

AGENDA BILL

**Beaverton City Council
Beaverton, Oregon**

SUBJECT: AN APPEAL OF THE DIRECTOR'S
APPROVAL OF DI 2019-0003 LIFE TIME
FITNESS DIRECTOR'S
INTERPRETATION, APP 2019-0002

FOR AGENDA OF: 04-14-2020 **BILL NO:** _____

Mayor's Approval: _____

DEPARTMENT OF ORIGIN: CDD _____

DATE SUBMITTED: 04-6-20

CLEARANCES: City Attorney _____
Mayor's Office _____
Planning _____

PROCEEDING: PUBLIC HEARING

EXHIBITS: In Reverse Chronological Order
1. Appeal Memo, Dated 4/6/2020
2. Director's Decision

BUDGET IMPACT

EXPENDITURE	AMOUNT	APPROPRIATION
REQUIRED \$0	BUDGETED \$0	REQUIRED \$0

RECOMMENDED ACTION:

Conduct public hearing, approve or deny Appeal 2020-0001 (an appeal of DI 2019-0003). Denial of the appeal affirms the Director's decision to approve DI 2019-0003.

HISTORICAL PERSPECTIVE:

Life Time Fitness, represented by Dana Krawczuk of Stoel Rives LLP, applied for a Director's Interpretation (DI2019-0003) on November 4, 2019. The City issued its Director's Interpretation on February 5, 2020. Beaverton Business Owners (BBO), represented by Mike Connors of Hathaway Larson, appealed the Director's Decision on February 14, 2020.

INFORMATION FOR CONSIDERATION:

An appeal of the Director's Interpretation approval decision was filed by Mike Connors, attorney for the appellant, Beaverton Business Owners (BBO) on February 14, 2020. Staff reviewed and accepted the appeal as valid under the provisions of Section 50.70 of the Beaverton Development Code. Staff have prepared the attached memorandum responding to the issues raised by the appellant. Also attached is the Director's Interpretation record on the decision under appeal.

Agenda Bill No: _____



MEMORANDUM

TO: City Council
FROM: Jana Fox, Current Planning Manager
DATE: April 6, 2020
SUBJECT: APP2020-0001 Appeal of Life Time Fitness Director's Interpretation (DI2019-0003)

On the April 14, 2020 meeting the City Council will hear an appeal of the Director's decision for Life Time Fitness Director's Interpretation. The entire Land Use record must be provided to the council for consideration, which is provided with this memorandum and Agenda Bill.

BACKGROUND INFORMATION:

The Sunset Station & Barnes Road PUD (CU2013-0003) (referred to herein as "the PUD") received approval on November 5, 2013. The PUD was approved with a two-year period prior to expiration per Section 50.90.1.B of the Development Code, which would have made the expiration date November 5, 2015. However, the applicant subsequently extended the decision twice, per Section 50.93.4 of the Development Code, case files EXT2015-0004 and EXT2017-0003. The final expiration date for the PUD after the two valid time extensions was to be November 5, 2019, unless per Section 50.90 "the approval [was] enacted either through construction or establishment of the use within the specified time period."

As the PUD did not entitle any specific development proposals, subsequent land use entitlements and construction in reliance on those entitlements were required to meet the "enacted" provision of Section 50.90.1.

On March 28, 2019, the Sunset Surface Parking (CU2018-0023 / DR2018-0167) applications were approved by the City of Beaverton. The approved proposal included construction of a guard structure building, together with a commercial parking lot. Sunset Surface Parking was the first project approved under the PUD that involved construction of physical improvements to a site.

The Life Time Fitness Beaverton proposal (DR2018-0128 / LD2019-0008 / LO2018-0005 / SDM2018-0004 / TP2018-0009) was approved by the Planning Commission on June 14, 2019. The Life Time Design Review application (DR2018-0128) was subsequently appealed to the City Council (APP2019-0002) by Beaverton Business Owners, LLC, a Delaware limited liability company (BBO). The City Council denied the appeal and upheld the Planning Commission's approval of Life Time on August 13, 2019, well in advance of the final expiration date for the

PUD. The City Council's decision is considered the final local decision on the Life Time applications. BBO appealed the City Council's decision to the Oregon Land Use Board of Appeals (LUBA), which affirmed. ___ Or LUBA ___ (LUBA No. 2019-079, March 9, 2020).

Life Time Fitness (hereinafter Life Time) represented by Dana Krawczuk of Stoel Rives LLP, applied for a Director's Interpretation (DI2019-0003) on November 4, 2019. The City issued its Director's Interpretation on February 5, 2020. BBO, represented by Mike Connors of Hathaway Larson, appealed the Director's Decision on February 14, 2020.

APPEAL OF A TYPE 3 DECISION REQUIREMENTS: (50.70.2 of the Beaverton Development Code):

50.70.2 Within Seven (7) calendar days after an appeal has been filed, the Director shall determine whether an appeal contains at least the following information:

A. The case file number designated by the City.

Staff Finding:

In its February 14, 2020 submittal letter, BBO identifies case file DI2020-0003 as the case file being appealed.

B. The name and signature of each appellant.

Staff Finding:

Randy Matthews of BBO, signed the appeal form, as did Mike Connors of Hathaway Larson LLP as BBO's representative. Staff finds that the name and signature of the appellant (BBO) are provided.

C. Reference to the oral or written evidence provided to the decision making authority by the appellant that is contrary to the decision.

Staff Finding:

BBO references a December 26, 2020 letter from Michael Connors on behalf of BBO entered into the record, which provides testimony contrary to the Director's Decision.

D. If multiple people sign and file a single appeal, the appeal shall include verifiable evidence that each appellant provided written testimony to the decision making authority and that the decision being appealed was contrary to such testimony. The appeal shall designate one person as the contact representative for all pre-appeal hearing contact with the City. All contact with the City regarding the appeal, including notice, shall be through this contact representative.

Staff Finding:

BBO is the only appellant. Staff finds that this criterion is not applicable as the appeal is filed by one appellant.

