**

The following uses are permitted outright, provided such uses meet the applicable environmental performance standards contained in Chapter 8.

- A. Veterinarians offices and animal hospitals.
- B. Contractor's offices, and other offices associated with a use permitted in the LI zone.
- C. Public and private utilities including but not limited to telephone exchanges, electric substations, gas regulator stations, sewage treatment plants, water wells and public works yards.
- D. Glass installation and sales.
- E. Government offices, including but not limited to postal stations, administrative offices, police and fire stations.
- F. Automobile, boat, trailer, and recreational vehicle storage.
- G. Laboratories for testing and medical, dental, photographic, or motion picture processing, except as prohibited by Section 2.110.04E.
- H. Industrial hand tool and supply sales, primarily wholesaled to other industrial firms or industrial workers.
- I. Other similar light industrial uses subject to Section 4.600.
- J. Uses permitted outright in the GC zone, Section 2.109.02, except for adult entertainment businesses which are prohibited.

- K. Dwelling unit for one (1) security person employed on the premises, and their immediate family.
- L. PUDs, subject to the provisions of Section 2.202.
- M. Temporary uses, including but not limited to construction and real estate sales offices, subject to Section 4.500.

#### 2.110.03 Conditional Uses

The following uses are permitted as Conditional Uses provided such uses meet the applicable environmental performance standards contained in Chapter 8 and are approved in accordance with Section 4.300:

- A. Manufacture, compounding, processing, assembling, packaging, treatment, fabrication, wholesaling, warehousing or storage of the following articles or products:
  1. Food products, including but not limited to candy, dairy products, beverages, coffee, canned goods and baked goods, and meat and poultry, except as prohibited by Section 2.110.03.
  2. Appliances, including but not limited to, refrigerators, freezers, washing machines, dryers; small electronic motors and generators; heating and cooling equipment; lawn mowers, rototillers, and chain saws; vending machines; and similar products and associated small parts.
  3. Cosmetics, drugs, pharmaceutical, toiletries, chemicals and similar products, except as prohibited by Section 2.110.04.
  4. Electrical, radio, television, optical, scientific, hearing aids, electronic, computer, communications and similar instruments, components, appliances and systems, and similar products and associated small parts.
  5. Building components and household fixtures, including but not limited to furniture, cabinets, and upholstery; ladders; mattresses, doors and windows; signs and display structures; and similar products and associated small parts.
  6. Recreational vehicles and equipment, including but not limited to bicycles, recreational watercraft, exercise equipment, and similar products and

associated small parts, but excluding motorized equipment unless otherwise permitted by Section 2.110.02 or 2.110.03.

7. Musical instruments, toys and novelties.
  8. Pottery and ceramics, limited to products using previously pulverized clay.
  9. Textiles and fiber products.
  10. Other small products and tools manufactured from previously prepared or semi-finished materials, including but not limited to bone, fur, leather, feathers, textiles, plastics, glass, wood products, metals, tobacco, rubber, and precious or semi-precious stones.
- B. Laundry, dry cleaning, dyeing or rug cleaning plants.
- C. Light metal fabrication, machining, welding and electroplating and casting or molding of semi-finished or finished metals.
- D. Offices associated with a use conditionally permitted in the LI Zone.
- E. Sawmills.

#### 2.110.04 Prohibited Uses

The following uses are expressly prohibited:

- A. Adult Entertainment Businesses.
- B. Any use permitted or conditionally permitted under Section 2.111 that is not specifically listed in this Section, and any use listed in Section 2.111.04.
- C. Auto wrecking and junk or salvage yards.
- D. Distillation of oil, coal, wood or tar compounds and the creosote treatment of any products.
- E. Manufacture, compounding, processing, assembling, packaging, treatment, fabrication, wholesale, warehousing, or storage of the following products of substances, except for any incidental business, service, process, storage, or display that is essential to and customarily associated, in the City's determination, with any otherwise permitted or conditionally permitted use:

1. Abrasives, acids, disinfectants, dyes and paints, bleaching powder and soaps and similar products.
  2. Ammonia, chlorine, sodium compounds, toxics, and similar chemicals.
  3. Celluloid or pyroxylin.
  4. Cement, lime, gypsum, plaster of Paris, clay, creosote, coal and coke, tar and tar-based roofing and waterproofing materials and similar substances.
  5. Explosives and radioactive materials.
  6. Fertilizer, herbicides and insect poison.
- F. Metal rolling and extraction mills, forge plants, smelters and blast furnaces.
- G. Pulp mills and paper mills.
- H. Slaughter of livestock or poultry, the manufacture of animal by-products or fat rendering.
- I. Leather tanneries.
- J. General purpose solid waste landfills, incinerators, and other solid waste facilities.

2.110.05 Dimensional Standards

No lot area, setback, yard, landscaped area, open space, off-street parking or loading area, or other site dimension or requirement, existing on, or after, the effective date of this Code shall be reduced below the minimum required by this Code. Nor shall the conveyance of any portion of a lot, for other than a public use or right-of-way, leave a lot or structure on the remainder of said lot with less than minimum Code dimensions, area, setbacks or other requirements, except as permitted by Section 4.400.

A. Lot Dimensions

Except as otherwise provided, required minimum lot area and dimensions shall be:

1. Lot area: 10,000 sq. feet
2. Lot width at front property line: 100 feet
3. Lot width at building line: 100 feet

**B. Setbacks**

Except as otherwise provided, required minimum setbacks shall be:

1. Front yard: Twenty (20) feet, except when abutting a residential zone or public park, then there shall be a minimum of forty (40) feet.
2. Side yards: None, except when abutting a residential zone, then there shall be a minimum of forty (40) feet.
3. Rear yard: None, except when abutting a residential zone, then there shall be a minimum of forty (40) feet.
4. Corner lots: Twenty (20) feet on any side facing a street, except when abutting a residential zone, then there shall be a minimum of forty (40) feet.

