



SHERWOOD CITY COUNCIL MEETING MINUTES
22560 SW Pine St., Sherwood, Or
August 24, 2022

SPECIAL SESSION

1. **CALL TO ORDER:** Council President Rosener called the meeting to order at 7:02 pm.
2. **COUNCIL PRESENT:** Council President Tim Rosener, Councilors Doug Scott and Kim Young. Councilor Taylor Giles participated remotely. Mayor Keith Mays and Councilor Renee Brouse were absent.
3. **STAFF PRESENT:** City Manager Keith D. Campbell, IT Director Brad Crawford, Associate Planner Eric Rutledge, Planning Manager Erika Palmer, Police Captain John Carlson, Interim City Attorney Carrie Richter, Interim City Attorney Alan Rappleyea, and City Recorder Sylvia Murphy.
4. **APPROVAL OF AGENDA:**

MOTION: FROM COUNCILOR YOUNG TO APPROVE THE AGENDA. SECONDED BY COUNCILOR SCOTT. MOTION PASSED 4:0, ALL PRESENT MEMBERS VOTED IN FAVOR (MAYOR MAYS AND COUNCILOR BROUSE WERE ABSENT).

5. NEW BUSINESS

A. Resolution 2022-070, Declaring a Sherwood City Council Seat Vacant

Council President Rosener recapped that Councilor Garland had resigned his position as a City Councilor, leaving his seat vacant. He explained that the first step in filling the vacancy was to declare the seat as vacant via a resolution. City Manager Keith Campbell reported that Councilor Garland had resigned his seat on August 19th and explained that the City Charter stated that a seat on City Council became vacant upon a declaration from Council after the incumbent had resigned from office. He outlined that the Sherwood Municipal Code stated that upon becoming aware of the vacancy, City Council must promptly declare the vacancy. He stated that the Code also indicates that if 13 months or more remained in the term, then an election must be held at the next available election date and reported that the vacancy would be filled via the November 8, 2022 election. Mr. Campbell stated that there were no financial impacts for this resolution and explained that the city would declare that there were four open Council seats for the November 8, 2022 election and the candidate that received the fourth highest number of votes shall be appointed to the remainder of Councilor Garland's term. Interim City Attorney Alan Rappleyea explained that the deadline to file for the November 8th election was 5:00 pm on August 30th and explained that it would help save the city money to fill the vacancy via the November 8th election so the city would not have to hold a special election. Council President Rosener commented that the City Charter also required that the vacant Council seat be filled within 45 days, and the city would still do so, but whoever won in the November election would be sworn

in January 2023. Interim City Attorney Rappleyea recommended that Council choose the person most likely to be elected in November, so the candidate had time to familiarize themselves with Council duties.

MOTION: FROM COUNCILOR YOUNG TO APPROVE RESOLUTION 2022-070, DECLARING A SHERWOOD CITY COUNCIL SEAT VACANT. SECONDED BY COUNCILOR SCOTT. MOTION PASSED 4:0, ALL PRESENT MEMBERS VOTED IN FAVOR (MAYOR MAYS AND COUNCILOR BROUSE WERE ABSENT).

Council President Rosener addressed the next agenda item and recessed the meeting from 7:08 pm to 7:17 pm due to technical issues.

6. PUBLIC HEARING

A. Appeal Hearing for LU 2022-012 SP / MM / CUP / PLA Chestnut Inn and Parkway Village South Self Storage

Interim City Attorney Carrie Richter read aloud the public hearing statement. She asked if Council was able to be unbiased? She asked if Council had any conflicts of interest? She asked if Council had any ex parte contacts? Councilor Scott replied that he did not have any conflicts of interest or any ex parte contact. Councilor Young replied that she had no bias nor any financial interest, and she had not discussed the application, but she was previously made aware of the Applicant's future vision for their property when on a tour of the Langer's Entertainment Center facility. Councilor Giles replied that he had no bias, but he had visited the site previously as a patron. Council President Rosener replied that he did not have any financial or other conflicts and he was also previously made aware of the Applicant's future vision for their property when on a tour of the Langer's Entertainment Center facility and stated he had discussed the application with city staff. Interim City Attorney Richter addressed the audience and asked if anyone in attendance wished to question any of the disclosures from Council?

Susan Claus, 22211 SW Pacific Highway, came forward and asked what specifically about the application Council President Rosener had discussed with city staff? Interim City Attorney Richter replied that conversations with staff did not qualify as ex parte contact and did not need to be disclosed. Ms. Claus asked for clarification about staff discussions with Council. Ms. Richter explained that questions from Council to staff were not a part of the public record as a part of this proceeding and asked Council President Rosener if he would be able to decide based on the applicable approval criteria and the record as it was created before the Planning Commission? Council President Rosener replied that he was able to do so and clarified that the extent of the conversation consisted of asking staff if the application for the project had been submitted prior to the application having been submitted to the Planning Commission.