E. The specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error.

Staff Finding:

BBO makes three assertions in its appeal materials (Exhibit APP 1.1): (1) The Director erred in concluding that the construction of the guard structure foundation vested the PUD; (2) The partial construction of the surface parking lot does not constitute a change in use for purposes of vesting the PUD; (3) The Director erred in concluding that the Life Time project is not impacted if the PUD it relied on expired. Staff notes that assertion 2 made by BBO was not addressed by the Director in their decision.

The applicant, Life Time Fitness, provides written responses to the appellant's assertions which are identified in the record as Exhibit APP 2.1 to this memorandum and incorporated in the findings below.

In the findings below, staff only responds to the appellant's claims of error and does not provide a re-analysis of the original Director's Interpretation decision (DI2019-0003) in full. Staff incorporates the findings of DI2019-0003 in their entirety. Staff has provided references to where in the Director's Decision analyses of these topics are provided.

Assertion 1: The Director erred in concluding that the construction of the guard structure foundation vested the PUD.

On March 28, 2019, the first applications under the PUD, Sunset Surface Parking (CU2018-0023 / DR2018-0167), that involved physical construction were approved. These approvals were not appealed. They involved the construction of a building, a guard structure, in addition to a surface parking lot.

BBO's specific arguments can be summarized as follows:

- The surface parking lot was approved as an interim use, not a principal use of the PUD.
- The guard structure is an accessory use or structure and therefore cannot qualify as a principal use for purposes of vesting the PUD.
- The guard structure was not anticipated by the PUD approval and cannot vest the PUD because of its size and scale.

BBO's Assertion: The Surface Parking Lot Is an Interim Use

The Beaverton Development Code (BDC) in Chapter 90 defines Principal Use as "The main or primary purpose of which land or a structure is designed, arranged or intended or for which it is occupied or maintained." The staff report preceding the Sunset Surface Parking approval stated that the parking lot would be an interim use and that a more dense urban

development was expected to replace it in the future. The Planning Commission placed conditions of approval on the surface parking lot to ensure the use would not continue for more than ten (10) years without additional development occurring on the site.

Condition 42 of the PUD approval requires that the PUD expire unless “a construction permit has been issued and Substantial Construction thereto has taken place.” The BDC defines “Substantial Construction” in part by saying, “the completion of construction of footings for the building where the principal use will take place shall constitute Substantial Construction.”

BBO contends that because the parking lot is an interim use, limited to 10 years, it is not a principal use of the PUD that can be “Substantial Construction for the building where the principal use will take place.” This is incorrect, and BBO’s contention must be rejected. A use can be both “principal” and “interim,” particularly when the interim use lasts for a period of 5 to 10 years.

In this case, the use is “interim” only because it is being measured against the lengthy timeline of the PUD development as a whole. A principal use does not have to be eternal; indeed, many principal uses established in Beaverton are discontinued in less than 5 years. Staff made clear at the Planning Commission hearing on the surface parking lot that eventually the lot would be replaced, but no one said that while the surface parking lot was in place, it would not be a principal use of the property. BBO’s March 16, 2020 letter relies on lively public testimony and planning commissioner comments that were considered by the Planning Commission but ultimately not incorporated into the final decision. BBO is using these comments, which were made prior to and during deliberations, to stage an attack on the decision that was actually made. The attack must fail because it is an established principle of land use law that the views expressed in public testimony and in deliberations are subsumed into the decision itself.

The staff report repeatedly called the lot a principal use. The land use category assigned to the Conditional Use request is “Parking, as the Principal Use” which acknowledges specifically that the parking lot is indeed the principal use of the site. The BDC does not state that to be a Principal Use, a use must last for a minimum period. In its response to BBO’s appeal, Life Time points to numerous places where the Sunset Surface Parking approval makes clear it is for “Parking, as the Principal Use.”

BBO’s Assertion: The Guard Structure Is an Accessory Structure

Under the definition of Substantial Construction found in Chapter 90 of the Development Code, for a land use application involving a building, Substantial Construction is considered to have taken place once construction of the footings is complete for the building where the principal use is located. There is only one building on the site, which is part of the principal use of the site, and since this provision applies when construction of any building is involved, the guard structure is considered the building for which the footings must be constructed in order to vest approval of the Sunset Station Parking lot and therefore the Sunset Station and Barnes Road PUD.

BBO contends that the guard structure is an accessory structure and therefore the construction of the guard structure foundation did not constitute “Substantial Construction.” The definition of “Parking, as the Principal Use” is “a facility providing for the temporary parking of automobiles and transportation vehicles which arrive and depart daily.”

Life Time responds that the guard structure is part of the Sunset Surface Parking “facility” approved as the principal use of the site. The guard structure includes an office with windows and a restroom, and is intended to house the security guard who will provide security for and attend to any issues concerning the parking facility. Therefore, the principal use of the guard structure is parking. Life Time also observes that the definition of Substantial Construction does not require the principal use to take place within the building but specifies “the building *where* the principle use will take place.” It argues that if the intention had been that the principal use would take place only inside the structure, more specific language would have been used, such as “the building *within which* the principal use will take place.”

The definition of “Substantial Construction” stated below includes the test for vesting in cases where buildings are proposed.

Substantial Construction. *Providing there are buildings on the site, the completion of construction of footings for the building where the principal use will take place shall constitute Substantial Construction . . .*

In this case only one building was proposed, a guard structure. The definition of Substantial Construction is clear that when a building is located on the site, the completion of construction of footings for the building is the test which should be applied to determine Substantial Construction. There is no other building on the site subject to the Substantial Construction test. Life Time points out that using BBO’s reasoning and calling the guard structure “accessory,” it would be impossible to show Substantial Construction for the Sunset Surface Parking approval, since there is no other building “where the principal use will take place.” Staff finds that the guard structure is part of the parking facility, the principal use of the site, and is the only building on the site. Construction of the footings of the guard structure suffices to vest the Sunset Surface Parking approval, thereby vesting the Sunset Station and Barnes Road PUD as well.