**C. Height**

Except as otherwise provided, the maximum height shall be fifty (50) feet, except that structures within one hundred (100) feet of a residential zone shall be limited to the height requirements of the residential zone.

**2.110.06 Community Design**

For standards relating to off-street parking and loading, energy conservation, historic resources, environmental resources, landscaping, access and egress, signs, parks and open space, on-site storage, and site design, see Chapters 5, 8 and 9.

**2.110.07 Flood Plain**

Except as otherwise provided, Section 8.202 shall apply.



TO: SHERWOOD PLANNING COMMISSION Emailed: 7/5/2022  
 FROM: R. James Claus *Jim Claus*  
 RE: LU 2022-012 SP, MM, LLA Langer Storage/Chestnut Inn Hotel  
 COMMENTS FOR THE RECORD

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Dear Commission Members:

This land use application is not an inconsequential land use act. The Langers, by their own count and admission currently own 1,000 storage units between their four storage locations in Sherwood and Herman Road. Their recent Major Modification in front of the Planning Commission that is now under appeal at the City Council is a request to add 575 storage units more by constructing a 74,000 sq.ft. three story building within the Langer PUD boundaries.

Let's add this pending application request for storage to the initial analysis from the earlier application.

Gross Storage Income Estimated at \$100 average price/unit per month and annualized

Existing 1,000 Langer storage units	\$100,000 monthly x 12 mos. =	\$1,200,000
Request #1 for 575 more storage units	57,500 monthly x 12 mos.=	690,000
Request #2 for 690 more storage unit	<u>69,000 monthly x 12 mos. =</u>	<u>828,000</u>
Total	\$ 226,500 monthly	\$2,718,000

If you assume a 75 percent net gross income after expenses:

Existing 1,000 units	\$100,000 x 0.75= \$75,000 monthly x 12 =	\$ 900,000
Request #1 for 575 units	57,500 x 0.75 = \$43,125 monthly x 12=	517,500
Request #2 for 690 units	<u>69,000 x 0.75 = \$51,750 monthly x 12 =</u>	<u>621,000</u>
Total	\$169,875 monthly x 12 =	\$2,038,500

Applying a 6% capitalization rate to the three estimated net gross incomes, the value is estimated:

Existing Langer 1,000 units net gross income	\$900,000 / 0.06 cap rate	\$15,000,000
Request #1 for 575 units net gross income	517,500 / 0.06 cap rate	8,625,000
Request #2 for 690 units net gross income	621,000 / 0.06 cap rate	<u>10,350,000</u>
TOTAL STORAGE INCOME VALUE ESTIMATE using a 6% Cap Rate		<u>\$33,975,000</u>

Even with this simplified analysis, it is easy to see the millions of dollars of value that is being requested by this applicant for an illegal use based on a 27-year-old zoning code that no one else in this town can or would dare attempt to invoke in front of the Commission or City Council.

Light industrial zoning in town is supposed to be reserved for living wage jobs. This proposal as well as the earlier 575 storage unit expansion proposal violates the intent of industrial zoning producing living wage jobs. When specifically asked by a member of the Planning Commission about the living wage jobs this application would be offering, the applicant had no answer, and did not attempt to answer the question. The applicant is asking for major modifications for an illegal use of storage and a condition use permit for a hotel in an industrial zone. The applicant bears the burden to produce credible evidence for the record that shows both the storage and the hotel uses will produce living wage jobs. Instead, all the consultant offered was some boiler plate language to fill the gap in the application, instead of dealing with the vacuum of living wage jobs that are NOT being produced if the Planning Commission grants these illegal and conditional use applications for the applicant. The applicant is attempting to use a 27-year-old code and an ORS 92.040 statute, both of which do not apply to the applicant's request.

The applicant has provided no benefit-cost analysis showing why this request outweighs the benefit and intent for industrial zones in town to provide living wage jobs.

As usual, this land use application is a win-win-win situation for the Langers. They want tremendous increased value in their property, they do not want to build any public improvements, they do not want to provide living wage jobs for the town, and they want land use approvals for uses that they, themselves declared in their own CC&Rs to be PROHIBITED USES... as well as asking the town to give them an approval based on a 27-year-old code that NO ONE in the town would be allowed to use to bootstrap in a currently illegal use. We should congratulate them for something... exactly what remains to be seen.

Langer Farms Parkway was not funded by the Langer or Wal-Mart developments. It was paid for from Sherwood's Urban Renewal Agency, grant money from Washington County's MSTIP road monies and city road funds. How many gifts should the city and the Sherwood citizens be asked to give to this family... and why? Where is the public benefit tradeoff? Why the highly favored treatment? Mayor Mays could likely answer those questions for one of his most prominent contributors.

The first city Urban Renewal Agency was supposed to fund a \$20 million Performing Arts Center and clean up areas around the old cannery site. Instead, we built a palsy \$4 million Arts Center, did inadequate clean up, and have funded more than \$10 Million in road improvements that should have been funded by the Langer family or their buyer, Wal-Mart, or both.

Why did we do it then, and why does this group of people and their investors think that the residents of Sherwood should underwrite their land use schemes again? Wouldn't it be nice if everyone in town could get this kind of deal and this kind of most favored status treatment?

This application should not be approved. **Let's get some real living wage jobs in the town** and stop fummy-diddling around with our town zoning and land use codes, attempting to get more illegal storage units in a light industrial land use zone that is not designated for the same.

**From:** [clausssl@aol.com](mailto:clausssl@aol.com)  
**To:** [Eric Rutledge](#)  
**Cc:** [Erika Palmer](#); [Joy Chang](#)  
**Subject:** Re: Reminder - Testimony for LU 2022-012 Due at 5pm Today  
**Date:** Tuesday, July 5, 2022 1:07:43 PM  
**Attachments:** [image001.png](#)

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Hi Eric--

Why is the deadline at 5 pm? The hearing didn't end until later in the evening last Tuesday so the 5 pm arbitrary deadline isn't even the full seven days. Usually the deadline runs until the end of the day, 11:59:59 pm. Given this has also been a holiday weekend, the time seems to be shortened in every possible manner. Again, why? No one from the audience was allowed to speak their objection regarding the timing.