Jim Claus, 22211 SW Pacific Highway, came forward and asked if anyone on Council was an attorney? Interim City Attorney Richter clarified that the purpose of this part of the public hearing was to discuss the disclosure of ex parte contact. Mr. Claus asked if Council had seen any part of the file that was not a part of this meeting? Council members stated they had not. Mr. Claus asked if Council had reviewed the file with "knowledge of the professional standards on variances or exceptions?" Ms. Richter asked Mr. Claus how that question related to the disclosure of ex parte contact? Mr. Claus replied that it had to do with bias and stated that since no one on Council was an attorney, what Council did was "use your education and your bias to decide." He asked if Council had seen any part of the file that was not a part of this meeting that would affect their bias? Councilor Scott replied no. Council President Rosener replied no and commented that these questions did not seem to be a part of the process. Councilor Young replied that she would not reply to the question because it had nothing to do with ex parte contact. Mr. Claus stated that it was to establish bias,

not ex parte contact. Council President Rosener explained that the purpose of this part of the public hearing was to question ex parte contact disclosure and if he wanted to provide public comment later, there would be time to do so. Mr. Claus recapped that since no one on Council was an attorney, nor were they professional land use planners, their "total acceptance of this application is just contact with staff. I think that's a yes. Now, I want a yes on the record." Interim City Attorney Richter recapped that the question of if Council had reviewed anything that was not included in the record with respect to this application had been asked and Council had answered that they had not reviewed anything other than the record. Councilor Scott stated that he had not discussed the application with anyone on staff or otherwise and the only materials he had seen were the documents in the official record. Councilor Giles stated that he had only reviewed the packet that was sent out and was available on the city's website as well as the additional testimony (see record, Exhibit A) provided by Associate Planner Eric Rutledge to Council prior to this meeting. He continued that he had not discussed anything with staff and had not attended the Planning Commission meeting when this application was discussed. Councilor Young stated that the only documents she had seen were the ones in the official record. Council President Rosener stated that he had not reviewed any materials that were not a part of the official record and he had also read the additional testimony that had been provided by Associate Planner Rutledge prior to this meeting. He stated that he had had a brief conversation with staff asking if the application had been submitted prior to the application being submitted to the Planning Commission.

Jim and Susan Claus, 22211 SW Pacific Highway, came forward and Mr. Claus asked if all Council had seen was "what Coie Perkins has produced for you, is that correct?" Councilor Young replied that Council had seen what staff had prepared and sent to Council. Mr. Claus stated that "you've got Coie Perkins material here too, I assume you've read that." Councilor Young replied that staff had provided Council with all of the records. Mr. Claus again asked if Council had reviewed the material provided by Perkins Coie? Council President Rosener stated that the question had been asked and answered and the Perkins Coie materials were a part of the record that Council was provided. Mr. Claus asked if Council had seen the comments about him in the letter from Perkins Coie attorney Seth King? He continued that according to the letter, Mr. Claus was "some clown that just walked in off the street—that was to bias your response to us." Ms. Claus asked if each Councilor had reviewed the entire record prior to this hearing? Interim City Attorney Richter replied that Council had answered the question by saying they had reviewed the record. Ms. Claus stated she wanted each Councilor to state their answer. Council President Rosener replied that the question had been asked and answered and every Councilor had said they had reviewed the record and it could be left at that. Ms. Claus stated that reviewing the record was different than reading the entire record and again asked if each Councilor had read the entire record before the hearing? Ms. Richter stated that it was time to move on and Council President Rosener stated he agreed. Ms. Claus asked if what Council was saying by stating it was time to move on, was that each of them had reviewed the entire record before this appeal? Council President Rosener stated the question had been asked and answered. Ms. Claus asked if each Councilor had reviewed the entire record prior to this hearing? Council President Rosener replied that Council had reviewed the record. Ms. Claus asked if each Councilor had reviewed the entire record prior to this hearing? Interim City Attorney Richter stated that it was time to move on to the staff report. Ms. Claus stated that it was then Council's position that they had "reviewed, but you didn't read the whole record." Council President Rosener stated that that was not Council's position. Ms. Claus stated that it was then Council's position that they had read the entire record. Council President Rosener stated that he did not want words put in his mouth and asked that Associate Planner Eric Rutledge proceed with his staff report. Ms. Claus again asked if each Councilor had reviewed the entire record? Council President Rosener stated it had been asked and answered.

Associate Planner Eric Rutledge presented the "LU 2022-012 SP, MM, CUP, LLA Chestnut Inn and Parkway Village South Self-Storage Land Use Appeal Hearing" PowerPoint presentation (see record, Exhibit B) and provided an overview of the application summary. He explained that the proposal was for a 100-room hotel

