



CITY COUNCIL MEETING PACKET

FOR

Thursday, July 14, 2022

**Sherwood City Hall
22560 SW Pine Street
Sherwood, Oregon**

7:00 pm City Council Special Meeting

This meeting will be live streamed at
<https://www.youtube.com/user/CityofSherwood>



AGENDA

SHERWOOD CITY COUNCIL Thursday, July 14, 2022

7:00 pm City Council Special Meeting

**Sherwood City Hall
22560 SW Pine Street
Sherwood, OR 97140**

**This meeting will be live streamed at
<https://www.youtube.com/user/CityofSherwood>**

7:00 PM SPECIAL SESSION

1. CALL TO ORDER

2. ROLL CALL

3. APPROVAL OF AGENDA

4. PUBLIC HEARINGS

A. Resolution 2022-053 Establishing the Brookman Area Public Sanitary Sewer Reimbursement District and directing staff to enter into a Reimbursement District Agreement with the developer (Brookman Development, LLC)

(Bob Galati, City Engineer, and Craig Sheldon, Public Works Director)

B. Appeal Hearing for LU 2021-009 MM Cedar Creek Plaza Multifamily

(Eric Rutledge, Associate Planner)

5. ADJOURN

How to Provide Citizen Comments and Public Hearing Testimony: Citizen comments and public hearing testimony may be provided in person, in writing, or by telephone. Written comments must be submitted at least 24 hours in advance of the scheduled meeting start time by e-mail to Cityrecorder@Sherwoodoregon.gov and must clearly state either (1) that it is intended as a general Citizen Comment for this meeting or (2) if it is intended as testimony for a public hearing, the specific public hearing topic for which it is intended. To provide comment by phone during the live meeting, please e-mail or call the City Recorder at Cityrecorder@Sherwoodoregon.gov or 503-625-4246 at least 24 hours in advance of the meeting start time in order to receive the phone dial-in instructions. Per Council Rules Ch. 2 Section (V)(D)(5), Citizen Comments, "Speakers shall identify themselves by their names and by their city of residence." Anonymous comments will not be accepted into the meeting record.

How to Find out What's on the Council Schedule: City Council meeting materials and agenda are posted to the City web page at www.sherwoodoregon.gov, generally by the Thursday prior to a Council meeting. When possible, Council agendas are also posted at the Sherwood Library/City Hall and the Sherwood Post Office.

To Schedule a Presentation to the Council: If you would like to schedule a presentation to the City Council, please submit your name, phone number, the subject of your presentation and the date you wish to appear to the City Recorder, 503-625-4246 or Cityrecorder@Sherwoodoregon.gov

ADA Accommodations: If you require an ADA accommodation for this public meeting, please contact the City Recorder's Office at (503) 625-4246 or Cityrecorder@Sherwoodoregon.gov at least 48 hours in advance of the scheduled meeting time.



RESOLUTION 2022-053

**ESTABLISHING THE BROOKMAN AREA PUBLIC SANITARY SEWER REIMBURSEMENT DISTRICT
AND DIRECTING STAFF TO ENTER INTO A REIMBURSEMENT DISTRICT AGREEMENT WITH THE
DEVELOPER (BROOKMAN DEVELOPMENT LLC)**

WHEREAS, Chapter 13.24 of the Sherwood Municipal Code (“SMC”) permits those who finance and install certain public improvements to seek reimbursement from other persons or entities who benefit from those improvements through the establishment of a reimbursement district; and

WHEREAS, Brookman Development LLC (“Developer”) financed and constructed public sanitary sewer improvements to serve their development in the Brookman Area; and

WHEREAS, these public sanitary sewer improvements were extended off-site in order to obtain service from existing public sanitary sewer systems, and the constructed public sanitary sewer improvements are available to serve adjacent private site developments; and

WHEREAS, the Developer applied for the establishment of a reimbursement district in accordance with SMC 13.24.020; and

WHEREAS, as required by SMC 13.24.030, on June 30, 2022, the Public Works Director prepared a report recommending approval of the reimbursement district with certain modifications, including a methodology for equitably allocating the costs of the improvement among benefiting properties within the district, and this report was provided to City Council on July 6, 2022; and

WHEREAS, notice of a hearing on the formation of a reimbursement was mailed to all affected property owners on June 30, 2022, consistent with the requirements of SMC 13.24.050(B); and

WHEREAS, on July 14, 2022, the City Council held an informational hearing and accepted testimony on the proposed reimbursement district consistent with the requirements of SMC 13.24.050(A); and

WHEREAS, SMC 13.24.060 provides certain requirements for a resolution approving formation of a reimbursement district; and

WHEREAS, the City’s Finance Director has recommended that an interest rate of 2.0% be applied to the reimbursement fee in accordance with SMC 13.24.060(B); and

WHEREAS, after considering the Public Works Director's Report and all information and testimony submitted at the public hearing, it appears to Council that formation of a reimbursement district, as described in the Public Works Director's Report, is fair and in the public interest.

NOW, THEREFORE, THE CITY OF SHERWOOD RESOLVES AS FOLLOWS:

- Section 1.** The Public Works Director's report, attached hereto as Exhibit A and incorporated into this resolution, is hereby approved and adopted.
- Section 2.** The Brookman Area Public Sanitary Sewer Reimbursement District, as described in Exhibit A, is hereby established. Payment of the reimbursement fee, as designated for each parcel as described in Exhibit A, is a precondition of receiving any City permits applicable to development of that parcel, as provided in SMC 13.24.100(B).
- Section 3.** The City Manager is directed to enter into an agreement with the Developer in accordance with SMC 13.24.060.
- Section 4.** An interest rate of 2.0% shall be applied to the reimbursement fee as a return on the investment of the Developer. This interest rate is fixed and shall be computed against the reimbursement fee as simple interest and will not compound.
- Section 5.** The City Manager shall provide notice of adoption of this resolution as required by SMC 13.24.070 and the City Recorder shall cause this Resolution to be recorded as required by SMC 13.24.080.
- Section 6.** This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 14th of July, 2022

Keith Mays, Mayor

Attest:

Sylvia Murphy, MMC, City Recorder



City of Sherwood
22560 SW Pine St.
Sherwood, OR 97140
Tel 503-625-5522
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www.sherwoodoregon.gov

Mayor
Keith Mays

Council President
Tim Rosener

Councilors
Renee Brouse
Sean Garland
Taylor Giles
Doug Scott
Kim Young

City Manager
Keith Campbell

June 30, 2022

To: Sherwood City Council
From: Craig Sheldon, Public Works Director
Bob Galati P.E., City Engineer
Through: Keith Campbell, City Manager

RE: Public Works Directors Report for Brookman Development LLC
Request to Establish Reimbursement District

This report has been created to fulfill the City of Sherwood's Municipal Code Chapter 13.24 – Public Improvement Reimbursement District requirements which include a Public Works Directors Report (SMC Section 13.24.030).

Brookman Development LLC submitted an application letter with attachments dated April 22, 2022, in which the establishment of a Reimbursement District is being requested. Staff has reviewed the application materials and requested additional information on tax lot ownership, mailing addresses and contact name for property. The applicant responded to staff's request and staff has determined that the submittal now has met the minimum requirements of SMC 13.24.020.

This application will follow the process requirements of the City of Sherwood Municipal Code Sections 13.24.010 through 13.24.150, with the final determination being made by the City Council with adoption of a Resolution and recording of the Resolution with the Washington County Clerk, if applicable.

The following items A through G must be individually addressed in this Report in compliance with SMC Section 13.24.030.

- A. Whether the developer will finance or has financed some of all of the cost of the public improvement, thereby making service available to property, other than that owned by the developer.
- B. The boundary and size of the reimbursement district.
- C. The actual or estimated cost of the public improvement serving the area of the proposed reimbursement district and the portion of the cost for which the developer should be reimbursed for each public improvement.
- D. A methodology for spreading the cost among the properties within the reimbursement district and, where appropriate, defining a "unit" for applying the reimbursement fee to property which may, with city approval, be partitioned, subdivided, altered or modified at some future date. City may use any methodology for apportioning costs on properties specially benefited that is just and reasonable.
- E. The amount to be charged by the city for an administration fee for the reimbursement agreement. The administration fee shall be fixed by the city council and will be included in the resolution approving and forming the reimbursement district. The administration fee may be a percentage of the total reimbursement fee expressed as

an interest figure or may be a flat fee per unit to be deducted from the total reimbursement fee.

F. Whether the public improvements will or have met city standards.

G. Whether it is fair and in the public interest to create a reimbursement district.

Background Information

The Sherwood Brookman Sanitary Sewer Trunk Line Extension project is listed in the Sanitary Master Plan (adopted ORD 2016-014) as Brookman Pipeline Extension (SS-3), which includes installation of new 10-inch diameter mainline pipe from SW Cobble Court to SW Brookman Road. This line is intended to service the Brookman Area expansion, which was within the City's Urban Growth Boundary at the time of the Sanitary Master Plan adoption (August 2016).

With the annexation and expansion of the Sherwood West area due to the construction of the Sherwood School District High School, the Brookman Extension project was upsized and expanded to provide service to the Sherwood High School and approximately half of the future Sherwood West area growth.

Per the Site Development Land Use Decision (SP 2018-002), the following description of the public sanitary sewer improvements and conditions of approval were stated.

Sanitary Sewer

"The proposed project site is located near an existing 15-inch diameter City sanitary sewer trunk line, located within the Cedar Creek corridor. As part of sanitary sewer services to the future southern and western UGB and Urban Reserve parts of Sherwood, the extension of the sanitary sewer trunk line will need to be extended and sized to meet these future needs.

In November 2018, CWS staff presented a Resolution (R&O 18-25) to the CWS Board of Director, whereby CWS staff are being authorized to acquire easement rights for the extension of the Brookman sewer trunk line. This Resolution is the basis for coordination between CWS and the applicant to obtain easement rights and provide sanitary sewer service to the proposed development, while also providing capacity for the future development needs of the areas described above. The design of this segment of the sanitary trunk line is being performed by the applicant's engineer, while approval of the pipeline design size, invert elevation, and slope are being dictated by CWS.

Condition: *Prior to Final Approval of Engineering Plans, applicant shall obtain and submit a copy of an agreement letter between applicant and CWS which supports CWS approval of sanitary trunk line design.*

Condition: *Prior to Final Approval of Engineering Plans, the design of the public sanitary sewer system shall conform with CWS design and construction standards (CWS R&O 17-5).*

Condition: *Prior to Grant of Occupancy, all installed private sanitary sewer piping shall be installed meeting the standards of the Oregon Specialty Plumbing Code (recent edition)."*

MC Section 13.24.030.A - Whether the developer will finance or has financed some or all of the cost of the public improvement, thereby making service available to property, other than that owned by the developer.

Response: The public sanitary sewer trunkline improvements required by Planning Land Use Conditions of Approval File No. SUB 18-02, have been constructed and accepted by the City of Sherwood as noticed by issuance of an Engineering Final Approval and Release of Performance Bonds letter, dated February 14, 2022. The constructed off-site public sanitary sewer trunkline improvements provide service access to adjacent properties that are currently not served by public sanitary sewer systems.

In conformance with the Memorandum of Understanding (MOU) between CWS and the developer, the public sanitary sewer trunkline improvements have been oversized to provide future service to properties beyond the extents of the site development project. The developer has financed the design and construction costs of the oversized public sanitary sewer trunkline extension.

MC Section 13.24.030.B - The boundary and size of the reimbursement district.

Response: The applicant submitted a map showing the requested reimbursement district boundary limits and identifying the properties included within the reimbursement area. The specific tax lots are identified below in Table REMB-1 along with their total areas and developable areas as noted by applicant.