The Director addresses the question of whether the construction of the guard structure vested the PUD as part of the Sunset Surface Parking approval on pages DI-6 through DI-9 in the Life Time Fitness Director’s Interpretation Director’s Decision, dated February 5, 2020.

BBO’s Assertion: The Surface Parking Lot was not anticipated for the PUD

BBO’s third assertion is that the parking use was not anticipated when PUD approval was granted and, furthermore, the guard structure is too small to vest the large PUD. The argument fails because there is no size threshold either in the Development Code definition for Substantial Construction or in the original PUD approval. The fact that a small structure can vest an entire PUD does not render the PUD expiration date meaningless or set a dangerous precedent, as BBO contends. Individual land use decisions do not set precedents. Possible development applications in this PUD can range from small to large. The Substantial Construction test is applied to each separate project. Whether the test is met depends on the relationship between the work performed and the specific project approved – in this case, the Sunset Surface Parking project. Completion of footings for the guard structure is indeed Substantial Construction when measured against the parking lot project itself. While the guard structure is not large, it is the first building approved with a completed foundation within the area of the PUD. Once vested, the Sunset Surface Parking Lot project acts to vest the entire PUD.

The PUD approval does not discuss any specific physical development. It posits a mix of possible uses for the site in order to analyze the potential transportation impacts from the reasonable development of the parcels within the PUD boundary. It neither requires nor anticipates that the uses discussed for the purpose of the TIA in the original PUD approval will actually be the final uses of the parcels. The TIA results from the mix of use assumptions. It sets forth the transportation framework and calculates the number of trips that are to be set aside for the eventual development within the PUD area. The PUD approval does not relieve any future development applications from compliance with any other applicable provisions of the Development Code. In short, the PUD approval establishes only trip assumptions and mitigation measures with which future development within the area must comply. Subject to those limits, any use that can show compliance with the Beaverton Development Code may be located within the PUD.

Because the PUD approval decision does not entitle any specific development proposals, subsequent land use applications and construction in reliance on those entitlements must meet the “enacted” provision of Section 50.90 (“Expiration of a Decision”). The PUD staff report (page 6) describes what is necessary to vest the PUD:

“Moreover, an approval of the PUD will establish the range of necessary mitigation measures to the transportation system in the area. In order to act on the entitlements granted by this PUD on the specific parcels, the property owner will be required to submit appropriate land use applications in the future which demonstrate how the proposed development will meet the Development Code in effect at the time of application submittal and the conditions of CU 2013-0003. The development of the Sunset Station and Barnes Road PUD will be at least a two-step land use application review process. CU 2013-0003 is the first step. If CU 2013-0003 is approved, once a subsequent development approval is granted, and Substantial Construction, as defined in Chapter 90 of the Development Code, has taken place, the PUD and associated transportation trips will be vested for the full build out of the PUD area.”

It is clear from this description that any physical development of the PUD area would have to be authorized by a subsequent land use decision, since no physical development was entitled by the PUD approval. The development would be required to meet Development Code criteria in effect at the time of the land use application and to show compliance with the PUD conditions.

Staff incorporates by reference the findings in the decision for DI2019-0003 Life Time Fitness Director’s Interpretation related to vesting based on commencement of development, found on pages DI-7 through DI-9.

Staff finds that the Director did not err in fact or law in determining that the Sunset Station and Barnes Road PUD was vested through the Substantial Construction of the guard structure associated with the Sunset Surface Parking approval.

Assertion 2: The partial construction of the surface parking lot does not constitute a change in use for purposes of vesting the PUD.

BBO challenges Life Time's second vesting assertion regarding whether the commencement of construction of the surface parking lot consists of a change of use sufficient to vest the PUD. The Director did not make a determination on the applicant's original assertion that the commencement of construction of the Sunset Surface Parking Lot approvals constitutes a change in use for the purposes of vesting under BDC Section 50.90.3.B.1, as the Director found that the applicant was vested under BDC Section 50.90.3.B.2 and additional vesting tests are not necessary.

Staff finds that the Director did not err in fact or law in determining that the Sunset Station and Barnes Road PUD was vested through the Substantial Construction of the guard structure associated with the Sunset Surface Parking approval and therefore did not need to address the second vesting test posited by the applicant.

Assertion 3: The Director erred in concluding that the Life Time project is not impacted if the PUD it relied on is expired.

Staff Findings:

The Director addresses construction of the guard structure as part of the Sunset Surface Parking approval on pages DI-9 through DI-16 in the Life Time Fitness Director's Interpretation Director's Decision, dated February 5, 2020.

BBO's specific arguments can be summarized as follows:

- Life Time's approval is contingent upon the PUD remaining effective because of its reliance on the transportation provisions of the PUD.
- Life Time must demonstrate a vested right.

BBO's contentions under Assertion 3 are based on BBO's conclusion that the PUD approval has expired. If the PUD approval has not expired, for the reasons stated above, then BBO's arguments are moot and do not require further consideration.

BBO's Assertion: Life Time's Approval is Reliant on the PUD Transportation Framework

BBO asserts that the transportation assumptions and mitigation measures that were specifically relied upon in the Life Time approval to show compliance with transportation requirements were dependent upon the PUD approval remaining in effect. BBO contends that if the PUD has expired, the trip standards that the Life Time approval relied upon expired with it. BBO concludes that the Life Time approval is therefore invalid.

The Sunset Station and Barnes Road PUD application was focused solely on transportation issues. It didn't seek any of the special development opportunities available through the PUD process, such as increased height allowances, reduced setbacks, exceptions to required floor area ratios (FAR) or other development benefits. The PUD was instead to provide a consistent framework for determining transportation improvements related to future development in the PUD itself and in the surrounding area.