and a 690-unit self-storage building. He stated that it was a Type IV land use action and the zoning was Light Industrial and provided an overview of the applicable SZCDC (Sherwood Zoning and Community Development Code) criteria on page 3 of the presentation. He stated that staff had received two pieces of testimony, one from Seth King, attorney for the Applicant and one from Jeffrey Kleinman, attorney for the Appellant (Exhibit A) after the release of the staff report both of which had been forwarded to Council prior to this meeting. Mr. Rutledge provided an overview of the site location and stated that the site was at the corner of Century Drive and Langer Farms Parkway and explained that all the lots outlined in red would be impacted by the modification. He outlined the site's zoning and surrounding land uses and recapped that the site was in a Light Industrial PUD and the zoning was Industrial to the north, south, and east of the site. To the west of the site was High Density Residential, Institutional Public, and Retail Commercial. He outlined the map on page 7 and gave an overview of the existing and proposed site map on page 7 of the presentation. He explained that the color purple was what had been approved through the 2017 site plan application and constructed and included the entertainment center, parking in front of the entertainment center, and the drive aisles. He reported that yellow delineated what had been approved but not constructed and noted that the applicant was able to apply for building permits at any time for items shown in yellow. He clarified that as part of the 2017 site plan approval, those things included Phase II of the entertainment center and the retail pads along the frontage of the streets. He reported that blue and green was what was proposed and would be new development that the Planning Commission had approved as part of the 2022 site plan application and modification. He outlined that blue was the hotel and green was the self-storage with parking in between and provided an overview of the site plan rendering on pages 9-10 of the presentation. Mr. Rutledge addressed Appeal Issue #1 and explained that the Appellant argued that the Planning Commission had misapplied the provisions of the current and applicable past versions of the SZCDC, ORS 92.040, and the city's previous PUD and subdivision approvals in approving the application. He explained that the Planning Commission had determined that self-storage was not a permitted use under the current Light Industrial Zone, however, because of ORS 92.040 and the previous land use approvals issued on the property, self-storage was permitted on the property until August 28, 2022. He explained that the Planning Commission had based their decision on ORS 92.040 which stated that "After September 9, 1995, when a local government makes a decision on a land use application for a subdivision inside an urban growth boundary, only those local government laws implemented under an acknowledged comprehensive plan that are in effect at the time of application shall govern subsequent construction on the property unless the applicant elects otherwise." He read aloud Subsection 3 which stated that "A local government may establish a time period during which decisions on land use applications under subsection (2) of this section apply. However, in no event shall the time period exceed 10 years, whether or not a time period is established by the local government." Associate Planner Rutledge stated that it was staff's opinion that the statute outlined that the local government could establish a time period in which this provision would apply, but in no case could that provision exceed 10 years. He addressed the SUB 12-02 Langer Farms Subdivision and explained that it was a 5-lot subdivision on the east side of Langer Farms Parkway and was approved in 2012. He explained that the code that was in effect at the time of the subdivision's approval was different than the current code for Light Industrial zoning. He explained that SZCDC 16.32.020(h) was in effect at the time of the subdivision submittal and stated that "Approved PUDs may elect to establish uses which are permitted or conditionally permitted under the base zone text applicable at the time of final approval of the PUD." He explained that the Applicant wished to take advantage of the approved uses provided by the code that were in effect at the time of the PUD approval and would permit self-storage. Associate Planner Rutledge recapped that the code that was in effect at the time that the PUD was approved allowed self-storage in the Light Industrial zone. He stated that the subdivision was approved in 2012 and the code that was in effect at that time stated that approved PUDs could elect to use the uses that were in effect at that time, or at the time of the final PUD. He explained that the ORS stated that only those local government laws in effect at the time of the subdivision shall govern subsequent construction on the property unless the applicant elected otherwise. He explained that staff viewed this as the applicant having the right to utilize the code in effect at the time of the 2012 subdivision

approval which allowed them to also go back to the PUD uses in effect at that time which included self-storage. Mr. Rutledge addressed Appeal Issue #2 and recapped that the Appellant argued that the Planning Commission had applied two different versions of the SZCDC to approve the application, an older code version for one use and the current code version for the other use. He stated that the Planning Commission had found that ORS 92.040(2) stated "After September 9, 1995, when a local government makes a decision on a land use application for a subdivision inside an urban growth boundary, only those local government laws implemented under an acknowledged comprehensive plan that are in effect at the time of application shall govern subsequent construction on the property unless the applicant elects otherwise." and the Planning Commission had acknowledged that the Applicant had "elected otherwise for the proposed hotel use." He explained that the hotel use was permitted under the 2022 code, but not in the 2012 code. He explained that ORS 227.175(2) supported allowing two different code versions to be applied and read the statute aloud and explained that it was staff's opinion that the city had an obligation to process the two applications together consistent with the Applicant's election. He commented that the statute's wording of "...unless the applicant elects otherwise" seemed to allow for the splitting of the uses under two different codes of two different times and was further supported under ORS 227.175(2). He outlined that the Applicant had done the subdivision in 2012, and he felt it was within the Applicant's right, to apply for this in either in 2017 or 2022 and say they were not electing otherwise and that they wished to use the code in effect at the time of the subdivision in 2012. He explained that in staff's opinion, the city would have had to allow the uses in the 2012 code, which included the Light Industrial zoning that permitted self-storage. He continued that if the Applicant had not elected otherwise, the city would have applied all the other standards that were in effect in 2012 such as dimensional standards, landscaping, off-street parking, etc. Mr. Rutledge stated that the city generally preferred not to revert to an older code, and so the approach in this application was to have the Applicant agree to the 2022 site planning criteria as it related to everything else besides the self-storage use and reported that the Applicant had agreed to these terms in their submittal and their narrative. He outlined that previous City Attorney Josh Soper had said that the Applicant could have chosen not to do that and just come in under the 2012 code. Mr. Rutledge added that he felt it was possible that the Applicant could have applied for the self-storage use under the 2012 code and the city would have processed it under the 2012 code. He continued that the Applicant could have then come back after receiving approval for the self-storage use and stated that they were not electing otherwise under the ORS, and they wished to come in under the 2022 code, and the city would have processed that as well. He referred to the ORS that required the city to consolidate applications and commented that staff processed them together to save applicants from having to go through different steps. He explained that consolidating applications was something that occurred regularly, and the main purpose was to bring in lower-level applications with the highest-level applications so that the applications went to the Planning Commission. He explained that this prevented applicants from having to do separate applications for each piece of development. Mr. Rutledge outlined the benefits of having the Applicant come in under the applicable 2022 standards on page 14 of the presentation. He addressed Appeal Issue #3 and stated that the Appellants argued that the Planning Commission had erred for each reason asserted in the letters and emails submitted by Jim Claus and/or Susan Claus in the record, and the Appellants asserted each argument raised as grounds for appeal of the Planning Commission's decision. Associate Planner Rutledge outlined that staff had reviewed the testimony in detail, both when it was submitted and on the appeal, to the extent that they felt that any of the issues needed to be addressed. He explained that staff had addressed those issues in the staff report and staff focused on the procedural concerns. He stated that if staff had identified and agreed with any issues in the appeal, staff would have no problem saying so. He stated that staff had made a close review and had found no issues to raise on appeal. He stated that it was staff's recommendation that Council affirm the Planning Commission's decision and approve the application. He outlined Council's alternatives on page 17 of the presentation and noted that the first alternative should not say "tentatively." Councilor Scott asked if it was accurate to say that the Applicant could have chosen to apply for the self-storage and the hotel as separate applications? And clarified, that in such a case, the Applicant could have chosen to apply the old standard or the current standard for each