Please add this to the record.

-----Original Message-----

**From:** Eric Rutledge <[RutledgeE@SherwoodOregon.gov](mailto:RutledgeE@SherwoodOregon.gov)>  
**To:** Susan Claus <[clausssl@aol.com](mailto:clausssl@aol.com)>  
**Cc:** Erika Palmer <[PalmerE@SherwoodOregon.gov](mailto:PalmerE@SherwoodOregon.gov)>; Joy Chang <[ChangJ@SherwoodOregon.gov](mailto:ChangJ@SherwoodOregon.gov)>  
**Sent:** Tue, Jul 5, 2022 12:40 pm  
**Subject:** Reminder - Testimony for LU 2022-012 Due at 5pm Today

Hi Susan,

I wanted to remind you that any new testimony for LU 2022-012 is due by 5pm today. City Hall will be open until 5pm and we can also accept an email with PDF attachment. Let us know if you have any questions.

Thanks,

Eric Rutledge  
City of Sherwood  
Associate Planner  
[rutledgee@sherwoodoregon.gov](mailto:rutledgee@sherwoodoregon.gov)  
Desk 503.625.4242  
Work Cell 971.979.2315



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**From:** [clausl@aol.com](mailto:clausl@aol.com)  
**To:** [PlanningCommission](#)  
**Cc:** [Joy Chang](#); [Erika Palmer](#); [Eric Rutledge](#)  
**Subject:** Re: LU 2022-012 SP, MM, CUP, LLA Langer application additional comments  
**Date:** Tuesday, July 5, 2022 3:49:55 PM

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**TO:** The Sherwood Planning Commission  
**RE:** LU 2022-012 SP, MM, CUP, LLA Langer application  
Jim Claus additional Comments drafted for the record  
**DATE:** 5 July 2022

Dear Planning Commission Members –

No one is trying to question the actual motives of people on the Planning Commission, with the possible exception of one or two people. Further, it is problematic trying to explain in a general way the massive amounts of money and funds being transferred in some of the land use actions by inadequately understanding the public hearing process.

Let me simply note it is troubling to appear in front of the Commission and not one member asked one single question of any opponent to an application. Some new members of the Planning Commission may not realize they could ask questions. The Chairperson however has been in that position for quite a while and on the Commission even longer. She knows she can talk to staff endlessly and then begins testifying in the hearings herself, adding new information and interpretations to applications in efforts to either sway the approval or disapproval of an application. It's a unique "take" in the administration of the land use process in Sherwood.

Not only are some of the commission members new to the commission, but also some of the staff are new and inexperienced. Just because a staff member "declares" what the history of 1995 PUD is—does not mean that is the actual history. Planning Commission is being asked to rely on some staff writings that do not adequately detail the "history" of the applicant's PUD. I don't say that in an accusatory way, but merely as someone who has been in town since the beginning of the Langer PUD 95-1 and its various land use applications and iterations and have observed facts that have either been omitted, forgotten or changed to conform to the approval intent of whatever is the application at hand.

I have advanced education and experience in regional urban planning and development. For complicated applications such as what is now being proposed and has been proposed recently and currently under appeal with the City Council, I find it quite surprising that junior staff with limited background is being tasked with the complexities of the application. It also becomes problematic if staff becomes defensive if questioned on matters pertaining to the land use application(s).

In the last meeting of the Planning Commission, there was an outside attorney at the Planning Commission meeting who stated that she represented "the City of Sherwood", and yet she was replacing Josh Soper who works for the City Council. He's a licensed professional and has had to recuse himself from even the Urban Renewal Agency matters because of potential and/or actual conflicts of interest as we understand it.

I believe your procedure is seriously flawed in the broad dictates of the 14th Amendment of U.S. Constitution constraints and the Oregon Constitution that restrains biased and unfair public hearings. Without Josh Soper in the room, the stand-in replacement attorney advised the Commission that if the hearing was extended for seven days and the applicant made any remarks that were different than in the

record, you automatically had to reset the hearing record for another seven days so others have the opportunity to respond to those remarks. Your Planning Commission Chairperson has refused to apply that “new evidence” rule repeatedly. Either she is prejudiced by her ideas of whom she should listen to before she votes and/or she needs to take a serious set of classes in civil rights and property rights considerations in public hearings. Bear in mind U.S. Constitution on its first amendment, Fifth Amendment, and 14th amendment have extensive legal cases talking about the protection you have in the United States from government wrongful acts under those constitutional amendments. I appreciated the approach the stand-in attorney was counseling to the Commission.

Put another way, currently some in the town believe if you are not a friend of Keith Mays and/or following his prejudices or his “dictates” for that hearing, those citizens are considered a second-class participant in the land use planning process. Look how poorly the turn out is for public meetings and hearings. The Planning Commission members are free agents—not subject to listening solely to what other members of the Commission may be testifying to while an application is in process. Planning Commission members are supposed to be neutral observers. If bias creeps into the land use process for any of the Commission members, there is a process for recusal. As “judges” in a process, if you have bias, you must recuse yourself instead of taking a “can they prove my bias?” approach. And if a member has an open dislike for the applicant or any opponents they have no business sitting there because they have bias or conflicts of interest that precludes them being a judge with a vote in these public hearings.

Let me make some general observations.

Generally, is a rule of thumb in the suburban areas, industrial land is worth about five dollars a square foot. In order to find out the estimated value for a parcel of ground multiply the five dollars times 43,560 ft.<sup>2</sup>. That is not advance math. It's simple arithmetic. One acre (43,560 sqft.) multiplied by \$5/sf = \$217,800 in value for the industrial acre.

As a simple example, the present Walmart site which was purchased for \$15 a square foot per acre of land was zoned light industrial. We do not know, and neither does the Planning Commission, who paid for the right-of-way of Langer Farms Pkwy and the construction of that road including the turnabout etc. but it appears for all practical purposes it was a combination of monies from the Urban Renewal Agency, Washington County MSTIP funds, and city street funds.