This was to be accomplished through two main mechanisms: (1) identifying a total number of PUD-wide trips related to anticipated uses and background trips at the time the PUD was approved (in-process trips), and (2) specific mitigation measures that would be required for development across the PUD. This framework was then to be applied to subsequent land use applications pursuant to the PUD through an individual (“mini”) Transportation Impact Analysis, to determine how many of the trips generated by a specific proposed development should be deducted from the total anticipated PUD in-process trips and to identify which of the PUD-identified mitigation measures would be appropriate for the proposed development.

Each mini-Transportation Impact Analysis within the PUD will utilize the same trip generation assumptions and requirements as all other TIAs completed within the City but outside the PUD. Proposals for development of non-PUD sites in the area will include the PUD in-process trips in TIAs to evaluate impacts and mitigation.

Recognizing in-process trips generated by development within the PUD is no different from recognizing in-process trips approved outside the PUD. In both cases, in-process trips must be considered at the time of a subsequent application for development. Arguing that existing in-process PUD trips were improperly relied upon for the Life Time approval is therefore analogous to arguing that if another development within the same transportation system were approved prior to Life Time and then expired, the Life Time approval would be invalidated. Following this logic, each development would have to be constructed in the order it was approved; if any development were not completed as approved, all projects subsequently approved would automatically expire because the trip assumptions used in their TIAs would be invalid. This is wholly inconsistent with established methodologies for conducting transportation impact analysis.

The PUD established factual assumptions for trip generation and mitigation measures for subsequent development within the boundaries of the PUD. When Life Time’s applications were filed on September 5, 2018 and final local approval occurred on August 13, 2019, the PUD had not reached its potential expiration date of November 5, 2019. The Planning Commission and City Council (on appeal) relied upon and applied the transportation-related requirements of the PUD first to the Sunset Surface Parking application and then to the Life Time Fitness applications in addition to all other relevant provisions of the BDC.

Life Time argues that if the PUD has expired, the trip assumptions and mitigation measures included in the PUD approval are no longer be in effect with respect to the areas of the PUD not already separately approved for development. Any new application for development within the geographic area of the expired PUD will no longer be able to make use of the trips that could have vested during the period the PUD approval was effective, and will not be subject to the conditions of approval of the expired PUD related to traffic mitigation.

Future applications for development in the area, should the PUD expire, will have to address a different set of facts, which will be reflected in the findings on the applications. If it were possible to invalidate a final land use decision due to a post-approval change in facts, many decisions would be invalidated because it is impossible to predict which land use entitlements will ultimately be constructed and in what order. The Life Time applications were approved on terms established by the valid approval of the Sunset Station and Barnes Road PUD. The expiration of that PUD following approval of the Life Time applications does not invalidate the approval.

Life Time maintains that BBO is making a collateral attack on the Life Time Fitness approval, a final land use decision. Life Time states that issues resolved in a final discretionary land use decision cannot later be re-litigated in a subsequent land use proceeding. The prohibition of collateral attacks “promotes stability and repose; that is, once the time for appeal has passed, interested persons can rely on the finality of a given land use decision in determining their course of action.” *Woodcock v. LCDC*, 51 Or App 577, 581, 626 P2d 901 (1981).

BBO provides no case law to support its argument that a final land use approval is vitiated if the PUD that was in effect at the time of the approval subsequently expires. BDC 50.90.1.B allows a developer two years from the effective date of a decision to enact an approval through construction, with the possibility of two additional two-year time extensions. Life Time almost certainly will have completed its development by then.

Even assuming that BDC 50.90.1.B could simply be ignored, BBO has failed to demonstrate that the Life Time application would have been subject to different standards had there been no PUD at all. As explained above and in the Director’s Interpretation, p. DI-11, the PUD is solely concerned with the allocation of trips to development within the PUD area. Life Time would have generated the same number of trips, as identified in the Transportation Impact Analysis (TIA), with or without the PUD framework. Requiring Life Time to begin the application anew would be a waste of resources and a demonstration of what *Woodcock* suggests will happen when collateral attacks are allowed and final decisions cannot be relied upon.

BBO’s Assertion: Life Time’s Must Demonstrate a Vested Right to Continue

BBO asserts that Life Time Fitness must demonstrate, using the vesting rights test stated in *Clackamas County v. Holmes*, 265 Or. 193, 508 P2d 190 (1973), that it has a vested right to continue the project notwithstanding the expiration of the PUD. BBO asserts that the PUD served to modify the approval criteria for transportation analysis and therefore is similar to a zoning ordinance. The PUD approval in this case – *particularly* this case – is not comparable in any respect to a zoning ordinance. It does not contain development standards. It does not modify any Development Code standards. The staff report for the PUD clearly requires compliance with the Development Code regulations in effect at the time of future application submittal, in addition to compliance with the PUD conditions of approval. All the PUD approval does is regulate transportation impacts for a set of in-process trips reserved by the PUD approval.

Life Time responds that the argument made by BBO relies on a misunderstanding of the vested rights doctrine. The vested rights doctrine refers to the right to continue the development of a use that is no longer allowed under current land use regulations per *O’Shea v. City of Bend*, 49 Or LUBA 498 (2005) (citing *Clackamas Co. v. Holmes*, 265 Or. 193, 197 (1973)). Courts have described the vesting rights claims as a type of nonconforming use. BBO makes a novel analogy between land use regulations and the requirements of a PUD. There is no support in case law for such an analogy. In fact, it was expressly rejected in *Athletic Club of Bend v. City of Bend*, 63 Or LUBA 467 (2011) (“The PUD Master Plan itself is neither a city-adopted ‘standards and criteria’ nor part of the city’s ‘development ordinance’”).

Staff incorporates by reference the findings in the decision for DI2019-0003 Life Time Fitness Director's Interpretation related to vesting based on commencement of development, found on pages DI-9 through DI-16.

Staff finds that the Commission did not err in fact or law in concluding that even if the Sunset Station and Barnes Road PUD expired, the Life Time Fitness approval is final.

Staff recommends that the City Council deny the appeal and affirm the Director's Decision approving Life Time Fitness Director's Interpretation (DI2019-0003).