application, and separately the city would have allowed for the application of the 2012 standards for one application and the 2022 standards for the other application? He continued that the applications were combined because of the consolidation language, Oregon law, and the city's procedures and best practices for efficiencies, but otherwise the applications would stand on their own and would have had the separate standards applied to each? He continued that just because they were consolidated, it did not mean that that flexibility went away. Associate Planner Rutledge replied that was correct. Interim City Attorney Richter replied that it was a process issue. Councilor Young commented that she had had the same question as Councilor Scott, but the presentation had answered her question. Mr. Rutledge replied that combining the applications "made the most sense" and commented that staff was pleased that the Applicant was open to coming in under the current code. Councilor Giles commented that combining the applications sounded like it saved money because it was more efficient. He asked hypothetically, that if this was a single lot, would an applicant be able to apply two different standards? Mr. Rutledge replied that the Applicant was able to do so because they were two different lots and explained that it was the combination of two state laws that made this a unique situation. He referred to Councilor Giles' hypothetical question and explained that if that had been requested, staff would have tried to determine a way to come in under one code. He continued that for this application, all the lots that were either modified or had a new site plan for all came in under the current Development Code standards except for the self-storage use.

Council President Rosener opened the public hearing and called the Appellant forward.

Attorney for the Appellant Jeff Kleinman, 1207 SW 6th Avenue Portland, Oregon 97204, stated that he disagreed with the Planning Commission's decision. He commented that the Applicant's requests were similar to a buffet in that they wanted to pick and choose what standards they wanted applied. He outlined that there were four decisions and agreements. In the 1995 PUD approval, self-storage was permitted but motel use was not. He referred to the August 2010 express written development agreement between the city and the Langers in which the parties agreed in writing that the 1995 zoning provisions would apply. He referred to the 2012 subdivision approval and the relevant 2017 approval and stated that the Applicant believed they could pick the favorable standards they wanted and ignore the standards they did not want applied. He outlined that the Applicant could choose to apply under the 1995 provisions, but they would not be permitted to build a motel, or they could apply under the 2017 provisions where a motel would be allowed, but they would not be permitted to build the self-storage facility. He stated that the Applicant could choose one or the other, but not both. Mr. Kleinman stated the Appellant disagreed with the characterization of the 2012-02 subdivision approval as something that could be relied upon, as it was the 2017 subdivision that controlled development. He commented that this subdivision could benefit from the provision of ORS 92.040 which allowed for a 10-year look back, but the code at that time also did not allow storage facilities. He outlined that the Applicant had asserted that the Appellants were trying to collaterally attack prior decisions of the city and explained that the Appellant was not doing so, they were trying to compel the Applicant and the city to recognize those prior decisions and to apply and enforce them. He referred to the 10-year timeline provided by ORS 92.040 and explained that it could not be "trumped by the language of the code that was repealed...in 2012...that's been relied on" and referred to SZCDC 16.32.020(h)" and stated that that appeared to have created a 17-year look back period. He stated that regardless, the limit would be 10 years under the statute, so the ability to go back to the 1995 zoning would have ended in 2005. Mr. Kleinman voiced that he was not overly concerned about the applications getting processed together, the issue was that the Applicant was picking and choosing which approval standards they wanted to comply with. Councilor Giles asked if these were two separate applications and the Applicant could decide to utilize the current code or the code from the time period 10 years prior, would the Appellant have an issue with that? Mr. Kleinman replied that there was an issue with that scenario. Councilor Giles asked if the two sites were owned by two different people who could decide to utilize the current code or the code from the time period 10 years prior, would there be an issue there? Mr. Kleinman replied that the code provision Councilor Giles referred to was

