Job No.: TAS-01

Date: October 3, 2012

To: Brad Kilby, AICP

From: Keith Jones, AICP, LEED AP ND

Harper Houf Peterson Righellis Inc.
ENGINEERS ◆ PLANNERS
LANDSCAPE ARCHITECTS ◆ SURVEYORS

Project/Subject: **Langer Farms Phase 7 (SP 12-05/CUP 12-02)**
Recommended Condition #43 – Parking Landscaping Overhang

☐ Fax - Number:_____; Number of pages_____
(If you did not receive the correct number of pages, please call 503-221-1131)
☒ E-mail ☐ Mail ☐ Hand Deliver ☐ Interoffice

Background
Condition 43 is stated in the August 28, 2012 staff report recommendation to the Planning Commission as follows:

43. Prior to the issuance of building permits, the applicant shall provide a revised parking lot plan that demonstrates that the proposed overhang areas are provided in addition to the required on-site and perimeter landscaping.

Section 16.94.020(B) of the Sherwood Zoning and Community Development Code (SZCDC) requires a 20-foot deep stall with wheel stop placed three feet back from the head of the stall. This provides a 17-foot stall depth and three-foot vehicle overhang. In lieu of a 20-foot deep stall with wheel stop, the applicant has proposed a reduced stall depth and landscaping overhang. The applicant has proposed this in select locations of the site with an overhang that varies from 0.5-foot to 2.5 feet.

The staff analysis and finding on page 38 of the staff report indicates that these overhang areas cannot count towards required landscaping. Therefore Condition 43 was drafted by staff to require the applicant to demonstrate that the proposal complies with minimum landscaping amounts after deducting the landscape overhang areas.

Applicant Finding
The applicant has prepared the attached exhibit showing where these overhang areas are proposed along with the size of each area. The SZCDC Section 16.92.030 contains standards that are impacted by removing the landscaping overhang areas from required landscaping calculation. Compliance with these standards is demonstrated as follows:

1. <u>16.92.030(B)(1) – Parking and Loading Areas – Total Landscape Areas</u>
   This section requires that a minimum of 10% of paved parking area is dedicated to landscaping. The applicant's landscaping plans dated 7-9-12 indicate 61,509 square feet or 12.2% of the 506,030 square foot parking area is landscaped.

   The attached exhibit shows that 2,633 square feet of overhang was included as parking lot landscaping for the purpose of this requirement. After deducting this amount, the proposal will

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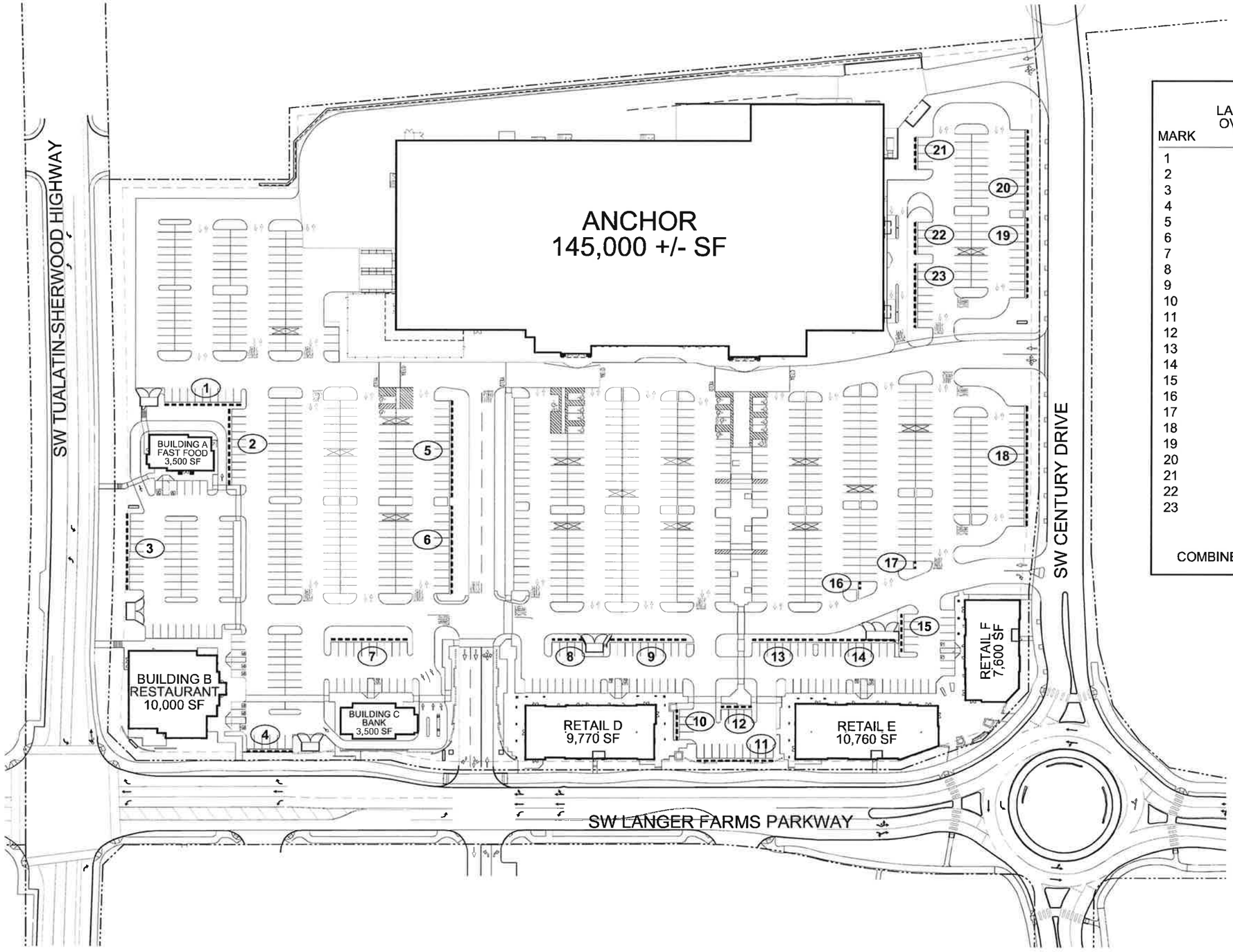
have 58,876 square feet of landscaping or 11.6% interior landscaping, and continues to exceed the 10% minimum amount.

2. 16.92.030(B)(3) - Parking and Loading Areas – Perimeter Landscaping
   A 10-foot wide perimeter landscape buffer is required between the parking area and the right-of-way. The attached exhibit shows the required landscape buffer as a dashed line as well as the location of the landscape overhang areas. In no case was the overhang used as part of the landscape buffer width. Further, Section 16.92.020(C) requires a 15-foot visual corridor on Tualatin-Sherwood Road. This 15-foot corridor is marked with the same dashed line as the required buffer. The overhang area does not encroach into the visual corridor as shown on the exhibit. Therefore the overhang area was not used as part of the required visual corridor or landscape buffer width.

3. 16.92.030(B)(4) - Parking and Loading Areas – Interior Landscaping
   This section requires that 50% of the required parking area landscaping is interior landscaping. The attached exhibit shows that 1,341 square feet of overhang area was counted towards this interior amount. The applicant's 7-9-12 landscaping plan indicates that 39,865 square feet, or 65%, of interior landscaping was proposed. After deducting the 1,341 square feet of overhang counted as interior landscaping, 38,524 square feet, or 65%, of interior landscaping is provided. Therefore the proposal continues to comply with this section.

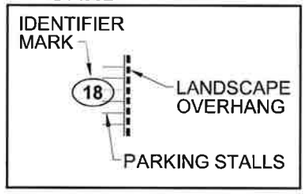
Request

As demonstrated by this memo and attached exhibit, the applicant complies with minimum landscaping requirements after parking lot landscaping overhangs are deducted. Therefore, Condition 43 is satisfied and the applicant respectfully requests that Condition 43 be removed from the staff recommendation to the Planning Commission.



MARK	LANDSCAPE OVERHANG DEPTH	AREA (PARKING AREA INTERIOR)	AREA (PARKING AREA PERIMETER)
1	2'-6"		225 S.F.
2	2'-6"		225 S.F.
3	2'-6"		225 S.F.
4	2'-6"		135 S.F.
5	0'-6"	57 S.F.	
6	0'-6"	51 S.F.	
7	2'-6"	225 S.F.	
8	2'-6"	90 S.F.	
9	2'-6"	225 S.F.	
10	2'-6"		90 S.F.
11	2'-6"		225 S.F.
12	2'-6"	90 S.F.	
13	2'-6"	180 S.F.	
14	2'-6"	224 S.F.	
15	2'-6"	113 S.F.	
16	0'-6"	5 S.F.	
17	0'-6"	5 S.F.	
18	0'-6"		71 S.F.
19	0'-6"		48 S.F.
20	0'-6"		48 S.F.
21	0'-6"	19 S.F.	
22	0'-6"	19 S.F.	
23	0'-6"	38 S.F.	
	TOTALS:	1,341 S.F.	1,292 S.F.
	COMBINED TOTAL:	2,633 S.F.	

LEGEND



1 LANDSCAPE AT CAR OVERHANGS

1" = 60'

NORTH

0 30' 60' 120' 180'

1" = 60'

TILAND / SCHMIDT
ARCHITECTS, P.C.
3611 S.W. HOOD AVE.
SUITE 200
PORTLAND, OR 97239
(503) 220-8511
FAX (503) 220-8518

GRAMOR DEVELOPMENT

LANGER FARMS PHASE 7
SW TUALATIN-SHERWOOD ROAD AND SW LANGER FARMS PARKWAY
SHERWOOD, OREGON
LANGER GRAMOR LLC
LAND USE SET

PROJECT NO.
11364

DATE :
09-28-12
DRAWN BY :
CDO
CHECKED BY :

REVISIONS

A
0.4

SP 78

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to separate testimony

Job No.: TAS-01

Date: October 3, 2012

To: Brad Kilby, AICP

From: Keith Jones, AICP, LEED AP ND

Harper Houf Peterson Righellis Inc.
ENGINEERS ◆ PLANNERS
LANDSCAPE ARCHITECTS ◆ SURVEYORS

Project/Subject: **Langer Farms Phase 7 (SP 12-05/CUP 12-02)**
Recommended Conditions #51 and #52
ODOT 99W Requirements

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(If you did not receive the correct number of pages, please call 503-221-1131)
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Background
Conditions 51 and 52 are stated in the August 28, 2012 staff report recommendation to the Planning Commission as follows:

51. *The northbound right turn lane on Highway 99W onto Sherwood Boulevard will exceed the available storage (625' versus 415'). The applicant shall Increase the right turn storage length from 415' to 625'. The improvement shall also include the associated deceleration lane distance.*

52. *The northbound left turn lane on Highway 99W onto Roy Rogers Road will exceed the available storage (525' versus 490'). The applicant shall Increase the left turn storage length from 490' to 535'. The improvement shall also include the associated deceleration lane distance.*

These conditions were drafted based on the first ODOT letter dated August 31, 2012 from Seth Brumley. These conditions were recommended by ODOT since the project may be open prior to the County-funded (MSTIP 3D) Tualatin-Sherwood Road Improvement project being constructed. However, if the County's project is in place prior to this project opening, these improvements are not required. Therefore, Seth Brumley of ODOT issued an updated letter dated September 18, 2012. This letter gave the option of either constructing these improvements, or phasing the project so that these improvements would not be needed.

Request
The updated September 18, 2012 letter from ODOT gives the option to phase the project until the County-funded Tualatin-Sherwood Road project is in place. Therefore the applicant requests that Conditions 51 and 52 are modified to be consistent with the updated ODOT recommendation. The applicant requests the following modifications to these conditions:

51. The northbound right turn lane on Highway 99W onto Sherwood Boulevard will exceed the available storage (625' versus 415'). The applicant shall <u>either</u> increase the right turn storage length from 415' to 625', <u>open the project after the County MSTIP 3D project is in place, or phase the project so the traffic generated does not exceed the existing available storage.</u> The improvement<u>, if needed</u>, shall also include the associated deceleration lane distance.

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52. The northbound left turn lane on Highway 99W onto Roy Rogers Road will exceed the available storage (525' versus 490'). The applicant shall either Increase the left turn storage length from 490' to 535', open the project after the County MSTIP 3D project is in place, or phase the project so the traffic generated does not exceed the existing available storage. The improvement, if needed, shall also include the associated deceleration lane distance.

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October 4, 2012

VIA EMAIL

Brad Kilby, AICP
Senior Planner
City of Sherwood
Sherwood City Hall
22560 SW Pine Street
Sherwood, OR 97140

Re: Land Use Applications for Langer Farms Phase 7 Shopping Center (City of Sherwood File Nos. SP 12-05/CUP 12-02); Proposed Findings and Condition Relating to Trip Generation

Dear Brad:

This office represents Langer Gramor LLC, the applicant requesting approval of the above-referenced applications. Attached please find proposed findings and a revised Condition 27 relating to trip generation from the proposed development. These findings correspond with the revised data submitted to the City of Sherwood ("City") in a memorandum from Kittelson & Associates, Inc. dated October 1, 2012, as well as with forthcoming testimony that the applicant will submit responding to comments from the public regarding potential traffic impacts.

The attached findings and condition address the City's concern that the applicant consider and document the full range of likely uses in the anchor store and ensure that the ultimate development of the site not exceed the trip impacts of the applicant's Traffic Impact Analysis without further study. Further, the data, findings, and condition demonstrate compliance with applicable standards at this stage of approval for a variety of ITE Land Use Codes, which offers additional certainty to all parties and obviates the need for future processes unless the applicant modifies the development program in a manner that will increase trip generation from the site.

Please review these materials in advance of our meeting on Monday, where we can discuss these issues in more detail.

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PALO ALTO · PHOENIX · PORTLAND · SAN DIEGO · SAN FRANCISCO · SEATTLE · SHANGHAI · WASHINGTON, D.C.
Perkins Coie LLP

Please place a copy of this letter and its attachments into the official Planning Department file for this matter and place a copy before the Planning Commission before the close of the record. Thank you for your consideration of these materials.

Very truly yours,

Seth J. King

Enclosure

cc: Bob Galati (via email) (w/encl.)
Jason Waters (via email) (w/encl.)
Chris Crean (via email) (w/encl.)
Matt Grady (via email) (w/encl.)
Chris Brehmer (via email) (w/encl.)
Keith Jones (via email) (w/encl.)

CITY OF SHERWOOD FILE NOS. SP 12-05/CUP 12-02

PROPOSED FINDING:

The applicant submitted a Traffic Impact Analysis (TIA) performed by Kittelson & Associates, Inc. ("Kittleson") dated July 2012, with an amendment to the initial analysis submitted on August 12, 2012, a supplemental operations and queuing analysis from Kittelson dated September 11, 2012, and a second supplemental analysis from Kittelson dated October 1, 2012. The initial TIA and related amendments and supplements addressed impacts from the development on the City, County, and State transportation systems. The City's on-call traffic engineer, DKS Associates, Washington County Traffic Engineers, and State of Oregon DOT Traffic Engineers have reviewed the proposed traffic impacts of the development. Corresponding review comments and conditions are noted below.

The TIA identifies that the intersection of Highway 99W and Tualatin-Sherwood Road would reach a volume to capacity (v/c) ratio of 1.05 during peak hours with the applicant's proposed development (including the construction of off-site improvements such as the Langer Farms Parkway/Adams Avenue northern extension). Based on ODOT standards this level of congestion exceeds the mobility targets of the Oregon Highway Plan (OHP), listing a standard v/c of 0.99. However, this intersection is programmed and funded to be improved in the near future (2014) through the Washington County MSTIP capital improvement project (CIP) for Tualatin-Sherwood Road. Analysis of the traffic impacts with all of the proposed off-site improvements including the County's capital improvement of Tualatin-Sherwood Road reduces the v/c to 0.92 during peak hours and complies with the OHP mobility targets. Two conditions (Conditions 51 and 52) have been recommended to ensure that the project meets the OHP mobility targets.

According to the TIA, the proposed development will generate a maximum of 760 net new weekday PM peak hour trips. In the TIA and its amendments and supplements, Kittelson has determined that, subject to completion of the identified mitigation measures, the proposed development will not adversely affect the surrounding street system or any study intersections. In a memorandum dated _____, DKS Associates has concurred with Kittelson's analysis and conclusions.

The applicant's TIA was based on an assumed use under the Institute of Transportation Engineers (ITE) Code 820 ("Shopping Center") for the majority of the site. Staff finds that the applicant's assumed use of Shopping Center is reasonable for two (2) reasons. First, the use satisfies the description of the "Shopping Center" land use set forth in ITE *Trip Generation*, 8th Edition at page 1497, which reads as follows:

> "A shopping center is an integrated group of commercial establishments that is planned, developed, owned and managed as a unit. A shopping center's composition is related to its market area in terms of size, location and type of store. A shopping center also provides on-site parking facilities sufficient to serve its own parking demands. Specialty retail center (Land Use 814) and factory outlet center (Land Use 823) are related uses."

As set forth on the site plan, the applicant is proposing an integrated retail center, with seven (7) buildings that will share access, circulation, and parking. The applicant is planning and developing these buildings as a single project. Additionally, the applicant currently owns the entire site and it will operate under a common set of covenants, conditions, and restrictions. Therefore, staff finds that the proposed development is consistent with the ITE description of "Shopping Center."

Staff also finds that classifying the subject development as a "Shopping Center" is consistent with the City's treatment of the majority of the Langer Marketplace, which is located across the street from the subject property, as a "Shopping Center" at the time of its site plan approval in 2000. Like the subject development, Langer Marketplace includes a large retail anchor (Target) and related out pads with common access, circulation, and parking. Thus, for this additional reason staff finds that the "Shopping Center" classification is appropriate.

Finally, staff finds that the applicant's use of the "Shopping Center" use classification for the majority of the site is conservative because the TIA assumed a more intensive level of development than the applicant has actually proposed.

Staff finds that it is possible that, at the time of building permit, the applicant may propose a use in the anchor store that constitutes a different land use with different trip generation characteristics than a "Shopping Center." Accordingly, at staff's request, the applicant has also analyzed the traffic impacts of the anchor store under the trip generation rates applicable to two (2) other ITE land use categories that commonly apply to large-scale retail stores—"Free-Standing Discount Superstore" (ITE Code 813) and "Free-Standing Discount Store" (ITE Code 815). As set forth in Kittelson's second supplemental analysis dated October 1, 2012, the proposed development set forth in the applicant's site plan will generate 125 fewer net new weekday PM peak hour trips than the TIA reported if the anchor store constitutes a "Free-Standing Discount Superstore" and 10 fewer net new weekday PM peak hour trips than the TIA reported if the anchor constitutes a "Free-Standing Discount Store." In short, according to Kittelson's analysis, the development shown in the applicant's site plan will generate fewer net new weekday PM peak hour trips if the anchor is classified and analyzed as a "Free-Standing Discount Superstore" or "Free-Standing Discount Store" than if it is classified as a "Shopping Center" and the site is developed at the higher level of intensity reported in the TIA. DKS Associates has reviewed Kittelson's second supplemental analysis and has submitted a memorandum concurring with Kittelson's methodology and conclusions regarding the trip generation impacts of these two alternative uses.