And understand in addition to paying \$15-\$25 per square foot for the land right-of-way, the road construction runs about \$1500 per linear foot to construct a collector Street.

The \$5/sq.ft industrial land zoned the Langer Family LLC sold to Wal-Mart roughly for \$15/sq.ft. – not an insignificant increase in value for the Wal-Mart 15 Acre Parcel. Generally, the price increase for the industrial land is \$10/sf for 15 acres of 43,560 sq.ft.per acre:

$$\$10/\text{sf increase} \times 43,560 \text{ sf} \times 15 \text{ acres} = \$6,534,000 \text{ increase received}$$

We now have a new Urban Renewal Agency district that is allowing for \$166.6 Million in indebtedness for 30 years. The old Urban Renewal Agency was supposed to remove the pollution from the cannery site and build a \$20 Million Performing Arts Center. Instead, monies went to enhance other projects like the Langer Farms Parkway infrastructure and development. We were to have an outstanding regional community art center, a cleaned-up cannery site and an enhanced central business district to revitalize historic Old Town. Instead, we encouraged a retail category killer like Wal-Mart to come to Sherwood. Our Historic Old Town businesses and district are still feeling the negative effects.

Further the Planning Commission is being asked to believe that a Langer LLC is a Langer LLC is a Langer LLC and any Langer LLC or Corporation should benefit from an expired development agreement that the Langer Family LLC and Clarence and Pam Langer and the City of Sherwood had several years ago so illegal zoning in a light industrial area can still obtain 27-year-old zoning uses. That's laughable. The implication is that this applicant has a corner on LLCs for the state of Oregon and that LLC ownership is not as complicated of subject of ownership of land as you can find in real property law. That's a glowing mistake to make. You need to get an attorney that is not Josh Soper, who works for the City Council, and



get an outside legal counsel find out of these are even the same applicants for this next massive bite at the apple Langers are attempting.

I don't know how to present the subject to this planning commission. The chairperson is constantly testifying on behalf of certain applicants and advocating for their project, that's my opinion and belief. She becomes animated in trying to explain the law that she has absolutely no legal background. Planning staff at times seems to be in the same position of practicing law and making legal interpretations.

Why do I mention that subject? Because Walmart is a category killer. They're proud of it and they love the fact that they are a mass merchandiser that has a profile of shoppers that is distinct, and clearly not the profile of the average citizen in Sherwood, that they service and service well with this attitude. And this particular profiler demographics was brought into Sherwood and even the police force admits they have to make extra trips there to monitor the activities at Walmart.

And now we have one of the worst cases I've ever seen a mix-and-match zoning.

We are going to match some kind of hotel, that has no frontage on the Pacific Highway, with a business commercial storage operation that is so large it is larger than the combined operations in the area, and we have little information about the impact of this from competent transportation engineers.

Now we have the applicant saying well they're not going to conflict with each other in their origin destination trips. They promise they are not going to double up on the available parking and I guess it's just a case of trust and believe me the sun will shine in the morning regardless. Then we have a 20-foot wall along Century Drive that is going to look like a fortress. We can and should do better than that—after all the town will be looking at the fortress for years to come if this application ultimately receives approval.

The enabling statute in the state of Oregon is very liberal on what is defined as a public use for urban renewal districts. But you still must promote and protect public health, safety, welfare and aesthetics but not the business interest of a special group over other groups under the dictates of our enabling statute. You are being asked to put together two zones, that in my opinion and belief, under their current structure are completely illegal.

The enabling statute does not anywhere say that a city has the right to restrict the rights of other property to land uses and then come back and grant non-permitted uses to a special applicant, were apparently has affiliations the rest of us don't.

Why am I writing this to you? Because I have never seen any individual, be accorded the favoritism in public hearings and in land use applications, even under our broad enabling statute in urban renewal statutory provisions without serious questioning of various acts that for the rest of us would be prescribed and frequently called illegal.

I am also objecting to the shortened time frame for the material submittals with an early 5 pm deadline. That is less than the full 7 days requested and granted. Please confirm that this information was received before the 5 pm deadline.

Sincerely,

Jim Claus

**From:** [clausl@aol.com](mailto:clausl@aol.com)  
**To:** [PlanningCommission](#)  
**Cc:** [Joy Chang](#); [Erika Palmer](#); [Eric Rutledge](#)  
**Subject:** LU 2022-012 SP, MM, CUP, LLA Langer Application Additional comments  
**Date:** Tuesday, July 5, 2022 4:51:16 PM  
**Attachments:** [We sent you safe versions of your files.msg](#)  
[Galati\\_email RE - Question about road SDCs and reimbursement.pdf](#)

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**TO:** Planning Commission Members  
**FR:** Jim Claus  
**RE:** LU 2022-012 SP, MM, CUP, LLA Langer Application

#### Additional comments

City employees enjoy very broad sovereign immunities and have wide and broad protections by the League of Cities City and County insurance program in the state of Oregon.

That should be kept in mind when reading documents such as the attached, because is it evident that staff and the mayor may be pushing this road infrastructure matter to litigation where interrogatory, deposition, and discovery is forced. Making false statements about infrastructure such as made in the enclosed documents can lead to charges that could be brought into court of law. The Planning Commission should understand clearly, much of what you are hearing is biased interpretation and potential political influence of someone(s) idea of who should have land use permits and who should not in the City of Sherwood. Worse than simply deciding who and who does not receive land use permits, and in a more serious category than possibly now known, there is the distinct possibility that the mayor has encourage staff to inflict certain development costs on his political opponents ("Throw the book at them") and use staff to endow political backers with substantial gifting of public money for the building of such as roads and infrastructure and purchase of the right-of-way.

Now caution would tell anyone to be careful treading such waters. Politicians and/or staff should not vicariously, with a "wink and a nod", or directly, take away the fundamental rights to due process and equal treatment for citizens. Citizens who may have been in Sherwood for two or three generations of families.