Map REMB-1 – Applicant Submitted Reimbursement District Boundary

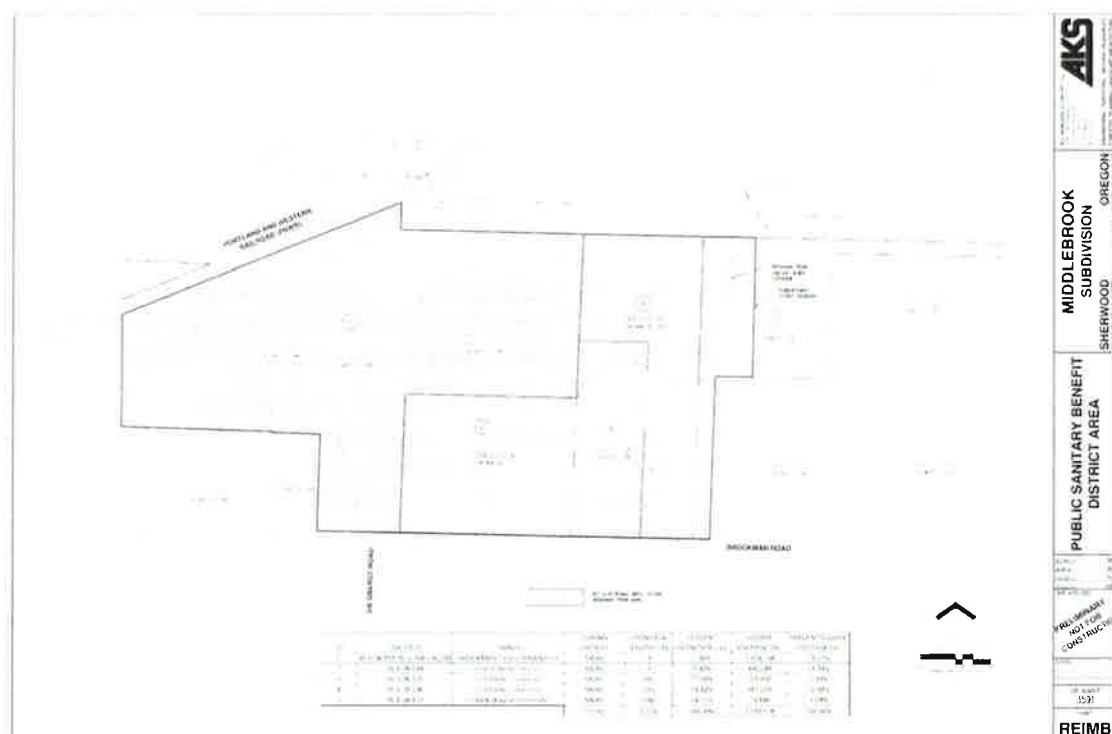


Table REMB-1 – Applicant Submitted Tax Lots and Related Areas

Tax Lot Number(s)	Total Tax Lot Area (Acres)	Total Tax Lot Area (Sq.Ft.)	Developable Tax Lot Area (Acres)	Developable Tax Lot Area (Sq.Ft.)
3S106000103, 3S106B100 & 200	37.97	1,653,973	32.57	1,418,704
3S106000100 & 101	15.76	686,505	10.49	456,845
3S106000104	10.47	456,073	6.89	300,189
3S106000107	9.92	432,115	1.69	73,840

The tax lot number, property owner, mailing address for property owner, site address are provided by the applicant and shown below.

Table REMB-2 – Applicant Submitted Tax Lot and Owner Information

Tax Lot # 3S106B000100 17601 SW Brookman Road Sherwood, Oregon 97140	Brookman Development LLC, Joe Schiewe P.O. Box 61426 Vancouver, Washington 98666
Tax Lot # 3S106B000200 17769 SW Brookman Road Sherwood, Oregon 97140	Boyd, George W. Rev Liv Trust & Brewer, Carleen H Rev Liv Trust P.O. Box 85 Tualatin, Oregon 97062
Tax Lot # 3S1060000103 17495 SW Brookman Road Sherwood, Oregon 97140	Brookman Development LLC, Joe Schiewe P.O. Box 61426 Vancouver, Washington 98666
Tax Lot # 3S1060000100 17045 SW Brookman Road Sherwood, Oregon 97140	CND Cedar Creek LLC, John Burchfield 1111 N Post Oak Lane Houston, Texas 77024
Tax Lot # 3S1060000101	CND Cedar Creek LLC, John Burchfield

17117 SW Brookman Road Sherwood, Oregon 97110	1111 N Post Oak Lane Houston, Texas 77024
Tax Lot # 3S1060000104 17433 SW Brookman Road Sherwood, Oregon 97140	Linda & Richard Scott 17433 SW Brookman Road Sherwood, Oregon 97140
Tax Lot # 3S1060000107 17033 SW Brookman Road Sherwood, Oregon 97140	Wayne K & Linda A Chronister P.O. Box 1474 Sherwood, Oregon 97140

Staff has reviewed the submittal and limits of the upstream boundary for parcels which will have the ability to obtain service from the trunkline extension that are within the current City limits at the time of the application and is presenting a modified reimbursement district boundary Map REMB-1.

The reason for the modified boundary is that the City has received land use applications for adjacent properties that provide information on actual and proposed developments that can take service from the sanitary sewer trunk line constructed by the applicant. In addition, adjacent properties that are within the city limits that have no other option but to take service from the constructed trunkline and have not received land use approval or have not been submitted for land use review have also been included in the boundary area. Given the development pressures within the Brookman area, it is anticipated that development of those lots that are currently not being developed will occur in a near term timeframe.

Map REMB-2 – City Recommended Reimbursement District Boundary



Table REMB-3 – City Recommended Tax Lots and Related Areas

Development	Tax Lot #(s)	Total Area (Acres)	Number of Lots
Middlebrook Subdivision	3S1060000100, 200, 300	37.97	145
Riverside at Cedar Creek Subdivision	3S1060000104	10.47	28
Reserve at Cedar Creek Subdivision	3S1060000100, 101	15.72	58
Cedar Creek Gardens Subdivision	3S1060000102, 104	19.64	42
Brookman Place Subdivision	3S106B000101	2.0	12**
Potential Future Development	3S1060000200	5.52	34*

(*) Calculated: $5.52 \text{ ac} \times 43,560 \text{ sf/ac} \times \%70 \text{ (developable area)} / 5,000 \text{ sf/lot (residential lot size)} = 34 \text{ lots}$

(**) Calculated: $2.0 \text{ ac} \times 43,560 \text{ sf/ac} \times \%70 \text{ (developable area)} / 5,000 \text{ sf/lot (residential lot size)} = 12$

**Table REMB-4 – City Recommended Reimbursement District Boundary
Tax Lot and Owner Information**

Middlebrook Subdivision Tax Lot # 3S106BA Lot #s (100 through 9000) Tax Lot # 3S106AB Lot #s (100 through 6300) Addresses: 145 tax lot addresses Sherwood, Oregon 97140	Brookman Development LLC, Joe Schiewe P.O. Box 61426 Vancouver, Washington 98666
Reserve at Cedar Creek Subdivision Tax Lot # 3S1060000100 17045 SW Brookman Road Sherwood, Oregon 97140	CND Cedar Creek LLC, John Burchfield 1111 N Post Oak Lane Houston, Texas 77024

Reserve at Cedar Creek Subdivision Tax Lot # 3S1060000101 17117 SW Brookman Road Sherwood, Oregon 97140	CND Cedar Creek LLC, John Burchfield 1111 N Post Oak Lane Houston, Texas 77024
Riverside at Cedar Creek Subdivision Tax Lot # 3S1030000104 17433 SW Brookman Road Sherwood, Oregon 97140	Linda R & Richard L Scott 17433 SW Brookman Road Sherwood, Oregon 97140 Riverside Homes LLC 17933 NW Evergreen Parkway, Suite 370 Beaverton, Oregon 97006
Cedar Creek Gardens Subdivision Tax Lot # 3S1060000107 17033 SW Brookman Road Sherwood, Oregon 97140	Wayne K and Linda A Chronister P.O. Box 1474 Sherwood, Oregon 97140
Brookman Place Subdivision Tax Lot # 3S106B000101 17687 SW Brookman Road Sherwood, Oregon 97140	Olivia Beach LLC P.O. Box 7534 Olympia, Washington 98507
Tax Lot # 3S106B000200 17769 SW Brookman Road Sherwood, Oregon 97140	Boyd, George W. Rev Liv Trust & Brewer, Carleen H Rev Liv Trust P.O. Box 85 Tualatin, Oregon 97062

MC Section 13.24.030.C - The actual or estimated cost of the public improvement serving the area of the proposed reimbursement district and the portion of the cost for which the developer should be reimbursed for each public improvement.

Response: As part of the reimbursement district application, the applicant submitted a cost breakdown of the constructed improvement (18-inch diameter sanitary sewer trunk line) which breaks out the System Development Charge (SDC) creditable amount for the oversizing costs of providing the difference in size between the 8-inch diameter and 12-inch diameter sanitary sewer trunk line. The costs associated with the oversizing from 12-inch to 18-inch was directly paid for by CWS out of regional SDC funds and is excluded.

The applicant's submittal shows a recommended Reimbursement District valuation of \$511,421.00 less \$10,456.71 = \$500,964.29 as shown in Table REMB-5 below. SMC 13.24.040(C) states "No reimbursement shall be allowed for the cost of legal expenses, design engineering, financing costs, permits or fees required for construction permits, land or easements dedicated by the developer, the portion of costs which are eligible for systems development charge credits or any costs which cannot be clearly documented."

Table REMB – 5 Applicant Submitted Construction Cost Breakdown

BROOKMAN TRUNK MAIN EXTENSION
Contractor Construction Costs

4/22/2022

Cost for 12" Sanitary Trunk Main

ITEM No.	ITEM DESCRIPTION	QTY.	UNIT	UNIT PRICE	AMOUNT
GENERAL					
1	Mobilization (Limited to 5% of Total Bid)	1	LS	\$16,509.00	\$ 16,509.00
2	Clearing and Grubbing	1	LS	\$10,820.20	\$ 10,820.20
3	Construction Access Grading/Road	1	LS	\$20,839.60	\$ 20,839.60
4	Access Grading Restoration	1	LS	\$22,592.50	\$ 22,592.50
5	Tree Removal	1	LS	\$68,037.20	\$ 68,037.20
EROSION CONTROL					
6	Orange Sediment Fence	1,750	LF	\$3.70	\$ 6,475.00
7	Straw Wattle (including Secondary BMP)	1,550	LF	\$3.30	\$ 5,115.00
8	Tree Protection Fence	1,350	LF	\$2.30	\$ 3,105.00
9	Slope Matting	11,880	SF	\$0.50	\$ 5,940.00
10	Vegetated Corridor Tree Plantings	235	EA	\$20.40	\$ 4,794.00
11	Vegetated Corridor Shrubs Plantings	2,012	EA	\$9.70	\$ 19,516.40
12	Vegetated Corridor Reseeding (Area within TCE & Util. Ease.)	40,238	SF	\$0.12	\$ 4,828.56
13	Disturbed Area Erosion Control Reseeding (Outside VC)	28,455	SF	\$0.13	\$ 3,699.15
14	Temporary Irrigation	1	LS	\$12,635.00	\$ 12,635.00
TRENCH EXCAVATION AND BACKFILL					
15	Trench Excavation and Class 'A' Backfill (<10-ft depth)	1,051	LF	\$56.40	\$ 59,276.40
16	Trench Excavation and Class 'A' Backfill (10-ft to 15-ft depth)	339	LF	\$163.30	\$ 55,358.70
17	Foundation Stabilization Rock	350	CY	\$92.50	\$ 32,375.00
18	Trench Dewatering	1	LS	\$6,856.60	\$ 6,856.60
MANHOLES					
19	48-inch Dia. STND Conc MH (<10-ft depth)	3	EA	\$4,516.60	\$ 13,549.80
20	48-inch Dia. STND Conc MH (10-ft to 15-ft depth)	5	EA	\$5,909.30	\$ 29,546.50
PIPE AND FITTINGS					
21	12" PVC Pipe	1,390	LF	\$15.90	\$ 22,101.00
22	Connect to Existing Pipe (New Manhole Over Pipe)	1	EA	\$1,849.10	\$ 1,849.10
23	Testing - Video, Mandrel, Vacuum etc.	1,578	LF	\$5.10	\$ 8,047.80
Total Construction Costs					\$433,868
24	Construction Inspection Fees - City of Sherwood (5% of Const. Costs)				\$ 21,693.38
25	Engineering Review Fees - City of Sherwood (4% of Const. Costs)				\$ 17,354.70
26	Engineering, Surveying & Const. Management Costs (7.5%)				\$ 32,540.06
27	Bond Premium Reimbursable Costs (1.375%)				\$ 5,965.68
Total Other Costs					\$77,554
TOTAL					\$511,421

**BROOKMAN TRUNK MAIN EXTENSION
Contractor Construction Costs**

4/22/2022

SDC Creditable Amount for increase from 8" to 12" Sanitary Trunk Main

ITEM No.	ITEM DESCRIPTION	12" MAIN SIZE UNIT PRICE	8" MAIN SIZE UNIT PRICE	COST DIFFERENCE	QTY.	UNIT	AMOUNT
PIPE AND FITTINGS							
1	PVC Pipe, SDR 35	\$15.90	\$9.20	\$6.70	1,414	LF	\$ 9,473.80
Total Construction Costs							\$9,473.80
2	Construction Inspection Fees - City of Sherwood (5% of Const. Costs)						\$ 473.69
3	Engineering Review Fees - City of Sherwood (4% of Const. Costs)						\$ 378.95
4	Bond Premium Reimbursable Costs						\$ 130.26
Total Other Costs							\$982.91
TOTAL							\$10,456.71

Table REMB-6 Sanitary Sewer Oversizing Construction Cost

Contractor Construction Cost Total for 12-Inch Diameter Pipe (A)	Contractor Construction Cost Less Sanitary Sewer SDC Creditable Amount for Oversizing (from 8-inch to 12-inch) (B)	Reimbursement District Valuation (C) = (A) – (B)
\$ 511,868.00	\$ 10,456.71	\$ 500,964.29

Cost information was provided by the developer and is based on actual construction costs supported by construction contracts. These construction costs were reviewed for comparable construction cost for public improvements of recent nearby private development projects, with city staff determining that the values provided are reasonable and within the expected range of construction costs for public utilities.

Staff has reviewed the provided construction cost data pursuant to the requirements of SMC 13.24.040 and accepts the requested Reimbursement District valuation amount of **\$ 500,964.29**.