repealed in 2012 and could not supplant the language from ORS 92.040 which would only allow the Applicant to opt to go back 10-years, not 17 years. He continued that it did not matter who the applicant was or how many applicants it was or how many parcels it was for, ORS 92.040 "did not allow, would not allow, will not allow" a look back of more than 10 years, and therefore no one would get the benefit of the 1995 zoning. Susan Claus asked if Councilor Giles believed that anyone who came in for a land use planning application could use whichever code they wanted to? Councilor Giles replied that he did not believe that and stated that as he understood it, "some things get grandfathered in and you can't change the rules...mid-game." He clarified that he wanted to understand that if this was a single lot with the applications being processed separately, would the Appellant still have an issue with it? Mr. Kleinman replied that their answer would be the same. Councilor Scott commented that he did not understand that position. He outlined that if he owned the lot that was the site of the proposed motel and Councilor Giles owned the lot that was the site to be self-storage, and Councilor Scott chose to be brought in under the 2022 code so he could build the hotel, that would somehow also force Councilor Giles to use the 2022 code for developing his lot? Mr. Kleinman replied that was not correct and stated that their argument was that the applicable law "is what it is." He provided an example of someone applying for a use that was allowed today on their property, then they were entitled to do so. He stated that no one was entitled to go back to 1995 because the maximum look back was 10 years, not 27 years. Councilor Scott commented that that was not the question, his question had to do with the consolidating of the applications, not the timeline question. Mr. Kleinman replied that it did not matter to him if the applications were consolidated. Councilor Scott commented that the consolidating of the applications was one of the issues in the appeal the Appellant had raised. Mr. Kleinman replied that "it makes no difference whether they're combined or not." Councilor Scott asked why that was included as an appeal issue then? Mr. Kleinman replied that he had not drafted that, and he was focused on the issues he was most familiar with.

Jim and Susan Claus came forward and Mr. Claus said that when he discussed moving to Oregon with an attorney, they had discussed how Oregon was a statutory state, but the state was "more restrictive on the First Amendment and government and we're good on compensation..." He told a story of the state having to pay money for violating a citizen's First Amendment rights after the assassination of President Lincoln. He commented that the Bill of Rights had not been formally adopted until the 1950s and commented about Oregon and the First Amendment. He asked why an armed police officer attended Council meetings? He stated that it was to discourage free speech and so did the attitudes of Council. Mr. Claus said that it was an "enormous" amount of money to get to this point and when the environment was unfriendly "you were against the town." He stated that his family had donated the principal land for the refuge and had also donated Stella Olsen Park and the downtown theater and he was treated like "an enemy of the public." He stated that sooner or later it would be revealed who had used urban renewal money to fund Cedar Brook Way. Mr. Claus stated that there was a case in 1927 of Ambler Realty Co. versus the Village of Euclid and commented on zoning and misuse. He commented on rational relationships and the need to conform to the law or prove that the law was incorrect. He commented that the burden of proof was on Council. Mr. Claus stated that there was no true free speech at this meeting because it was "chilled" by the presence of a police officer in the room. He stated that he and Ms. Claus had been treated as if they were antagonistic and the Clauses were the biggest donors to the city. He stated that the city had been antagonizing litigation. He referred to a case involving Cambridge and commented that the front of the collector street in the application was to be 25 mph and stated that the street was already dangerous, and the city would be putting more traffic on the road next to a residential district. Mr. Claus stated that the city was incorrect, and the street should not be labeled as a collector road but a neighborhood street and commented that the traffic circle was dangerous. He commented that the applications would allow for a 100-room motel and storage that was four times the allowable density and no one had tried to determine what the effects on the neighborhood would be. He stated that one of the first steps the city should have done when determining whether to issue a variance was to determine if the variance would affect the general plan. He referred to the land that was used for Stella Olsen Park and stated

that the Clauses had given that land to the city and he was "getting tired of you giving it away in the way Walmart came in here." He stated that that was Light Industrial ground, the same as the Home Depot lot, and the same group of people were involved in this situation. Mr. Claus stated that the city had ignored the 100-year-old case law that Mr. Kleinman had brought to the city and pertained to this situation. He referred to the Tualatin River Wildlife Refuge and commented that it had never been expanded and that it was to be a non-hunting refuge, but the county was not maintaining that designation. Mr. Claus commented that the city should seek legal advice.