As an example, Who paid for Langer Parkway Road in the infrastructure improvements that went into an industrial area and transformed that area into a Retail Commercial shopping area? We really don't know. But it is a good guess that the money was taken out of the urban renewal funds that were to build the community art center and cleanup the pollution from the tannery in the first urban renewal grant, and other county and city street and infrastructre funds. A question like that is answered in deposition, interrogatory, discovery.

If you look at the enclosed letters, or memorandum from the Sherwood staff, in one case we must dedicate 50 feet of right-of-way and put in the center linear structure and "possibly, maybe" we will get a refund for the additional 14 feet and extra construction costs. On a road that is not wanted, needed or the responsibility of that land. But read the memorandum carefully from this individual who clearly has favorites in the city, and you will realize you don't know the full scope and extent of what is being suggested. And then read the other memorandums back and forth. They are the classic vague answers that can lead to entropy and chill potential activity on selected or targeted properties. Why? Because a landowner or aggrieved party would have to spend between \$50,000 and \$150,000 at a minimum on attorney's fees, engineers, surveyors, environmental studies etc. before an applicant can come into a meeting and have an infrastructure question finalized such as "who will pay for Cedar Brook way" a city designated road.

Why do I bring that up in a Langer hearing? Well, it's simple- our piece of property we've been talking about has two deeded exit and entrances to 99W and it has a third easement that is a separate parcel property that has the clear language of okaying or rejecting a frontage road, such as the city engineer's purported Cedar Brook Way road, that has been developed at the demands of the city engineer. Multiple reasons are suggested. It is hard to believe that any competent urban land use planner with any economic training could try to create obstacles in the development of the road back into itself along these Highway properties between Meinecke Road and Sunset Blvd. Unbiased commissioners and council members could guess at least one reason for the obstacle(s).

What is the obvious reason for wanting to create restraints against alienation and create obstacles to the development of this highly valuable property as zoned with confused public infrastructure? Even Washington County's assessor's office with their mass appraisal techniques cannot deal with local municipality infrastructure confusion. Their appraisals were made under the assumption that you didn't have a city engineer attempting to engineer obstacles to development by both cutting the size of the parcels and their availability and inflicting devastating costs on these properties to build. Again, staff has responsibilities to clarify infrastructure requests and not tie up significant portions of valuable property in Sherwood while other properties are allowed to develop.

Clearly, beyond a shadow the doubt, the left hand doesn't know what the right hand is doing. In the end, in my opinion and belief, it should not be a forceful politician or staff "engineering" infrastructure obstacles or restraints on trade or alienation of property to favor some properties to develop while others are restrained.

Again, I am objecting to the 5 pm deadline today for these comments.

Sincerely, Jim Claus

**From:** GalatiB@SherwoodOregon.gov,

**To:** clausssl@aol.com, HajdukJ@SherwoodOregon.gov,

**Cc:** AbdillK@SherwoodOregon.gov, ChristensenC@SherwoodOregon.gov,

**Subject:** RE: Question about road SDCs and reimbursement

**Date:** Fri, Sep 17, 2021 11:46 am

**Attachments:**

---

Susan,

Karen forwarded your request on to me for SDC/TDT credits eligibility information. I've tried to provide you with the information that would answer your inquiry. Please let me know if you have any specific questions about this information.

City of Sherwood System Development Charges (SDCs) and related credits are predicated on Chapter 15.16 – System Development Charges of the City's Municipal Code. Applicable Credit requirements are listed in Section 15.16.100 of Chapter 15.16. The specific language of the MC section is shown below for your reference.

#### **15.16.100 - Credits**

*A. Credit may be applied to the system development charge to the extent that prior structures or uses existed, city services were established to those structures or uses, and said structures or uses had previously paid the applicable system development charge in effect at the time the structure or use was established. Except as provided in subsection F of this section, credits may not exceed the calculated system development charge. Refunds may not be made on account of such excess credit.*

*B. Credit shall be given for the cost of a qualified public improvement, as defined by [Section 15.16.040](#) of this chapter. Except for transportation improvements, if a qualified public improvement is located partially on and partially off the parcel or parcels that are the subject of the development approval, the credit shall be given only for the cost of the portion of the improvement not located on or wholly contiguous to the property. For transportation improvements, credit may also be given for the cost of the portion of the improvement located on or contiguous to the property. The terms of this subsection may be modified by the authorizing resolution described in [Section 15.16.050](#) of this chapter to the extent that credit provisions are made less restrictive.*

*C. The credit provided for by this section shall be only for the improvement charges for the type of improvement being constructed and, except as provided in subsection B of this section, shall not exceed the improvement charge even if the cost of the capital improvement exceeds the applicable improvement charge. Credits shall not be provided for reimbursement charges.*

*D. The qualified public improvement must be designed and constructed to provide additional capacity to meet projected future capacity needs created by the development. Improvements that address capacity deficiencies existing at the time of development are not eligible for credit. In the case of improvements addressing both future and existing capacity needs, only that portion providing future capacity is eligible for credit. The terms of this subsection may be modified by the authorizing resolution described in [Section 15.16.050](#) of this chapter to the extent that credit provisions may be made less restrictive.*

*E. The city manager must determine that the timing, location, design, and scope of the proposed improvement is consistent with and furthers the objectives of the capital improvement programs of the city. The city manager may use priorities established by the city council in the city's capital improvement plan, the information contained in the city's comprehensive plan and various public facility master plans, the advice of the city's engineering, public works, and planning staff, and other relevant information and data in making this determination. The city manager must also determine*



that the improvement is required to fulfill a condition of development approval issued by the city and is included in the city's adopted public facility plans.

F. Except as provided in this subsection, excess credit may not be transferred from one development to another.

1. In the case of a multi-phased development, excess credit generated in one phase may be used to offset applicable system development charges in subsequent phases.
2. Upon written application to the city manager, excess credits may be reapportioned from one lot or parcel to another lot or parcel within the confines of the property originally eligible for the credit. The reapportionment shall be noted on the original credit form retained by the city.
3. Upon written application to the city manager, excess credits may be transferred to another lot or parcel that is adjacent to and served by the transportation facility that generated the credits.