MC Section 13.24.030.D - A methodology for spreading the cost among the properties within the reimbursement district and, where appropriate, defining a "unit" for applying the reimbursement fee to property which may, with city approval, be partitioned, subdivided, altered or modified at some future date. City may use any methodology for apportioning costs on properties specially benefited that is just and reasonable.

Response: The applicant has submitted a reimbursement district cost allocation methodology based on development frontage length to the sanitary trunk line and developable area of the individual lots, where the allocation is a 30/70 split between frontage and area costs.

Table REMB-7 – Applicant Submitted Cost Allocation Methodology

BROOKMAN TRUNK MAIN EXTENSION REIMBURSEMENT DISTRICT COST ALLOCATION

4/22/2022

SANITARY SEWER COST SUMMARY	
Sanitary Sewer Construction Cost:	\$ 511,421.33
System Development Charges (SDC) Creditable Amount:	\$ 10,456.71
Reimbursement District Eligible Cost:	\$ 500,964.62

COST ALLOCATION METHODOLOGY	
30% of Cost Distributed by Frontage of Property:	\$ 117.78 PER LF
70% of Cost Distributed by Service Area of Property:	\$ 0.1559 PER SF

ID	Tax Lot #	Owner	Frontage Length (LF)	Unit Cost per LF	Total Frontage Costs	Area (SF)	Unit Cost (SF)	Total Area Cost	Total Cost (30% Frontage + 70% Area)
1*	Middlebrook Subdivision	BROOKMAN DEVELOPMENT LLC	0	\$ 117.78	\$ -	1,418,704	\$ 0.1559	\$ 221,154.53	\$ 221,154.53
2	3S-1-06 104	Riverside Homes LLC	0	\$ 117.78	\$ -	300,189	\$ 0.1559	\$ 46,794.93	\$ 46,794.93
3	3S-1-06 101	Cnd-Cedar Creek LLC	345	\$ 117.78	\$ 40,634.67	119,832	\$ 0.1559	\$ 18,680.00	\$ 59,314.67
4	3S-1-06 100	Cnd-Cedar Creek LLC	235	\$ 117.78	\$ 27,678.69	337,013	\$ 0.1559	\$ 52,535.24	\$ 80,213.92
5	3S-1-06 107	Linda & Wayne Chronister	696	\$ 117.78	\$ 81,976.03	73,840	\$ 0.1559	\$ 11,510.54	\$ 93,486.57
TOTAL			1,276		\$ 150,289.39	2,249,578		\$ 350,675.23	\$ 500,964.62

* Brookman Development, LLC is the reimbursement district applicant; therefore, reimbursement to Brookman Development LLC is not anticipated.

**Landowners were paid by CWS for sewer line easement.

Staff has reviewed the proposed cost allocation methodology and finds the methodology does not assign costs in a just and reasonable manner based on the known and projected usage of the system by the properties within the district. It appears that the applicant's methodology under sizes its own usage and thus share of the cost of the system.

Frontage length is an appropriate and typical unit of allocation for street construction costs but is not appropriate for a sanitary system, where the benefit a property derives is not connected to its frontage. In addition, justification for the 30/70 percent split in valuations was not presented.

Staff is recommending the following cost allocation method based on the total number of lots in each development within the district which will or are expected to take service from the sanitary trunk line. The total reimbursement cost was divided by the total number of actual or expected lots within the district to arrive at a per lot unit cost of \$1,585.33. This was then multiplied by the number of actual or expected lots on each current parcel to arrive at a per parcel cost.

Map REMB-3 – City Recommended Cost Allocation Lot Count



Table REMB-8 – City Recommended Cost Allocation Methodology

Subdivision Name	Total Area (Acres)	Number of Lots	Share Cost # of Unit Lots	%Share
Middlebrook Subdivision	37.95	145	\$ 230,118.14	45.9%
Reserve at Cedar Creek Subdivision	15.72	58	\$ 92,047.26	18.4%
Riverside at Cedar Creek Subdivision	10.47	28	\$ 44,436.61	8.9%
Cedar Creek Gardens Subdivision	19.64	39	\$ 61,893.85	12.4%
Brookman Place Subdivision	2.00	12	\$ 19,044.26	3.8%
Future Potential Development Areas	5.52	34	\$ 53,424.18	10.7%
Totals	91.30	316	\$ 500,964.29	100%

MC Section 13.24.030.E - The amount to be charged by the city for an administration fee for the reimbursement agreement. The administration fee shall be fixed by the city council and will be included in the resolution approving and forming the reimbursement district. The administration fee may be a percentage of the total reimbursement fee expressed as an interest figure or may be a flat fee per unit to be deducted from the total reimbursement fee.

Response: The administration fee is proposed as 4.0% (\$20,000.00) of the total reimbursement fee amount. The reimbursement district administration fee shall be paid as an additional 4% of the fee owed by each property at the time the fee is paid.

MC Section 13.24.030.F - Whether the public improvements will or have met city standards.

Response: The public improvements have met City design and construction standards and have been approved, accepted and placed into service.

MC Section 13.24.030.G – Whether it is fair and in the public interest to create a reimbursement district (Ord. 01-1114 § 3).

Response: Based on the information submitted the improvements financed by the developer will enhance the ability of other properties within the reimbursement district to develop their properties in an efficient manner. If these improvements were not available, then it would place the burden on other property owners to construct the same improvements. The public interest is served by allowing development to proceed in an orderly and efficient manner, and by requiring each property to pay its share of the cost of those improvements based on a just and reasonable allocation methodology.

**Craig
Sheldon**

Digitally signed by
Craig Sheldon
Date: 2022.06.30
12:54:31 -07'00'

Craig Sheldon, Public Works Director
Date:

**Bob Galati PE,
City Engineer**

Digitally signed by Bob
Galati PE, City Engineer
Date: 2022.06.30
12:45:55 -07'00'

Bob Galati P.E., City Engineer
Date:

TO: Mayor Keith Mays and Sherwood City Council

FROM: Eric Rutledge, Associate Planner

THROUGH: Carrie Richter, Contract Legal Counsel

DATE: July 7, 2022

SUBJECT: Appeal Hearing for LU 2021-009 MM Cedar Creek Plaza Multifamily

Issue:

The City received an appeal on land use application LU 2021-009 MM Cedar Creek Plaza Multifamily. The application is for a new 67-unit apartment building on a vacant lot in the Cedar Creek Plaza commercial center. This appeal deals with application of the minimum lot area requirements for multi-family housing in the Retail Commercial zone.

Background

At its continued hearing on May 24, 2022, the City of Sherwood Planning Commission (Commission) unanimously denied the land use application finding that the development lot area was not adequately sized to accommodate 67 units and did not meet the City's development code. The Commission adopted findings of non-compliance for the following code sections: SZCDC § 16.12.030, 16.22.020, and 16.90.020(D)(1). The applicant appealed the Planning Commission decision on June 10, 2022, citing 8 grounds for the appeal. The appeal form and narrative are included as Attachment 2. The appeal Staff Report (Attachment 1) also lists the grounds for appeal and provides a staff response.

This application was submitted prior to the recent code update related multifamily housing standards the City's commercial zones (Ordinance 2021-008). While the applicant is not subject to the new standards, it is unlikely that the issues raised in this appeal will occur again because of the changes to the code (e.g. housing is now required to be located above a ground floor commercial use).

Appeal Procedures

The City Council acts as the Appeal Authority for Type IV land use decisions issued by the Planning Commission. Land use appeal procedures are described in SZCDC § 16.76 and is limited. No new evidence can be submitted into the record. Only individuals who testified before the Planning Commission, either orally or in writing, will be allowed to testify before the City Council and all arguments must similarly have been raised.

As of the date of this memo, no written public testimony was received on the appeal. The 120-day deadline is July 22, 2022 and the City is required to issue its final decision by this date.

Application Timeline

Pre-App Meeting:	February 18, 2021
App. Submitted:	May 5, 2021
App. Complete:	July 22, 2021
Planning Commission Decision:	May 24, 2022
Council Appeal Hearing:	July 14, 2022
120-Day Deadline:	July 22, 2022

Financial Impacts:

There are no direct financial impacts of acting on the land use appeal, however, the decision can be appealed to the Land Use Board of Appeal (LUBA). If a LUBA appeal is filed, the City may incur legal costs if the City chooses to defend the decision.

City Council Alternatives:

The Appeal Authority may act to affirm, reverse, remand, or amend the action being reviewed. Due to the 120-day deadline, the decision cannot be remanded to the Planning Commission.

- A. Affirm the Planning Commission decision and deny the application based on the Planning Commission Findings Report dated May 24, 2022.
- B. Amend the Planning Commission decision and deny the application with additional / amended findings of non-compliance.
- C. Reverse the Planning Commission decision and adopt findings of compliance for SZCDC § 16.12.030, 16.22.020, and 16.90.020(D)(1).

Staff Recommendation:

Staff recommends the City Council affirm the Planning Commission decision and deny the application based on the Planning Commission Findings Report dated May 24, 2022.

Attachments:

- 1. Appeal Staff Report
- 2. Appeal Form and Narrative
- 3. Planning Commission Decision and Full Land Use Record (Exhibits A – AR)

TO: Mayor Keith Mays and Sherwood City Council
FROM: Eric Rutledge, Associate Planner
THROUGH: Carrie Richter, Contract Legal Counsel
DATE: July 7, 2022
SUBJECT: Staff Report for Land Use Appeal Hearing - LU 2021-009 MM
Cedar Creek Plaza Multifamily

Background Information

A. Applicant: Deacon Development, LLC
901 NE Glisan St., Suite 100
Portland, OR 97232

Appellant: Deacon Development, LLC
901 NE Glisan St., Suite 100

Owner: DD Sherwood Two, LLC.
TL 2200 901 NE Glisan St., Suite 100
Portland, OR 97232

Owner: DD Sherwood One, LLC.
TL 2700 901 NE Glisan St., Suite 100
Portland, OR 97232

B. Location: 16840 and 16864 SW Edy Rd. (Tax Lots 2S130DA2700 and 2200).
West corner of Hwy 99W and SW Edy Rd. (Cedar Creek Plaza)

C. Current Zoning: Retail Commercial (RC)

D. Review Type: Type IV Major Modification / Appeal

E. Public Notice: Notice of the appeal hearing was provided in accordance with § 16.72.020 of the Sherwood Zoning and Development Code (SZDC) as follows: notice was distributed in five locations throughout the City, posted on the property, and mailed to property owners within 1,000 feet of the site on or before June 24, 2022. Newspaper notice was also provided in a newspaper of local circulation on June 30 and July 7, 2022.

Application Summary

The applicant / appellant (“applicant”) is proposing a Major Modification to an Approved Site Plan for a new 3-story, multi-family building located within the Cedar Creek Plaza Shopping Center. The original Site Plan approval for the Cedar Creek Plaza Shopping Center was issued under Land Use Case File SP 16-10 / CUP 16-06 / VAR 17-01.

As originally proposed, the applicant proposed to construct 84 units within 3 stories located entirely on Lot 2 but relying on Lots 2, 3, and 7 within the Cedar Creek Plaza subdivision plat as providing the necessary minimum lot area. After the owner of Lot 3 objected, the applicant revised the proposal removing Lot 3 and reducing the number of proposed units to 67 units, using Lots 2 and 7 to meet the required lot area. Lot 7 was developed with a single-story commercial building that is currently occupied by local businesses including a clothing store and nail salon. A total of 90 new vehicle parking stalls are proposed for a total of 596 stalls within the Cedar Creek Plaza center. Access to the site is proposed from the existing driveways along SW Edy Rd. and Hwy 99W.

Planning Commission Decision

The Sherwood Planning Commission (Commission) held the initial evidentiary hearing on the application on January 25, 2022. At the request of the applicant, the hearing was continued to February 22, 2022 and again two additional times to a final date of May 24, 2022. The Commission unanimously denied the application on May 24, 2022 as recommended in the staff reported dated May 17, 2022.

After considering all of the arguments and evidence presented, the Commission found that minimum lot area standards reference the “lot area” where the new development is proposed to be built and does not include lot area that is not contiguous and already developed for another use. As such, the maximum number of units that can be provided on Lot 2 is 46, prior to removing any access easements from the lot area calculations. When accounting for the existing easement on Lot 2, the maximum permitted density on Lot 2 is between 44 – 46 units. The applicant proposed 67-units which exceeds the density permitted by at least 21 units.

The Commission adopted findings of non-compliance for three code sections, all of which are related to City standards for minimum lot area. The findings of non-compliance relate to: SZCDC § 16.12.030 Residential Land Use Development Standards, 16.22.020 Uses (Commercial Land Use Districts), and 16.90.020(D)(1) Site Plan Review Findings, and are discussed in greater detail below.

Appeal Procedures

The City Council acts as the Appeal Authority for Type IV land use decisions issued by the Planning Commission. Land use appeal procedures are described in SZCDC § 16.76 and are limited. No new evidence can be submitted into the record. Only individuals who testified before the Planning Commission, either orally or in writing, will

be allowed to testify before the City Council and all arguments must similarly have been raised below.

Staff Analysis on Appeal

The applicant's notice of appeal contains eight bulleted issues that overlap and for ease of explanation, staff provides a reorganized, consolidated response. This analysis is based solely on the evidence and argument already contained in the record.