Although Kittelson's second supplemental analysis also reported a single scenario that would cause the development to exceed the trip levels reported in the TIA, staff finds that this scenario is theoretical only and thus not a reliable estimate of the likely traffic impacts of the development. In that single scenario, which classified the anchor as a "Free-Standing Discount Store," the development would generate a 10-trip increase over the TIA in the weekday PM peak hour. Kittelson only offered the scenario for the sake of completeness and for the sake of analyzing a development consistent with the size assumed in the TIA. In fact, the scenario is not consistent with the applicant's site plan, which proposes to develop nearly 7,000 square feet less than the assumed development reported in the TIA and this scenario. *See* Sheets A0.1 and A0.2 dated July 9, 2012, of applicant's submittal. In short, the applicant is not requesting authorization

in this application to develop at the level of intensity reported in the scenario. Therefore, staff finds that the results of this scenario are not representative of the likely traffic impacts of the development and thus are not the basis to require additional traffic analysis or mitigation measures at this time. In order to ensure that the trip impacts of the development do not exceed the levels set forth in the TIA and thus do not rise to the level set forth in this single scenario, staff recommends the condition set forth below.

For these reasons, based upon the data and conclusions reported by Kittelson and concurred with by DKS Associates, staff finds that, whether the anchor store is developed as a Shopping Center (ITE Code 820), Free-Standing Discount Superstore (ITE Code 813), or a Free-Standing Discount Store (ITE Code 815), the applicant's proposed development set forth on site plan Sheets A0.1 and A0.2 (dated July 9, 2012) will not adversely impact the surrounding street system, subject to the mitigation measures identified in the staff report dated September 18, 2012, and subject to a condition limiting development to an amount that would not produce more net new weekday PM peak hour trips than the TIA.

In the event the applicant proposes an increase in the amount of the development or a change in the use of the anchor building from one (1) of the three (3) analyzed use categories in the TIA, a condition is warranted to ensure that the project does not create traffic impacts in the weekday PM peak hour over and above what is stated in the applicant's TIA.

Finally, staff finds that, contrary to testimony received from the public, the Fred Meyer Wilsonville development is not comparable to the subject site for purposes of analyzing trip impacts. Staff reaches this conclusion based upon the weight of the evidence in the record for three (3) reasons. First, as explained by the applicant in rebuttal testimony dated _____, the location, uses, density, and development program at the Wilsonville site are not comparable to the subject property. For example, the Fred Meyer site includes over 206,000 square feet of anchor and shopping center uses while the applicant is proposing only 173,130 square feet of such uses at the subject property. Additionally, the Fred Meyer site includes 60 units of multi-family housing, while the subject property does not include any housing. Furthermore, the Wilsonville site is located adjacent to higher volume roadways (SW Wilsonville Road and Interstate 5). Accordingly, due to location alone, the Wilsonville site serves as a regional draw. By contrast, the subject site is not in a location that is as accessible to traffic throughout the region, which will reduce its potential for generating traffic.

Second, there is no basis to require use of tenant-specific trip rates as used in Wilsonville because the applicant in this case does not have an identified tenant and, as explained above, has instead analyzed trip impacts based upon the likely uses of the anchor site, which for the reasons set forth in these findings, staff finds to be consistent with the ITE standards, which project traffic based upon use types and not tenant names. Additionally, staff notes that the Fred Meyer specific trip rate (4.95 trips per one thousand square feet) is actually lower than the trip rate for the anchor utilized in the applicant's TIA, which is 5.23 trips per one thousand square feet. In other words, the applicant has assumed greater trip impacts per square foot of anchor development than occurred at the Wilsonville site.

Third, the Fred Meyer TIA overstated the trip impacts of that site in order to be conservative. For example, that TIA calculated the trip impacts of the proposed office buildings as retail in

order to allow for possible future conversion to retail uses. Further, the Fred Meyer TIA assumed that the multi-family housing would develop at the highest possible rate for apartments, townhouses, or condominiums (ITE 231). Accordingly, the Fred Meyer TIA likely overestimated the actual trip impacts from the site. Therefore, staff finds that the Wilsonville site is not comparable, and thus, the traffic impacts related to the Fred Meyer Wilsonville do not constitute substantial evidence to support any conclusions about the traffic impacts of the subject property.

This standard is met, subject to the condition set forth below.

PROPOSED CONDITION 27:

Maximum development on the site shall be limited so that it would not produce more than 760 net new trips in the weekday PM peak hour (4:00pm-6:00pm). In calculating the trips of individual buildings for purposes of this condition, the City shall utilize the respective ITE land use codes and trip generation rates identified in the TIA dated July 2012; the amendment dated August 12, 2012; the supplemental operations and queuing analysis dated September 11, 2012; and the second supplemental analysis dated October 1, 2012; unless the applicant proposes a change to a use classified under a different ITE land use code, in which case the City shall utilize the land use code and trip generation rate applicable to the new use as set forth in ITE *Trip Generation*, 8th Edition.

The City may allow development intensity beyond this maximum number of peak hour trips only if the applicant submits to the City, Washington County, and ODOT a supplemental traffic impact analysis that demonstrates that the proposed intensification of use would not adversely impact the surrounding street system or such adverse impacts are mitigated. The applicant shall seek and the City shall consider the supplemental TIA as a modification to the site plan in accordance with Zoning and Community Development Code 16.90.

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MEMORANDUM

DATE: October 5, 2012

TO: Bob Galati, City of Sherwood
Jason Waters, City of Sherwood

FROM: Chris Maciejewski, P.E., P.T.O.E.
Garth Appanaitis, EIT

SUBJECT: **Sherwood Transportation On-Call Task 3** P11117-003
Langer PUD Planning Review – Supplemental Trip Generation Comparison

---

Per your request, we have reviewed the supplemental trip generation comparison[1] provided for the proposed Langer Farms Phase 7 retail development. The analysis was provided to demonstrate if other retail land use categories that could occupy the "big-box" portion of the site would generate a comparable (or less than) amount of traffic as the level assumed in the transportation impact analysis (TIA), and would be consistent with the recommended transportation conditions of approval.

We reviewed the trip generation for the four new scenarios presented in Tables 2 through 5. Each scenario contained a combination of land uses generally similar to what was assumed in the TIA (big box store with supporting retail, bank, and food pads). The differentiating features of each scenario are:

- Table 2: Scenario 1 - Free-Standing Discount Superstore (ITE 813) – TIA Assumed Area
- Table 3: Scenario 2 - Free-Standing Discount Store (ITE 815) – TIA Assumed Area
- Table 4: Scenario 1 - Free-Standing Discount Superstore (ITE 813) – Current Site Plan Area
- Table 5: Scenario 2 - Free-Standing Discount Store (ITE 815) – Current Site Plan Area

The primary difference between ITE 813 (discount superstore) and ITE 815 (discount store) is the inclusion of a full-service grocery department under the roof of ITE 813.

We generally concur with the trip generation calculations that are provided. In general, while categories 813 and 815 would have a higher trip generation rate than the category 820 ("Shopping Center") that was utilized in the TIA, the difference in pass-by trip reductions and internal-site trip reductions help offset the rate differences. Furthermore, the TIA utilized a conservative method to calculate the category 820 trips using the published regression equation instead of average rates, which, as explained by the applicant, provides flexibility to have a range of uses develop on the site without exceeding the level of traffic evaluated in the TIA.

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[1] Langer Farms Phase 7 Supplemental Trip Generation Comparison, prepared by Kittelson & Associates, October 1, 2012.

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Portland, OR 97205

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(503) 243-1934 fax
www.dksassociates.com

Our own calculations on scenarios proposed indicate that internal trip reductions may slightly differ from what is shown by the applicant. However, these differences would be generally offset by adjusted pass-by reductions, resulting in minimal overall differences.

The total new trip calculation provided by the applicant adequately indicates that other high traffic generating retail land use types that could occupy the "big box" portion of the site (e.g., ITE Code 813 and 815) would generate approximately equal or fewer trips than what was assumed in the July 2012 TIA. Therefore, an ultimate mix of land uses consistent with the four scenarios would not generate additional transportation impacts beyond those found from review of the TIA. Furthermore, the proposed condition of approval requiring additional trip generation and traffic impact analysis depending upon the tenant of the big-box portion of the site is probably no longer necassary.

If you have any questions, please feel free to call.

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Job No.: TAS-01

Date: October 9, 2012

To: Brad Kilby, AICP
Bob Galati, PE

From: Keith Jones, AICP, LEED AP ND

Copy: Alex Hurley, PE
AKS Engineering & Forestry

Project/Subject: **Langer Farms Phase 7 (SP 12-05/CUP 12-02)**
Recommended Conditions #14
Work in Langer Farms Parkway

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Background
Conditions 14 is stated in the August 28, 2012 staff report recommendation to the Planning Commission as follows:

14. *The applicant shall comply with SMC Section 12.17.025 - for exceptions to construction work within a construction limited street. The request submittal shall include exhibits which will provide technical design information of the impacts to the existing Langer Farms Parkway public infrastructure, and proposed mitigation efforts based on the City's Engineering Design and Standard Details Manual. Final mitigation requirements will be determined from review of this submittal and shall become part of the approval requirements for construction. Note - Submittal of the exceptions request is not a guarantee of being able to perform construction work within the construction limited street, and that review/approval is taken on a case-by-case basis.*

The site will be accessed via a full access driveway to Langer Farms Parkway. A commercial driveway was constructed by the City with the Langer Farms Parkway south project and at the time of construction, the driveway location was placed as the best "guess" absent of a detailed traffic study for a specific project. This driveway was installed so it aligns with the Target shopping center driveway across the street. However, the applicant proposes to reconstruct the existing driveway and move it slightly north so that the through lane from the proposed project will directly align with the existing through lane of the Target driveway. This will require removing the existing driveway apron and removing some paving from Langer Farms Parkway.

Finding
The City has placed a 3-year construction limitation that is set to expire in November of 2014 that prohibits any removal of asphalt in Langer Farms Parkway within this 3-year timeframe (Chapter 12.17 of the Sherwood Municipal Code). Section 12.17.025 of the City code allows staff to grant exceptions to the 3-year construction limitation when circumstances are warranted. The applicant's traffic engineer finds that aligning the through lanes will improve safety and function of the

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intersection and therefore the applicant believes the asphalt removal is justified. To minimize the impact, the applicant will limit the removal of asphalt so that the disturbance is kept close to the existing driveway. Attached is an exhibit prepared by AKS Engineering showing the extent of the asphaltic concrete (AC) grind and overlay proposed to accomplish the driveway relocation. As shown in the exhibit, the domestic water connection will be completed within this AC removal area and therefore all work within Langer Farms Parkway will be concentrated in this one area. This work is the minimum necessary to accomplish the driveway relocation and ensure an adequate replacement AC overlay.

Request

Based on the finding in this memo and attached exhibit, the applicant requests that the recommended "Staff Analysis" on page 47 and 48 and Condition 14 is amended as follows:

Staff Analysis page 47 and 48

The project fronts Langer Farms Parkway, a collector status road constructed in 2011. This road falls under Municipal Code Chapter 12.17 - Construction Limited Streets, and any proposed site improvements which impact the existing public street infrastructure shall comply with the requirements under Sections 12.17.025 Exceptions. The proposal complies with Section 12.17.025 as follows: ~~through 12.17.035~~. ~~A condition is recommended below to ensure that any impacts are reviewed utilizing the correct procedure as spelled out in the Sherwood Municipal Code.~~

A. *The City Manager or the City Manager's designee may approve an exception to the limitations in Section 12.17.015 in order to facilitate development on adjacent properties, provide for emergency repairs to subsurface facilities, provide for underground connections to adjacent properties, or to allow the upgrading of underground utilities.*

An approved exception may include conditions determined necessary by the City Manager or designee to ensure the rapid and complete restoration of the street and surface paving, consistent with the purpose of this Chapter 12.17 to the greatest extent practicable. Pavement restoration requirements may include but are not limited to surface grinding, base and sub-base repairs, trench compaction, or other related work as needed, including up to full-width street pavement removal and replacement.

Finding: The applicant's traffic consultant Kittelson & Associates, Inc. prepared a Traffic Impact Analysis for the project dated May 2012. The study recommends realigning the existing Langer Farms Parkway Driveway so the through lane will align with the existing Target access driveway west of the project. The applicant requests the driveway relocation in the interest of traffic safety and operations. In order to accomplish the driveway relocation, some removal of paving is required. The applicant has submitted an exhibit prepared by AKS Engineering dated 9/28/2012 titled "Langer Farms Subdivision Driveway Relocation and Water Service Connection Plan." This exhibit shows the limits of the paving removal and also shows that the domestic waterline connection can be made in this same cut thereby consolidating the impact into one location. Staff finds that the proposal as shown on the 9/28/2012 exhibit is acceptable as it concentrates the work in one location and limits the impacts to existing paving. A condition is recommended to ensure that any work is consistent with the submitted exhibit.

B. *A person seeking an exception under this section shall submit an application to the City Manager or designee in a form acceptable to the city. The application must include sufficient information to demonstrate reasonable compliance with Section 210.20 (Construction Limited Streets) of the Engineering Design Manual.*

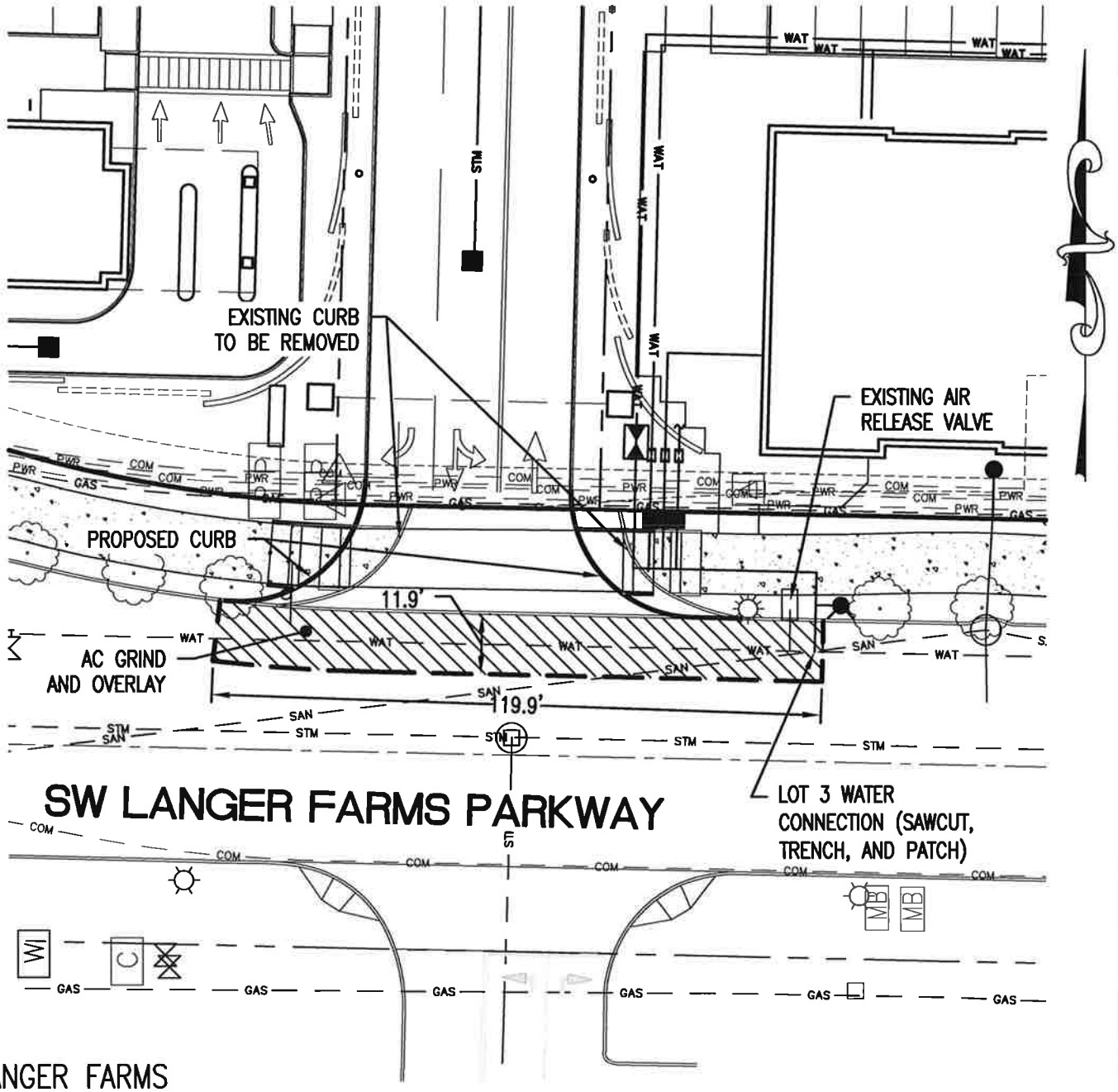
The City Manager or designee will review the application and information and provide a written decision either approving or denying the application. The City Manager's or designee's decision may be appealed in the manner provided for a writ of review under ORS chapter 34.

Finding: The details provided in this land use application along with the exhibit prepared by AKS Engineering dated 9/28/2012 titled "Langer Farms Subdivision Driveway Relocation and Water Service Connection Plan" are adequate to demonstrate compliance. The applicant should be conditioned to provide construction plans that are consistent with the impact area shown in this exhibit or request a new application under this Section 12.17.025 of the City's code.

Condition 14

~~The applicant shall comply with SMC Section 12.17.025 - for exceptions to construction work within a construction limited street. The request submittal shall include exhibits which will provide technical design information of the impacts to the existing Langer Farms Parkway public infrastructure, and proposed mitigation efforts based on the City's Engineering Design and Standard Details Manual. Final mitigation requirements will be determined from review of this submittal and shall become part of the approval requirements for construction. Note - Submittal of the exceptions request is not a guarantee of being able to perform construction work within the construction limited street, and that review/approval is taken on a case-by-case basis.~~

Work performed in Langer Farms Parkway shall be limited to the area shown in the exhibit prepared by AKS Engineering dated 9/28/2012 titled "Langer Farms Subdivision Driveway Relocation and Water Service Connection Plan." If additional work in Langer Farms Parkway is needed to support the development, the applicant shall make a new request under the requirements of SMC Section 12.17.025.



LANGER FARMS
SUBDIVISION DRIVEWAY
RELOCATION AND WATER
SERVICE CONNECTION PLAN

SCALE 1" = 30 FEET

30 0 12 18 24 30

JOB NAME: LANGER FARMS (9/28/12)	ENGINEERING • PLANNING • LANDSCAPE ARCHITECTURE FORESTRY • SURVEYING
JOB NUMBER: 3048	LICENSED IN OR & WA
DRAWN BY: MTS	13910 SW GALBREATH DRIVE, SUITE 100 SHERWOOD, OR 97140
CHECKED BY: AHH	PHONE: (503) 925-8799 FAX: (503) 925-8969
DWG NO.: STREET CUT EXHIBIT	OFFICES LOCATED IN SALEM, OR & VANCOUVER, WA

AKS ENGINEERING & FORESTRY

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to separate testimony

Claus
22211 SW Pacific Highway
Sherwood, Oregon 97140
503-625-5265

October 9, 2012

Planning Commission Members
c/o City of Sherwood
Pine/Oregon Street
Sherwood, Oregon 97140

RE: Langer Commercial Site Plan Phase 7

Dear Planning Commission:

This process has been pre-determined. Councilor Matt Langer has voted on all the 2011-2012 code clean up legislation that has paved the way for this application to be heard by the Planning Commission in its current form. Code language has been tailored to meet the needs of the Langer PUD. City Council and city staff want to bring tax revenue in for the Urban Renewal to try to counter some of the accumulated debt payments and previous mistakes of earlier urban renewal projects and decisions.