Attorney for the Applicant Seth King, 1120 NW Couch Street 10th Floor Portland, Oregon 97209, came forward. Mr. King asked that Council deny the appeal and affirm the decision made by the Planning Commission. He stated he agreed with the staff report, with one qualification. He stated that Appeal Issues #1 and #2 were closely related, so he would address them together. He said that Appeal Issues #1 and #2 had to do with how ORS 92.040 applied to the Langer Family PUD and commented that Council had recently looked at that issue at the Sentinel Storage II land use appeal hearing in July, and Council had determined that the PUD and the phases were subject to a subdivision that was approved in 2012. He explained that the approved subdivision was inside an urban growth boundary, which therefore triggered the applicability of the statute that allowed for a 10-year time period for the applicant to develop consistent with the standards in effect at the time of their original application, unless the applicant elected otherwise. He recapped that that was what Council had determined in the July hearing and it was the same interpretation that the Planning Commission had used in this case, and if Council denied the appeal, they would be making a decision that was consistent with the decision they had made in the land use appeal hearing in July. Mr. King referred to Mr. Kleinman's assertion of "picking and choosing on the buffet" and explained that what was happening was allowed per the statute, which allowed applicants to develop consistent with the standards in effect at the time of the subdivision application unless they elected otherwise. He spoke on the two separate applications being consolidated and processed together and explained that the applications could have gone through separately, but they had been consolidated for ease of processing. He continued that the Applicant was choosing to have one application processed under the standards that were in effect at the time of the 2012 subdivision and the other application processed under standards in effect at the time of the site plan and conditional use permit application. Mr. King referred to Mr. Kleinman's earlier comments as well as his comments in Exhibit A and recapped that Mr. Kleinman took issue with the time period and vesting that could occur. Mr. King explained that this type of issue was also discussed by Council at the land use appeal hearing in July and Council had determined that the city had not adopted an ordinance establishing a shorter period of time, thus they relied upon the statute to determine that the vesting would be valid for a 10-year period of time. Mr. King outlined that Mr. Kleinman disagreed with that assertion, and that the city had not adopted any legislation and the statute did not create or mandate a particular time period and suggested that the time period for vesting should be consistent within the order of approval and the time period that it provided. Mr. King stated that that position was not consistent with the legislative intent of the statute. He stated that the purpose of the statute was that the state legislature had determined that there were cities within the state that were allowing developers to move forward with subdivisions and to create lots based on the idea that they could develop them consistent with the standards in effect at the time they moved forward with the subdivision. He continued that after the developers had moved through the subdivision process and had recorded and created the lots, they found that cities had changed the standards in the meantime and were now requiring that they develop the remaining lots under the new standards. He explained that that was why the Home Builders Association went to the state legislature and was why ORS 92.040 and Subsection 2 were adopted by the legislature to protect developers from local governments. Mr. King referred to Mr. Kleinman's argument regarding time periods and argued that that was not consistent with the legislative intent because it would allow local governments to define the time period inappropriately. He recapped that the city had not established a time period, which resulted in the default 10-year period under the statute. He spoke on the 2017 subdivision. He explained that when the city adopted that subdivision, which specifically

stated in the decision that the property had been the subject of a subdivision in 2012 and that the subdivision had vested those standards for a 10-year period and that those standards would continue to apply. Mr. King reported that that was a finding and conclusion that was adopted by the city and stated that he had cited the instances where that point was referenced in the decision in his letter to Council (Exhibit A). He explained that that decision was not challenged and became final when it went into effect and was the basis that people had been relying on. He referred to the Appellant's argument that "2017 reset the clock" and the standards in effect in 2017 should apply instead and explained that the Applicant viewed those arguments as a collateral attack because the city had determined in the 2017 decision that the 2012 standards would apply. Mr. King referred to Mr. Kleinman's argument that the statute would only allow a 10-year look back, not a 27-year look back and stated that Mr. Kleinman had misconstrued the statute. He explained that the statute allowed the vesting of standards that were in effect at the time of a subdivision application, and in this case, those standards allowed for a further look back to the time of the PUD that was adopted in 1995. He recapped that for the above reasons, he felt that the Appellants had not presented any argument or evidence that would demonstrate that the Planning Commission had erred and that there was no basis to reverse the Planning Commission's decision. He asked that Council affirm the Planning Commission's decision and outlined that he had made additional arguments in his letter to Council (Exhibit A) and asked that Council adopt those responses into their findings consistent with the staff recommendation. Councilor Scott asked if the PUD in question was the same PUD that was subject to the previous appeal in July? Mr. King replied that was correct. Council President Rosener asked if there was anyone else who wished to provide testimony on the matter? Hearing none Council President Rosener proceeded to rebuttals.

Mr. Kleinman stated that there was a fundamental disagreement between Mr. King and himself as to the law that applied in this situation. He referred to Mr. King's comments regarding the purpose of ORS 92.040 and the testimony provided by the Home Builders Association representatives and realtors. He stated that Mr. King understood the statute to mean that it created a safe harbor of a maximum look back of 10 years. He continued that Mr. King's interpretation of the statute meant that if you were approved for a subdivision, then you were entitled to develop pursuant to the development standards in effect at the time, in this case 1995 standards, but for only 10 years thereafter. He stated that it allowed 10 years pursuant to the argument that Mr. King made, but it did not allow 22 years under any circumstances. He commented that this was not a "free lunch for developers" and that if you had a development proposal, you had 10 years to continue to rely upon the standards in effect at the time of approval, in this case 1995. He stated that otherwise you would be subject to the regulations in effect at the time of the development application. He argued that the Applicant was trying to rely on the approved 1995 PUD in order to build the motel. He continued that the Applicant also relied upon the 2017 subdivisions decision which re-adopted the findings of the 2012 subdivision decision which related back to the 1995 development standards. Mr. Kleinman stated that you could not do that and explained that this was not a collateral attack as he was trying to ensure that the law was properly applied and enforced. He argued that if you were relying upon a statute with a 10-year look back, it did not matter what the extensible findings were in the 2012 or 2017 subdivisions. He continued that the Applicant did not get to supplant the 10-year limit and stated the Applicant was relying on a 1995 decision and window to utilize the 1995 standards that had expired. Councilor Giles asked for clarification regarding Mr. Kleinman's rebuttal to Mr. King's statements regarding timelines. Mr. Kleinman explained that the code provision that Mr. King had relied upon was repealed in 2012 and would have allowed for the supplanting of the 10-year look back. He stated that it had no force and effect when it came to estate law which only allowed a 10-year look back. He continued that in 2012, the city repealed the local provision that allowed a menu of choices and commented it was still gone in 2017 and it was still gone now. He stated that it was never effective vis-à-vis the state's 10-year limit, and it had now been gone for over 10 years in Sherwood. He stated that and impermissible stacking and reliance upon a code provision that had not been in existence for 10 years was occurring. Councilor Giles commented that he was still unclear because as he understood it, after the provision was repealed, land that was already in-process or grandfathered in, was permitted to use either