The appellant argues that the application to authorize 67 housing units must be approved because either: (1) as a modification of the same initial Cedar Creek Plaza land use approval, both of these lots were part of a single parcel allowing for shared development rights across lots; (2) the definition of "lot" includes multiple "lots of record" without requiring any lot adjacency; or (3) the lot area standards do not qualify as "dimensional requirements" under the plain language of the SZCDC and to find otherwise would run afoul of the clear and objective standard limitations of ORS 197.307(4).

Regulations at Issue

SZCDC § 16.22.020 specifies the uses that are allowed in commercial zones set forth in tabular format and for multi-family housing, it provided:¹

Uses	RC Zone
Multi-family housing, subject to the <i>dimensional requirements</i> of the High Density Residential (HDR) zone in 16.12.030 when located on the upper floors, in the rear of, or otherwise clearly secondary to commercial buildings. ^{2, 3}	P

(emphasis added)

SZCDC § 16.12.030, includes Residential Land Use Development Standards, which provide, in relevant part:

"16.12.030 - Residential Land Use Development Standards

A. Generally

No lot area, setback, yard, landscaped area, open space, off-street parking or loading area, or other *site dimension or requirement*, existing on, or after, the effective date of this Code shall be reduced

¹ SZCDC Chapter 16.22 was amended in 2021 to change how multi-family development in commercial zones must be designed including requiring its location above a commercial ground floor along with density limitations. As such, it is unlikely that the issues raised in this appeal will occur again.

below the minimum required by this Code. Nor shall the conveyance of any portion of a lot, for other than a public use or right-of-way, leave a lot or structure on the remainder of said lot with less than minimum Code dimensions, area, setbacks or other requirements, except as permitted by Chapter 16.84. (Variance and Adjustments)

B. Development Standards

Except as modified under Chapter 16.68 (Infill Development), Section 16.144.030 (Wetland, Habitat and Natural Areas) Chapter 16.44 (Townhomes), or as otherwise provided, *required minimum lot areas, dimensions and setbacks* shall be provided in the following table.

C. Development Standards per Residential Zone

Development Standard	HDR
Minimum lot area (multifamily, first 2 units)	8,000 SF
Minimum lot area (multifamily, each additional unit after first 2)	1,500 SF
Minimum Lot width at front property line	25 ft.
Minimum Lot width at building line ^[1] (multifamily)	60 ft.
Lot depth	80 ft.
Maximum Height ^[2]	40 or 3 stories
Front yard setback ^[4]	14
Interior side yard (multifamily, over 24 ft. height)	§ 16.68 infill
Rear yard	20

¹Minimum lot width at the building line on cul-de-sac lots may be less than that required in this Code if a lesser width is necessary to provide for a minimum rear yard.

²Maximum height is the lesser of feet or stories (emphasis added.)

SZCDC 16.10.20 defines "lot" as:

"A parcel of land of at least sufficient size to meet the minimum zoning requirements of this Code, and with frontage on a public street, or easement approved by the City. A lot may be:"

A. A single lot of record; or a combination of complete lots of record or complete lots of record and portions of other lots of record.

B A parcel of land described by metes and bounds; provided that for a subdivision or partition, the parcel shall be approved in accordance with this Code."

"Lot area" is defined as:

"The total horizontal area within the lot lines of a lot, exclusive of streets and access easements to other property."

Cedar Creek Plaza and the Deacon Tract Modification Issues

Grounds 1, 3, 4 and 5: The original land use approvals (SP 16-10/CUP 16-06/VAR 17-01) applied to the entirety of Cedar Creek Plaza that was approved as a unified 13.17-acre development. As this Application is a modification of that original approval, the boundaries of the relevant area are the same as those that were originally approved. Further, Deacon owns Lots 2 and 7 within the "Deacon Tract," which is itself part of the original area approved for the existing Cedar Creek Plaza. The Cedar Creek Plaza approvals run with the land and bind each successive owner of property. A change in ownership of any of the lots does not invalidate these approvals and each owner is bound by the original site plan approval. Lot 2 is currently vacant, and the Application proposes 67 units of multifamily housing. The number of units proposed is consistent with the minimum lot size requirements for multifamily housing, based on the combined area of Lots 2 and 7 within the Cedar Creek Plaza and the Deacon Tract.

Staff Analysis: The Commission findings concur that Lots 2 and 7 are within the Deacon Tract which is part of the original area approved for Cedar Creek Plaza (SP 16-10) and that these approvals run with the land so as to survive successive owners. While Lots 2 and 7 are part of the original area of the Site Plan approval, both lots are part of a commercial subdivision that created seven new lots, each meeting the minimum lot area and other dimensional standards of the zone independently from each other (SUB 17-02). The minimum square footage allowed for a multi-family unit development is expressly directed to "lot area" and not to any initial site plan approval or parent-parcel development tract. All of the lots except Lot 2 have been developed with commercial buildings, including Lot 7. As such, it is not clear how the applicant can claim in its 5th appeal point that the Cedar Creek Plaza approvals provide the basis to determine

“where there is enough undeveloped ‘lot area’ to allow the proposed residential unit density” when Lot 7 is not undeveloped.

Typically, where a term is given a particular meaning in one place, it is assumed to have that same meaning throughout. As such, if “lot” for purposes of minimum lot area takes into account the whole of the parent parcel or the Cedar Creek Plaza approval area, that same parent parcel would be the “lot” for purposes of the other dimensional standards like lot width and depth. Uniform application of the term “lot” when considering all of the dimensional standards requires treating Lot 2 and separate and distinct from Lot 7 as determined in the 2017 subdivision approval. Staff identifies no error in the Planning Commission’s approach on this issue.

Definitions of “Lot” and “Lot Area”

Grounds 7 & 8: The definition of “lot” in SZCDC 16.10.20 may include more than one lots of record that need not be contiguous.

Staff Analysis:

First, it is important to point out that nothing in the SZCDC contemplates transfer of necessary lot area across lots or developments. As such, the Commission found that while the definition of “lot” may allow “a combination of complete lots of record,” the definition of “lot” was not controlling with respect to SZCDC § 16.12.030. The more specific and applicable definition of “lot area” is defined as: “The total horizontal area within the lot lines of a lot, exclusive of streets and access easements to other property.” The reference in this definition to “area within the lot lines” is premised on the idea that the area in question would be surrounded by a single set of lot lines that can be used to determine the lot area.

The Commission found that the purpose of maintaining minimum development standards such as lot area is to establish a minimum amount of space necessary to accommodate a development. Under the applicant’s interpretation of “lot”, the minimum lot area can be met by combining one or more incontiguous lots within the same Site Plan or subdivision. Under this approach, the land used to meet the minimum lot area standard is not required to be physically available to support the development and could already be entirely developed with a different use. If the applicant is able to borrow lot area from a developed and non-contiguous parcel in this manner, it could do so again and again, frustrating the minimums required by code. Such an approach would violate the mandate that no lot area “shall be reduced below the minimum required by this Code.” SZCDC § 16.12.030.A. Further, applying such a malleable definition of the term “lot” would interject a value-laden policy judgment which would violate the clear and objective decision making obligations for needed housing as prescribed by ORS 197.307(4).

Therefore the Commission found that definition of “lot area” is the controlling definition over “lot” when determining compliance with the zone’s minimum lot area standards. The Commission found that Lot 7 could not be used to meet the minimum lot area standard for the proposed multifamily development on Lot 2.²

Dimensional Standard Limitations and Clear and Objective Standards

Grounds 2 and 6: ORS 197.307(a) (known as the "needed housing statute") provides that "[e]xcept as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing." Thus, the Application may be subject only to clear and objective standards.

The "density standards" of the HDR zone cannot be imposed because there is no clear and objective link to those standards. Rather, the SZCDC applicable to the Application simply provides that in the RC zone, multi-family dwellings are permitted "subject to the dimensional requirements of the High Density Residential zone in 16.12.030." Section 16.12.030 separately lists "minimum lot areas, dimensions, and setbacks." The minimum lots areas to which staff refers as applicable to the Application are not listed as "dimensional standards" under 16.12.030. Thus, the lot area standards do not apply as a matter of plain language. To the extent that applicability of the “lot area” standards is ambiguous or unclear, such standards cannot be applied because the link between the lot area requirements of the HDR zone and the residential use allowance in the RC zone is not clear and objective.

Staff Analysis: SZCDC § 16.22.020 states that multi-family housing is permitted in the Retail Commercial zone “subject to the dimensional requirements of the High Density Residential zone in 16.12.030”. The applicant’s interpretation of the “dimensional requirements” focuses on 16.12.030 Subsection (B) “Development Standards” and the specific language that refers to “minimum lot area, dimensions, and setbacks” within this subsection. The applicant argues that because “lot area” and “setbacks” are listed

² Although not raised in the notice of appeal, applying the definition of “lot area” in SZCDC § 16.10, the Planning Commission concluded that access easements to other properties are required to be excluded from the final calculations. The proposal did not remove the access easement on Lot 2 of the Cedar Creek Plaza subdivision from the lot area calculations (Exhibit BB to the land use record – Sheet 3, Note 4). The size of the easement appears to be approximately 2,000 SF and removing it from the lot area calculations would likely impact the permitted unit count on the property and was not taken into account. This explains one of the reasons why a condition of approval could not be crafted limiting the development as necessary to satisfy the lot area dimensional standard, in addition to potentially requiring significant design changes.

separately from “dimensions” that only “dimensions” are applicable under the phrase “dimensional requirements” in 16.22.020. While it is not clear in the application or appeal, it appears that under this interpretation only lot width and lot depth would fall under the word “dimensions”. Multi-family housing in the City’s commercial zones would therefore only be subject to lot width and depth standards. This would create a nonsensical situation where the City could not impose any lot area or setback, and perhaps height requirements on multi-family housing within the high density zone. Although not without doubt, nothing in the structure of SZCDC § 16.22.020 and its reference to SZCDC § 16.12.30 suggests that the only dimensional standards applicable to multi-family housing are the lot width and depth provisions and not the area square footage dimensions as well.

The Commission findings acknowledge that the needed housing statute applies to the application. The Commission applied all of the development standards listed under SZCDC § 16.12.030 as dimensional requirements, resulting in a clear and objective path for housing development in the Retail Commercial zone. This interpretation of the code is consistent with previous land use decisions made by the Commission, whereby all of the standards listed in Table C of SZCDC § 16.12.030 are applied to housing development in the City’s commercial zones (SP 16-04). In fact, the applicant appeared to concede that the lot area limitations applied as a dimensional standard where it reduced the unit count when it concluded that it could no longer use development rights from Lot 3, as well as Lots 2 and 7.

The Commission further found that the applicant applied the City’s code in an unclear an unobjective manner. As described in the response to Grounds #1 above, the application combines Lots 2 and 7 in order to meet minimum lot area standard but does not address how other dimensional standards such as lot width, lot depth, and lot width at building line are met when two lots are involved. If the City were to agree with this flexible approach, applicants would have the ability to meet each development standard with one or more lots that they own to suit their objectives. For example, an applicant could propose a new building that meets the setbacks of the lot on which it is located, but add to its stated minimum lot width by using another lot in the same ownership, subdivision or Site Plan. The Commission found that combining lots in this way in an ad hoc manner is not consistent with City code and the needed housing statute as it interjects a value-laden policy judgment which would violate the clear and objective decision making obligations of the City.

It is also important to note that the applicant has not lost any development rights as a result of the Commission decision because the applicant can still develop Lots 2 and 7 with multifamily housing at the density allowed by the HDR’s minimum lot area requirements. While Lot 7 has been developed with a single-story commercial building, the owner is entitled to a minimum of 16 multifamily units on the lot. The lot would need to be redeveloped to accommodate the housing, but the entitlement under the code still

exists. The Commission simply found the City's code does not permit the applicant to transfer area between or combine Lots 2 and 7 to meet the lot area for 67-units on Lot 2.

In conclusion, the Commission found that the phrase "dimensional requirements" in 16.22.020 is not defined by the narrow language SZCDC 16.12.030 Subsection (B). Instead, when taken in the context of its location in the code and applicability to housing developments, the phrase "dimensional requirements" refers to a broader category of dimensional standards that include lot area and setbacks. If "dimensional requirements" were intended to be narrowly defined as proposed by the applicant, the code would have likely referenced the specific dimensional standards (e.g. lot depth and lot width).

Staff Recommendation on Appeal

After review of the applicable approval criteria, the appeal petition, and Planning Commission decision, staff recommends affirming the Planning Commission decision and denying the application.

City Council Alternatives:

The Appeal Authority may act to affirm, reverse, remand, or amend the action being reviewed. Due to the 120-day deadline, the decision cannot be remanded to the Planning Commission unless an extension is granted by the applicant.

- A. Affirm the Planning Commission decision and deny the application based on the Planning Commission Findings Report dated May 24, 2022.
- B. Amend the Planning Commission decision and deny the application with additional / amended findings of non-compliance.
- C. Reverse the Planning Commission decision and adopt findings of compliance for SZCDC § 16.12.030, 16.22.020, and 16.90.020(D)(1).



NOTICE OF APPEAL TYPES III & IV

RECEIVED
JUN 10 2022

City of Sherwood
Planning Dept.