In a world minus the influence of Councilor Langer, his clan and the urban renewal district money issues, a potentially large impact on the town like this would be decided by our seven elected officials. That world does not exist in Sherwood at the present time.

The City Council should appeal this land use file up to themselves because they are our highest elected officials as well as due to the cost prohibitive nature of the appeal fee-- 50% of the cost of the site plan which for this application is more than $13,000. A $6,500 plus appeal fee requirement by the city of the citizens is outrageous-- just to bring the application to our elected officials.

The "anchor tenant," (big enough for a Wal-mart type store) site alone at 14 acres of the Langer 55 acre parcel would generate over $9,000,000 in a land sale at $15 /sq.ft. 14 acres x 43,560 sq.ft/acre. x $15/sf = $9,147,600. Is it any wonder there have been a variety of questionable tactics used to push through the Langer PUD remaining site plans?

Citizens have not been given enough information to comment on the proposal-- Yet staff has deemed the application complete and has the clock ticking against the citizens. Citizens trying to provide meaningful information on a site plan without specified users and profiles is like trying to hit not only a moving target, but a shape shifting target. Applicant and staff comments, criteria and words morph as

they need to as the approval process and financial responsibilities take shape away from the public and without citizen review.

Who is looking out for the citizens?

Not the planning staff-- they don't even live in this town. The staff is pushing for development in the urban renewal agency boundaries so the urban renewal development bonds can get some revenue to cover the bond payments. They are also trying to get fees into their departments to prevent layoffs. Not the Langers and their investors-- they are looking to make millions of dollars for themselves while leaving the citizens with a mystery "anchor tenant" so large that only a few mass merchandisers could qualify to fill that space.

Tragedy of a Carefully Crafted "Process" that disenfranchises the citizens

Wal-Mart, known as "the merchant of death" could be brought into this town by an approval vote on this "undefined tenant" site plan application. Approval only takes a yes vote from four (a simple majority) of the seven appointed citizens who sit on the Planning Commission. The Planning Commission should reject this application because of the many unknowns of the end users for this site plan. Let the applicant then appeal the decision to the City Council and provide adequate information to the citizens. The citizens could then also hold their elected officials accountable for their vote on this proposal.

Legitimate Land Use Issues Being Circumvented

A stand alone operation like a mass merchandiser is different than an "anchor tenant." If the anchor is a mass merchandiser, during holidays they can generate 14,000 to 18,000 cars daily. Peak transportation causes several problems including gridlock on a road system that was not designed for such a use. That portion of the Langer PUD was to be industrial property-- look at their estate tax ruling as well as the initial traffic study that was done in 1995.

The recent traffic study has dramatically understated the traffic profile for the mystery tenants. Why are hypotheticals being allowed? Other tenants will also be drawing in their own traffic. Only by withholding users are the applicants and owners able to produce hypothetical traffic and tenant profile reports. The Northern extension of Adams Avenue (now called Langer Farms Porkway) was to be attached as a condition and completed by the Langers prior to this Phase, according to the latest version of their periodically changing "development" agreement with the city. Please make sure that as much of the road system improvements that can be required are being required prior to any mass merchandiser or mystery tenant being allowed to be built and occupy the 145,000 sq.ft. building.

The demographics of Wal-Mart will draw from 15-25 miles. We are the third highest income town in Oregon. This is not serving our town. Much of the customer profile that shops Wal-Mart has an income of $38,000 income or less. A lot of associated Wal-Mart information about increased theft, security, vagrancy, local business closures, decreases to the overall tax base and associated problems could be dealt with by the Planning Commission decision makers if the applicant would disclose the tenant information. These are legitimate land use issues that are being circumvented.

As with the opening of Albertsons several years ago, we saw the closing of the grocery market in the Sherwood Plaza. This mystery tenant may close Albertsons and/or Safeway, Target, and numerous small independent businesses that are already located in our town. The applicant is not even suggesting that these land uses will be providing family sustainable wages-- they are talking about part time student help and low level employee wages. Is this application worth such a set of trade-offs?

Shame on the Mayor who is friends with the Langer family and who is being vigorously supported for re-election this November by Councilor Matt Langer and members of his clan. It is no coincidence that this site plan application is being timed to be heard and approved by the Planning Commission without the credit for the land uses and processes placed at Mayor Mays and Councilor Matt Langer's door steps.

Langers and Keith Mays are fooling no one. The Planning Commission should place this application with the City Council where it belongs. Throwing out a little candy at the Robin Hood festival doesn't meet the threshold for a multi-million dollar pay day at the expense of the people of Sherwood.

T.C. Memo. 2006-232

UNITED STATES TAX COURT

ESTATE OF F. WALLACE LANGER, DECEASED, CLARENCE D. LANGER, JR., EXECUTOR, Petitioner v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 11116-04. Filed October 30, 2006.

John H. Draneas, for petitioner.

Wesley F. McNamara, for respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

HAINES, Judge: Respondent determined a Federal estate tax deficiency of $949,686 against the Estate of F. Wallace Langer

(the estate).[1] After concessions,[2] the issue for decision is the fair market value on February 29, 2000, of Phases 2 and 5 of the Langer MarketPlace Planned Unit Development.

FINDINGS OF FACT

Some of the facts have been stipulated and are so found. The stipulation of facts and the attached exhibits are incorporated herein by this reference.

F. Wallace Langer (decedent), a lifelong resident of Sherwood, Oregon, died on February 29, 2000 (the date of death). Decedent's nephew, Clarence D. Langer, Jr. (Clarence Langer), was appointed executor of the estate. At the time the petition was filed, he resided in Sherwood, Oregon.

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[1] Amounts are rounded to the nearest dollar.

[2] The parties have stipulated: (1) The taxable estate will be increased by $127,802, representing the value of the residence included in the Langer Residence Revocable Trust; (2) decedent's 29.19-percent interest in the Langer Family LLC (LFLLC) is included in the estate; (3) the fair market value of the real property owned by the LFLLC, excluding Phases 2 and 5 of the PUD and prior to reduction for deferred property taxes, was $5,885,000 on February 29, 2000; (4) the net value of the real property owned by LFLLC will be calculated by adding the fair market value of Phases 2 and 5 to $5,885,000, then subtracting $430,310 to account for property tax liabilities that would attach the property on the date of death; and (5) the value of decedent's 29.19-percent interest in LFLLC will be computed by multiplying the net value of the real estate owned by LFLLC by 15.32475 percent. This computation reflects a 47.5-percent discount to account for all applicable discounts. The figure thus computed will be substituted for the value of decedent's interest in LFLLC reported on Schedule G, Transfers During Decedent's Life, of the estate's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return.

A. The City of Sherwood

Sherwood, Oregon, is located approximately 15 miles southwest of Portland, Oregon. During the 1990s and through at least 2000, Sherwood experienced rapid population growth, increasing from 5,320 in 1995 to 12,230 by 2000.

The population growth led to increased commercial development in the Town Center area, which was centered around the intersection of T-S Road and Pacific Highway.[3] To facilitate commercial development, the City of Sherwood created a "master plan" for development, which included a comprehensive development plan, zoning districts, and a zoning map. Individual land owners could apply for planned unit developments, or PUDs, which overlaid the master plan. The PUDs included "categories of use", or phases, that fit within the general goals and requirements of the comprehensive plan. The PUDs were intended to be flexible, offering relief from strict adherence to the zoning map. The phases within each PUD could be altered without going through a comprehensive plan amendment or zoning change. The PUD phases were not separate legal parcels, and any development, reconfiguration, or partitioning of the phases required the city's approval.

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[3] In 2000, Pacific Highway had two to three lanes of traffic running in each direction, additional turn lanes, and an average daily traffic count of 37,800. In 2000, T-S Road had only one lane in each direction, a center turn lane, and an average daily traffic count of 22,946.

Prior to December 5, 2000, developers in Sherwood were subject to the traffic mitigation requirements of Metro, an elected regional government engaged in regional and local planning in the Greater Portland area. Traffic mitigation requirements could include constructing new roads, widening existing roads, or installing traffic signals. On December 5, 2000, Sherwood passed its own traffic mitigation ordinance, the Capacity Allocation Program (CAP). CAP's goal was to provide a better mechanism for transportation planning and more accurate calculations of infrastructure improvement costs.

Sherwood's continued growth and development were not without controversy. Around the date of decedent's death, many Sherwood citizens, including the mayor, showed some resistance to continued development. However, the resistence was insufficient to prohibit further development. By the date of death, new businesses in the Town Center area included a Home Depot, grocery stores, banks, restaurants, a movie theater, and an ice-skating arena.

B. The Langer MarketPlace Planned Unit Development and the Langer Family Limited Liability Company

Since 1879, the Langer family owned and farmed land in Sherwood. Their land was located in the Town Center area, approximately a quarter mile east of Pacific Highway and bisected by T-S Road. As population and commercial development increased,

farming became less practicable, and the Langers turned their attention to commercial development.

In 1995, the Langers created the Langer MarketPlace Planned Unit Development (the Langer PUD), which defined the development permitted on a 55.59-acre tract owned by a trust for decedent and a contiguous 29.88-acre tract owned by a trust for Clarence Langer. While it did not create separate legal parcels, the Langer PUD divided the land into eight phases of development. On April 25, 1995, the Sherwood City Council approved the Langers' application for the PUD. However, the approval was conditioned upon their agreement to, among other things, develop parks, pedestrian walkways, and:

> At each phase of development, and with each site plan submitted to the City, the applicant shall provide a traffic impact analysis for City, County and ODOT [Oregon Department of Transportation] review and approval. Recommended traffic safety and road improvements shall be considered by the City and may be required with each phase.

By agreement dated May 9, 1998, decedent, Clarence Langer, and other members of the Langer family formed the Langer Family Limited Liability Company (LFLLC). The trusts for decedent and Clarence Langer contributed to LFLLC the land subject to the Langer PUD. At his death, decedent held a 29.19-percent interest in LFLLC.

Prior to decedent's death, LFLLC sold Phase 1 of the Langer PUD. On the date of death, LFLLC still owned Phases 2 through 8.

Because the parties stipulated their value, Phases 3, 4, 6, 7, and 8 are not at issue. See supra note 2. At decedent's death, Phase 2 was zoned retail commercial, was 2.48 acres, and had a rectangular configuration. Phase 5 was zoned retail commercial, was 11.7 acres, and had an awkward configuration. On the date of death, there were no deals pending regarding the development or sale of Phases 2 and 5.

In August 2000, LFLLC entered into negotiations with Target Corporation (Target) for the purchase of Phase 5. On December 5, 2000, LFLLC filed an application for development of Phase 5 with the City of Sherwood, which was approved in October 2001. Because the application was submitted before the CAP ordinance was enacted, the development of Phase 5 was subject to the traffic mitigation requirements of Metro.

After approval of the development application, Sherwood's mayor encouraged LFLLC to redesign the development of Phase 5. In 2002, LFLLC proposed an amendment to the Langer PUD and requested the approval of a new development plan for Phases 2, 3, and 5, which proposed changing the sizes and configurations of those phases. The amended PUD and new development plan were approved on November 12, 2002.

On September 12, 2003, LFLLC and Target signed a Sale and Purchase Agreement for the purchase by Target of approximately 10.97 acres of Phase 5. On July 8, 2004, LFLLC sold

approximately 3.01 acres of Phase 5 to Gramor Langer Farms LLC (Gramor).

C. The Estate Tax Return

The estate timely filed a Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return (the estate tax return). As reflected on the estate tax return, the estate valued LFLLC's real property at $8,180,000 as of the date of death and determined that the value of decedent's 29.19-percent interest in LFLLC, after all applicable discounts, was $837,000.

On April 2, 2004, respondent issued the estate a notice of deficiency. Respondent determined that decedent's 29.19-percent interest in LFLLC was $2,606,700 rather than $837,000. In response to the notice of deficiency, the estate filed a petition with this Court on June 28, 2004.

OPINION

For Federal estate tax purposes, property includable in the gross estate is generally included at its fair market value on the date of the decedent's death. See secs. 2031(a) and 2032(a); sec. 20.2031-1(b), Estate Tax Regs.[4] Fair market value is "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant

[4] Unless otherwise indicated, all section references are to the Internal Revenue Code, as amended, and all Rule references are to the Tax Court Rules of Practice and Procedure.

facts." United States v. Cartwright, 411 U.S. 545, 551 (1973); sec. 20.2031-1(b), Estate Tax Regs. The willing buyer and the willing seller are hypothetical persons, instead of specific individuals and entities, and the characteristics of these imaginary persons are not necessarily the same as the personal characteristics of the actual seller or a particular buyer. See Estate of Bright v. United States, 658 F.2d 999, 1005-1006 (5th Cir. 1981).

Real estate valuation is a question of fact to be resolved on the basis of the entire record. See Ahmanson Found. v. United States, 674 F.2d 761, 769 (9th Cir. 1981); Estate of Fawcett v. Commissioner, 64 T.C. 889, 898 (1975). The valuation must reflect the highest and best use to which the property could be put on the relevant valuation date. Symington v. Commissioner, 87 T.C. 892, 896 (1986).

Valuation is an inexact process. See Buffalo Tool & Die Manufacturing Co. v. Commissioner, 74 T.C. 441, 452 (1980). As the trier of fact, we may use experts to assist us in deciding upon value, but we are not bound by those experts' views or opinions. See Silverman v. Commissioner, 538 F.2d 927, 933 (2d Cir. 1976), affg. T.C. Memo. 1974-285; Chiu v. Commissioner, 84 T.C. 722, 734 (1985). One expert may be persuasive on a particular element of valuation, and another expert may be persuasive on another element. See Parker v. Commissioner, 86

T.C. 547, 562 (1986). Consequently, we may adopt some and reject other portions of expert reports or views. See Helvering v. Natl. Grocery Co., 304 U.S. 282 (1938).

In attempting to establish the fair market value of Phases 2 and 5, the estate and respondent rely on valuation experts. The estate's valuation expert, Brian L. Kelley (Mr. Kelley), also valued the subject land for purposes of preparing decedent's estate tax return. Respondent's valuation expert was Stephen J. Pio (Mr. Pio).[5] The experts agree that the highest and best use of Phases 2 and 5 on the date of death was their intended use, commercial development. The experts also agree that the comparable sales method is the most appropriate valuation method.[6] However, the experts disagree over the fair market values of Phases 2 and 5 on the date of death. Mr. Kelley determined that Phases 2 and 5 had fair market values of $525,000 and $2,075,000, respectively. Mr. Pio determined that Phases 2

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[5] Because we find both experts to be qualified and because their relative experience does not impact our evaluation of their opinions, we do not discuss their qualifications or experience.

[6] The comparable sales approach is "'generally the most reliable method of valuation, the rationale being that the market place is the best indicator of value, based on the conflicting interests of many buyers and sellers.'" Estate of Spruill v. Commissioner, 88 T.C. 1197, 1229 n.24 (1987) (quoting Estate of Rabe v. Commissioner, T.C. Memo. 1975-26, affd. without published opinion 566 F.2d 1183 (9th Cir. 1977)). This method requires gathering information on sales of property similar to the subject property, then comparing and weighing the information to reach a likely value for the land being appraised.

and 5 had fair market values of $620,000 and $3,420,000, respectively.

Both parties encourage us to reject the other party's expert report in its entirety. However, we find each expert to be persuasive on some points, but not on others, and give each report its due weight.

A. Valuation of Phase 5

1. Mr. Kelley's Report

Mr. Kelley purported to value Phase 5 by using the comparable sales method. However, after arriving at a value per square foot, he then applied a "discounted cashflow analysis" to arrive at Phase 5's "net present 'as-is' land value" on the date of death.

a. Comparable Sales

To determine the value per square foot of Phase 5, Mr. Kelley used four comparables:

Comparable No.	Location	Sale date	Sales price	Acres	Adj. price per sq. ft.[1]
1	Intersection of Scholls-Sherwood Rd. and Pacific Highway, Sherwood, Oregon	12/99	$2,918,158	9.3	$7.20
2	20260 Pacific Highway, Sherwood, Oregon	8/00	4,473,194 (3,723,194 adjusted)	24.35/ (12.18 usable)	4.22/ (7.02 adjusted)[2]
3	NW 12th Ave. and Pacific Highway, Sherwood, Oregon	9/96	1,097,705	7.3	3.81
4	T-S Road and SW 90th Ave., Tualatin, Oregon	6/96	3,353,310	15.46	5.54

[1] Because comparables 3 and 4 were sold 40 months and 43 months before the valuation date, respectively, Mr. Kelley adjusted the sales prices upward by 10.5 percent and 11.25 percent to account for inflation. No such adjustments were made to comparables 1 and 2.

[2] Only a portion of comparable 2 was suitable for commercial development. Mr. Kelley determined that "approximately 50 percent" of the site was zoned for exclusive farm use, which prohibited commercial development. The seller of the property retained an option to repurchase that portion of the land for $400,000, though the option was never exercised. The seller also retained and exercised an option to repurchase a pad site on the property for $350,000. In order to get an "apples-to-apples" comparison, Mr. Kelley deducted $750,000, the total of the option prices, from the original sales price to get an adjusted sales price for the portion of usable land that was sold to and retained by the buyer.

Mr. Kelley determined that comparables 1 and 2 were high indicators of value because they were located on Pacific Highway, had superior exposure to traffic (exposure) than Phase 5, and were better configured for commercial development.[7] He determined that comparable 3 was a low indicator due to the older sales date and inferior configuration. Finally, he determined

[7] Both experts used the phrase "high indicator of value" to describe a comparable with a value greater than the property being valued and the phrase "low indicator of value" to describe a comparable with a value lower than the property being valued.

that comparable 4 was most similar to Phase 5 in exposure and location, but it was inferior in configuration and was thus a reasonable to slightly low indicator. Mr. Kelley concluded that Phase 5 had a value of $6 per square foot.

Comparables 3 and 4 were sold in 1996. In the period between those sales and the date of death, Sherwood experienced rapid population growth and increased demand for commercial property. Given the lapse in time and the change in demand for commercial property, we find that comparables 3 and 4 are not reliable indicators of value. Therefore, we take into consideration comparables 1 and 2 only.

b. Discounted Cashflow Analysis

Mr. Kelley determined that Phase 5 was not readily marketable on the date of death and that it would take 3 years to sell the property. To account for "an extended marketing and due diligence period" and for "the risk associated with the subject property", Mr. Kelley applied a discounted cashflow analysis to Phase 5's value per square foot to arrive at its "net present 'as-is' land value" of $2,075,000.[8]

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[8] Mr. Kelley's discounted cashflow analysis was essentially a three-step analysis: (1) He adjusted the value per square foot upwards by 3 percent annually for 3 years to account for inflation; (2) he then subtracted sales and marketing costs; and (3) he then discounted that amount by 12 percent annually for 3 years to account for the time-value of money and the risks associated with the property to arrive at a "net present 'as-is' land value".