F. The appeal fee, as established by resolution of the City Council.

Staff Finding:

Staff finds that the applicant has paid the required fee of \$2,134 for one appeal. The appeal fee was set by the City Council as part of the Planning Division fee schedule.

EXHIBITS:

Exhibit APP 1 – Appellant Materials:

APP 1.1 Appeal Submittal on behalf of BBO by Mike Connors, Hathaway Larson, dated February 14, 2020.

APP 1.2 Submittal on behalf of BBO by Mike Connors, Hathaway Larson, dated March 16, 2020.

Exhibit APP 2 – Applicant Materials:

APP 2.1 Appeal Response on behalf of Life Time Fitness by Dana Krawczuk, Stoel Rives LLP, dated March 2, 2020

Exhibit APP 3 – Public Comment:

App 3.1 Testimony Received on behalf of J. Peterkort and Company by Timothy Ramis, Jordan Ramis PC, received March 16, 2020

Exhibit APP 4 – Agency Comment:

No additional agency comment received to date.

Land Use Record (Exhibit 2 to the Agenda Bill)

RECEIVED
City of Beaverton

EXHIBIT APP 1.1

FEB 14 2020



Planning Division

Beaverton
O R E G O N

CITY OF BEAVERTON
Community Development
Department
Planning Division
12725 SW Millikan Way
PO Box 4755
Beaverton, OR. 97076
Tel: (503) 526-2420
Fax: (503) 526-2550
BeavertonOregon.gov

OFFICE USE ONLY	
FILE #:	_____
FILE NAME:	_____
TYPE:	RECEIVED BY: _____
FEE PAID:	CHECK/CASH: _____
SUBMITTED:	NAC: _____

APPEAL OF A LAND USE DECISION

Revised 01/2016

PLEASE SELECT THE SPECIFIC TYPE OF APPEAL FROM THE FOLLOWING LIST:

APPEAL OF A TYPE 1 DECISION APPEAL OF A TYPE 3 DECISION

APPEAL OF A TYPE 2 DECISION OTHER

APPELLANT NAME(S):
Beaverton Business Owners, LLC

SIGNATURE(S): *(Original Signature(s) Required)*

KANDY MATTHEWS

EACH APPELLANT MUST HAVE PROVIDED EVIDENCE TO THE DECISION MAKING AUTHORITY THAT WAS CONTRARY TO THE DECISION.

APPELLANT REPRESENTATIVE: *All pre-hearing contact will be made solely to this person.*
IF MORE THAN ONE APPELLANT, APPELLANTS **MUST** DESIGNATE A SINGLE APPELLANT REPRESENTATIVE.

NAME: E. Michael Connors COMPANY: Hathaway Larson, LLP
ADDRESS: 1331 NW Lovejoy St., Suite 950
CITY, STATE, ZIP Portland, OR 97209
PHONE: 503-303-3111 FAX: 503-205-8406
SIGNATURE: *(Original Signature Required)*

REQUIRED INFORMATION

See attached letter from E. Michael Connors dated February 14, 2020. SITE ADDRESS: _____ CASE FILE NO. UNDER APPEAL: DI 2019-003

SPECIFIC APPROVAL CRITERIA / CONDITION BEING APPEALED: See attached letter from E. Michael Connors dated February 14, 2020.

SPECIFIC REASON(S) WHY A FINDING / CONDITION IS IN ERROR AS A MATTER OF FACT, LAW OR BOTH: See attached letter from E. Michael Connors dated February 14, 2020.

(Attach additional sheets if necessary)

SPECIFIC EVIDENCE RELIED ON TO ALLEGE ERROR: See attached letter from E. Michael Connors dated February 14, 2020.

(Attach additional sheets if necessary)

HOW DID THE APPELLANT(S) PROVIDE EVIDENCE TO THE DECISION-MAKING AUTHORITY? WHERE IN THE OFFICIAL RECORD IS SUCH EVIDENCE?: See attached letter from E. Michael Connors dated February 14, 2020.

(Attach additional sheets if necessary)



HATHAWAY LARSON

Koback · Connors · Heth

RECEIVED
City of Beaverton

FEB 14 2020

Planning Division

February 14, 2020

VIA HAND DELIVERY

Jana Fox
Planning Manager
City of Beaverton
Community Development Department
Planning Division
12725 SW Millikan Drive
Beaverton, OR 97076-4755

Re: **Appeal of Director’s Interpretation**
LTF Real Estate Company, Inc.’s Application No. DI2019-003
Site Address: Map 1S103AB Tax Lot 200
Map 1S103A Tax Lots 1700, 2200
Map 1S102B Tax Lot 500
Map 1S103AD Tax Lot 600
Map 1S102CB Tax Lot 100
Map 1S102CA Tax Lots 500, 600
Our Client: Beaverton Business Owners, LLC

Dear Ms. Fox:

This firm represents Beaverton Business Owners, LLC (“Beaverton Business Owners”) with respect to the above-referenced matter. Pursuant to Beaverton Development Code (“BDC”) 50.70, Beaverton Business Owners hereby appeals the Director’s Interpretation decision (the “Decision”) regarding LTF Real Estate Company, Inc.’s (“Life Time”) Application No. DI2019-003 (the “Application”). The Application requested that the Director interpret the BDC and adopt three conclusions: (1) the Sunset Station and Barnes Road PUD (the “PUD”) vested under BDC 50.90.3.B.2 because the construction of the 200 square foot surface parking lot guard shack foundation constitutes substantial construction of the PUD; (2) the PUD vested under BDC 50.90.3.B.1 based on a change in use associated with the Sunset Surface Parking Lot project; and (3) even if the PUD expired, Life Time’s project is not impacted by the expiration of the PUD. The Decision adopted requests (1) and (3), and declined to address request (2) on the grounds that it is unnecessary.