Sherwood Zoning and Community Code (SZCDC) 16.76 Appeals

16.76.010.A Issues on Appeal

The only issues which may be raised on appeal are those issues which were raised on the record before the Hearing Authority with sufficient specificity so as to have provided the City, the applicant, or other persons with a reasonable opportunity to respond before the Hearing Authority.

16.76.020 Appeal Deadline

Land use actions taken pursuant to SZCDC 16.76 shall be final unless a petition for review is filed with the Planning Director not more than fourteen (14) calendar days after the date on which the Hearing Authority took final action on the land use application, and written notice of the action has been mailed to the address provided by the person in the record. If the person did not provide a mailing address, then the appeal must be filed within fourteen (14) calendar days after the notice has been mailed to persons who did provide a mailing address.

Tax Lot: 2S130DA2700 and 2200

Map No: _____

Land Use Case File No: LU 2021-009 MM

To Appeal Authority: Sherwood City Council

Appeal By: Deacon Development, LLC
(Appellant's Name)

The undersigned in the above-entitled matter does hereby appeal from that certain decision of the Planning Commission rendered on 31st day of May, upon the following grounds: (Please provide on a separate sheet the reasons why you think the Appeal Authority should render a different decision than that rendered by the Hearing Authority).

[Signature], mgr.

Appellant's Signature

6-8-22

Date Signed

Address: 901 NE Glisan St., Ste. 100
Portland, OR 97232

Phone Number: 503-297-8791

To be filled out by City Staff

Received by: _____

Date: _____

*Fee: _____

Receipt No.: _____

*See City of Sherwood current Fee Schedule, located at www.sherwoodoregon.gov.

22560 SW Pine Street | Sherwood, Oregon 97410 | 503-925-2308



June 10, 2022

Garrett H. Stephenson
Admitted in Oregon
T: 503-796-2893
C: 503-320-3715
gstephenson@schwabe.com

Sherwood City Council
22560 SW Pine Street,
Sherwood, Oregon 97140

RE: Notice of Decision
City of Sherwood Case File LU 2021-009MM

Dear Mayor Mays and City Council Members:

This office represents the Applicant and Petitioner in this Appeal, Deacon Development ("Deacon"), who is the Applicant in the above-referenced file. This letter sets forth the Applicant's appeal of the City of Sherwood Notice of Decision dated May 31, 2022 (the "Decision"). The Planning Commission (the "Commission") denied the Application, focusing on dimensional requirements for multi-family housing in the RC zone. Specifically, the Commission adopted findings of noncompliance in the Staff Report dated May 17, 2022, including SZCDC 16.12.30, 16.22.020, and 16.90.020(D)(1).

I. COMPLIANCE WITH APPEAL REQUIREMENTS

Pursuant to 16.76.020, notices of appeal must be filed with the Planning Director within 14 calendar days "after the date on which the Hearing Authority took final action on the land use application, and written notice of the action has been mailed." The challenged Decision was mailed on May 31, 2022. **Exhibit 1.** Therefore, the notice of appeal is due by June 13, 2022. This Appeal is timely filed.

SZDC 16.76.030 prescribes the requirements for a notice of appeal, which include:

- The date and description of the land use action.

RESPONSE: As noted above, the land use action on appeal is the Planning Commission's denial of City of Sherwood File No. LU 2021-009MM, which is a major modification of casefiles SP 16-10/CUP 16-06/VAR 17-01. The Application would allow the construction of 67 new multifamily residential units on a vacant lot within the Cedar Creek Plaza. The Planning Commission decision is dated May 31, 2022.

- Adopted findings of fact.

RESPONSE: The Planning Commission's adopted Decision on appeal is enclosed as Exhibit 1.

Sherwood City Council
June 10, 2022
Page 2

- A statement of how the petitioner is aggrieved by the action.

RESPONSE: The Petitioner is aggrieved because it is the Applicant for the Application denied in the Decision.

- The specific grounds relied upon in requesting review.

RESPONSE: The specific grounds for appeal are identified below.

- Fee pursuant to Section 16.74.010.

RESPONSE: The fee was paid by credit card and amounts to one half of the application fee, as required in the City's adopted fee schedule.

II. GROUNDS FOR APPEAL

The Commission's decision is incorrect and should be reversed for the following reasons:

- Deacon owns Lots 2 and 7 within the "Deacon Tract," which is itself part of the original area approved for the existing Cedar Creek Plaza. Lot 2 is currently vacant, and the Application proposes 67 units of multifamily housing. The number of units proposed is consistent with the minimum lot size requirements for multifamily housing, based on the combined area of Lots 2 and 7 within the Deacon Tract.
- ORS 197.307(4) (known as the "needed housing statute") provides that "[e]xcept as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing." Thus, the Application may be subject only to clear and objective standards.
- The original land use approvals (SP 16-10/CUP 16-06/VAR 17-01) applied to the entirety of Cedar Creek Plaza that was approved as a unified 13.17-acre development. As this Application is a modification of that original approval, the boundaries of the relevant area are the same as those that were originally approved.
- The Cedar Creek Plaza approvals run with the land and bind each successive owner of property. A change in ownership of any of the lots does not invalidate these approvals and each owner is bound by the original site plan approval.
- As this Application is a modification of the 2017 Cedar Creek Plaza approvals, it is the original approval boundary that is relevant to determining whether there is enough undeveloped "lot area" to allow the proposed residential unit density.
- The "density standards" of the HDR zone cannot be imposed because there is no clear and objective link to those standards. Rather, the SZCDC applicable to the Application simply

Sherwood City Council
June 10, 2022
Page 3

provides that in the RC zone, multi-family dwellings are permitted “subject to the dimensional requirements of the High Density Residential zone in 16.12.030.” Section 16.12.030 separately lists “minimum lot areas, dimensions, and setbacks.” The minimum lots areas to which staff refers as applicable to the Application are not listed as “dimensional standards” under 16.12.030. Thus, the lot area standards do not apply as a matter of plain language. To the extent that applicability of the “lot area” standards is ambiguous or unclear, such standards cannot be applied because the link between the lot area requirements of the HDR zone and the residential use allowance in the RC zone is not clear and objective.

- SZCDC 16.10.20 defines “lot” as: “A parcel of land of at least sufficient size to meet the minimum zoning requirements of this Code, and with frontage on a public street, or easement approved by the City. A lot may be”
 - A. A single lot of record; or a combination of complete lots of record, or complete lots of record and portions of other lots of record.
 - B. A parcel of land described by metes and bounds; provided that for a subdivision or partition, the parcel shall be approved in accordance with this Code.”
- A “lot” may be “a combination of complete lots of record, or complete lots of record and portions of other lots of record.” This definition goes to some detail to allow for combinations of lots of record to establish a “lot,” but at no point does it require those lots of record to be contiguous.

III. CONCLUSION

For the reasons stated above, the Applicant satisfies the approval criteria in the SZCDC and respectfully asks that the City Council reverse the Planning Commission’s decision and approve the Application.

Best regards,



Garrett H. Stephenson

GST
Enclosure

PDX\[Client\Matter]\[AuthorID]\33893239.3

RECEIVED

JUN 3 2022

AJ/sww



NOTICE OF DECISION

TAX LOT: 2S130DA2700 and 2200
CASE NO: LU 2021-009 MM Cedar Creek
Plaza Multifamily
**DATE OF
NOTICE:** May 31, 2022

Applicant

Deacon Development, LLC
901 NE Glisan St., Suite 100
Portland, OR 97232

Owner

DD Sherwood Two, LLC
901 NE Glisan St., Suite 100
Portland, OR 97232

NOTICE

You are receiving this notice because you are the applicant or because you provided testimony on the application. **On May 24, 2022, the Sherwood Planning Commission denied land use application 2021-009 MM Cedar Creek Plaza Apartments.** The denial is for a 67-unit multi-family building and associated site improvements located at 16864 SW Edy Rd. in the Retail Commercial zone.

INFORMATION: The full land use record can be viewed at:

<https://www.sherwoodoregon.gov/planning/project/lu-2021-009-mm-cedar-creek-multifamily-development>
or can be obtained by contacting Eric Rutledge, Associate Planner, at 503-625-4242 or rutledgee@sherwoodoregon.gov

APPEAL

Pursuant to Sherwood Zoning and Community Development Code Section 16.72.010.B.3.d, the Sherwood City Council is the Appeal Authority for Type IV land use decisions. The applicant and any person who testified before the Planning Commission at the public hearing or who submitted written comments prior to the close of the record may appeal the Planning Commission's decision, no later than 14 days from the date of this notice. Full details on the City's land use appeal procedures are located in SZCDC § 16.76. **An appeal of this decision must be filed no later than 5:00 PM on June 14, 2022.**

I, Eric Rutledge, for the Planning Department, City of Sherwood, State of Oregon, in Washington County, declare that the Notice of Decision LU 2021-009 MM was placed in a U.S. Postal receptacle, or transmitted via electronic mail, on May 31, 2022 before 5pm.

Eric Rutledge

Eric Rutledge, Associate Planner
City of Sherwood Planning Department

**CITY OF SHERWOOD
MAY 24, 2022
PLANNING COMMISSION FINDINGS**



**Cedar Creek Plaza Multifamily
Major Modification to an Approved Site Plan
LU 2021-009 MM**

Pre-App Meeting:	February 18, 2021
App. Submitted:	May 5, 2021
App. Complete:	August 3, 2021
Initial Evidentiary Hearing:	January 25, 2022
Second Hearing Date:	May 24, 2022
Continued Hearing Dates:	September 14, 2021 / October 12, 2021 / December 14, 2021 / February 22, 2022 / March 22, 2022
120-Day Deadline:	August 3, 2022

HEARING SUMMARY: The City of Sherwood Planning Commission (Commission) held the initial evidentiary hearing on the subject application on January 25, 2022. At the initial hearing the Commission heard presentations by City staff and the applicant, followed by testimony from the general public. During the applicant presentation, the applicant requested a continuance to a date certain of February 22, 2022. The February 22, 2022 hearing was continued two times at the request of the applicant to a date certain of May 24, 2022.

On May 24, 2022 the Commission held the continued hearing. The Commission heard presentations by City staff and the applicant, followed by testimony from the general public. The Commission then closed the record and deliberated on the application. The deliberations focused on ORS 197.307 and the requirement that only clear and objective standards be applied to the application. The Commission stated support for needed housing but determined that the manner in which the applicant interpreted and applied the dimensional requirements for multi-family housing in the Retail Commercial zone did not demonstrate compliance with the code. In addition, the access easement on Lot 2 was not removed from the lot area calculations prior to determining lot area.

The Commission denied the application with a unanimous vote and adopted findings of non-compliance in the staff report dated May 17, 2022 including SZCDC § 16.12.030, 16.22.020, and 16.90.020(D)(1).

Jean Simson, Chair

Jean Simson, Planning Commission Chair

05/31/2022

Date

PROPOSAL: The applicant is proposing a Major Modification to an Approved Site Plan for a new 3-story, 67-unit multi-family building located in the Cedar Creek Plaza Shopping Center. The building will be located on an existing vacant lot within the commercial center, identified as Tax Lot 2S130DA02200. In order to meet the minimum lot area requirements for the 67-unit building, the applicant is proposing to utilize the residential lot area entitlements from Tax Lot 2S130DA02700 within the commercial center. The units will be for rent and include 10 studio, 63 one-bedroom, and 11 two-bedroom units. Amenities including an outdoor pet area, central courtyard, covered patio, and bike storage are proposed. A total of 90 new vehicle parking stalls are proposed for a total of 596 stalls within the Cedar Creek Plaza center. Access to the site is proposed from the existing driveways along SW Edy Rd. and Hwy 99W. The original Site Plan approval for the Cedar Creek Plaza Shopping Center was issued under Land Use Case File SP 16-10 / CUP 16-06 / VAR 17-01.

REVISED PROPOSAL: The applicant submitted a revised application on March 21, 2022 that removed Lot 3 from the application and reduced the number of proposed units in the building from 84 to 67. Under the revised proposal, the site plan and building plan will remain the same but portions of the building will be reduced in height to account for the reduction in units. Revised architectural drawings, parking calculations, and traffic analysis were provided by the applicant. The revised application was re-routed to affected agencies for comment and the staff recommendation, findings, and conditions of approval have been updated based on the revised proposal.