We disagree with Mr. Kelley's use of a discounted cashflow analysis for two reasons. First, Mr. Kelley did not determine Phase 5's fair market value on the appropriate date--the date of death. Because we are determining fair market value on the date of death, it necessarily follows that the hypothetical sale between a willing buyer and a willing seller consummates on the date of death. See United States v. Cartwright, 411 U.S. at 551; sec. 20.2031-1(b), Estate Tax Regs. Mr. Kelley did not determine the price at which Phase 5 would change hands between a willing buyer and a willing seller on the date of death. Instead, he determined the price at which Phase 5 would change hands 3 years after the date of death and then discounted this amount by 12 percent annually for 3 years, as demonstrated by his testimony: "In my valuation analysis, I'm appraising it for a buyer that would most probably buy it three years from the date of valuation, because I didn't feel that it was really marketable at that point in time and therefore, I needed to discount that value over a 3-year period."

Second, we do not agree with Mr. Kelley's conclusions on which he based his use of a discounted cashflow analysis. By using a discounted cashflow analysis, Mr. Kelley attempted to reduce Phase 5's value to account for: (1) The uncertainty of offsite costs; (2) the City of Sherwood's stance on further

development; and (3) the purported oversupply of commercial property in Sherwood.

The uncertain offsite costs to which Mr. Kelley refers are the costs of traffic mitigation requirements imposed on commercial developers by Metro. However, these requirements were not peculiar to Phase 5--all commercial developers in Sherwood (or at least those developing larger tracts of land) were subject to the requirements of Metro, including the developers of comparables 1 and 2. Any impact the uncertain traffic mitigation costs had on the market should be reflected in the sales prices of comparables 1 and 2, and are thus taken into account by using those comparables in the comparable sale method. A further discount is not necessary.

The estate also argues that Phase 5 was subject to other extraordinary offsite costs. In valuing Phase 5, we generally take into consideration only those costs that are reasonably foreseeable by a hypothetical buyer and a hypothetical seller on the valuation date. See Estate of Spruill v. Commissioner, 88 T.C. 1197, 1228 (1987). The estate has not established that extraordinary offsite costs were reasonably foreseeable on the date of death. Instead, it appears that the estate is focusing on the costs associated with the reconfiguration of Phase 5 in 2002. However, the reconfiguration was not contemplated by LFLLC on or before the date of death, nor was it reasonably foreseeable

that such reconfiguration would be necessary. Therefore, we do not take into account any purported extraordinary offsite costs.

Mr. Kelley and the estate assert that the City of Sherwood's hostility to further development made approval for additional development difficult and expensive. Like the uncertain offsite costs, any impact the City's attitude toward development had on the market should be reflected in the sales prices of comparables 1 and 2 and is thus taken into account by using those comparables in the comparable sale method. A further discount is not necessary.[9]

Finally, we do not agree with Mr. Kelley's determination that there was an oversupply of commercial space in Sherwood on the date of death. In analyzing the supply and demand for commercial property, Mr. Kelley conducted a "retail expenditure analysis". To summarize, Mr. Kelley determined that there were 9,218 people residing in 3,404 households within a 1.5-mile radius of the intersection of Pacific Highway and T-S Road. Using average retail expenditure data, he then determined that

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[9] There is some indication that LFLLC had particular difficulty in getting city approval because of strained personal relationships between Clarence Langer and members of Sherwood's government. Because we are determining the fair market value based on a hypothetical sale by a hypothetical seller, we do not necessarily take into consideration the personal characteristics of the actual seller. See Estate of Bright v. United States, 658 F.2d 999, 1005-1006 (5th Cir. 1981). Therefore, we do not factor in any difficulty arising from Clarence Langer's relationship with members of the city government.

3,404 households could support only 208,325 square feet of retail space. Because more than 300,000 square feet of commercial space was available on the date of death, Mr. Kelley concluded that there was an oversupply of commercial property.

By limiting his analysis to a 1.5-mile radius, Mr. Kelley made an implicit assumption that people living outside the radius will not shop within the radius. His approach takes into account only 9,218 people, which does not even include the entire population of Sherwood in 2000 (12,230). Mr. Kelley did not offer a reasonable explanation for why he so limited his analysis. The businesses within the area included a Home Depot, grocery stores, banks, restaurants, a movie theater, and an ice-skating arena. We find that it is unreasonable to assume that only those people living within 1.5 miles will frequent such businesses.

For the above-stated reasons, we reject Mr. Kelley's use of a discounted cashflow analysis.[10]

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[10] We recognize that discounted cashflow analysis can be an appropriate valuation method. For example, discounted cashflow analysis has been accepted as a method of valuing a company's stock by determining the present value of its future stream of income. See, e.g., N. Trust Co. v. Commissioner, 87 T.C. 349, 378-380 (1986). Also, in Estate of Rodgers v. Commissioner, T.C. Memo. 1999-129, discounted cashflow analysis was accepted to determine the fair market value of multiple pieces of real property. The properties were so numerous that they could not be liquidated within a reasonable time without depressing the sales prices, and thus a discounted cashflow analysis was appropriate to take into account a market absorption rate. Id. This case is

(continued...)

2. Mr. Pio's Report

In valuing the subject property, Mr. Pio made a "hypothetical assumption" that Phases 2 and 5 were legally partitioned on the date of death.[11] He then determined the fair market value of Phase 5 using seven comparables:

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[10](...continued)
distinguishable from Estate of Rodgers because there has been no showing that, due to their numerosity, the Phases could not be sold within a reasonable time without depressing their sales prices. In fact, Mr. Kelley did not purport to use his discounted cashflow analysis to take into account a market absorption rate, nor does the estate argue that Mr. Kelley's discounted cashflow analysis was used to take into account a market absorption rate.

[11] The estate argues that Mr. Pio's "hypothetical assumption" was inappropriate because Mr. Pio does not take into account costs associated with the subdivision of the phases for individual sale. However, both parties valued Phases 2 and 5 as if they were separate properties on the date of death. It does not appear that Mr. Kelley took into account the costs associated with the subdivision of the phases, nor does the estate offer an estimate of such costs. Because the estate has failed to provide any basis upon which we could make an estimate, we cannot take such costs into consideration.

Comparable No.	Location	Sale date	Sales price	Acres	Price per sq. ft.
7	NW Imbrie Rd. at NW Cornelius Pass Rd., Hillsboro, Oregon	7/00	$7,500,000	13.01	$13.23
8	SE 24th Ave at TV Hwy, Hillsboro, Oregon	2/01	7,000,000	13.22	12.16
9	NW Stucki Rd. at Cornell Rd., Hillsboro, Oregon	2/00	8,276,240	17.67	10.75
10	Intersection of Scholls-Sherwood Rd. and Pacific Highway, Sherwood, Oregon	12/99	2,918,158	9.3	7.20
11	20260 Pacific Highway, Sherwood, Oregon	7/00	4,473,194/ (4,373,194 adjusted)	24.39/ (12.97 usable)	4.22/ (7.74 adjusted)[1]
12	T-S Rd., between Adams Ave. and Langer Dr., Sherwood, Oregon	9/03	2,702,160	10.93	5.68
13	T-S Rd. at Langer Dr., Sherwood, Oregon	7/04	1,500,000	3.01	11.44

[1] Mr. Pio adjusted the sales price of comparable 11 downward by $100,000 to account for the land zoned for exclusive farm use.

Mr. Pio determined that comparables 7, 8, and 9 were very high or high indicators of value due to their location and development costs, that comparable 10 was a reasonable indicator due to its modestly superior exposure but less desirable access, and that comparable 11 was a reasonable indicator due to its superior exposure but inferior zoning and less desirable access. Comparables 12 and 13 represented the sales portions of Phase 5, as reconfigured in 2002, to Target in 2003 and Gramor in 2004. Mr. Pio did not accord either comparable great weight. Mr. Pio

concluded that Phase 5 had a fair market value on the valuation date of $7.50 per square foot, or $3,420,000.

Mr. Pio acknowledged that Hillsboro was a completely different market with characteristics distinct from Sherwood. As such, we find that comparables 7, 8, and 9 are not reliable indicators of value. Likewise, comparables 12 or 13 are not reliable indicators of value. The sales occurred more than 3 years after the valuation date, and because of the reconfiguration, the character of the property was significantly different than it was on the date of death. Therefore, we take into consideration comparables 10 and 11 only.

3. Fair Market Value of Phase 5

Mr. Kelley's comparable 1 was the same property as Mr. Pio's comparable 10 (comparable 1-10). Likewise, Mr. Kelley's comparable 2 was the same property as Mr. Pio's comparable 11 (comparable 2-11). Both comparables were located in the Town Center area of Sherwood, and the sales dates were within 6 months of the date of death. Thus, we find that comparables 1-10 and 2-11 are the most helpful in determining the fair market value of Phase 5. Based on the expert reports, we find that there are five major factors that must be weighed in comparing comparables 1-10 and 2-11 to Phase 5: Location, exposure, configuration, accessibility, and zoning.

a. Comparable 1-10

Comparable 1-10 was located on Pacific Highway, while Phase 5 was located on T-S Road. Because Pacific Highway had a significantly higher traffic count than T-S Road, comparable 1-10 had superior location and exposure to Phase 5. While Mr. Pio did not address comparable 1-10's configuration, we agree with Mr. Kelley that comparable 1-10 had superior configuration for commercial development due to Phase 5's awkward configuration. These three factors indicate that comparable 1-10 is a high indicator of value.

The impact of accessibility is less clear. However, even assuming arguendo that Phase 5 had superior accessibility, this factor would not outweigh the three factors above. In addition, both Phase 5 and comparable 1-10 were zoned retail-commercial, making zoning a neutral factor. Thus, comparable 1-10, at $7.20 per square foot, is a high indicator of value.

b. Comparable 2-11

Only a portion of comparable 2-11 was suitable for commercial development, the remainder being zoned for exclusive farm use. Both experts agree that the sale price of comparable 2-11 must be adjusted to determine the value of the area suitable for commercial development only. However, they do not agree to the extent of the adjustment. Additionally, their reports conflict regarding the acreage of the land usable for commercial

development. These issues must be resolved before a reliable comparison can be made.

Mr. Kelley valued the land zoned for exclusive farm use at $400,000, based on an option retained by the seller to repurchase that portion of the land. Mr. Pio testified that, hypothetically, if a buyer and seller believed that the land was worth $400,000, then $400,000 would be an appropriate value. However, Mr. Pio did not believe the land was actually worth $400,000. He concluded that it was worth $100,000, but did not offer any support for his conclusion other than that he "happened to be familiar with that property". Because the parties to the sale agreed to an option price of $400,000, we find that it is an appropriate measure of value for the exclusive farm use portion of comparable 2-11.

Mr. Kelley also reduced the sale price of comparable 2-11 by $350,000 to account for an option exercised by the seller to repurchase a 1.59-acre pad site on the property.[12] Mr. Pio did not make the adjustment because he was not aware that the seller retained and exercised the option. However, he testified that it would be appropriate to reduce the sale price by $350,000, so long as the acreage was also reduced by 1.59 acres.

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[12] A pad site is a building site within a shopping area that is ready for construction of a retail establishment and is usually surrounded by customer parking areas.

We conclude that the sale price of comparable 2-11 should be reduced by $750,000, to reflect the exclusive farm use portion and additional pad site. Thus, we use an adjusted sale price for comparable 2-11 of $3,723,194.

Mr. Kelley determined that comparable 2-11 was 24.35 acres, and "approximately 50% of the site" was zoned for exclusive farm use. He used 12.18 acres (approximately 50 percent of 24.35) to calculate the adjusted sales price per square foot. Even though he deducted the option price of the pad site, he did not deduct the pad site's 1.59 acres from the usable acres.

Mr. Pio determined that comparable 2-11 was 24.39 acres, and 12.97 acres was usable. Mr. Pio's determination was based on a plot map and is thus more reliable than Mr. Kelley's approximation. From the 12.97 acres, we must also subtract the 1.59-acre pad site because we reduced the adjusted sale price by the pad site's option price. Thus, we find that 11.38 acres of comparable 2-11 was suitable for commercial development by the buyer, resulting in an adjusted sale price of $7.51 per square foot.

Because of its location on Pacific Highway, comparable 2-11 had superior location and exposure to Phase 5. It also had superior configuration due to its relatively square shape. Mr. Pio argues that these factors are offset by comparable 2-11's inferior accessibility and zoning. We disagree. As discussed

above, Phase 5's accessibility is unclear. Even assuming arguendo that Phase 5 had superior accessibility, this would not offset the other three factors. Additionally, comparable 2-11 was zoned light industrial instead of retail-commercial. However, given the fact that comparable 2-11 was sold to Home Depot for the construction of a Home Depot store, we find that its zoning did not have a significant impact on the ability to develop the property. Thus, comparable 2-11, at $7.51 per square foot, is a high indicator of value.

c. Fair Market Value of Phase 5

Due to the importance of the traffic count, we find that location and exposure are the most significant factors in determining Phase 5's fair market value. In 2000, Pacific Highway had an average daily traffic count of 37,800, while T-S Road had an average daily traffic count of only 22,946. Because of their location on Pacific Highway, comparables 1-10 and 2-11 had superior location and exposure to Phase 5. Additionally, Phase 5 was less suitable for commercial development due to its awkward configuration. To take these factors into consideration, we find that a 25-percent discount from the average sales price per square foot of the comparables is appropriate. We conclude that Phase 5 had a value of $5.52 per square foot on the date of

death.[13] Therefore, we find that the fair market value of Phase 5 on the date of death was $2,813,279.[14]

C. Valuation of Phase 2

1. Mr. Kelley's Report

Similar to his valuation of Phase 5, Mr. Kelley used the comparable sales method to determine Phase 2's value per square foot ($6) and then applied a discounted cashflow analysis to arrive at Phase 2's "net present 'as-is' land value" on the date of death ($525,000). For the same reasons described above, we reject the discounted cashflow analysis portion of Mr. Kelley's valuation.

To determine the value per square foot of Phase 2, Mr. Kelley used five comparables:

---

[13] Phase 5's value per square foot on date of death = ($7.51 + $7.20)/2 = $7.36 [average sales price per square foot of comparables 1-10 and 2-11] x 0.75 [to reflect a 25-percent discount] = $5.52.

The estate argues that Phase 5's value should be reduced due to: (1) The uncertainty of traffic mitigation costs imposed by Metro; (2) the city's hostility towards further development; and (3) the extraordinary offsite costs associated with making Phase 5 suitable for commercial development. These arguments are discussed supra in our analysis of Mr. Kelley's discounted cashflow analysis.

[14] $5.52 per square foot x 43,560 square feet per acre = $240,451 per acre x 11.7 acres = $2,813,279.

Comparable No.	Location	Sale date	Sales price	Acres	Adj. price per sq. ft.[1]
1	Edy Rd., Just West of Pacific Highway, Sherwood, Oregon	6/99	$775,404	3.03	$5.87
2	19740 SW 72nd St., Tualatin, Oregon	3/00	320,352	0.92	7.99
3	Smith Blvd. at Pacific Highway, Sherwood, Oregon	2/99	210,000	1.06	4.55
4	Intersection of Sherwood Blvd. and Pacific Highway, Sherwood, Oregon	11/97	349,919	0.95	9.05
5	Intersection of T-S Rd. and Pacific Highway, Sherwood, Oregon	3/97	660,000	2.46	6.71

[1] Because comparables 4 and 5 were sold 28 months and 36 months before the valuation date, respectively, Mr. Kelley adjusted the sales prices upward by 7 percent and 9 percent to account for appreciation and inflation. No such adjustments were made to comparables 1-3.

Mr. Kelley's expert report provided only a summary analysis of the comparables:

> The high end of the value range is indicated by Comparable 4 ($9.05/SF), a pad site with superior exposure. In concluding a value for the subject, primary emphasis is placed on Comparables 1 and 5 ($5.87/SF to $6.76/SF) both located in the immediate area. Considering the subject's secondary locational characteristics, a value of $6.00 per square foot is concluded for this phase of the subject property.

2. Mr. Pio's Report

Mr. Pio used six comparables to determine Phase 2's fair market value on the date of death:

Comparable No.[1]	Location	Sale date	Sales price	Acres	Price per sq. ft.
1	Intersection of SW Handley St. and Pacific Highway, Sherwood, Oregon	3/01	$249,000	0.74	$7.72
2	7300 SW Childs Rd., Tualatin, Oregon	6/02	$500,000	1.74	$6.60
3	3585 NW 215th Ave., Hillsboro, Oregon	8/99	$485,000	2.83	$3.93
4	SW Borchers Dr., Just West of Pacific Highway, Sherwood, Oregon	2/00 & 11/00	$900,000	3.39	$6.09
5	Smith Blvd. at Pacific Highway, Sherwood, Oregon	3/99	$210,000	1.03	$4.68
6	Edy Rd., Just West of Pacific Highway, Sherwood, Oregon	6/99	$775,404	3.03	$5.87

[1] Mr. Pio's comparables 5 and 6 are the same properties as Mr. Kelley's comparables 3 and 1, respectively. We note that Mr. Pio reported the sale date of his comparable 5 as March 1999, while Mr. Kelley reported the sale date of that property (his comparable 3) as February 1999.

In comparing the properties to Phase 2, Mr. Pio determined: (1) Comparable 1 was a high indicator of value because it had superior exposure than Phase 2 and was smaller in size, which indicated a relatively high value per square foot; (2) comparable 2 was a good to slightly high indicator of value due to its location in Tualatin; (3) comparable 3 was a low indicator of value because of inferior zoning and exposure; (4) comparable 4 was a good indicator of value because of similar location and exposure; (5) comparable 5 was a low indicator of value because, though it was located on Pacific Highway, it was away from most of the commercial development; and (6) comparable 6 was a good to

modestly high indicator of value; it had superior location and exposure, but inferior configuration and access. Mr. Pio concluded:

> The preceding sales show a range in prices from $3.93 to $7.72. Sale Nos. 1 and 2 ($7.72 and $6.60) are high indicators. Sale Nos. 3 and 5 ($3.93 and $4.58) are low indicators. Therefore, the subject value should be between these two price ranges, the mid-range of which is $5.64 per square foot. The remaining sales are $5.87 and 6.09 per square foot, suggesting a value conclusion closer to the upper end of the range. Based on the preceding, the value opinion is modestly above the mid-range, at $5.75 per square foot. After applied to the total land area, the final value opinion for Subject Parcel Phase 2 is:
>
> 108,029 square feet x $5.75 = $621,167, Rounded $620,000.

3. Fair Market Value of Phase 2

We accept Mr. Pio's valuation of Phase 2. Mr. Kelley did not offer a detailed analysis of his comparables and did not further elaborate at trial. On the other hand, Mr. Pio offered a detailed and reasonable comparison of each comparable to Phase 2. We do not find that all of Mr. Pio's comparables are reliable indicators of value, particularly those not located in Sherwood. However, the elimination of those comparables would not have a significant impact on the final value determination because $5.75 per square foot was in the range of the sales prices for the comparables located in Sherwood. Therefore, we find that the fair market value of Phase 2 on the date of death was $620,000.

In reaching our holdings herein, we have considered all arguments made, and, to the extent not mentioned above, we find them to be moot, irrelevant, or without merit.

To reflect the foregoing and the concessions of the parties,

Decision will be entered under Rule 155.