Beaverton Business Owners disagrees with the Decision and is submitting this letter and the attached completed and signed City Appeal of Land Use Decision form (the “Appeal Form”) to

E. Michael Connors
1331 NW Lovejoy Street, Suite 950
Portland, OR 97209
mike@hathawaylarson.com
(503) 303-3111 direct
(503) 303-3101 main

appeal the Decision. The Appeal Form and this letter set forth the appeal information required by BDC 50.70. Additionally, we enclosed a check in the amount of \$250 for the appeal fee. For the reasons set forth in this letter, the Director erred in adopting the Director's Interpretation decision and the City Council should reverse the decision on appeal.

1. BDC 50.70.1.

Beaverton Business Owners is entitled to appeal the Decision because it submitted written comments on the Application pursuant to the letter and attachments from E. Michael Connors, dated December 26, 2019 (the "December 26 Letter"). We attached the completed and signed Appeal Form to this letter. This appeal was filed within twelve (12) calendar days after the date of the Decision.

2. BDC 50.70.2.

This letter and the attached Appeal Form contain the information required by BDC 50.70.2 as explained below.

A. The case file number designated by the City.

The application or case file number for the Application at issue in this appeal is DI2019-003.

B. The name and signature of each appellant.

The attached Appeal Form contains the required name and signature for the appellant Beaverton Business Owners.

C. Reference to the oral or written evidence provided to the decision making authority by the appellant that is contrary to the decision.

Beaverton Business Owners submitted written argument and evidence as set forth in the December 26 Letter, which were contrary to the Decision.

D. If multiple people sign and file a single appeal, the appeal shall include verifiable evidence that each appellant provided written testimony to the decision making authority and that the decision being appealed was contrary to such testimony. The appeal shall designate one person as the contact representative for all pre-appeal hearing contact with the City. All contact with the City regarding the appeal, including notice, shall be through this contact representative.

This appeal is being filed by a single appellant, Beaverton Business Owners. The attached Appeal Form identifies the appellant's representative (E. Michael Connors) whom the City should contact regarding this appeal.

E. The specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error.

Beaverton Business Owners is appealing the Decision on multiple grounds, under multiple approval criteria and based on both legal and factual grounds. Beaverton Business Owners rely on the evidence in the record before the Director, in particular the written argument and evidence referenced in Section 2.C above, as well as this letter. The Director erred in approving the Application pursuant to the Decision on the following grounds.

1. The Director erred in concluding that the construction of the guard shack foundation vested the PUD.

As explained in the Decision, the PUD approval expired on November 5, 2019 unless "a construction permit has been issued and substantial construction pursuant thereto has taken place * * *." (Emphasis added). Order No. 2337, CU2013-0003, Order Approving Sunset Station & Barnes Road PUD ("PUD Approval"), condition of approval no. 42, attached to December 26 Letter. "Substantial construction" is defined as "Providing there are buildings on the site, the completion of construction of footings for the building where the principal use will take place shall constitute substantial construction." BDC Chapter 90. (Emphasis added). Therefore, the PUD can only vest if the building footings for a "principal use" in the PUD have been completed. As we explained below, there are several reasons why the guard shack foundation cannot vest the PUD.

a. The surface parking lot was approved as an interim use, not a principal use of the PUD.

The guard shack foundation cannot vest the PUD Approval because the surface parking lot was approved as an interim use, not a principal use of the PUD. A "principle use" is defined as: "The main or primary purpose of which land or a structure is designed, arranged or intended or for which it is occupied or maintained." As explained in the staff report for the Sunset Surface Parking Lot project, dated March 6, 2019 and attached to this letter ("Staff Report"), the applicant J. Peterkort Company ("Peterkort") proposed the surface parking lot is an "interim use" that will be replaced in the future by principle uses that are consistent with the PUD Approval. The Staff Report explained:

This site is intended for intense urban style development. The applicant has stated that the surface parking lot in intended as an interim use and that the parking lot has been designed to allow for continued intensification of the site, as well as future redevelopment of the parking lot into urban style development. Staff Report, p.26. (Emphasis added).

There are numerous similar references in the Staff Report clarifying that the surface parking lot will only be an interim use and it will be replaced or redeveloped with the principle uses contemplated by the PUD Approval. Staff Report, p.20-22, 26 & 37.

Peterkort proposed the surface parking lot as an interim use because it could not comply with several approval criteria if it was treated as a principal use of the site. For example, the surface parking lot

could not comply with Comprehensive Plan Policy 3.6.1 which requires a “mix of commercial, residential, employment, and civic uses at relatively high densities,” “Limit[s] or prohibit[s] auto-oriented commercial uses” and “Limit[s] surface parking to encourage compact development.” Staff Report, p.20-21. Recognizing that the surface parking lot conflicted with these code requirements, Peterkort submitted conceptual plans showing the future development of the site and relied on the future development to address compliance with these approval criteria. The Staff Report explained:

Further the applicant states that the proposed surface parking lot is intended as an interim use and has been designed to allow further development and intensification of the remainder of the property as well as over the proposed surface parking area. * * * The applicant has further provided a Design Review Build Out Concept Plan which identifies how the site can be further intensified to meet the intended development identified above. Staff finds that the applicant’s proposal does not preclude compliance with the policies identified above. Staff Report, p.20. (Emphasis added).

Peterkort and the staff acknowledged that the surface parking lot does not comply with many of the Station Community-Sunset (SC-S) zoning district approval criteria and specifically relied on the future principal uses to comply with these criteria.

The planning commission specifically concluded that the surface parking lot was not a principal use of the site and only approved it as an interim use. Expressing concern that the surface parking lot conflicts with Comprehensive Plan Policies 3.6.1 (Support pedestrian-oriented mixed use areas) and 3.6.4 (Station Communities), the planning commission only approved it as an interim use:

The Commission discussed their concern that the proposed surface parking lot as a principal use of the site and whether that was consistent with the Comprehensive Plan Policies 3.6.1 (Support pedestrian-oriented mixed use areas) and 3.6.4 (Station Communities), including policies related to providing vertically mixed uses, limiting auto-oriented uses, and promoting walkable areas. The applicant explained how understanding the total parking demand at the station site was integral to right-sizing the parking for future development phases, including dense mixed use development. The Commission found that with a condition of approval to ensure that the conditional use was intended help facilitate full buildout of the site and not a permanent principal use of the site, that the proposal met the Comprehensive Plan policies. Planning Commission Order No. 2685, CU2018-0023 Order Approving Sunset Surface Parking, New Conditional Use (‘Parking Lot Approval’), p.2, attached to December 26 Letter. (Emphasis added).