I. BACKGROUND

A. Applicant: Deacon Development, LLC
901 NE Glisan St., Suite 100
Portland, OR 97232

Owner: DD Sherwood Two, LLC.
TL 2200 901 NE Glisan St., Suite 100
Portland, OR 97232

Owner: DD Sherwood One, LLC.
TL 2700 901 NE Glisan St., Suite 100
Portland, OR 97232

B. Location: 16840 and 16864 SW Edy Rd. (Tax Lots 2S130DA2700 and 2200). West corner of Hwy 99W and SW Edy Rd. (Cedar Creek Plaza)

C. Current Zoning: Retail Commercial (RC)

- D. Review Type: Type IV Major Modification
- E. Public Notice: Notice of the application was provided in accordance with § 16.72.020 of the Sherwood Zoning and Development Code (SZDC) as follows: notice was distributed in five locations throughout the City, posted on the property, and mailed to property owners within 1,000 feet of the site on or before August 25, 2021, January 5, 2022, and May 4, 2022. Newspaper notice was also provided in a newspaper of local circulation on August 19, 2021, September 9, 2021, December 30, 2021, January 20, 2022, May 5, 2022 and May 19, 2022. The application was re-noticed in January 2022 in order to update the hearing procedure and participation requirements pursuant to House Bill 2560. The application was re-noticed in May 2022 in response to the revised application.
- F. Review Criteria: Sherwood Zoning and Community Development Code (SZDC) Chapter 16.12 Residential Land Use Districts; Chapter 16.22 Commercial Land Use Districts; Chapter 16.50 Accessory Structures, Architectural Features and Decks; Chapter 16.58 Clear Vision and Fence Standards; Chapter 16.60 Yard Requirements; Chapter 16.72 Procedures for Processing Development Permits; Chapter 16.90 Site Planning; Chapter 16.92 Landscaping; Chapter 16.94 Off-Street Parking and Loading; Chapter 16.96 On-Site Circulation; Chapter 16.98 On-Site Storage; Chapter 16.106 Transportation Facilities; Chapter 16.108 Improvement Plan Review; Chapter 16.110 Sanitary Sewers; Chapter 16.112 Water Supply; Chapter 16.114 Storm Water; Chapter 16.116 Fire Protection; Chapter 16.118 Public and Private Utilities; Chapter 16.142 Parks, Trees, and Open Spaces; Chapter 16.146 Noise; Chapter 16.148 Vibrations; Chapter 16.150 Air Quality; Chapter 16.152 Odors; Chapter 16.154 Heat and Glare; Chapter 16.156 Energy Conservation
- G. History and Background: The Sherwood Providence Medical Plaza received Site Plan approval from the City in 2004 for a 42,000 SF medical office building (SP 04-04). In 2017 the medical center property and two other adjacent properties were redeveloped to create the Cedar Creek Plaza Shopping Center (Exhibit GG - SP 16-10 / CUP 16-06 / VAR 17-01). The resulting development was 13.17-acres and contained three commercial lots owned by Quarto LLC, Providence Health & Services – Oregon, and DD Sherwood One LLC (Deacon Development). The Quarto property is now occupied by The Ackerly Senior Living, the Providence property is occupied by Providence, and the Deacon property is occupied by various commercial tenants. A lot line adjustment was approved to reconfigure the three lots in 2017 (Exhibit HH – LLA 17-02). The 6.38-acre Deacon property was subdivided in 2017 (Exhibit II - SUB 17-02) into

seven (7) new commercial lots known as the Cedar Creek Plaza subdivision (Exhibit BB). Five of the seven lots in the Cedar Creek Plaza subdivision have been sold to new owners, with Deacon Development retaining ownership of two lots (Lots 2 and 7). Deacon Development is now proposing a new 67-unit multi-family building on Lot 2 of the Cedar Creek Plaza subdivision, utilizing residential lot area entitlements from Lots 2 and 7 to achieve the required minimum lot size requirements. Lot 2 is currently vacant while Lot 7 is improved with commercial buildings, parking, and landscaping.

- H. Existing Conditions: Cedar Creek Plaza is an existing 13.17-acre commercial shopping center with a variety of commercial buildings and uses. The development includes a 42,000 SF medical office building, 138 room senior care facility, and 47,500 SF of mixed commercial uses including retail, fitness, and restaurant. The commercial center contains eight (8) buildings, 506 parking stalls, vehicle and pedestrian ways, landscaping, and underground utilities. Access to development is provided via a fully signalized intersection at SW Borchers Rd. / SW Edy Rd. and a right-in only driveway from Hwy 99W. The proposed multifamily building will be located on Lot 2 of the Cedar Creek Plaza subdivision which is currently vacant.

Tax Lot 2200 (1.73 AC) – vacant, two parking stalls at west corner

Tax Lot 2700 (0.70 AC) – commercial building, 33 parking stalls

- I. Surrounding Land Uses: The site abuts two public streets including SW Edy Rd. to the north and Hwy 99W to the south. The zoning to the north is Retail Commercial (RC) and Medium Density Residential High (MDRH), to the south / southeast is General Commercial (GC), and to the west is High Density Residential with a Planned Unit Development Overlay (HDR-PUD).

II. AFFECTED AGENCY AND PUBLIC COMMENTS

- A. Notice of the application was sent to affected agencies via email on August 16, 2021 and April 26, 2022. The following responses were received:
1. City of Sherwood Engineering Department provided revised comments dated April 29, 2022 (Exhibit T) and an Internal Memorandum dated December 6, 2021 (Exhibit TT). The comments address traffic and transportation, public utilities (water, sanitary sewer, storm water), and

other engineering requirements. The comments and Conditions of Approval are incorporated throughout the report under each applicable code section. The Internal Memorandum provides analysis on the expected trip generation demand of the previously proposed 84-unit apartment building (proposal now for 67-units) versus a 94-room hotel. The analysis concludes the AM peak hour, PM peak hour, and average daily trips will with the proposed apartment building than the previously proposed hotel.

- a. Revised comments were received and are included as Exhibit T.
2. City of Sherwood Police Department provided comments dated August 17, 2021 (Exhibit U). The comments express concern regarding parking management and enforcement, noise and privacy between the existing neighborhood and proposed development, and traffic congestion at SW Edy Rd. and SW Borchers Drive. The comments conclude that police services and responses will increase as a result of the development.
 - a. Revised comments were not received.
3. Washington County Land Use and Transportation provided comments dated August 27, 2021 (Exhibit V). The comments state the County concurs with the Trip Generation Memo provided by the applicant.
 - a. Revised comments were not received.
4. Tualatin Valley Fire and Rescue provided comments during the completeness review process which are dated May 7, 2021 (Exhibit W). The comments are in regard to fire hydrants, water supply, and fire apparatus access. Final compliance with the fire marshal's letter and all fire code regulations is required as a condition of approval.
 - a. Revised comments were not received.
5. The Oregon Department of Transportation provided comments dated May 21, 2021 (Exhibit X). The comments state no significant impacts to the state highway will occur as a result of the development. The anticipated traffic trips generated by the multi-family building is lower than the traffic trips generated by the hotel that was assumed in the original Transportation Impact Analysis (TIA).
 - a. Revised comments were not received.
6. Clean Water Services provided a memorandum dated August 31, 2021 (Exhibit Y). The memorandum provides Conditions of Approvals related to CWS regulations for stormwater and erosion control. The applicant has provided also a Sensitive Area Pre-Screening Site Assessment (Exhibit N) that indicates a no site assessment or service provider letter is required.
 - a. Revised comments were not received.

7. Pride Disposal Company – Pride Disposal provided comments dated August 30, 2021 (Exhibit Z). The applicant is required to comply with Pride Disposal standards for trash enclosure design and vehicle access.
 - a. Revised comments were not received.
 8. The Oregon Department of Transportation Outdoor Advertising Sign Program provided comment dated August 17, 2021 (Exhibit AA). The comments referred the property owner and developer to the Oregon Revised Statutes (ORS) Chapter 377 regarding signage visible to a state highway for any future signs on the property.
 - a. Revised comments were not received.
- B. Notice of the application was provided in accordance with SZCDC § 16.72 for a Type IV hearing. The following public testimony was received:

1. Harold Cox submitted testimony dated August 31, 2021 and December 3, 2021 (Exhibit LL - 16852 SW Edy Rd.) – Mr. Cox owns Lot 1 of the Cedar Creek Plaza subdivision which is currently occupied by Planet Fitness. The testimony states Mr. Cox is opposed to the Major Modification because the developer represented that Lot 2 would be developed with a compatible commercial use. The testimony expresses concern over the development's potential to reduce property values in the commercial center and impact loans which are based on the current CC&R's.

The comments also raise concerns about the actual number of existing parking stalls compared to what is stated in the staff report and application, the restrictions on parking stated in the CC&R's, the parking study created by Kittelson and Associates, the City's parking ratios, and the application procedures for a Major Modification,

Staff Response: The proposed multi-family residential use is permitted in the Retail Commercial zone. The impact of property values as a result of any new development is not an applicable development code standard or approval criteria.

Staff concurs with Mr. Cox that the actual number of existing parking stalls on the site is different than described in the applicant's original submittal. To clarify the number of parking stalls within the Cedar Creek Plaza development, staff conducted its own analysis using GIS and a web service called CONNECTExplorer. Exhibit QQ shows the actual number of parking stalls on the site. The number of existing parking stalls is 506. The applicant is proposing an additional 90 parking stalls on Lot 2 for a total of 596 proposed parking stalls within

the entire Cedar Creek Plaza development. The applicant's revised Narrative (Exhibit S) and revised Final Parking Study (Exhibit UU) incorporate the corrected parking counts provided by staff.

The comment also raises a concern regarding the City approving a Major Modification which proposes something different than what was anticipated or represented at the time of the original land use approval. While Lot 2 was not a part of the original land use approval, a Major Modification is being pursued because the original approval met the City's development code through a shared approach to parking, landscaping, and vehicle access and circulation, etc. In order to receive approval for the Major Modification, the applicant is required to show how all of the applicable development code standards and approval criteria have been met including for public improvements, traffic, parking, and loading.

2. Mark Light submitted testimony dated September 1, 2021, September 19, 2021, October 6, 2021, January 13, 2022, March 31, 2022, and April 24, 2022 (Exhibit JJ / AM / AO – 17117 SW Robinwood Place) - Mr. Light lives in the adjacent townhomes to the south/west of the proposed development. The testimony raises issues with the development as it relates to egress, carbon footprint, logistical concerns with regard to fire access and public safety, and general inconveniences to the surrounding residents as a result of the development.

The comments also raise concern about the compatibility of the proposed multi-family building with the CC&R's recorded against the Deacon tract in 2019. The comments state that CC&R's state the development is intended to be a commercial use and that prohibited uses include any of those which are objectionable to the development as a high quality retail and/or commercial center. The comments also raise concerns related to traffic assumptions, trash, and ownership type of the new units.

The comments also raise concerns about the number of new parking stalls needed to accommodate the proposed development and indicates the applicant's Parking Study is not accurate based on a site visit and photos completed Mr. Light.

Staff Response: The proposed multi-family building will be located in an existing commercial center with approved egress at the fully signalized intersection of SW Edy Rd. and SW Borchers Dr. The development complies with the Energy Conservation, Noise, Odor,

and other environmental impact standards in SZCDC § 16.146 - .156, as discussed in this report. The development will also be required to meet fire access requirements prior to receiving occupancy, per Condition of Approval G11.

The proposed multi-family residential use is permitted in the Retail Commercial zone, subject to the dimensional requirements of the High Density Residential zone. The City is not responsible for interpreting, implementing, or enforcing the CC&Rs and cannot adjudicate many of the specific issues raised. The City can only consider the existing and proposed private agreements as they relate to specific development code standards and approval criteria. The sections of the development code that require evidence of private agreements are addressed in this report under each applicable section.

Specifically, the findings and conditions of approval in the following sections demonstrate the application conforms to the required development regulations under each section:

- SZCDC § 16.106.080 Traffic Impact Analysis
- SZCDC § 16.94 Off-Street Parking and Loading
- SZCDC § 16.116 Fire Protection

As discussed in this report, the application has not demonstrated compliance with all applicable standards and approval criteria in the following sections:

- SZCDC § 16.90 Site Planning
- SZCDC § 16.12 Residential Land Use Districts
- SZCDC § 16.22 Commercial Land Use Districts

The testimony also raises concern about the number of parking stalls provided and the parking ratio proposed by the developer. As demonstrated in the applicant's Revised Final Parking Study (Exhibit UU) and this staff report, the applicant has demonstrated compliance with the City's minimum parking requirements in SZCDC § 16.94. The testimony from Mr. Light does not address specific parking standards in the City's code and how the minimum requirements have not been satisfied.

3. Bruce Bebb provided testimony dated September 6, 2021 (Exhibit LL – 21233 SW Houston Drive) – Mr. Bebb lives in the adjacent residential neighborhood to the west of the proposed development.

The testimony is in opposition to the application and raises concern about traffic at the intersection of SW Borchers Rd. and SW Edy Rd. During both the rush hours (AM / PM) and sometimes mid-day, the intersection is blocked with traffic heading east on Edy Rd. towards Hwy 99W.

Staff Response: The original land use application for Cedar Creek Plaza development included a Transportation Impact Analysis (TIA) for the entire commercial center including Lot 2. The TIA assumed that Lot 2 would be developed with a 94-room hotel generating 768 daily trips. The applicant has provided a Revised Trip Update Letter (Exhibit L) that shows the daily trips generated by the 67-unit multi-family building is 452. Therefore, at build-out of Lot 2, the proposed 67-unit residential building will result in a reduction of 316 daily trips compared to the 94-room hotel. Agency comments provided by the Oregon Department of Transportation (Exhibit X), Washington County Land Use & Transportation (Exhibit V), and City of Sherwood Engineering (Exhibit T and TT) concur with the trip generation report provided by the applicant.

4. Julia Light provided testimony dated September 21, 2021 (Exhibit KK) 17117 SW Robinwood Place) - Ms. Light lives in the adjacent townhomes to the south/west of the proposed development. The testimony raises concerns related to traffic, moving trucks, emergency vehicle access, vehicle emissions, trash, pets, architectural design, and the rental nature of apartments.