SHERWOOD TOWNCENTER
FOR LEASE ~ RETAIL & OFFICE SPACE
SHERWOOD, OREGON

Description

PROJECT INFORMATION

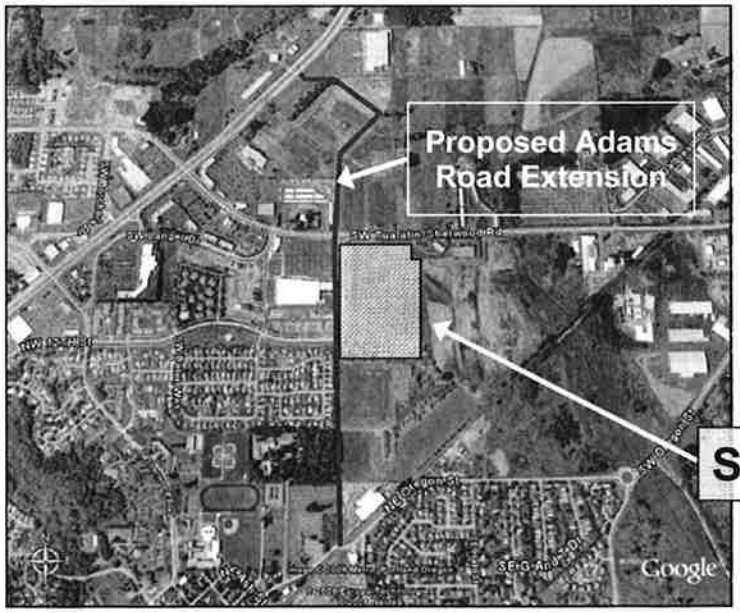
Langer Crossings at Sherwood is a planned, 57 acre Retail/Office Development in the heart of Sherwood located on Tualatin Sherwood Road directly east of Target and Langer Shopping Center in Sherwood, Oregon. Langer Crossings will be fronted by the new Adams Avenue extension which will become the new north/south arterial to Historic Downtown Sherwood and SW Pacific Highway. Langer Crossing will be a new 22-acre Power Center in addition to new office and flex space on the remaining 27 acres.

Langer Crossing is situated in the heart of the Tualatin Valley between I-5, the fast growing City of Tualatin, and the famous Willamette Valley Vineyards. As the Willamette Valley expands with new boutique hotels, gourmet restaurants and over 200 existing wineries, Sherwood has become the main entrance to the wine country. The population of the primary trade enjoyed a 27% growth rate from 2000 to 2006, averaging 4.5% per year. The City of Sherwood's population has grown at an average rate of 3.4% annually for the last 10 years. This site is ready for retail development today and in fact the Johnson/Gardner Report has estimated that there is an approximate demand for over 800,000 s.f. of new retail. The average household income is expected to increase $17,845 over the next 5 years, an average annual increase of 4.9%.

Langer Crossing preliminary design will include approximately 225,000 s.f. of retail, plus 295,000 s.f. of office and flex development. Directly west of Langer Crossings is Langer Shopping Center, a 186,000 s.f. Target-anchored retail center. Langer Crossing is in close proximity to existing retail centers that include Albertsons, Safeway, GI Joes, Home Depot and a 10- screen Regal Movie Theater for over 700,000 square feet of retail space.

RETAIL DEMAND

Currently, the residual demand in the Primary Trade Area is estimated at over 800,000 s.f. of retail space. Over the next 20 years, the residual demand is projected to grow at a faster rate than supply in the area. There are no other vacant commercially zoned parcels that approach the size of Langer Crossing it will be almost impossible to have another center of this magnitude within several miles. The site is located next to an established cluster of retail



Subject

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SHERWOOD TOWNCENTER
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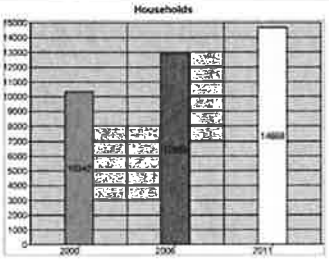
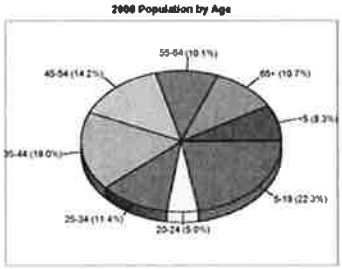
Demographics



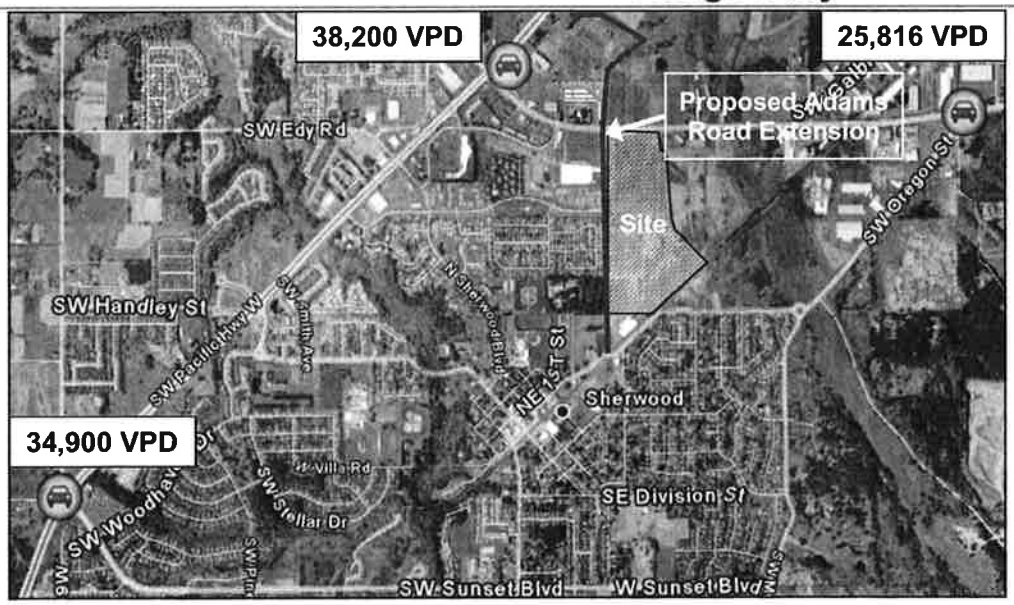


Sherwood, OR 97140 | **Site Type: Radius 3.0 Mile** | **Radius:**

Summary	**2000**	**2006**	**2011**
Population	26,947	34,419	39,406
Households	10,342	12,903	14,668
Families	7,430	9,244	10,423
Average Household Size	2.59	2.65	2.67
Owner Occupied HUs	7,723	9,979	11,417
Renter Occupied HUs	2,619	2,924	3,251
Median Age	35.2	36.6	37.2

Trends: 2006-2011 Annual Rate	**Area**	**State**	**National**
Population	2.74%	1.23%	1.30%
Households	2.6%	1.23%	1.33%
Families	2.43%	1.02%	1.08%
Owner HHs	2.73%	1.27%	1.41%
Median Household Income	4.07%	3.29%	3.32%

Average Daily Traffic Counts



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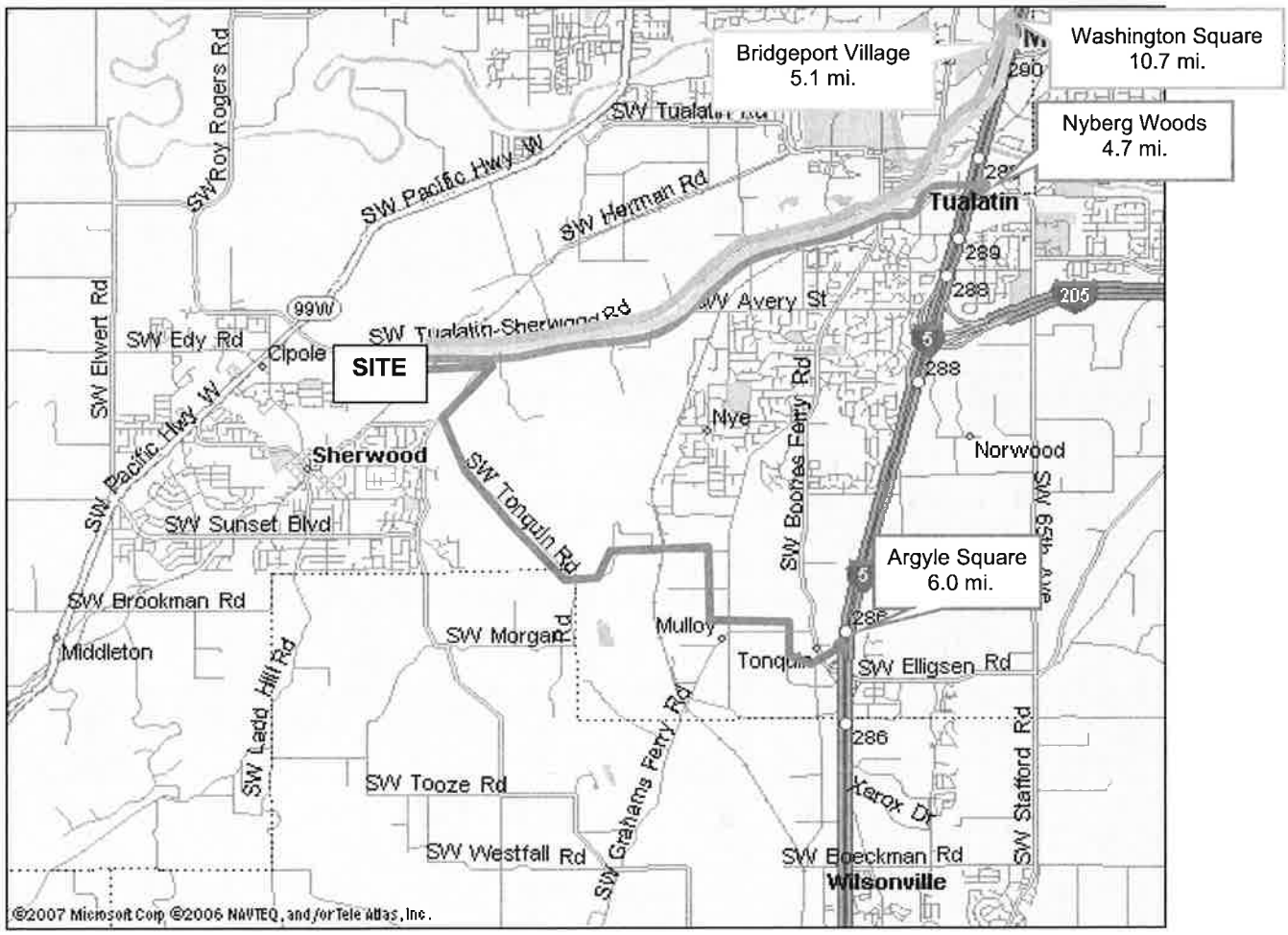

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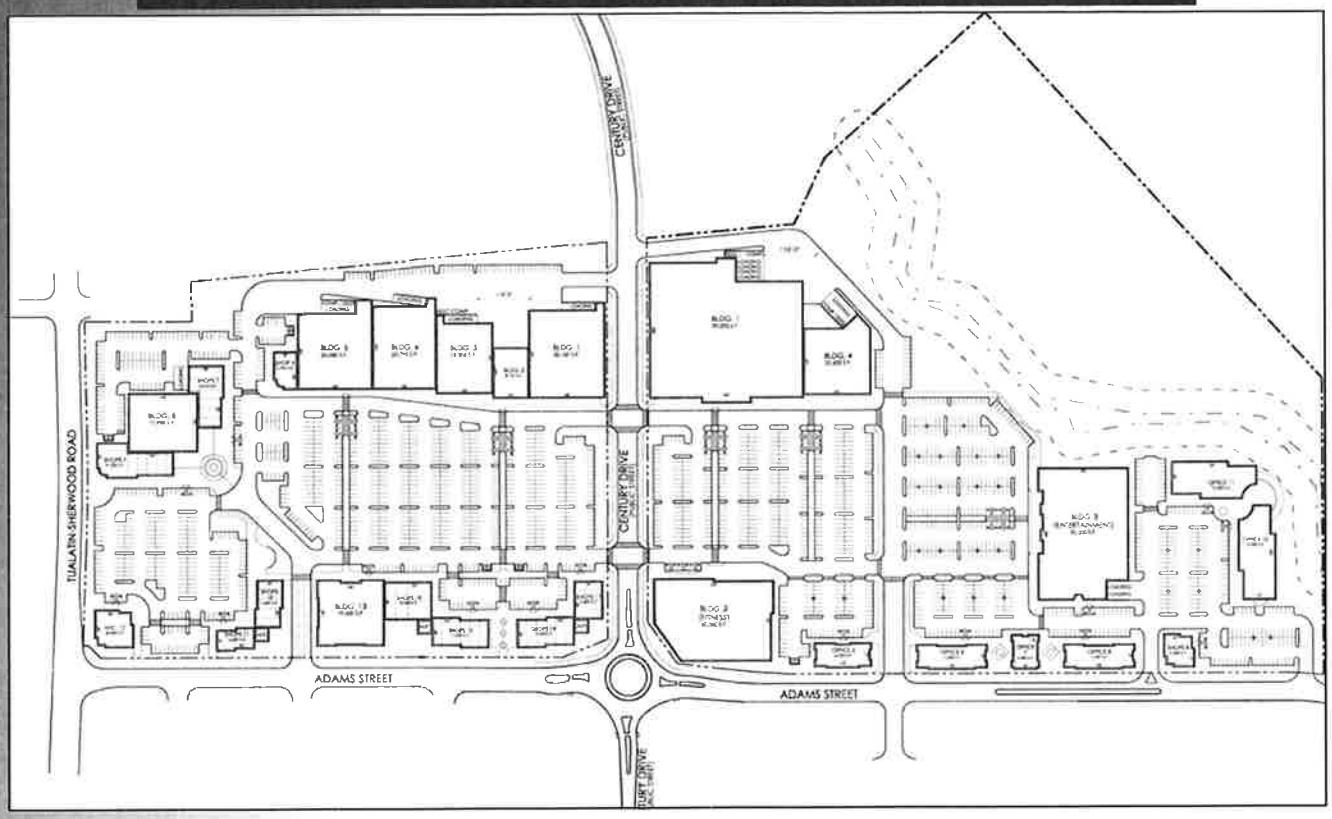

Location: Tualatin-Sherwood Rd. @ Adams Ave.

Project: 466,324 SF Retail Development

Size: 57 acre Master Development

Traffic Counts: 23,876 VPD on Tualatin-Sherwood Rd.

Demographics:	**1 Mile**	**3 Mile**	**5 Mile**
2006 Population	6,305	34,419	104,666
2006 Household Income	$72,982	$73,372	$68,916

Expected Income Growth: 4.9% a year over the next 5 years

Population Growth: 27% from 2000 - 2006

Estimated Completion: Spring 2009

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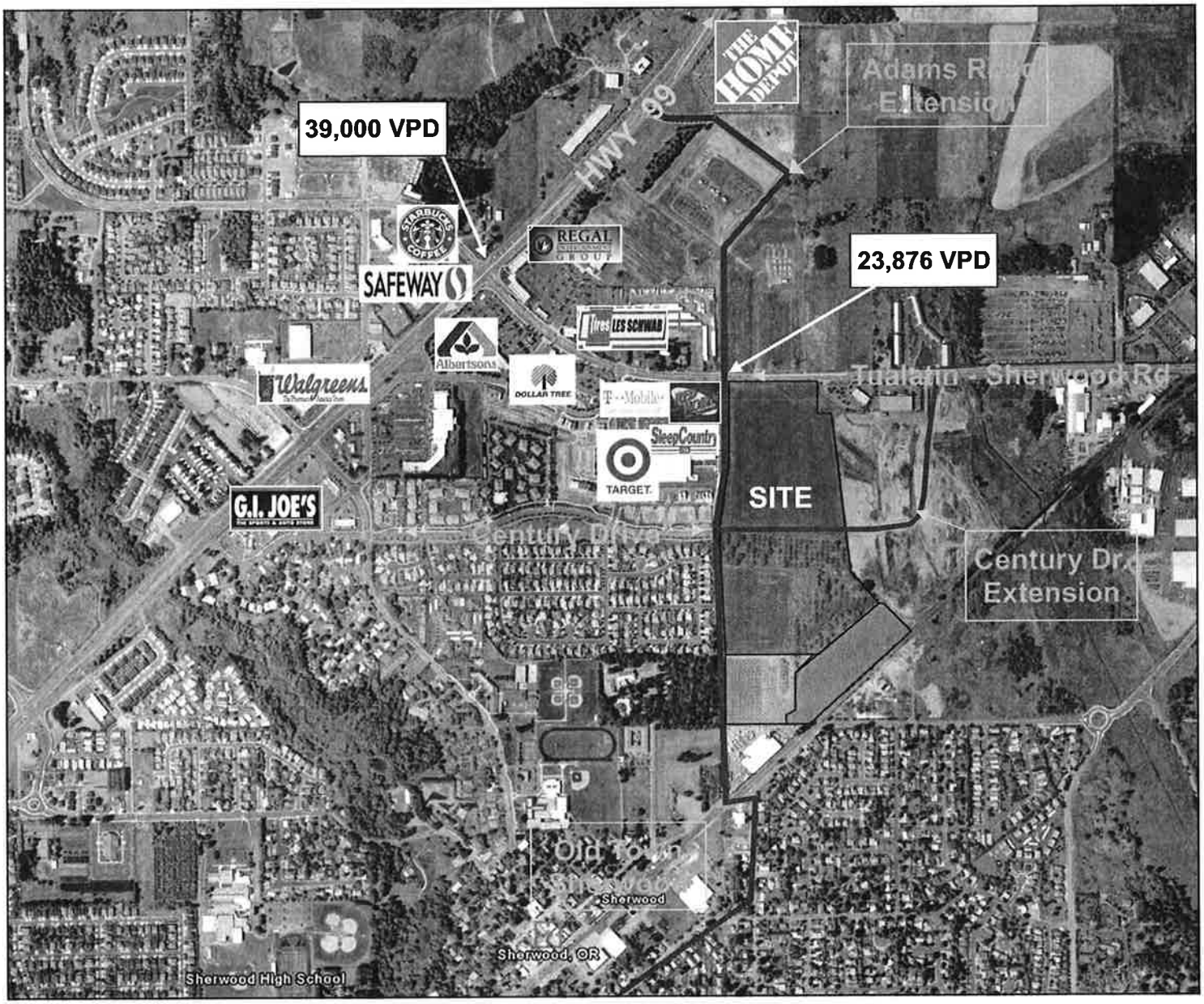

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LANGER V. CIR
2006 Tax Ct. Memo LEXIS 235 (October 30, 2006)
Judge Haines

Langer: Team Approach Essential to Successful Estate Tax Valuation

By Owen Flore, JD, CPA

By cooperating yet remaining independent, taxpayer's legal counsel and appraisers served the Langer Estate well. Together, their effective estate planning followed by adept negotiations during the audit and litigation phases led to a nearly 50% combined valuation discount of an LLC interest-- without any Section 2036 attack by the Service, or a trial on the discount.