the rules that were in effect when it was originally approved or the new rules. Mr. Kleinman explained that what the Applicant was attempting to do was to argue that there was language in the 2012 decision that would allow them to “run forward” in reliance on the old code provision, which to him was never at full force and effect regarding the state’s 10-year limit by state law. He continued that the Applicant was then also relying on the 2017 decision that cited the 2012 decision where the 1995 standards were allowed to be in effect. Mr. Kleinman recapped that if the Applicant wanted to use the 1995 standards, then the motel would not be permitted and if the Applicant wanted to use the current standards, then the self-storage units would not be permitted and asked that consistency be used. He stated that the 2017 decision outlined that what happened in 2012 allowed the applicant to go back to 1995 and would also allow applicants to do similarly “forever” and that was not the law. He stated that he felt that the correct way to proceed was to either use the standards from 2017 when the subdivision was approved or the standards from 2022 when the new application was submitted. He referred to arguments made by the Appellants at a previous Planning Commission hearing regarding if employment was generated out of a storage facility located in Light Industrial zoning and clarified that Light Industrial zoning was intended to provide employment. He stated that one of the main objectives of the Comprehensive Plan was to provide employment in Light Industrial, and a storage facility did not provide much employment. He asked Council to think about if they wished to give up Light Industrial property to a non-employment use.

Susan Claus came forward and stated that one of the “big problems” was that the city had trouble with providing living-wage jobs in town and putting self-storage on land that was dedicated for employment did not make sense. She stated that Council was the elected and many of the Planning Commission members were new and did not know the whole process. She commented that Planning Commissioners were not supposed to be the stewards of the town, Council was.

Mr. King came forward and referred to the look back period issue and statement that the code provision allowing an applicant to elect uses in effect at the time of PUD approval had not been in effect for 10 years and stated that that was correct. He continued that it had not been in effect for 10 years, but it had been in effect at the time of the 2012 subdivision and that was what made it a standard that would be vested and would continue to apply to development on the site unless the Applicant elected otherwise. He addressed the Appellant’s argument regarding the site generating employment and commented that this was addressed extensively in their letter to Council and summarized that the Comprehensive Plan provision at issue was only applicable to the hotel use because it only applied through the conditional use permit criteria and did not apply to the storage facility. Mr. King stated that the Applicant had thoroughly explained in the application materials how the proposed development would further diversify the city’s local economy. Councilor Young commented that if the 1995 code was only supposed to be allowed for 10 years, that would have expired in 2005, but then in 2012 the Planning Commission had allowed the 1995 code and asked if Mr. King was arguing that the 10 years started in 2012? Mr. King replied that the 10 years provided under ORS 92.040 started in 2012 with the subdivision approval. Councilor Young clarified that that was because it could go back to the time that the PUD was created. Mr. King replied that there was a separate code provision that the city had in effect in 2012 that allowed an applicant to elect uses that were allowed at the time of the final PUD approval, which was 1995. Councilor Young clarified that the clock then started in 2012, and that was why the Applicant had up to August 28, 2022. Mr. King replied that was correct.

Council President Rosener closed the public hearing and asked for comments and deliberation from Council.

Associate Planner Eric Rutledge referred to the question of the 10-year look back period rule and how the Applicant was permitted to use the 1995 code and explained that when the subdivision occurred in 2012, the code that was in effect at that time allowed an applicant to go back to uses in effect when the PUD was approved. He continued that if an applicant was allowed to utilize the law in effect in 2012, staff would review