Staff Response: The Sherwood Zoning and Community Development Code covers many of the topics raised as concerns including traffic, loading, emergency vehicle access, waste, building design, and land use. Issues raised that are not requirements of development cannot be considered (e.g. residents leaving the property to walk dogs on public property in the Maderia neighborhood). Outside agencies including Pride Disposal, Tualatin Valley Fire and Rescue, and the Oregon Department of Transportation have all reviewed and provided comment on the application.

The findings and conditions of approval in the following sections demonstrate the application conforms to the required development regulations under each section:

- SZCDC § 16.106.080 Traffic Impact Analysis
- SZCDC § 16.94 Off-Street Parking and Loading

- SZCDC § 16.116 Fire Protection

As discussed in this report, the application has not demonstrated compliance with all applicable standards and approval criteria in the following sections:

- SZCDC § 16.90 Site Planning
- SZCDC § 16.12 Residential Land Use Districts
- SZCDC § 16.22 Commercial Land Use Districts

5. Bob Barman provided testimony dated December 3, 2021 (Exhibit OO) – 16826 SW Edy Rd, Suite 137) - Mr. Barman owns the Hops n Drops property located in the Cedar Creek Plaza development and the testimony is in opposition to the proposed development. The comments state that a hotel was originally planned for Lot 2 and that a hotel was clearly represented to Planning Commission during the original hearing in May 2017. The testimony also raises concerns about the traffic assumptions and parking study and concludes the development will result in spill over impacts to the adjacent residential neighborhood.

Staff Response: Mr. Barman is correct that the owner and developer of Lot 2 intended to construct a hotel on the property, however, the City did not approve any development for Lot 2 in the 2017 approval. In order to provide a complete picture of the final traffic counts for the commercial center, the applicant included traffic counts and implemented traffic mitigation measures for a 94-room hotel. Under this approach the developer was able to identify all of the required traffic mitigation measure for the entire development upfront, instead of re-studying and potentially re-constructing recently completed road improvements. The applicant has provided an updated trip analysis for Lot 2 (Exhibit L) that indicates the apartment project will result in less daily trips than the previously proposed hotel. Regarding the parking impacts and potential spillover to adjacent neighborhoods, the applicant has provided a Revised Final Parking Study (Exhibit UU) that demonstrates the City's minimum parking requirements have been satisfied. The testimony provided by Mr. Barman does not specify how the City's minimum parking requirements in SZCDC § 16.94 have not been satisfied.

6. Chris Koback provided testimony dated December 3, 2021, December 7, 2021, and February 21, 2022 (Exhibit NN / AJ – 1331 NW Lovejoy St., Suite 950) - Mr. Koback represents three property

owners in the Cedar Creek Plaza center. The testimony is in opposition to the application and expresses concern that residential apartments are not a permitted use, that the proposal does not meet off-street parking requirements, and that the proposed parking is not on the lot or development as the residential use.

The testimony states that as part of the original 2017 approval the City placed a Condition of Approval on the application that Lot 2 be developed with a hotel and that the current application is proposing to remove that condition without addressing the required criteria.

Staff Response: Many of the issues raised by Mr. Koback are related to interpreting the CC&R's that bind the private parties in the commercial center. The City is not responsible for interpreting, implementing, or enforcing the CC&Rs and cannot adjudicate many of the specific issues raised. The City can only consider the existing and proposed private agreements as they relate to specific development code standards and approval criteria. The sections of the development code that require evidence of private agreements are addressed in this report under each applicable section.

Off-Street Parking Requirements

SZCDC § 16.94.010(E)(1) requires residential off-street parking to be located on the "same lot or development" as the residential use. Mr. Koback's testimony states that the word "development" is not defined in the context of this code section and application, and in this instance the City should define development as "Lot 2". Mr. Koback's argument ignores other sections of the parking code that clearly permit residential uses to share parking with other uses including those on other lots and in other developments. The narrow definition proposed in the testimony does not take into account the parking rights in the CCRs related to shared parking on adjacent lots. If the City agreed with the analysis in Mr. Koback's testimony, the City's findings related to parking would be in conflict with other portions of the City's development code that permit shared parking.

Mr. Koback's testimony also argues that the proposed multi-family building requires 92 additional spaces that are not located on the Deacon Tract. To support this argument the testimony states the Deacon Tract is currently lacking 51 stalls based on the existing uses and required parking minimums. This approach assumes that all users of the Deacon Tract including commercial customers are required to park on the Tract. The 2017 CC&Rs allow shared parking

across all three Tracts for customers and guests. Because customers and guests of the Deacon Tract can park on the other two Tracts, the calculations provided in the testimony are incomplete and inaccurate.

Mr. Koback's testimony also argues that by approving the application, the Ackerly's Conditional Use permit for an assisted living facility may fall out of compliance because the original application stated the facility would host approximately 85-90 employees. While the application did make this statement, the application also provided a letter clarifying the demand for parking for the assisted living use specifically to determine parking requirements under the code. The letter (Exhibit RR) states approximately half of the 98 stalls would be used for residents and the other half would be split between employees and guests. This evidence was accepted by the City at the time of the original approval in order to determine minimum parking requirements.

Finally, Mr. Koback's testimony raises the fact that employees are required to park on the Tract which they are associated based on the parking restrictions in the 2017 CCRs. The first staff report released on the application did specifically raise this issue. Staff agrees that the CC&R's provide clear restrictions for employee parking. The applicant has provided a revised, Revised Final Parking Study dated February 9, 2022 that takes into account all of the restrictions in the 2017 and 2019 CCRs, including those for employees. Staff concurs with the conclusions of the Final Parking Study that the City's minimum parking requirements have been met.

The second piece of testimony from Mr. Koback raises concern about a specific Condition of Approval related to a hotel use being changed by the Major Modification application but does not specify which Condition of Approval from SP 16-10 is being changed. The application is going through the Major Modification review process which permits changes to the original approval and any specific Conditions of Approval placed on the application including those related to use, traffic, and parking. The applicant narrative and staff report address all of the Major Modification criteria and find the approval criteria have been met.

8. Richard Jaffe (Exhibit PP) – Mr. Jaffe owns Lot 5 of the Cedar Creek Plaza subdivision where IHOP and Sherwood Eye Health are located. The testimony raises concern about the amount of parking

being provided by Lot 2 and the potential impact to customer parking. Mr. Jaffe states up to two (2) stalls should be required per unit.

Staff Response: The comment raises concern about the amount of parking being proposed on Lot 2 and suggests a minimum parking standards per unit. The City's Development Code contains clear minimum parking standards that all applicant's are required to comply with. The applicant has provided a Final Parking Study (Exhibit UU) that demonstrates how the Cedar Creek Plaza development will meet the City's applicable parking code requirements. The testimony from Mr. Jaffe does not address specific parking standards in the City's code and how the minimum requirements have not been satisfied.

III. ADOPTED FINDINGS

Chapter 16.22 - COMMERCIAL LAND USE DISTRICTS

16.22.010 – Purpose

- C. **Retail Commercial (RC) - The RC zoning district provides areas for general retail and service uses that neither require larger parcels of land, nor produce excessive environmental impacts as per Division VIII.**

16.22.020 - Uses

- A. **The table below identifies the land uses that are permitted outright (P), permitted conditionally (C), and not permitted (N) in the Commercial Districts. The specific land use categories are described and defined in Chapter 16.88 Use Classifications and Interpretations.**
- B. **Uses listed in other sections of this code, but not within this specific table are prohibited.**
- C. **Any use not otherwise listed that can be shown to be consistent or associated with the uses permitted outright or conditionally in the commercial zones or contribute to the achievement of the objectives of the commercial zones may be permitted outright or conditionally, utilizing the provisions of Chapter 16.88 Use Classifications and Interpretations.**
- D. **Additional limitations for specific uses are identified in the footnotes of this table.**

***(*Abbreviated table*)

Uses	RC Zone
Multi-family housing, subject to the dimensional requirements of the High Density Residential (HDR) zone in <u>16.12.030</u> when located on the upper floors, in the rear of, or otherwise clearly secondary to commercial buildings. ^{2, 3}	P

² The residential portion of a mixed use development is considered secondary when traffic trips generated, dedicated parking spaces, signage, and the road frontage of residential uses are all exceeded by that of the commercial component and the commercial portion of the site is located primarily on the ground floor.

³ Except in the Adams Avenue Concept Plan area, where only non-residential uses are permitted on the ground floor.

ANALYSIS: The applicant is proposing a new 67-unit multifamily building in the Retail Commercial (RC) zone. Multifamily housing is a permitted use in the zone, subject to the dimensional requirements of the High Density Residential (HDR) zone when located on the upper floors, in the rear of, or otherwise clearly secondary to commercial buildings.

The multifamily building will be located on Lot 2 of the Cedar Creek Plaza subdivision (Exhibit BB) which is located behind the existing commercial buildings in the Cedar Creek Plaza development. As shown in the applicant's Aerial-Vicinity Map (Exhibit B), the proposed residential building will be screened from SW Edy Rd. and Hwy 99W by one or more commercial buildings including the Providence medical office building at the corner.

Because the commercial use table references § 16.12.030 as setting forth "Dimensional Standards", as contrasted with the "density standards" as articulated in § 16.12.010, all of the development standards included under § 16.12.030 apply to multifamily housing in the RC zone. As part of the amended application, the applicant concedes that § 16.12.030 is applicable.

FINDING: The commercial use table requires multi-family housing in the Retail Commercial zone to meet the dimensional requirements in SZCDC § 16.12.030. The application has not demonstrated compliance with the dimensional standards in SZCDC § 16.12.030 and this standard is not met.

16.12.030 - Residential Land Use Development Standards

A. Generally

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

B. Development Standards

Except as modified under Chapter 16.68 (Infill Development), Section 16.144.030 (Wetland, Habitat and Natural Areas) Chapter 16.44 (Townhomes), or as otherwise provided, required minimum lot areas, dimensions and setbacks shall be provided in the following table.

C. Development Standards per Residential Zone

Development Standard	HDR
Minimum lot area (multifamily, first 2 units)	8,000 SF
Minimum lot area (multifamily, each additional unit after first 2)	1,500 SF
Minimum Lot width at front property line	25 ft.
Minimum Lot width at building line ^[1] (multifamily)	60 ft.
Lot depth	80 ft.
Maximum Height ^[2]	40 or 3 stories
Front yard setback ^[4]	14
Interior side yard (multifamily, over 24 ft. height)	§ 16.68 Infill
Rear yard	20

¹Minimum lot width at the building line on cul-de-sac lots may be less than that required in this Code if a lesser width is necessary to provide for a minimum rear yard.

²Maximum height is the lesser of feet or stories

³Some accessory structures, such as chimneys, stacks, water towers, radio or television antennas, etc. may exceed these height limits with a conditional use permit, per Chapter 16.62 (Chimneys, Spires, Antennas and Similar Structures).

⁴Reductions in front yard setbacks for architectural features as described in 16.50.050 are not permitted in the MDRL, MDRH, or HDR zoning districts.

ANALYSIS: The applicant is proposing a 67-unit multifamily building to be located on Lot 2 of the Cedar Creek Plaza subdivision. The applicant is proposing to meet the minimum lot area by including Lots 2 and 7 of the Cedar Creek Plaza subdivision (Tax Lots 2S130DA2200 and 2700) in the lot area calculations. The applicant's revised narrative (Exhibit S, p. 11) references the City's definition of "lot" in SZCDC § 16.10 in support of utilizing more than 1 lot to achieve the minimum lot area. The definition is included below for reference.

SZCDC 16.10 Definitions

Lot: A parcel of land of at least sufficient size to meet the minimum zoning requirements of this Code, and with frontage on a public street, or easement approved by the City. A lot may be:

- A. A single lot of record; or a combination of complete lots of record, or complete lots of record and portions of other lots of record.*
- B. A parcel of land described by metes and bounds; provided that for a subdivision or partition, the parcel shall be approved in accordance with this Code.*

While the definition of "lot" may allow "a combination of complete lots of record" to be defined as a lot¹, when this definition is read in the context of the City's code, it is clear that those lots would need to be contiguous and undeveloped—which is not the case for Lots 2 and 7.

Moreover, the definition of "lot" is not controlling. The more specific and applicable definition of "lot area" is: "The total horizontal area within the lot lines of a lot, exclusive of streets and access easements to other property." The reference in this definition to "area within the lot lines" is premised on the idea that the area in question would be surrounded by a single set of lot lines.

Further, the purpose of maintaining minimum development standards is to establish a floor amount of space necessary to accommodate a development. That minimum area is not available if it is not abutting the area slated for development and has otherwise been assigned to and developed for another use. If the applicant is able to borrow lot area from other developed, non-contiguous parcels, it could do so again and again, frustrating the minimums required by code.

¹ Note that staff believes that the meaning of the term "parcel" as referenced in the definition of "lot" is similar to the term "tract" as used in ORS 215.010(2), which includes "one or more contiguous lots or parcels under the same ownership."