DILLIGENCE PAYS OFF

Since 1879, the Langer family had owned and farmed land located in Sherwood, Oregon, just outside of Portland. As the surrounding population and commercial development increased, farming became impractical. The family decided to "go with the flow" of Sherwood's development, actual and potential, through estate planning.

In 1995, the family created an 8-Phase PUD (planned unit development) for their properties and received approval from the town council. Three years later, they formed the Langer Family LLC, bringing together the family members' respective farm holdings under a single manager's control. Maximizing land values was an important goal, as was managing the development process, including dealing with the local city council. And, of course, preserving maximum value, net of income and estate tax, for family members was an imperative for the family LLC.

Legal counsel guided the family throughout the process, including tax attorney John Draneas (Draneas & Hugin, P.C.; Lake Oswego, OR), who would eventually represent the estate in audit negotiations with the IRS as well as in the Tax Court litigation. When Wallace F. Langer, one of the family patriarchs, died in 2000, Draneas helped the estate obtain qualified appraisal assistance to complete it federal tax return (Form 706). This, there were five years of careful planning before the IRS intervened.

MOST PRE-TRIAL ISSUES RESOLVED IN ESTATE'S FAVOR

On advice of counsel, the estate selected Steven Kam, ASA (Cogent Valuation, San Francisco), to prepare the valuation report of the devedent's non-managing, minority interest (29.19) in the Langer Family LLC. In his conclusions, Kam first developed combined discounts for lack of control and marketability of more than 63%, in large part due to Wallace Langer's non-managerial role and minority interest in the LLC.

A concerted team effort by Kam and the estate's attorney successfully resolved most of the pre-trial issues in the estate's favor. Notably, the Service settled on 47.5% combined discount, and dropped a Section 2036 challenge to the viability of the LLC, due to proof of its overriding business purpose. They parties also reached stipulations on the values of five of the PUD parcels.

ONLY TWO REAL ESTATE VALUES REMAINED IN DISPUTE

By the time the matter reached trial, the valuation of just two out of seven PUD phases were in dispute (the LLC had sold one phase prior to Langer's death.) Through their respective real estate appraisers, both the IRS and the estate accepted the "highest and best use" value for the real estate, which-- given the facts surrounding Sherwood's growth and the impetus for the LLC, was clearly commercial retail development.

Both experts also agreed to use the comparable sales methodolgy; however, in advancing specific comparables and considering PUD risks (market uncertainties and costs), they came up with different conclusions of value.

On the value of PUD Phase 2, the experts were $100,000 apart in their appraisals (not much considering the decedent's 29%-plus interest in the LLC and the stipulated 47.5% discount). The Tax Court agreed with the IRS appraisal of $620,000, based on its "detailed and reasonable comparison of each comparable to Phase 2." The Court did not find that all of the expert's comparables were reliable indicators of value, particularly those located outside of the Sherwood area. However, the elimination of these outlying values "would not have a significant impact on the final value determination," the Court daid, and it accepted the overall determination.

But on PUD Phase 5, the experts were substantially farther apart: The IRS appraiser opined a value of $3.4 million, while taxpayer's appraiser came up with a $2.1 million value. (Keep in mind that for the value of devedent;s interest, the divergence was barely $200,000, meaning that a little over $100,000 in estate tax was at issue, plus interest over the years since the filing of the return). Yet it seems that the eleven hours of trial-- completed in a single day, according to attorney Draneas-- was well worth it, as the Tax Court came up with a $2.8 million value for Phase 5.

INSIGHTS FROM THE LITIGATION

In its final opinion, the Tax Court also provided a number of insights for appraisers and client advisors in its determination of Phase 5 value:

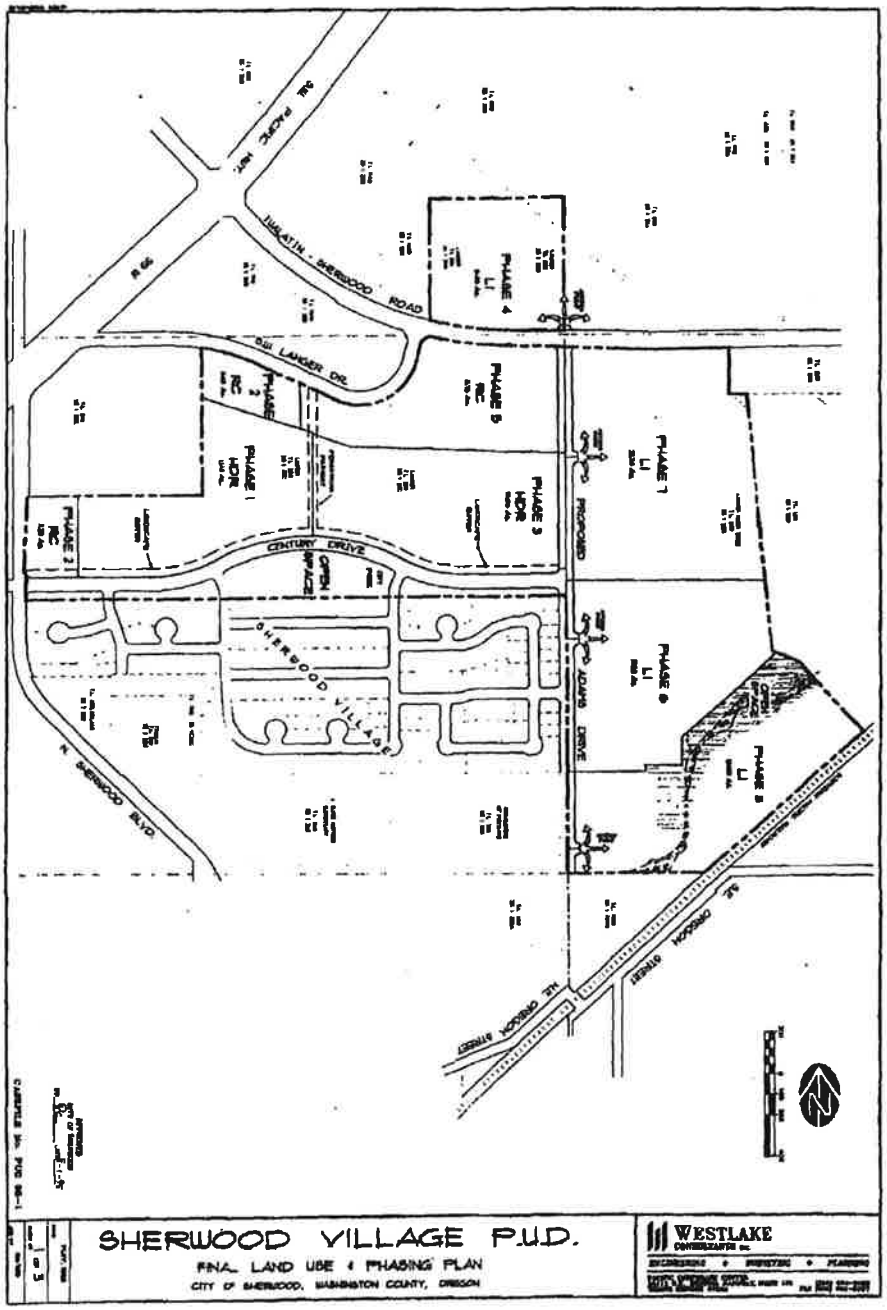
1. ***DCF analysis does not apply appropriate valuation date.*** The estate's real property appraiser, while paying lip service to the comparable sales method, essentially employed a discounted cash flow (DCF) analysis, relying on his opinion that any sale required three years of extended marketing and due diligence. The Tax Court disagreed, for two reasons:

   a. First, the date of death is the applicable valuation date for estate tax purposes (unless the allowable alternative valuation date is selected). Instead of determining the price at which Phase 5 would change hands between a willing buyer and seller on the date of death, however, the estate's expert had determined the price at which it would change hands three years later, discounted by 12% annually.

b. Second, the appropriate sales comparables should account for any uncertainties such as offsite improvement costs, changing city and resident views on commercial development, and possible oversupply of commercial properties, "A further discount is not necessary," the Court said.

2. ***Relevancy of sales comparables***. The Tax Court accepted only two of the estate's comparables, as the remaining two had occurred three years after the date of death. But the Court rejected five of the IRS comparables, fixing on the same two that it had accepted from the estate. A good reminder that the Court Court is likely to play the "pick and choose" game with appraisals, so the better the report, the more likely the trier of fact will choose its elements for the ultimate determination of fair market value.

3. ***Weighing Comparable Sales***. The Tax Court listed five factors in considering relevant comparables: Location, exposure, configuration, accessibility and zoning. Two of these --- location and expsoure-- were the most significant in this case. Given Phase 5 was less-desirably located than the court-selected comparables and had an "awkward configuration," the Court concluded that a 25% discount from the average sales price per square foot of the comparables was appropriate.



SHERWOOD VILLAGE P.U.D.

FINAL LAND USE & PHASING PLAN

CITY OF SHERWOOD, WASHINGTON COUNTY, OREGON

WESTLAKE CONSULTANTS INC.

ENGINEERING • SURVEYING • PLANNING

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to separate testimony

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October 9, 2012

VIA EMAIL ONLY

Patrick Allen, Chair
City of Sherwood Planning Commission
c/o Planning Department
22560 SW Pine Street
Sherwood, OR 97140

Re: Land Use Applications for Langer Farms Phase 7 Shopping Center (City of Sherwood File Nos. SP 12-05/CUP 12-02); Response to Letter from Charles and Amy Boyle Dated September 25, 2012

Dear Chair Allen and Members of the Planning Commission:

This office represents Langer Gramor LLC ("Applicant"), the applicant requesting approval of the land use applications for Langer Farms Phase 7 Shopping Center (City of Sherwood File Nos. SP 12-05/CUP 12-02) ("Applications") on approximately 19.7 acres of real property on the east side of SW Langer Farms Parkway ("Property"). This letter responds to and rebuts the letter from Charles and Amy Boyle to the Planning Commission on September 25, 2012. For the reasons explained below, the Planning Commission should deny each of the Boyles' contentions.

1. Response to Boyle Letter.

The Boyles' contentions are set forth below in the order in which they appeared in their letter. Following each contention, the Applicant provides a response explaining why the Planning Commission should deny the contention.

"Comments and Concerns regarding 'Anchor Store'

"1. Traffic

"a. The Applicant's submitted Traffic Analysis states that the site development sized at 197,800 sq. ft. will not exceed 43 PM peak hour trips per acre as specified in the

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Highway 99W Capacity Allocation Program. Similarly sized developments in the area show a much greater PM peak hour per acre number, example Wilsonville Fred Meyer Development, documented at 68 PM Peak Hour per acre. We argue that the above-documented number in the traffic analysis is 'loose' as the occupancy of the anchor retail store plays a significant role in determining traffic. Compare a Walmart vs. Fred Meyers vs. Costco, vs. Whole Foods."

RESPONSE: The Planning Commission should deny this contention because the Wilsonville Fred Meyer site is not comparable to the Applicant's development for four (4) reasons. First, the August 2008 *Fred Meyer Transportation Impact Study* prepared by DKS Associates assumed a lower trip generation—4.95 trips per 1,000 square feet—than the Applicant's TIA, which assumed a trip generation of 5.23 trips per 1,000 square feet. Second, the Wilsonville site is located along higher volume roadways. Third, the Wilsonville site includes a larger anchor store. Fourth, the Fred Meyer TIA overstated the trip impacts of that site in order to be conservative. For example, that TIA calculated the trip impacts of the proposed office buildings as retail in order to allow for possible future conversion to retail uses. Further, the Fred Meyer TIA assumed that the multi-family housing would develop at the highest possible rate for apartments, townhouses, or condominiums (Institute of Transportation Engineers ("ITE") 231). Accordingly, the Fred Meyer TIA likely overestimated the actual trip impacts from the site. After reviewing the Fred Meyer study, the Applicant's expert traffic consultant, Kittelson & Associates, Inc. ("Kittelson"), concluded that the Fred Meyer site is distinguishable and that the trip generation assumptions in the Applicant's TIA "are reasonable and appropriate." *See* Exhibit A (memo from Kittelson) for additional analysis. The Planning Commission should deny the Boyles' contention.

"b. The Applicant used cumulative ITE Codes 820, 912, 931 and 934 for the entire development for the traffic standard however; similar developments including the Wilsonville Fred Meyer Development use a cumulative ITE Code 820, 932, "Apartments/Condos/Townhouses," and a "Fred Meyer" standard in calculating the traffic for the area. The Langer Shopping Center Development neglects to account for the type of anchor store which will be in place. A Walmart, Fred Meyer, Winco, and BiMart all have varying traffic impacts. A determination of the occupant should be required prior to approval in regards to traffic impact. Currently, CC&Rs will be provided upon land use approval however; until CC&Rs are provided the City cannot determine whether or not the occupancies will meet the traffic requirements."

RESPONSE: The Planning Commission should deny this contention for three (3) reasons. First, there is no basis to require use of the ITE trip generation data applicable to "Apartments/Condos/Townhouses" because the Applicant's development does not include any multi-family housing. Second, Kittelson has submitted updated trip data into the record dated October 1, 2012, that demonstrates that the TIA assumes a sufficient number of trips to account

for potential development of the anchor store as either a Shopping Center (ITE Code 820), Free-Standing Discount Superstore (ITE Code 813) or Free-Standing Discount Store (ITE Code 815). Accordingly, there is no basis to require use of tenant-specific trip rates as used in Wilsonville. The Applicant does not have an identified tenant. Further, as explained above, the Applicant has instead analyzed trip impacts based upon the likely uses of the anchor site. This approach is consistent with the ITE standards, which project traffic based upon use types and not tenant names. Moreover, the City's on-call traffic consultant, DKS Associates, has submitted a memorandum into the record dated October 5, 2012, that concurs with Kittelson's assessment. Finally, the Boyles do not explain how covenants, conditions, and restrictions ("CC&R's") are even relevant to the question of traffic impacts. Therefore, the Boyles' contention lacks merit.

"c. The Traffic Impact Analysis on pg. 25, 'Proposed Development Plan' states

> **'This plan was developed with conservative site build out assumptions for the purpose of identifying and mitigating traffic impacts associated with the highest trip generation potential for the site.'**

"We argue that this statement is FALSE as a 'conservative' analysis would use ITE Codes 813, 815 or 851 (Convenience Market 24 Hours – WALMART)."

RESPONSE: The Planning Commission should deny this contention for two (2) reasons. First, as explained above in response to the previous contention, Kittelson has now analyzed the trip impacts of the anchor store under the trip generation rates applicable to ITE Code 813 and ITE Code 815 and has determined that the Applicant's development will generate fewer trips under either of these classifications than the TIA assumed, and DKS Associates has submitted a memorandum concurring with this assessment. Second, as further explained by Kittelson in Exhibit A, it is inappropriate to apply ITE Land Use Code 851 to the anchor because that code is only applicable to convenience stores such as 7-Eleven, which are clearly of a smaller size than the anchor. Therefore, the Planning Commission should deny this contention.

"d. Traffic Volume Analysis Incomplete – Traffic volume was analyzed based on Highway 99 W historic data from an ATR located on Highway 99W in Newberg at Brutscher St. We argue that this analysis site does not represent traffic on SW Tualatin Sherwood at SW Langer Farms Parkway. We also argue that the word 'historic' for the obtaining of data along Highway 99 W in Newberg is vague and does not provide a realistic timeframe for data collection."

RESPONSE: For the reasons explained by Kittelson in Exhibit A, the Planning Commission should deny this contention.

"2. Traffic Noise

"a. 'The (applicant's) response to Chapter 16.146 – Noise states,

'High levels of noise beyond what is expected is an urban area is not anticipated. Therefore, the proposed use will be within required standards and there will be no adverse impacts.'

"This statement cannot be substantiated as the occupant of the anchor store is at the time unknown and currently CC&R's are not in place to regulate the potential occupant. The difference between a Walmart, a Fred Meyer, Costco and Whole Foods is significant in regards to noise level and time of day of said noise."

RESPONSE: The Planning Commission should deny this contention for three (3) reasons. First, the Boyles have not explained how the existence of CC&R's will affect compliance with this standard. In fact, although Sherwood Zoning and Community Development Code ("ZCDC") 16.146.010 allows the City to request evidence of applicable permits or certification from a noise engineer, this standard does not require—or permit—the City to consider CC&R's for purposes of determining compliance with noise standards. Second, the Boyles have not presented any evidence to substantiate their contention that there are "significant" differences in noise impacts between the various retail tenants they identify. Third, as set forth at page 61 of the staff report, the development is not adjacent to any noise-sensitive uses, and thus, the City cannot require a noise level study pursuant to ZCDC 16.146.020. Therefore, the Planning Commission should deny the Boyles' contention on this issue.

"b. Response #1 found in Attachment 8 titled 'Neighborhood Meeting Summary' states that commercial traffic would be routed down SW Langer Farms Parkway to the round-about and would then head East on SW Century Blvd and would not continue South on SW Langer Farms Parkway. We argue that there are still residential properties between SW Tualatin Sherwood Rd and SW Century Blvd along SW Langer Farms Parkway, which will be adversely effected [sic] by commercial traffic in the area; especially with the varying potential occupants of the anchor retail store. As an alternate option, all commercial traffic could be routed in and out of SW Century Blvd where it connects with SW Tualatin Sherwood Blvd just east of DEQ and SW Langer Parkway therefore removing commercial trucking noise from SW Langer Farms Parkway in entirely."

RESPONSE: The Planning Commission should deny this contention because ZCDC 16.146.030 ("Exceptions") provides that traffic noise is exempt from the City's standards as follows:

> "This Chapter does not apply to noise making devices which are maintained and utilized solely as warning or emergency signals, or

> to noise caused by automobiles, trucks, trains, aircraft, and other similar vehicles when said vehicles are properly maintained and operated and are using properly designated rights-of-way, travel ways, flight paths or other routes. This Chapter also does not apply to noise produced by humans or animals. Nothing in this Chapter shall preclude the City from abating any noise problem as per applicable City nuisance and public safety ordinances." (Emphasis added.)

Accordingly, the Planning Commission cannot either deny or condition the Application based upon possible noise caused by traffic. To the extent that the Boyles actually intend for this contention to relate to truck routes, Kittelson has addressed it in Exhibit A. For these reasons, the Boyles' contention lacks merit.

"3. Design:

"a. The proposed design does not meet the guidelines as outlined in the 1995 PUD Guidelines for 'Front Porch Society.' The exterior of the anchor building is bland and flat walled with limited aesthetic features. It appears as though the City is willing to compromise on the guidelines by stating that the *development* meets the 'intent' of the guidelines therefore the *anchor* store can fall short. As an anchor store at the City's deemed entrance to Old Town, the building should be welcoming, inviting and aesthetically pleasing meeting the same aesthetic as the historic Old Town Sherwood."

RESPONSE: The Planning Commission should deny this contention for two (2) reasons. First, as explained in the Applicant's narrative, the design of the anchor store is consistent with the Design Guidelines. For example, the elevations include two (2) vestibules that take their design cues, materials, and elements from the surrounding retail buildings. The incorporated design elements include light tone palette colors, trimmed openings at windows, some wood exterior components, pitched roof entry points, staggered parapet heights along the elevations, metal grids along the exterior siding, and canopies as shown on the Applicant's building elevations. Further, the main entrances to the anchor are connected to the other retail buildings and to public pathways. Accordingly, the Applicant's proposed anchor design is consistent with the Design Guidelines. Second, although the Boyles contend that the development should be required to reflect elements of Old Town Sherwood, there is no basis in the Design Guidelines to reach this conclusion. For example, the Design Guidelines do not reference "Old Town" at any point. Therefore, the Planning Commission should deny the Boyles' contention.