G. Credit may not be transferred from one of the types of capital improvements defined by [Section 15.16.040](#) of this chapter and authorized by a resolution, to another type of capital improvement authorized by a different resolution.

H. All credit requests must be in writing and filed with the city manager no more than ninety (90) days after acceptance by the city of the qualified public improvement. Improvement acceptance shall be in accordance with the practices, procedures and standards of the city. At the time the city accepts the qualified public improvement, the city shall provide written notice to the person making the improvement that the improvement may qualify for credit under this section. The notice shall state that a credit request must be filed within 90 days of the date of acceptance.

I. The amount of any credit shall be determined by the city manager and based upon the subject improvement's construction contract documents, or other appropriate information provided by the applicant, and verified and accepted by the city. Notwithstanding the contract amount, the credit may not exceed prevailing market rates for similar projects, as determined by the city.

J. In the case of rights-of-way, easements, or other land associated with the improvement, value shall be established by sales documents, formal appraisal provided at the developers cost, by county assessors records, or some other method deemed acceptable to the city. Notwithstanding actual sales price, the credit may not exceed prevailing market rates for similar projects, as determined by the city.

K. Credit shall be provided to the applicant on a form provided by the city. The original of the credit form shall be retained by the city. The credit shall state a dollar amount that may be applied against any applicable system development charge imposed against the subject property. Excess credit may not be redeemed for cash or a cash-equivalent.

L. All requests for redemption of credits must be submitted not later than the issuance of a building permit or, if deferral was permitted pursuant to [Section 15.16.090](#) of this chapter, issuance of an occupancy permit. The permittee is solely responsible for presentation to the city of any credit redemption request and no credit redemption request shall be accepted after issuance of a building permit or, if deferral was granted, issuance of an occupancy permit. In no event is a subject property entitled to redeem credits in excess of the system development charges imposed.

M. Credits shall not be allowed more than seven years after the acceptance of the applicable improvement by the city. Extensions of this deadline may not be granted.

N. Upon annexation of affected parcels of land, credits previously issued by Washington County will be honored by the city.

In particular, Sub-Sections D., I. and J. appear to be the focus of your question for City SDC credits. However, to try and answer your question with specificity cannot be accomplish as the value of the public improvement construction cost is not known. The same can be said regarding the value of any land that was dedicated to the City as right-of-way.

What I can say is that the value of any credit eligible constructed or dedicated improvements can meet or exceed the amount of any individual SDC fee assessment, implied by Sub-Section K. The regulations allow the retainage of the



excess credits as noted on Sub-Section L.

So the best answer I can provide you with relation to City SDC credits issued under Section 15.16.100, is that a portion or all of a particular City SDC fee can be offset based on the construction or dedication value of eligible public improvements for which a Credit Voucher is issued.

### **City Parks SDC Municipal Code Language**

City Parks System Development Charges (SDCs) are dealt with in a separate section of Chapter 15, specifically Chapter 15.20 – Parks and Recreation System Development Charges on New Development.

Within this Chapter, Subsection 15.20.060 – SDC Credits provides the specific information relative to your inquiry.

#### **15.20.060 - SDC Credits**

*A. The city shall grant a credit against the parks and recreation SDC, which is otherwise assessed for a new development, for any qualified public improvement(s) constructed or dedicated as part of that new development. The applicant bears the burden of evidence and persuasion in establishing entitlement to an SDC Credit and to a particular value of SDC credit.*

*B. To obtain an SDC credit, the applicant must specifically request a credit prior to the city's issuance of a building permit for the new development. In the request, the applicant must identify the improvement(s) for which credit is sought and explain how the improvement(s) meet the requirements for a qualified public improvement. The applicant shall also document, with credible evidence, the value of the improvement(s) for which credit is sought. If, in the administrator's opinion, the improvement(s) is a qualified public improvement, and the administrator concurs with the proposed value of the improvement(s), and SDC credit shall be granted. The value of the SDC credits under this section shall be determined by the administrator based on the cost of the qualified public improvement, or the value of land dedicated, as follows:*

- 1. For dedicated lands, the value shall be based upon a written appraisal of fair market value by a qualified, professional appraiser based upon comparable sales of similar property between unrelated parties in an arms-length transaction;*
- 2. For improvements yet to be constructed, value shall be based upon the anticipated cost of construction. Any such cost estimates shall be certified by a professional architect or engineer or based on a fixed price bid from a contractor ready and able to construct the improvement(s) for which SDC credit is sought;*
- 3. For improvements already constructed, value shall be based on the actual cost of construction as verified by receipts submitted by the applicant;*
- 4. For all improvements for which credit is sought, only the fraction of over-capacity in the improvement is eligible for SDC credit.*

*C. The administrator will respond to the applicant's request in writing within twenty-one (21) days of when the request is submitted. The administrator shall provide a written explanation of the decision on the SDC credit request.*

*D. If the applicant disputes the administrator's decision with regard to an SDC credit request, including the amount of the credit, the applicant may seek an alternative SDC credit calculation under [Section 15.20.070](#) Any request for an alternative SDC credit calculation must be filed with the administrator in writing within ten calendar days of the written decision on the initial credit request.*

*E. Where the amount of an SDC credit approved by the administrator under this section exceeds the amount of the parks and recreation SDC assessed by the city upon a new development, the excess credit may be applied against parks and recreation SDC's that accrue in subsequent phases of the original development project. Any excess credit must be used not later than ten years from the date the credit is given. (01-1118.§6)*

### **Washington County Transportation Development Tax**



The following information is taken for the Washington County TDT Procedures Manual, which provides the guidance on valuation of TDT eligible credits.