Additionally, the definition of "lot" also requires a lot to be "a parcel of land". Lots 2 and Lot 7 of the Cedar Creek Plaza subdivision are not a parcel of land because they are not contiguous and do not form a single polygon that could be described through a singular metes and bounds description as a single parcel. As shown in Exhibit EE, Lot 2 is located at the north corner of the subdivision while lot 7 is located at the southern corner of the subdivision and developed commercial center. Lots 2 and 7 do not form a singular parcel of land because they are separated by 3 different lots under separate ownership.

If, as the applicant claims, "lot" includes both Lots 2 and 7 for purposes of "minimum lot area," this same "lot" would control for the remainder of the applicable development standards which would not make sense in the case of non-contiguous lots. For example, the minimum lot width requirements cannot be achieved by proposing development on a 10' wide lot of record but borrowing an additional 15' from a commonly owned lot located on the other side of town. The minimum lot width at the front or from building lines or depth is entirely frustrated if it were construed to apply in the case of non-contiguous lots. The applicant and City cannot choose which dimensional standards to apply when multiple lots are included under the City's definition of "lot". Under the applicant's proposal "minimum lot area" would apply but not the other development standards. Applying such a malleable definition of the term "lot" interjects a value-laden policy judgment which would violate the clear and objective decision-making obligations for needed housing as prescribed by ORS 197.307(4).

Because including Lot 7 solely for purposes of establishing the "minimum lot area" frustrates the City's obligation to process the application in a clear and objective manner and because lots 2 and 7 cannot be used together to form a single "parcel of land", the application cannot include Lot 7 to meet the minimum lot area requirements of the zone.

When only using Lot 2 to meet the minimum lot area requirements as the area where development is proposed, a maximum of 46 units are permitted on the vacant lot prior to removing the lot area dedicated for shared access. Per the definition of "lot area", access easements to other properties are required to be excluded from the final calculations. The application has not removed the access easement on Lot 2 of the Cedar Creek Plaza subdivision from the lot area calculations (Exhibit BB – Sheet 3, Note 4). The size of the easement appears to be approximately 2,000 SF and after removing this area from the lot area calculations, the final permitted unit count on the property is likely lower than 46 units.

The applicant is proposing 67 units which exceeds the number of units allowed on Lot 2.

Number of Residential Units Permitted Based on Lot Area

Lot	Lot Area	Lot Area Used for Residential Units	Units	Remaining Lot Area Not Used for Residential
Lot 2	75,359 SF*	8,000 SF (first 2 units) 66,000 SF (next 44 units)	46**	1,359 SF

**Includes access easement on Lot 2 of the Cedar Creek Plaza plat that cannot be counted towards the minimum lot area*

***Actual unit count is lower depending on the size of the access easement*

Required and Proposed Development Standards

Development Standard	HDR	Proposed (Lot 2)*
Minimum lot area (multifamily, first 2 units)	8,000 SF	See above
Minimum lot area (multifamily, each additional unit after first 2)	1,500 SF	See above
Minimum Lot width at front property line	25 ft.	294 ft.
Minimum Lot width at building line (multifamily)	60 ft.	294 ft.
Lot depth	80 ft.	245 ft.
Maximum Height	40 or 3 stories	3 stories, 36 ft. 5 inches
Front yard setback	14	287 ft. from Hwy 99W

Development Standard	HDR	Proposed (Lot 2)*
Interior side yard (multifamily, over 24 ft. height)	§ 16.68 infill** Final building height is 36.5 ft., requiring a 11.20 ft. interior side yard setback**	13 ft. (south / west) 56.6 ft. (north / west)
Rear yard	20	68 ft.

**The application does not address dimensional standards for Lot 7*

****16.68.030 - Building Design on Infill Lots**

Structures exceeding twenty four (24) feet in height shall conform to the following standards:

- B. Interior Side Setback and Side Yard Plane. When a structure exceed twenty four (24) feet in height:*
 - 1. The minimum interior side setback is five (5) feet, provided that elevations or portions of elevations exceeding twenty four (24) feet in height shall be setback from interior property line(s) an additional one-half (½) foot for every one (1) foot in height over twenty four (24) feet (see example below)*

$$36.41 \text{ ft.} - 24 \text{ ft.} = 12.41 \text{ ft.}; 12.41 \text{ ft.} \times 0.5 \text{ ft.} = 6.20 \text{ ft.}; 6.20 \text{ ft.} + 5 \text{ ft.} = 11.20 \text{ ft.}$$

In addition to the residential building, the applicant is proposing carport structures for the rear parking aisle along the west property line. Building permits are required for the accessory structures, as conditioned below.

FINDING: The applicant is proposing a total of 67-units which exceeds the number of units permitted on Lot 2 by a minimum of 21 units. In addition, the applicant has not removed the access easement on Lot 2 from the lot area calculations as required by the definition of "lot area". The applicant has not been conditioned to lower the unit count based on the analysis above because the design of the site and building may change and the application would need to be revised to show compliance with the applicable standards. This standard is not met.

Division V. - COMMUNITY DESIGN

Chapter 16.90 – SITE PLANNING

16.90.030 - Site Plan Modifications and Revocation

A. Modifications to Approved Site Plans

1. Major Modifications to Approved Site Plans

- a. **Defined.** A major modification review is required if one or more of the changes listed below are proposed:
 - (1) A change in land use (i.e. residential to commercial, commercial to industrial, etc.);
 - (2) An increase in density by more than ten (10) percent, provided the resulting density does not exceed that allowed by the land use district;
 - (3) A change in setbacks or lot coverage by more than ten (10) percent, provided the resulting setback or lot coverage does not exceed that allowed by the land use district;
 - (4) A change in the type and/or location of access-ways, drives or parking areas negatively affecting off-site traffic or increasing Average Daily Trips (ADT) by more than 100;
 - (5) An increase in the floor area or height proposed for non-residential use by more than ten (10) percent;
 - (6) A reduction of more than ten (10) percent of the area reserved for common open space; or
 - (7) Change to a condition of approval that was specifically applied to this approval (i.e. not a "standard condition"), or a change similar to items identified in Section 16.90.030.A.1.a.(1)—(2) as determined by the Review Authority.

ANALYSIS: The applicant is proposing a new 67-unit multi-family building in the existing Cedar Creek Plaza development. The original land use approval (SP 16-10 / CUP 16-06 / VAR 17-01) did not include a multi-family housing use as identified in the commercial use table under SZCDC § 16.22.020. The 138-assisted living and memory care facility was approved as a "Residential care facility. The proposed 67-units represent an increase in the density in the development by more 10%."

	Lot Size	Multifamily dwelling units	Density per acre	% Increase In Density
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Original approval	13.17 AC	0	0	
Proposed (Cedar Creek Plaza Commercial Center)	13.17 AC	67	5.08	100%
Proposed (Lots 2 and 7 only)	2.43 AC	67	27.57	100%
Lot 2 only	1.73	67	38.72	100%

The proposal does not represent an increase in Average Daily Trips (ADT) by more than 100 because the original TIA for the development assumed a greater daily trip count than the multi-family building will create (Exhibit L – Trip Update Letter).

FINDINGS: The proposed development will increase density on Lots 2, 7, and within the Cedar Creek Plaza center at-large by more than 10%. As such a Major Modification approval is required.

- b. **Approval Criteria. An applicant may request a major modification as follows:**
 - (1) Upon the review authority determining that the proposed modification is a major modification, the applicant must submit an application form, filing fee and narrative, and a site plan using the same plan format as in the original approval. The review authority may require other relevant information, as necessary, to evaluate the request.
 - (2) The application is subject to the same review procedure (Type II, III or IV), decision making body, and approval criteria used for the initial project approval, except that adding a Conditional Use to an approved Type II project is reviewed using a Type III procedure.
 - (3) The scope of review is limited to the modification request and does not open the entire site up for additional review unless impacted by the proposed modification. For example, a request to modify a parking lot requires site design review only for the proposed parking lot and any changes to associated access, circulation, pathways, lighting, trees, and landscaping.

- (4) Notice must be provided in accordance with Chapter 16.72.020.
- (5) The decision maker approves, denies, or approves with conditions an application for major modification based on written findings of the criteria.

ANALYSIS: The original land use application was processed under the City's Type IV procedure with the Planning Commission as the decision-making body. The proposed Major Modification is being processed as a Type IV application as required by the criteria above. Notice has been provided in accordance with SZCDC § 16.72.020 including mailed notice to property owners within 1,000 ft. of the site. The applicable sections of the City's development code are addressed throughout this report. The proposal meets or is conditioned to meet all of the applicable criteria.

FINDINGS: These criteria are met.

16.90.020 - Site Plan Review

D. Required Findings

No site plan approval will be granted unless each of the following is found:

1. **The proposed development meets applicable zoning district standards and design standards in Division II, and all provisions of Divisions V, VI, VIII and IX.**

ANALYSIS: The Cedar Creek Plaza commercial center is located in the RC zone and is required to all applicable zoning district and community design standards. The RC zone requires multifamily housing to meet the dimensional requirements of the HDR zone. As discussed in the findings for SZCDC § 16.12.030, the application has not demonstrated compliance with the dimensional standards for the multifamily building.

FINDINGS: This criterion is not met.

IV. EXHIBITS*

- A. Tax Map
- B. Aerial-Vicinity Map
- C. Zoning Map
- D. Survey
- E. As-Built Plans

- F. Civil Plans
- G. Landscape Plans
- H. REVISED Architectural Plans
- I. Architectural Perspective Renderings
- J. Neighborhood Meeting Materials
- K. Geotech Report
 - 1. Geotech Report Addendum
- L. REVISED Trip Update Letter
- M. Arborist Report and Tree Survey
- N. Service Provider Letter (Clean Water Services)
- O. Stormwater Report and Calculations
- P. Covenants, Conditions, and Restrictions (CC&Rs)
- Q. Title Reports
- R. REVISED Signed Land Use Application Forms
- S. Applicant Narrative
- T. REVISED City of Sherwood Engineering Department Comments
- U. City of Sherwood Police Department Comments
- V. Washington County Land Use and Transportation Comments
- W. Tualatin Valley Fire and Rescue Comments
- X. Oregon Department of Transportation Comments
- Y. Clean Water Services Comments
- Z. Pride Disposal Comments
- AA. ODOT Outdoor Advertising Sign Program Comments
- BB. Cedar Creek Plaza Subdivision Plat
- CC. Staff Photo – Site Perimeter Landscaping
- DD. Staff Photo – Site Perimeter Landscaping
- EE. Cedar Creek Plaza Property Ownership Map
- FF. Staff Photo – Ackerly Reserved Parking
- GG. Notice of Decision SP 16-10 / CUP 16-06 / VAR 17-01
- HH. Notice of Decision LLA 17-02
- II. Notice of Decision SUB 17-02
- JJ. Testimony from Mark Light dated 9-1-21, 9-19-21, 10-6-21, 1-13-22
- KK. Testimony from Julia Light dated 9-21-21
- LL. Testimony from Bruce Bebb dated 9-6-21
- MM. Testimony from Harold Cox dated 8-31-21 and 12-3-21
- NN. Testimony from Chris Koback dated 12-3-21 and 12-7-21
- OO. Testimony from Bob Barman dated 12-3-21
- PP. Testimony from Richard Jaffe dated 12-9-21
- QQ. Existing Parking Stall Count Exhibit from Staff dated 12-6-21
- RR. Letter from LeisureCare on Ackerly Staff and Parking
- SS. Final Site Plan Narrative from Original Decision (SP 16-10 / CUP 16-06 / VAR 17-01)

- TT.** Internal Memorandum "Analysis of Traffic Count Impacts to TIA due to Change of Use" from Bob Galati, City Engineer dated December 6, 2021
- UU.** REVISED Cedar Creek Plaza Parking Review and Management Plan from Kittelson & Associates dated 2-9-22
- VV.** Letter from Applicant (Brad Kilby) to Planning Commission dated 12-9-21, "Cedar Creek Plaza Testimony – LU 2021-019"
- WW.** Letter to Planning Commission from Applicant (Steve Deacon) dated 1-13-22, "Cedar Creek Plaza Multi-family Project"
- XX.** 120 Day Extensions from Applicant
- YY.** Testimony from Todd Fisher dated January 23, 2022
- ZZ.** Testimony from Chris Koback dated January 24, 2022
- AB.** Email from Applicant (Brad Kilby) dated January 25, 2022
- AC.** Letter from Applicant (Steve Deacon) dated January 25, 2022
- AD.** Exhibit from Kittelson & Associates dated January 25, 2022
- AE.** Testimony from Gabriel Zapodeanu dated January 25, 2022
- AF.** Testimony from Mark Light dated February 8, 2022
- AG.** 120-Day Extension from Applicant
- AH.** Letter from Applicant (Brad Kilby) dated February 16, 2022
- AI.** Testimony from David Petersen dated February 18, 2022
- AJ.** Testimony from Chris Koback dated February 21, 2022
- AK.** 120-Day Extension and Continuance Request from Applicant
- AL.** 120-Day Extension and Continuance Request from Applicant
- AM.** Testimony from Mark Light dated March 21, 2022
- AN.** Deeds for Tax Lots 2200 and 2700
- AO.** Testimony from Mark Light dated April 24, 2022

**The complete application materials are available in the paper project file at City Hall.*