"b. In response to the 1995 PUD Design Standards for Retail Building Construction, found on page 17 of the Proposal, the Applicant states that these requirements are 'guidelines' not 'standards.' Furthermore, the Applicant states the City

set a 'precedent' with Target in how guidelines are applied. We argue that a single data point could also prove to have been a mistake. However, Target's current exterior is more detailed that [sic] the current architectural drawings for the 'anchor' store as outlined in the proposal."

RESPONSE: The Planning Commission should deny this contention for three (3) reasons. First, as noted at page 10 of the staff report, the Design Standards are, in fact, guidelines and not mandatory criteria. Although the Boyles appear to disagree with this point, they do not offer any substantial evidence to rebut it. Further, a reasonable person would conclude that the City's application of these guidelines to the Target store did establish a precedent because the Target site (Langer Marketplace) is the only other example of retail development in the PUD. As such, it is the only instance when the City has applied the standards. Thus, the Boyles cannot point to any other examples within the PUD that support a contrary interpretation. Third, the relevant issue is whether the elevations of the anchor store are consistent with the Design Guidelines. As explained above in response to the previous contention, the Applicant's proposed anchor design is consistent with the Design Guidelines. The Planning Commission should deny the Boyles' contention.

"c. The City has stated that their intent is to get the 'highest quality' development for the city. It has also stated 'It should be noted that this is envisioned to be a primary entrance into Old Town Sherwood given it's [sic] location...' Based on the current square footage of the anchor store there are limited retailers to which this size of building markets. Examples would include Walmart, Costco, Winco and Fred Meyer. There have been recent public statements that Fred Meyers is currently working on developing a site behind the Providence Medical Building in Sherwood therefore removing their possibility from the Langer Development. Is the City stating that a Walmart would meet the 'highest quality' development and serve the Sherwood Community as an entrance into Old Town?"

RESPONSE: The Planning Commission should deny this contention because it lacks merit for three (3) reasons. First, it is purely speculative because there is no evidence in the record indicating who will ultimately use the site. In fact, staff and the Applicant have specifically stated that this information is not known. It is equally speculative at this time that Fred Meyer will locate at another site in the City. Second, this contention is not directed at any applicable approval criterion. As such, it does not provide a basis to deny or condition the Applications. Third, the Applications propose the "highest quality" development for the City. For example, the Applicant's proposal satisfies applicable PUD Design Guidelines as well as each of the five (5) categories in the Commercial Design Review Matrix (Building Design, Building Location, Parking and Loading Areas, Landscaping, and Miscellaneous). For these reasons, the Planning Commission should deny this contention.

"Comments and Concerns Regarding Overall Site Development

"1. Drive Thrus:

"a. In the Pre-Application Q&A, the City of Sherwood has stated that drive thrus should not be located between the public street and the building as per response to Question #7. Based on the architectural designs it appears as though all three (3) proposed drive thrus fail to meet this standard as drive thru lanes come between the building and a public street. Bank (Langer Farms Parkway), Pharmacy (Century Blvd), Fast Food (Tualatin Sherwood)."

RESPONSE: The Planning Commission should deny this contention for two (2) reasons. First, there is no applicable approval criterion that prohibits the Applicant from placing drive-through facilities between the public street and the building. Properly construed, staff's statement in the pre-application notes was simply a suggestion and not a binding requirement. Additionally, it should be noted that staff reviewed a different iteration of the site plan during the pre-application stage, and the site plan in the Application better orients the buildings to public streets. Second, although the Applicant did not comply with staff's suggestion, the Applicant has proposed a superior design that protects pedestrian safety and ensures screening of vehicles, as summarized in the introduction of the narrative for the Applications:

> "The applicant has gone to great lengths in not only placing the drive-thrus in areas where they will not conflict with pedestrian traffic but also designed them to not detract from the street scape. To address the pedestrian corridor and encourage people to walk to the development, all of the buildings along Langer Farms Parkway have been placed next to the pathway and pedestrian amenities provided including storefront windows and walkways. To ensure that the optional bank drive-thru is consistent with this design intent, a roof extension that matches the architectural look of the neighboring buildings is proposed to extend over the drive-thru lane. In addition, a decorative low wall is proposed to conceal the lower portions of automobiles and the asphalt drive-thru lane. With the use of screening and the drive-thru roof cover, the mass of the building is pulled close to the road while the auto use is deemphasized. This design provides a consistent pedestrian-focused streetscape along Langer Farms Parkway consistent with City code and policies."

The Applicant reviewed the alternative of placing the drive-through lanes in the interior of the site, however, doing so creates conflicts with pedestrians and parking lot maneuvering. This is

the case because access to the site is limited to only a few locations, so all vehicular traffic to the shopping center and drive-throughs will come from the interior of the site and indirectly from surrounding roads. Therefore, parking and vehicular access to all buildings will be from the interior. Placing the drive-throughs in the interior of the site near the parking area starts to create conflicts since drivers need to enter the drive-through so they can complete their transactions from the left side of the car. This requires that either drivers cross over from right to left or that the site design provide additional stacking in the parking area. This additional stacking room is easier to accommodate when the drive-through is placed between the building and the road as it allows for separation and additional room. Also, this design allows the Applicant to place ADA parking spaces close to the front door of each building. Finally, this design also adds safety for pedestrians as access from the sidewalk can be channelized to a path that crosses in front of the of drive-through window in plain view of the driver.

"b. As per 16.96, On-Site Circulation, 'On-site facilities shall be provided that accommodates safe and convenient pedestrian access...' We argue that the proposed drive-thrus make pedestrian access throughout the site development difficult and dangerous, as there are increased traffic crossings."

RESPONSE: The Planning Commission should deny this contention for two (2) reasons. First, the passage cited by the Boyles, which is the introductory sentence of this chapter of the ZCDC, is not an approval criterion. Rather, it is a generalized purpose-type statement that is informed by the implementing criteria set forth in ZCDC 16.96, A., B., C., D., E., and F. and ZCDC 16.96.030. The Boyles do not contend that the Applications do not satisfy these specific implementing standards. Second, the pedestrian crossings at the end of drive-through lanes shown on the Applicant's site plan provide "safe and convenient pedestrian access" because they are well-marked and located in plain view of drivers of vehicles in the drive-through lane. Further, they connect sidewalks. As such, they provide the most direct route for pedestrians, so there is no incentive for pedestrians to engage in a dangerous short-cut across vehicular traffic. Finally, redesigning the site to place the drive-through facilities on the interior would concentrate more vehicle maneuvering into a smaller area, which would result in pedestrian crossings that are more dangerous and confusing than the Applicant's proposed design. For these reasons, the Planning Commission should deny the Boyles' contention.

"c. As per Chapter 16.90 Site Planning, Section 7b, 'Buildings should be located adjacent to and flush to the street, subject to landscape corridor and setback standards of the underlying zone.' We argue that a drive thru does not meet this standard as outlined.

"Def. 'Flush' as found in Merriam Webster Dictionary states 'Having or forming a continuous plane or unbroken surface."

RESPONSE: The Planning Commission should deny this contention because the standard cited by the Boyles—ZCDC 16.90.030.D.7.b.—is not a mandatory approval criterion for two (2) reasons. First, pursuant to ZCDC 16.90.030.D.7.d., ZCDC 16.90.030.D.7.b. is not applicable if an applicant chooses to comply with the Commercial Design Review Matrix. The Applicant has opted to comply with the Commercial Design Review Matrix (and has presented substantial evidence to support a conclusion that the Applications satisfy same). Second, even if ZCDC 16.90.030.D.7.b. were applicable, it is not mandatory in nature because the plain language of this provision utilizes the aspirational term "should," rather than "shall." Accordingly, the Planning Commission should deny the Boyles' contention.

"2. CC&Rs:

"a. As per Chapter 16.94, Off Street Parking and Loading, Section d, Multiple/Mixed Uses:

> **"'When several uses occupy a single structure or a parcel of land, the total requirements for off-street parking and loading shall be the sum of the requirements of the several uses computed separately, with a reduction of up to 25% to account for cross-patronage of adjacent businesses or services. If the applicant can demonstrate that the peak parking demands are less than 25%, the total parking requirements may be reduced accordingly.'**

"We argue that since the proposed retail spaces currently do not have a specified use nor are there CC&R's in place prior to land use approval, the peak parking demands cannot be reduced as outlined above. In order to meet these requirements CC&R's must be developed and approved prior to land use approval of the site."

RESPONSE: The Planning Commission should deny this contention for two (2) reasons. First, neither ZCDC 16.90.030.D.3. nor any other approval criterion specifically requires submittal of CC&R's as a prerequisite to obtaining approval of a reduction in parking for a mixed use development. For that matter, the Boyles do not articulate why CC&R's are even informative to determining whether or not to grant a reduction in parking. Second, although the Applicant has proposed site plan alternatives (each with a slightly different mix of uses), the Applicant has also presented a chart at page 47 of the narrative and related explanation at pages 44 and 45 of the narrative justifying the reduction in parking for each of the site plan alternatives. The Boyles have not presented substantial evidence to undermine the Applicant's testimony. Therefore, the Planning Commission should deny this contention.

"b. Chapter 16.90, Site Planning, Section 3 states,

> **"'Covenants, agreements, and other specific documents are adequate, in the City's determination, to assure an acceptable method of ownership, management, and maintenance of structures, landscaping, and on-site features.'**

"The applicant states that it '...will prepare Covenants, Conditions and Restrictions (CC&Rs) for the development as well as shared access easements. These agreements will be provided to staff *following* land use approval. We argue that review of CC&R's should be conditional prior to land use approval and not upon land use approval."

RESPONSE: The Planning Commission should deny this contention for two (2) reasons. First, neither ZCDC 16.90.030.D.3. nor any other approval criterion specifically requires submittal of CC&R's as a prerequisite to obtaining approval of a site plan application. Second, notwithstanding that the Applicant has not yet submitted CC&R's into the record, there are a number of "agreements and other specific documents" that assure an acceptable method of ownership, management, and maintenance of structures, landscaping, and on-site features. For example, development of the Property is subject to the PUD Design Guidelines, which the Applicant has satisfied. Further, development of the Property will be subject to the conditions of approval of the Applications themselves, which also assures compliance with ZCDC 16.90.030.D.3. For instance, staff's proposed Condition 47 requires that all site development comply with the approved site plan:

> "All site improvements including but not limited to landscaping, parking and site lighting shall be installed per the approved final site plan and inspected and approved by the Planning Department." (Emphasis in original.)

Additionally, staff's proposed Condition 5 requires that the Applicant maintain the Property in accordance with the approved site plan on an ongoing basis or else be subject to code enforcement proceedings:

> "An on-going condition of approval is that the site be maintained in accordance with the approved site plan. In the event that landscaping is not maintained, in spite of the assurances provided, this would become a code compliance issue."

These staff-proposed conditions, if adopted by the Planning Commission, will ensure that the Property improvements are owned, managed, and maintained in a manner that is acceptable. IN fact, the condition likely provides the City with greater enforcement authority than any CC&R's would. The staff report at pages 19 and 20 supports the Applicant's position on this issue. The Boyles have not presented any substantial evidence to rebut this conclusion. The Planning

Commission should deny the Boyles' contention on this issue and find that the Applications satisfy ZCDC 16.90.030.D.3., subject to staff's proposed conditions of approval.

3. Conclusion.

For the reasons set forth above, the Planning Commission should deny each of the Boyles' contentions. Instead, the Planning Commission should find that there is substantial evidence to support the conclusion that the Applications satisfy applicable approval criteria, and the Planning Commission should approve same.

This letter and its exhibit constitute a portion of the Applicant's submittal into the record during the first open record period ending on October 9, 2012, at 5:00 p.m. I have asked City staff to place this submittal in the official Planning Department file for this matter and to place it before you before you render a decision in this matter. The Applicant reserves the right to submit additional argument and evidence in accordance with ORS 197.763 and the open record schedule approved by the Planning Commission.

Thank you for your consideration of the points in this letter.

Very truly yours,

Seth J. King

Enclosure (Exhibit A – Memorandum from Kittelson & Associates, Inc.)

cc: Brad Kilby (via email) (w/encl.)
Bob Galati (via email) (w/encl.)
Jason Waters (via email) (w/encl.)
Chris Crean (via email) (w/encl.)
Matt Grady (via email) (w/encl.)
Chris Brehmer (via email) (w/encl.)
Keith Jones (via email) (w/encl.)

KITTELSON & ASSOCIATES, INC.
TRANSPORTATION ENGINEERING / PLANNING
610 SW Alder Street, Suite 700, Portland, OR 97205 P 503.228.5230 F 503.273.8169

October 5, 2012 Project #: 12241

Planning Commission
City of Sherwood City Hall
22560 SW Pine Street
Sherwood, Oregon 97140

RE: Langer Farms Phase 7 Response to Transportation Comments – Sherwood, Oregon

Dear Planning Commission Members,

This letter responds to the transportation-related written comments provided by Charles and Amy Boyle at the September 25, 2012 Planning Commission Hearing. The pertinent comments are listed below in *italic* text, followed by our response.

Issue 1a) Comments and Concerns regarding "Anchor Store"

> *The Applicant's submitted Traffic Analysis states that the site development sized at 197,800 sq. ft. will not exceed 43 PM peak hour trips per acre as specified in the Highway 99W Capacity Allocation Program. Similarly sized developments in the area show a much greater PM peak hour per acre number, example Wilsonville Fred Meyer Development, documented at 68 PM Peak Hour per acre. We argue that the above documented number in the traffic analysis is "loose" as the occupancy of the anchor retail store plays a significant role in determining traffic. Compare a Walmart vs. Fred Meyers vs. Costco,. vs. Whole Foods.*

Response: The July 2012 Langer Farms – Phase 7 Transportation Impact Analysis (July 2012 TIA) prepared by Kittelson & Associates, Inc. was developed per the scoping direction of the Oregon Department of Transportation (ODOT), Washington County, and the City of Sherwood. All three agencies and the City's on-call traffic consultant (DKS Associates) have reviewed the study and concurred with the trip generation assumptions stated in the TIA. As indicated in my testimony at the September 25, 2012 public hearing, the final site plan trip generation should not be allowed to exceed the net new trip generation assumed in the July 2012 TIA without further study.

We have submitted a document dated October 1, 2012 outlining how trip data associated with other land use categories (as published by the Institute of Transportation Engineers, ITE) could be assumed

for the anchor tenant and that the July 2012 TIA assumed a sufficient number of trips to cover such uses.

The comment letter prepared by the Boyle's also raises questions about whether the trip rates assumed for the Wilsonville Fred Meyer Development should be considered for the Langer Farms Phase 7 project. As a follow-up to this information, we obtained a copy of the August 2008 *Fred Meyer Transportation Impact Study* prepared by DKS Associates for the City of Wilsonville from DKS Associates. Per Table 9 of the 2008 study, the Fred Meyer store trip rate is 4.95 trips/1,000 square feet based on Fred Meyer trip rate obtained from surveyed Fred Meyer stores in Oregon and Washington.

By comparison, the July 2012 TIA assumed a shopping center land use for the anchor tenant with a total trip generation of 945 weekday p.m. peak hour trips. Based on the assumed shopping center area of 180,800 square feet, the trip rate used in the July 2012 TIA was 5.23 trips/1,000 square feet. Given the trip rate assumed in the July 2012 TIA is higher than what was assumed for the Wilsonville Fred Meyer trip generation, the Wilsonville site is located adjacent to higher volume roadways (Interstate 5) and the Wilsonville Fred Meyer is larger than the proposed anchor tenant, we continue to believe the July 2012 TIA trip generation assumptions are reasonable and appropriate.

> *Issue 1b. The Applicant used cumulative ITE Codes 820, 912, 931 and 934 for the entire development for the traffic standard however; similar developments including the Wilsonville Fred Meyer Development use a cumulative ITE Code 820, 932, "Apartments/Condos/Townhouses," and a "Fred Meyer" standard in calculating the traffic for the area. The Langer Shopping Center Development neglects to account for the type of anchor store which will be in place. A Walmart, Fred Meyer, Winco, and BiMart all have varying traffic impacts. A determination of the occupant should be required prior to approval in regards to traffic impact. Currently, CC&Rs will be provided upon land use approval however; until CC&Rs are provided the City cannot determine whether or not the occupancies will meet the traffic requirements.*

Response: As noted in our response to Issue 1a, we have submitted a document dated October 1, 2012 outlining how trip data associated with other ITE land use categories (ITE 813, Free-Standing Discount Store and ITE 815, Free-Standing Discount Superstore) could be assumed for the anchor tenant and that the July 2012 TIA assumed a sufficient number of trips to cover such uses. There was no reason to consider use of Apartments/Condos/Townhouses on the proposed site development because no residential uses are proposed. We remain confident that the July 2012 TIA accommodates

the range of land uses anticipated on site and note that the final site plan trip generation should not be allowed to exceed the net new trip generation assumed in the July 2012 TIA without further study.

Issue 1c. The Traffic Impact Analysis on pg. 25, "Proposed Development Plan" states "This plan was developed with conservative site build out assumptions for the purpose of identifying and mitigating traffic impacts associated with the highest trip generation potential for the site." We argue that this statement is FALSE as a "conservative" analysis would use ITE Codes 813, 815 or 851 (Convenience Market 24 Hours – WALMART).

Response: See Response to Issue 1a. In addition, we note that ITE Land Use 851, Convenience Market, reflects facilities that "sell convenience foods, newspapers, magazines, and often beer and wine..." Per ITE *Trip Generation, 8th Edition*, the average convenience market building size in the weekday p.m. peak hour trip database is 3,000 square feet, with the largest being under 5,000 square feet. Locally, 7-Eleven or other similar convenience stores would be analogous to the trips associated with ITE Land Use 851. With respect to the Langer Farms Phase 7 project, use of Land Use 851 trip data would be inappropriate to reflect an anchor tenant building based on the building size alone.

Issue 1d. Traffic Volume Analysis Incomplete – Traffic volume was analyzed based on Highway 99 W historic data from an ATR located on Highway 99W in Newberg at Brutscher St. We argue that this analysis site does not represent traffic on SW Tualatin Sherwood at SW Langer Farms Parkway. We also argue that the word "historic" for the obtaining of data along Highway 99W W in Newberg is vague and does not provide a realistic timeframe for data collection.

Response: As documented in the July 2012 TIA, the operations analysis at the study intersections was based on traffic volume data collected in 2012 at each of the individual intersections (including SW Tualatin-Sherwood Road/Langer Farms Parkway). The historic ATR data referenced on page 14 of the July 2012 TIA was used to seasonally adjust the 2012 traffic counts along Highway 99W to 30th highest hour design volumes as per ODOT requirements.