### 3. Credits Option

*A development applicant may hold TDT credits received for constructing eligible transportation improvements. A detailed explanation of the credit provisions is provided in Section IV of this Procedures Manual. If Credits are granted, developers are issued credit vouchers in a specific dollar amount. These credit vouchers must be submitted no later than the time of issuance of a Washington building permit, or if deferred, at the time of occupancy permit, for payment of the TDT obligation. This section discusses the procedures used to process credits used to satisfy payment of the TDT.*

*3.17.080 Credit Application and Administration. H. Any credit must be redeemed not later than the issuance of the building permit or, if deferral was permitted pursuant to Section 3.17.060, issuance of the occupancy permit. The applicant is responsible for presentation of any credit prior to issuance of the building or occupancy permit. Except as provided in Section 3.17.110, under no circumstances shall any credit redemption be considered after issuance of a building permit or, if deferral was granted, issuance of an occupancy permit.*

*a. The applicant for a building permit is required to submit a copy of the credit voucher. If TDT has been deferred to occupancy, the credit voucher must be submitted prior to occupancy. The applicant is responsible for timely presentation of any credit, and no credit shall be considered after issuance of a building permit or, if deferral was granted, issuance of an occupancy permit. Note: While it is the applicant's responsibility to submit the credit voucher, the jurisdiction will normally keep track of available credit vouchers.*

*b. However, according to the program's refund policies (Section III.D), a refund shall be granted because of failure to claim a credit at the time of building permit issuance or building occupancy if the request is made in writing within 30 days of payment.*

*3.17.110 Refunds. Refunds of the TDT may be made upon initiation of the Director, or upon written application filed with the Director. Refunds shall be allowed upon a finding by the Director that there was clerical error in the calculation of the TDT. Refunds shall be allowed for failure to redeem a credit voucher or offset, provided the claim for refund is in writing and actually received by the appropriate jurisdiction within thirty days of the date of issuance of the building permit, or occupancy permit if deferral was granted. No refund shall be granted for any reason other than those expressly provided for herein.*

*c. Submittal of a valid credit voucher shall be considered payment of the TDT in the amount of the credit. The rate assessed to a building permit is the rate in effect at the time the credit voucher is submitted. d. The amount of the TDT paid through credits is subtracted from the outstanding credit balance and noted on the jurisdiction's master credit form. Note: No refund is allowed for TDT credit vouchers that exceed the TDT obligation. e. Credits expire ten years after issuance. No extension of this deadline shall be granted. f. Upon annexation, credits previously issued by the County shall be honored by the jurisdiction collecting the tax, provided that the credit voucher is redeemed in accordance with the rules listed above.*

## IV. TDT CREDIT ELIGIBILITY PROCEDURES

### INTRODUCTION

*This section describes the Transportation Development Tax (TDT) credit procedures. These procedures are utilized for determining whether an improvement project constructed by a developer may be eligible for credit, and if so how much credit. The information is provided to assist jurisdictions in implementing the credit provisions of the TDT and has largely been abstracted from the countywide TDT Ordinance as adopted in the Washington County Code. IV.A. GENERAL CREDIT PROVISIONS The Transportation Development Tax (TDT) program provides opportunities for a developer to construct capacity or safety improvements to eligible transportation facilities and receive credit for those costs. Credits may be redeemed against the amount of the TDT otherwise due for that development. To receive a credit, an applicant must submit a request for TDT credit when it completes an improvement. Staff reviews the request in order to assure that the project meets eligibility requirements and that the actual construction costs incurred are reasonable. If all criteria are met,*

the jurisdiction will issue credits for the applicable properties. Credits are valid for ten years from the date of issuance, and are attached to specific property unless transferred, as allowed. Developers of the subject properties may submit credit vouchers in lieu of payment of the TDT.

The following provisions apply to any credit application:

3.17.070 Credit. An applicant for a building permit, or occupancy permit if deferral has been granted, shall be entitled to a credit against the tax for constructing eligible capital improvements as defined in this section. Credit eligibility shall be determined by the Director.

A. A transportation capital improvement constructed on a public road or transit facility, and accepted by the jurisdiction operating the facility, is eligible for credit provided it meets all the following criteria, and the requirements of either 3.17.070(B) or (C):

1. The Director determines that the timing, location, design and scope of the improvement is consistent with and furthers the objectives of the capital improvement program of the jurisdiction issuing the credit. 2. The improvement is required to fulfill a condition of development approval issued by the jurisdiction with land use decision making authority.

3. The improvement must provide additional capacity to meet future transportation needs, or be constructed to address an existing safety hazard. Improvements to mitigate a safety hazard created primarily by the development are not eligible.

4. Improvements which primarily function as access to a private street, driveway or development parcel are not eligible.

5. The applicant shall have the burden of demonstrating in its application for credit that a particular improvement qualifies for credit.

6. Improvements, including travel lanes and bike lanes, must be at ultimate alignment, line and grade. 7. New roads are eligible projects as long as they meet the remaining project eligibility criteria. An existing dirt or gravel road is deemed new if its daily traffic volume is below two hundred vehicles per day.

8. Bike lanes are eligible if required pursuant to applicable street or road standards.

9. No credit shall be granted for utility relocation except for that portion which otherwise would have been the legal obligation of the jurisdiction pursuant to a franchise, easement or similar relationship.

10. No credit shall be granted for minor realignments not designated on the comprehensive plan.

11. No more than 13.5 percent of the total eligible construction cost shall be creditable for survey, engineering, and inspection.

12. No credits shall be granted for storm sewer improvements that are also eligible for storm water SDC credits.

Several important highlights to these general provisions:

- The improvement must be required to fulfill a condition of the development approval.
- The improvement must add transportation capacity to the public road or transit system or mitigate an EXISTING safety hazard. Improvements to mitigate a safety hazard created by the development are not eligible.
- An improvement that primarily functions as a private access is not eligible.

An improvement is only eligible for credit if all the general provisions are met. If a portion of the improvement meets the general provisions, only that portion of the improvement is eligible.

As with the City's SDC Credit eligibility, to try and answer your question with specificity cannot be accomplish as the value of the public improvement construction cost is not known. The same can be said regarding the value of any land that was

dedicated to the City as right-of-way.