Since the planning commission expressly conditioned the approval on Peterkort’s representation that the surface parking lot is not a “principal use of the site” and specifically relied on that conclusion to determine compliance with Comprehensive Plan Policies 3.6.1 and 3.6.4, the surface parking lot cannot be used as a principal use to vest the PUD.

The Decision mischaracterizes the Sunset Surface Parking Lot proposal and the planning commission’s decision approving it by claiming that the planning commission was merely “ensuring that the use was not a permanent use of the site unless supported by other uses in the future.” Decision, p.DI-12. The planning commission expressed “their concern that the proposed surface parking lot

as a principal use of the site,” not a permanent use. The planning commission also adopted conditions to ensure that the surface parking lot is “not a permanent principal use of the site.” The Decision ignores the multiple references to “principle use” and attempts to mischaracterize the planning commission by focusing only on the single reference to the term permanent. Nor is there any support or basis in the BDC for concluding that an interim use that does not satisfy the zoning district approval criteria can qualify as a principal use for vesting purposes.

b. The guard shack is an accessory use or structure and therefore cannot qualify as a principal use for purposes of vesting the PUD.

Even if the surface parking lot qualified as a principal use, the guard shack foundation cannot vest the PUD Approval because it is only an accessory use or structure to the parking lot. Peterkort proposed the guard shack as an accessory use or structure to the surface parking lot and relied on this classification to address the Design Guideline requirements. The Staff Report notes that: “The applicant states that the proposed guard structure is intended to be an accessory use in support of the surface parking area” and is merely an “auxiliary structure to the primary surface parking use and is proposed to be an interim use.” Staff Report, p.29 & 32. Peterkort relied on this characterization of the guard shack because it does not satisfy multiple Design Guideline requirements. BDC 60.05.35.1.D, 60.05.35.7.A & 60.05.40.6.A. Staff Report, p.28-29, 32 & 37.

An accessory use or structure cannot vest the PUD Approval because it is not a principal use or structure. An “Accessory Structure or Use” is defined as “A structure or use incidental, appropriate, and subordinate to the main structure or use.” BDC Chapter 90. Therefore, an accessory use or structure is not a “building where the principal use will take place.” Since only the substantial construction of a building “where the principal use will take place” can qualify for purposes of vesting, construction of the foundation for an accessory use or structure such as the guard shack cannot vest the PUD Approval.

c. An accessory structure for an interim use that was not contemplated by the PUD Approval cannot vest a PUD of this size and scale.

Notwithstanding the fact that the guard shack is an accessory structure for an interim use that was not even contemplated by the PUD Approval, the Director concluded that the guard shack foundation is sufficient to vest the entire PUD because “There is no size threshold in the Development Code definition for Substantial Construction, and no size test for development described in the original PUD approval.” Decision, p.DI-14. The Director’s interpretation is inconsistent with the whole purpose for limiting the time period for enacting a land use approval and is especially important in this case.

Virtually all land use approvals, including PUDs, are subject to expiration dates that automatically expire in one to five years unless they are “enacted either through construction or establishment of use within the specified time period.” BDC 50.93.1. Land use approvals can be extended, but the applicant is required to demonstrate that “It is not practicable to commence development within the time allowed for reasons beyond the reasonable control of the applicant” and “There has been no change in circumstances or the applicable regulations or Statutes likely to necessitate modification of the decision or conditions of approval since the effective date of the decision for which the extension

is sought.” BDC 50.93.6.B & C. Since land use approvals are issued based on the code provisions, surrounding conditions and evidence that existed at the time of the approval, the City wants to ensure that the principal use or structure is vested within a reasonable time period before the code provisions, surrounding conditions and evidence change in a way that undermines the basis for the approval.

This purpose is particularly important in this case because the PUD Approval evaluated and established the required transportation improvements and mitigation measures necessary to support the full development of the PUD area. Unlike a typical development which is required to submit a standard traffic impact analysis that evaluates the surrounding transportation system and recommends all transportation mitigation measures necessary to mitigate the development impacts, the PUD Approval only requires a “a supplemental transportation analysis to assess consistency with the approved October 2013 Sunset Station & Barnes Road PUD TIA and to identify which of the mitigation measures listed below in conditions 2 through 32 are triggered by the impacts of the proposed development phase.” PUD Approval, condition of approval no. 1. Therefore, the PUD Approval only requires a supplemental or mini TIA to ensure consistency with the 2013 PUD TIA and it locks in the scope of the required transportation mitigation measures required to build out the PUD area. Even if the transportation conditions significantly change or worsen over the years, a development proposal in the PUD is only required to provide a supplemental TIA and is limited to the improvements listed in conditions 2 through 32.

The Director’s conclusion that the construction of a tiny guard shack foundation vests the entire PUD is contrary to the purpose of imposing an expiration date. The PUD Approval covers an approximate 80-acre area and approved the development of over 1,250,000 square feet of commercial space, hotels consisting of 500 rooms and 2,175 residential units. As the planning commission recognized, the surface parking lot and guard shack were not even proposed or contemplated as one of the PUD uses. The foundation for a 200 square foot guard shack for a use/structure that was not even contemplated by the PUD Approval cannot possibly vest a PUD development of this size and scale.