the code from that time and go from there. He stated that the 2012 code clearly said that applicants could go back to the uses in effect when the final PUD was approved, so it was not 10 years from 1995, it was 10 years from 2012 and it was that 2012 code that allowed applicants to go back to the standards from the year the PUD was approved. Mr. Rutledge referred to the Appellant's argument that an applicant could then do this repeatedly and stated that staff did not agree with that assertion. He clarified that in both staff's and the Planning Commission's opinion, the Applicant had until August 28, 2022 to get approval because that was when the 10-year subdivision approval rule expired, and that was why the Applicant was applying for approval now. Councilor Scott asked if it mattered if the appeal went beyond the August 28th deadline? Mr. Rutledge replied that the application had already been approved, so if the appeal went beyond the August 28th deadline and then the approval of the application was upheld, it did not affect the deadline. Councilor Scott clarified that if the approval was overturned, either here or somewhere else, the Applicant would be out of time to submit a new application. Mr. Rutledge replied that was correct. Councilor Young clarified that the hotel use was permitted under the current code and the Applicant did not necessarily need to be applying for the hotel right now. Mr. Rutledge replied that the hotel was permitted under the city's current code. Council President Rosener asked if Council upheld the approval, was that considered modifying the PUD? Associate Planner Rutledge replied that it would not modify the PUD, it would modify the 2017 site plan. Council President Rosener asked if that would set another 10-year clock? Mr. Rutledge replied that it would not and clarified that if the Applicant came back in the future to re-parse out the lot, the rules in effect today would apply. He added that the ability for applicants to go back to PUD uses was no longer in the code, so if the Applicant wanted to do another subdivision today, they could not go back to the 1995 code. Councilor Young commented that a PUD could have been created in 1975, but no subdivision took place until 2012, and asked if the Applicant could have chosen to use the 1975 standards if they wanted to? Mr. Rutledge replied that was correct based on staff's reading of the language in effect in 2012 and he read the 2012 code aloud. Councilor Scott commented that before that rule was changed, any applicant with a site plan approval could have gone back to the code that was in effect at the time of approval or even 10 years forward. Council President Rosener asked if the crux of the disagreement between the Applicant and the Appellant was determining when the 10-year clock started? Mr. Rutledge replied that he believed the main argument was that the 10-year clock did not even apply in this case and whether you could utilize two different codes. Councilor Young commented that it sounded like Mr. Kleinman agreed that the hotel was potentially permissible, but the self-storage facility was not. Councilor Scott commented that there were three issues in the appeal and addressed the issue of the 10-year clock. He said that it was his understanding that the question being raised around the 10-year look back period to 1995 was the "exact same question that was raised previously on the exact same PUD that was at issue before" and commented that he had not heard or read any new testimony that changed the facts from the last time. He stated that it was clear to him that this was allowable. Councilor Scott addressed the issue of combining the applications and commented that he felt that Mr. Kleinman had had multiple opportunities to make a compelling case regarding that issue and he had not heard any. He stated that it seemed very clear and obvious to him that if the two applications came in separately, there would have been no issue, and the fact that staff had combined them to process them did not create a procedural problem. Councilor Scott addressed the third issue regarding the argument of the procedural issues that may or may not have happened through the planning process and stated that he would have to rely on staff's assertion that staff had done their due diligence. He commented that he had not heard any testimony from the Appellant regarding that issue at this hearing, so he had nothing to rely on beyond staff's testimony that they had followed proper protocols. He stated that in his view, Council should affirm the Planning Commission's decision. Councilor Young stated she agreed with Councilor Scott regarding the first issue that the same standards applied as it did for the last appeal on the same subdivision. She addressed the second issue and stated that she had previously not understood how two different codes could apply to the same application and explained that Associate Planner Rutledge's explanation had answered her questions regarding that issue. She addressed the third issue and stated she agreed that the issue was not addressed at this meeting and would have to rely on staff's statements. Councilor Giles

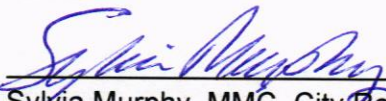
commented that it sounded like some major code holes were fixed in 2012 and it was not Council's job to try and go back and fix that. He stated that Council's job was to look at the standards of this case and review the materials that were provided. He stated that he also had not understood how two different codes could apply to the same application and commented that it was common sense that if someone was given the opportunity to choose the most advantageous option for themselves, they would do so. He stated that he was in favor of affirming the Planning Commission's decision. Council President Rosener stated that he also had not understood how two different codes could apply to the same application and commented that it made sense to do so because he could see the mayhem it would create if projects had to be divided up into separate applications due to technicalities. Council President Rosener addressed Appeal Issue #1 and stated that he did not hear anything that changed his opinion. He stated it was Council's job to review the materials and be prepared for these meetings and to apply the law. He commented that there was a misconception out there that Council could do as they pleased, but the law was the law and Council had to abide by that. He stated that Council should uphold the Planning Commission's decision. Council President Rosener asked for further discussion or a motion from Council.

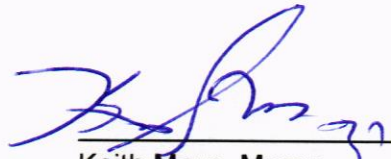
MOTION: FROM COUNCILOR SCOTT THAT THE CITY COUNCIL AFFIRM THE PLANNING COMMISSION'S DECISION AND APPROVE THE APPLICATION FOR THE REASONS SET FORTH IN THE PLANNING COMMISSION FINDINGS REPORT DATED JULY 12, 2022, THE CITY COUNCIL STAFF REPORT DATED AUGUST 17, 2022 AS WELL AS THE AUGUST 23, 2022 LETTER FROM THE APPLICANT'S ATTORNEY, MR. SETH KING. IN THE EVENT OF ANY CONFLICT BETWEEN THESE MATERIALS, THE CITY COUNCIL STAFF REPORT AND LETTER FROM MR. KING SHALL CONTROL. SECONDED BY COUNCILOR YOUNG. MOTION PASSED 4:0, ALL PRESENT MEMBERS VOTED IN FAVOR (COUNCILOR BROUSE AND MAYOR MAYS WERE ABSENT).

7. ADJOURN:

Council President Rosener adjourned the meeting at 9:08 pm.

Attest:


Sylvia Murphy, MMC, City Recorder


Keith Mays, Mayor