Issue 2b. Response #1 found in Attachment 8 titled "Neighborhood Meeting Summary" states that commercial traffic would be routed down SW Langer Farms Parkway to the round-about and would then head East on SW Century Blvd and would not continue South on SW Langer Farms Parkway. We argue that there are still residential properties between SW Tualatin Sherwood Rd and SW Century Blvd along SW Langer Farms Parkway, which will be adversely effected by the commercial traffic in the area; especially with the varying potential occupants of the anchor retail store. As an alternate option, all commercial traffic could be routed in and out of SW Century Blvd where it connects with SW Tualatin Sherwood Blvd just east of DEQ and SW

Langer Parkway therefore removing commercial trucking noise from SW Langer Farms Parkway entirely.

Response: Truck deliveries to the site are expected to be routed to and from the site loading area via SW Century Drive. Trucks destined to and from the east on I-5 are likely to access the site via SW Century Drive and SW Tualatin-Sherwood Road. Trucks entering or exiting the site towards Highway 99W are likely to travel via SW Century Drive to SW Langer Farms Parkway to SW Tualatin-Sherwood Road to use the new signalized intersection at SW Langer Farms Parkway/SW Tualatin-Sherwood Road. We do not anticipate site-related truck delivery traffic to travel to or from the site via SW Langer Farms Parkway south of SW Century Drive unless such vehicles have other delivery needs located south of SW Century Drive.

Please contact me if you have any questions or comments regarding the contents of this letter or the analyses performed.

Sincerely,
KITTELSON & ASSOCIATES, INC.

Chris Brehmer

Chris Brehmer, P.E.
Principal Engineer

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to separate testimony

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Seth J. King
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October 9, 2012

VIA EMAIL ONLY

Patrick Allen, Chair
City of Sherwood Planning Commission
c/o Planning Department
22560 SW Pine Street
Sherwood, OR 97140

Re: Land Use Applications for Langer Farms Phase 7 Shopping Center (City of Sherwood File Nos. SP 12-05/CUP 12-02); Response to Possible Comment from Bonneville Power Administration

Dear Chair Allen and Members of the Planning Commission:

This office represents Langer Gramor LLC ("Applicant"), the applicant requesting approval of the land use applications for Langer Farms Phase 7 Shopping Center (City of Sherwood File Nos. SP 12-05/CUP 12-02) ("Applications") on approximately 19.7 acres of real property on the east side of SW Langer Farms Parkway ("Property"). The Applicant has just learned that the Bonneville Power Administration ("BPA") may submit written comments into the record that request that the City not approve development within BPA's power line easement, which crosses the northeast corner of the Property ("Easement Area").

The Applicant has not seen the substance of the written comment. Thus, the Applicant reserves the right to respond to same if and when it is submitted into the record. Further, the Applicant does not concede that BPA has the authority to limit the Applicant's development rights in the Easement Area. Accordingly, by submitting this letter and enclosure, the Applicant does not waive any arguments that the BPA has exceeded its legal authority by submitting the written comment.

Nevertheless, in an abundance of caution and in light of the open record schedule, the Applicant submits into the record a slightly modified site plan that removes all development from the Easement Area. A copy of this site plan is set forth in Exhibit A. The Applicant offers this alternative site plan only in the event the City determines that it is necessary to restrict

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Perkins Coie LLP

development in the Easement Area based upon written comments from BPA. The Applicant does not withdraw any site plan alternatives already included in the record for this matter.

The modified site plan removes all development from the Easement Area and relocates parking from the Easement Area to other locations on the Property. There is no net loss of building floor area or parking spaces. Truck turning radii can still be safely accommodated on-site, as set forth in Exhibit B. Finally, as explained in Exhibit C, the modified site plan satisfies applicable landscaping requirements. There are no other material changes to the site plan or the size or location of any buildings or access points. Accordingly, subject to staff's proposed conditions of approval (as modified by the Applicant's comments), the site plan satisfies all applicable City development standards and, if necessary to address BPA's comments, should be approved.

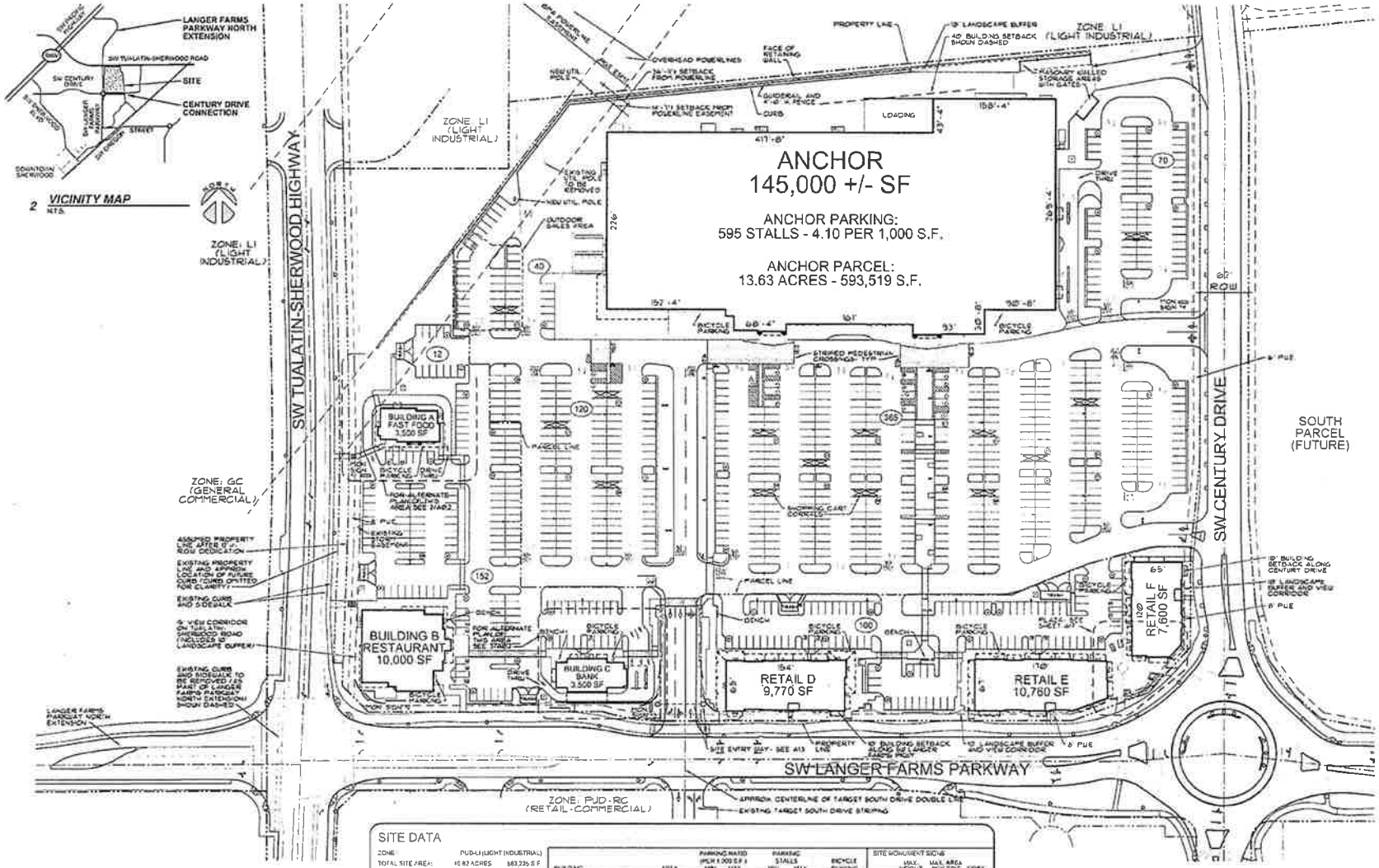
Thank you for your attention to the modified site plan and the points in this letter.

Very truly yours,

Seth J. King

Enclosures (Exhibit A – Site Plan; Exhibit B – Truck Turning Figure; Exhibit C – Landscaping Calculations)

cc: Brad Kilby (via email) (w/encl.)
Chris Crean (via email) (w/encl.)
Matt Grady (via email) (w/encl.)
Chris Brehmer (via email) (w/encl.)
Keith Jones (via email) (w/encl.)



2 VICINITY MAP
NTS

SITE DATA

ZONE: PUD-LI (LIGHT INDUSTRIAL)
TOTAL SITE AREA: 10.82 ACRES 583,235 S.F.

EXISTING POWERLINE EASEMENTS: 59,001 S.F. (NOT DEDUCTED FROM TOTAL SITE AREA)
BPA: 34,199 S.F.
PUE: 25,800 S.F.

BUILDING	AREA	PARKING RATIO (PER 1,000 S.F.) MIN	MAX	PARKING STALLS MIN	MAX	BICYCLE PARKING
ANCHOR	145,000 S.F.	4.1	3.7	105	140	20
BUILDING A - FAST FOOD	3,500 S.F.	9.5	12.4	25	43	3
BUILDING B - RESTAURANT	10,000 S.F.	15.3	19.1	153	191	8
BUILDING C - BANK	3,500 S.F.	3.3	5.4	15	19	3
RETAIL D	9,770 S.F.	4.1	3.3	40	50	3
RETAIL E	10,760 S.F.	4.1	3.1	44	55	3
RETAIL F	7,600 S.F.	4.1	3.1	31	39	3
TOTAL BUILDING AREA	190,130 S.F.	PARKING TOTALS:		913	1,137	TOTAL 46
BUILDING COVERAGE, OVERALL:	22.63 %	OVERALL RATIO:		4.00	2.98	MINIMUM 44

PARKING ANCHOR:	510 STALLS	4.10 PER 1,000 S.F. (REQUIRES NO REDUCTION FROM CODE)
PARKING OTHER:	204 STALLS	5.85 PER 1,000 S.F. (REQUIRES 17.0% REDUCTION FROM CODE)
OUTDOOR SALES:	+30 STALLS	
PARKING TOTAL:	829 STALLS	4.36 PER 1,000 S.F. (REQUIRES 12% REDUCTION FROM CODE)

SITE MONUMENT SIGNS

	MAX. HEIGHT	MAX. AREA PER SIDE	SIDES
SIGN 1	20'-0"	150 S.F.	2
SIGN 2	6'-0"	35 S.F.	1
SIGN 3	6'-0"	35 S.F.	2
SIGN 4	8'-0"	38 S.F.	2

1 ALTERNATE SITE PLAN #2 WITH BPA EASEMENT NOT UTILIZED
1" = 60'

0 30' 60' 120' 180'
1" = 60'

TILAND / SCHMIDT
ARCHITECTS, P.C.
3611 BILL HOOD AVE.
SUITE 200
PORTLAND, OR 97239
(503) 220-8517
FAX (503) 220-8518

GRAMOR DEVELOPMENT

LANGER FARMS PHASE 7

SW TUALATIN-SHERWOOD ROAD AND SW LANGER FARMS PARKWAY
SHERWOOD, OREGON

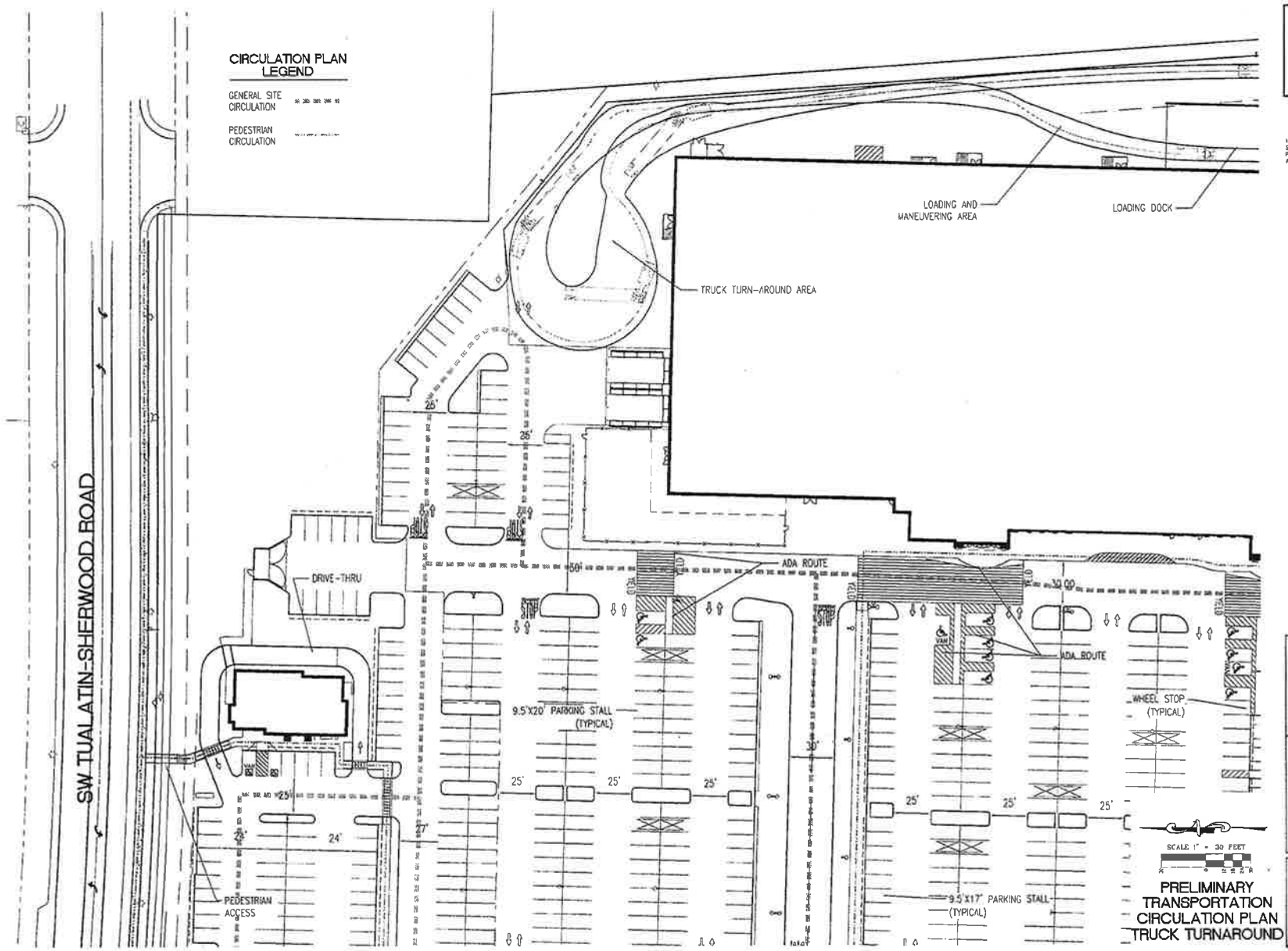
LANGER GRAMOR LLC
LAND USE SET

PROJECT NO. 11364
DATE: 10-09-12
DRAWN BY:
CDO
CHECKED BY:
REVISIONS

A/0.5

SP 81

EXHIBIT A



AKS ENGINEERING & FORESTRY
13910 SW GALBREATH DRIVE, STE 100
SHERWOOD, OR 97140
PHONE: 503-925-8799
AKS JOB: 3048

GRAMOR DEVELOPMENT

LANGER FARMS PHASE 7

SW TUALATIN-SHERWOOD ROAD AND SW LANGER FARMS PARKWAY
SHERWOOD, OREGON
LAND USE SET

PROJECT NO. 11364
DATE : 10/09/12
DRAWN BY : RSW
CHECKED BY : JWP
REVISIONS

C
4.1

EXHIBIT B

From: Chuck Oliver [mailto:chuckoliver@tilandschmidt.com]
Sent: Tuesday, October 09, 2012 2:24 PM
To: Matt Grady
Subject: RE: Sherwood - Alternate Plan Staying Out of BPA Easement

Landscape numbers check out, and mostly improved. Partial breakdown:

Total: 134,806 SF / 15.6% (from 13.09%, minimum is 10%)

Landscaped percentage of parking area: 12.0% (from 11.6%, minimum is 10%)

"Interior" portion of parking lot landscaping: 64.9% (from 65.4%; minimum is 50%)

Car overhangs are factored in.

Chuck Oliver
Tiland/Schmidt Architects, p.c.
3611 SW Hood Ave, Suite 200
Portland, OR 97239
503.220.8517
chuckoliver@tilandschmidt.com

EXHIBIT C

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RECEIVED

OCT 09 12

BY kla
PLANNING DEPT.

October 9, 2012

City of Sherwood
Planning Commission
22560 SW Pine St
Sherwood, OR 97140

Subject: SP 12-05 / CUP 12-02 Langer Farms Phase 7 Shopping Center

Planning Commission,

We would like to argue that the transportation impact analysis (TIA), which was created for this proposed development, does not appropriately measure the potential traffic impact based on worst-case scenario and that more appropriate ITE Codes should have been used to accurately reflect a reasonable worst-case scenario for the planned development.

After comparing TIAs in the area to include the City of Wilsonville Fred Meyer TIA, City of Cornelius Retail Development on North Adair TIA (Walmart) and East Vancouver Costco TIA, the study should have more accurately broken down the development into 5 separate spaces with 5 separate, more appropriate ITE codes.

1. Anchor Store (145,000 sq. ft.) – ITE Code 815 "Free-standing discount store."
2. Shopping Center (35,800 sq. ft.) – ITE Code 820
3. Bank w/ drive thru (3,500 sq. ft.) – ITE Code 912
4. Quality Restaurant (10,000 sq. ft.) – ITE Code 931 (possibly 932)
5. Fast-food Restaurant w/ drive thru (3,500 sq. ft.) – ITE Code 934

In a letter from ODOT to Kittelson & Associates, dated August 5, 2005, in regards to the proposed Cornelius Walmart on North Adair, ODOT recommended that a reasonable worst-case scenario for the development would use ITE Code 815, "Free standing discount store". Since the anchor store tenant has not been identified, a reasonable worst-case scenario should use at a minimum ITE code 815 in calculating the anchor store potential trip rate.

In the City of Wilsonville Fred Meyer TIA, the Fred Meyer "anchor" store trips were calculated separately from the remaining retail space. The Fred Meyer store was proposed at 155,700 sq. ft. and the remaining shopping center was 50,900 sq. ft. The Fred Meyer trip rates were based on surveyed Fred Meyer stores in Oregon and Washington and the remaining retail space was calculated based on ITE Code 820. Fred Meyer rates were calculated separately from the retail stores. And we argue

that the proposed anchor store should be calculated separately from the remaining retail space.

The Wilsonville Town Square TIA also used an ITE Code 932 "High Turnover (sit down) Restaurant while the Sherwood Langer Farms TIA used ITE Code 931 "Quality Restaurant. " In comparing trip rates between the ITE 931 (7.49 trips/KSF) and ITE 932 (11.15 trips/KSF) you will find a difference of 3.66 trips/KSF. Again, a reasonable worst-case scenario would be to use ITE Code 932 instead on 931 for the proposed restaurant.

In summary, the traffic impact analysis created for the proposed Langer Farms Phase 7 Shopping Center development does not accurately reflect the worst-case scenario in regards to traffic impact for the development.

Thank you,

Charles and Amy Boyle
21426 SW Massey Terrace
Sherwood, OR 97140

Resources Used:

1. City of Cornelius Proposed Retail Center Transportation Impact Analysis– North Adair St/North 4th Avenue (Walmart) dated August 2005, prepared by Kittleson & Associates, Inc.
2. City of Wilsonville Fred Meyer Transportation Impact Study dated August 2008, prepared by DKS Associates.
3. East Vancouver Costco Transportation Impact Analysis dated October 2009, prepared by Kittelson & Associates, Inc.