So the best answer I can provide you with relation to WACO TDT credits issued under Section 3.17.070, is that a portion or all of the WACO TDT fee can be offset based on the construction or dedication value of eligible public improvements for which a Credit Voucher is issued.

Bob Galati, PE

*City Engineer*

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**From:** Karen Abdill <AbdillK@SherwoodOregon.gov>  
**Sent:** Thursday, September 16, 2021 8:30 AM  
**To:** Susan Claus <clausl@aol.com>  
**Cc:** Craig Christensen <ChristensenC@SherwoodOregon.gov>; Bob Galati <GalatiB@SherwoodOregon.gov>  
**Subject:** RE: Question about road SDCs and reimbursement

Hi Susan. While we in the Building Department collect the SDC fees when we issue new home permits; those fees and credits are all calculated by our Engineering Department.

I'm copying Craig and Bob from Engineering on this message. They will be the department to answer your questions.

Take care,

Karen

*Karen Abdill*

Lead Building Permit Specialist

City of Sherwood

503-625-4226



Home of the Tualatin River National Wildlife Refuge

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**From:** [clausssl@aol.com](mailto:clausssl@aol.com) <[clausssl@aol.com](mailto:clausssl@aol.com)>  
**Sent:** Wednesday, September 15, 2021 6:02 PM  
**To:** Karen Abdill <[AbdillK@SherwoodOregon.gov](mailto:AbdillK@SherwoodOregon.gov)>  
**Subject:** Re: Question about road SDCs and reimbursement

**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.

Hi Karen--

I have a couple questions about SDCs and the city's reimbursement process.

How much per residential lot would there be for reimbursement on any road improvement that meets the city's criteria for reimbursement? Estimated from 1700 sq.ft. house, 3 bed, 2.5 baths with two car garages.

What is that process to apply for and receive the reimbursement?

The example I am wondering about would be the 27 residential lots in the back of our property if Cedar Creek Way was extended. What SDC categories could apply toward the reimbursement: county TDT, city collector road SDC, etc.

If there were apartments, how much road SDC per unit estimated?

Thank you for your help.

-- Susan





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July 5, 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: Chestnut Inn and Parkway Village South Self Storage Land Use Applications  
City of Sherwood Case File LU 2022-012-SP/MM/CUP/PLA  
Applicant's First Open Record Period Submittal**

Chair Simson and Members of the Planning Commission:

This office represents the Langer family regarding the land use applications to develop the Chestnut Inn and Parkway Village South Self-Storage (City of Sherwood Case File LU 2022-012-SP/MM/CUP/PLA) ("Application"), which is pending before the City of Sherwood ("City") Planning Commission. This letter constitutes the first open record submittal by the applicant and responds to opposition testimony presented by Jim Claus in his letter dated June 27, 2022. For the reasons explained below, the contentions raised by Mr. Claus lack merit. Further, the Planning Commission recently denied nearly identical contentions raised by Mr. Claus when the Planning Commission approved the Sentinel Storage II Site Plan Modification application (City Case File LU 2022-004 MM). There is no legal basis to reach a different conclusion in this proceeding. Therefore, the Planning Commission should deny Mr. Claus' contentions and approve the Application.

- I. Applicant's Response: Mr. Claus' contentions misconstrue the law and facts.**
  - A. 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

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not to exceed 10 years for how long vesting under the subdivision lasts. ORS 92.040(3). 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”), govern development on the property for a 10-year period of time ending in 2022. That is the beginning and the end of the analysis required under ORS 92.040(2) and (3) in this case.

Mr. Claus mistakenly contends that when the Development Agreement expired in 2017, the standards vested under ORS 92.040 also expired. 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 use election under the local code provision memorialized in the Development Agreement constituted an election of standards 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 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.

**B. Mr. Claus’ hypothetical development scenario is distinguishable from the present case.**

Additionally, the Planning Commission need not worry itself with the hypothetical scenario identified in Section 2 of Mr. Claus’ letter because the Planning Commission’s task is to decide about the actual Application, not a hypothetical one. 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.

**C. Mr. Claus misapplies the *Group B* decision.**

Correctly construed, the Land Use Board of Appeals (“LUBA”) stated in *Group B, LLC v. City of Corvallis*, \_\_\_ Or LUBA \_\_\_ (LUBA No. 2015-019, August 25, 2015) 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.

**D. Contrary to Mr. Claus’ contention, the 2017 subdivision of the subject property did not disrupt the vesting granted by the 2012 subdivision.**

In the 2017 subdivision/site plan decision for the subject property, the Planning Commission adopted findings stating that: (1) the 2012 decision vested the standards at the time of application for 10 years; and (2) pursuant to that vesting, uses allowed on the subject property in 2012 would still be permitted after the 2017 subdivision. See pp. 2, 17, 18 of Notice of Decision for City Case File SP 17-01/SUB 17-03 (submitted by Mr. Claus into the record). These findings, which the Langers have relied upon in developing their investment-backed expectations for the subject property, provide the framework for analyzing the current Application. Further, the 2017 subdivision/site plan decision was not timely appealed and is now final. Challenging the findings of that decision in the present case would be an impermissible collateral attack on the 2017 decision. *Sahagian v. Columbia County*, 27 Or LUBA 341, 344 (1994) (arguments that challenge an

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unappealed prior decision are a collateral attack on that earlier unappealed decision). In short, the City has already determined that, notwithstanding the 2017 subdivision, the vesting of standards under the 2012 subdivision remains in effect, and that determination cannot be challenged in the present case.

**II. Conclusion.**

For all of these reasons, the Planning Commission should deny the contentions raised by Mr. 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. Please consider it before making your decision on the Application. The Langers reserve the right to submit additional argument and evidence in accordance with ORS 197.797 and the open record schedule established by the Planning Commission.

Thank you for your consideration of this request.

Very truly yours,



Seth J. King

cc: Eric Rutledge (via email)  
Carrie Richter (via email)  
Matt Langer (via email)  
AKS Engineering & Forestry (via email)