If the City were to allow the entire PUD to vest based solely on the construction of a guard shack foundation, it would establish a terrible precedent that will allow future developers to easily avoid the expiration of their approvals. Every developer could avoid expiration of their approvals by subsequently proposing a guard shack to prevent theft and vandalism at the site and use the guard shack foundation as a basis for vesting the entire development. If a guard shack foundation can vest a PUD of this size, there is no question that the City would be required to conclude that *any* guard shack or similar small ancillary structure is sufficient to vest *any* development. Allowing a massive development proposal to vest based on the construction of such a small and incidental structure foundation for a use that was not even contemplated as part of the original PUD proposal would render the entire concept of having expiration dates meaningless.

For the reasons stated above, the construction of the surface parking lot guard shack foundation cannot vest the PUD. The City Council should reverse the Director’s determination that the PUD Approval vested based solely on the guard shack foundation and conclude that the PUD Approval expired.

2. The partial construction of the surface parking lot does not constitute a change in use for purposes of vesting the PUD.

Although the Decision does not address Life Time's claim that the PUD vested based on a change in use on the property associated with the Sunset Surface Parking Lot because the Director determined that it vested based on the guard shack foundation, in the event the City Council addresses this issue on appeal it should reject this argument. BDC 50.90.3.B.1 provides that an approval can vest if "The use of the subject property has changed as allowed by the approval." However, BDC 50.90.3.B.2 provides that a development requiring construction only vests if substantial construction has occurred: "In the case of development requiring construction, a construction permit has been issued and substantial construction pursuant thereto has taken place." Therefore, Life Time can only rely on BDC 50.90.3.B.1 if the PUD development did not require construction. Life Time's argument fails because the PUD does involve development requiring construction and the partial construction of the parking lot is wholly insufficient to establish a change in use.

Life Time cannot rely on BDC 50.90.3.B.1 because the PUD clearly involves construction and is subject to BDC 50.90.3.B.2. As Life Time acknowledged, BDC 50.90.3.B.1 is intended to apply only when the approval proposal is limited to the use of the property and does not involve construction of improvements. The PUD clearly involves construction based on the plain language of the PUD approval. Condition of approval no. 42 of the PUD approval expressly states that it can only be vested if substantial construction occurs by the expiration date: "In accordance with Section 50.90.1 of the Development Code, Planned Unit Development approval shall expire 2 years after the date of approval unless, prior to that time, a construction permit has been issued and substantial construction pursuant thereto has taken place * * * ." (Emphasis added). PUD Approval, p.16. Condition of approval no. 1 for the 2017 extension of the PUD confirms that the PUD involves construction: "All construction shall be carried out in accordance with the plans submitted and approved with CU2013-0003." See attached Notice of Director's Decision for EXT2017-0003 Sunset Station & Barnes Road PUD Second Time Extension ("2107 PUD Extension"), p.8. Life Time's assertion that the PUD does not involve development requiring construction is inconsistent with the plain language of the PUD Approval and 2017 PUD Extension.

Even if Life Time could rely on BDC 50.90.3.B.1, the partial construction of the surface parking lot is not a change in use. Life Time admits that the construction of the parking lot had not been finished as of the filing of the Application (November 21, 2019): "Construction of the Sunset Surface Parking Approval is underway and ongoing." Application Narrative, p.2. If the parking lot was still being constructed on the expiration date for the PUD, it clearly was not in use at that time. Life Time conflates "construction" with "use" by claiming that "the use of the property changed from vacant once construction of the parking facility commenced." Application Narrative, p.6. The commencement of construction is not the same as the commencement of a use. That is evident from the different standards in BDC 50.90.3.B.1 and BDC 50.90.3.B.2, which would not be necessary if the commencement of construction was the same as the commencement of a use. Life Time's argument completely ignores the difference between construction and use of the property. Mere commencement of construction of the parking lot is not enough to constitute a change in use under BDC 50.90.3.B.1.

3. The Director erred in concluding that the Life Time project is not impacted if the PUD it relied on expired.

The Director erroneously concluded that even if the PUD Approval expired, Life Time's project is not impacted. Although Life Time specifically relied on the PUD trip assumptions and mitigation measures to obtain approval of its project and Life Time acknowledged that the expiration of a PUD development "would no longer be able to rely upon the trips vested by the PUD," the Director concluded that "the expiration of the PUD would have no bearing on the approval of the Life Time project." Decision, p.DI-10. There are several flaws with the Director's determination.

Life Time's project specifically relied on and was contingent upon the PUD Approval for purposes of demonstrating compliance with the transportation requirements. The PUD Approval requires all development proposals within the PUD to submit a supplemental traffic impact analysis to demonstrate compliance with the PUD specific transportation assumption and mitigation measures, as opposed to the traditional approach of submitting a standard TIA which is not limited to a specific list of mitigation measures. The Decision noted that "The PUD approval established trip assumptions and mitigation measures with which future development within the area must comply" and acknowledged that the purpose of the PUD Approval was to "provide a consistent framework for determining transportation improvements for future development in the PUD itself and in the surrounding area by identifying in-process trips and mitigations for the PUD overall." Decision, p.DI-11 & DI-15. If the PUD Approval is no longer valid and the transportation measures identified in that approval can no longer be assumed to be built, Life Time's entire transportation analysis is invalid.

The Director's assumption that "Even without the PUD, the same proposal could successfully have been made under the same approval criteria" is wrong and completely unsubstantiated. Decision, p.DI-11. The PUD Approval superseded the typical transportation requirements and imposed a different standard (supplemental or mini TIA) and limited the transportation mitigation measures to those adopted as part of the PUD Approval. The Director cannot assume that the project would have been approved subject to the same transportation mitigation measures because different transportation related approval standards would apply.

The expiration of the PUD Approval is not a change in factual circumstances, but rather it is a change in the transportation approval criteria. In our December 26 Letter, we explained why Life Time's reliance on *Hoffman v. City of Lake Oswego*, 20 Or LUBA 64 (1990) and *Westlake HOA v. City of Lake Oswego*, 25 Or LUBA 145 (1993) was erroneous. These LUBA decisions involve different circumstances that did not include the expiration of the underlying PUD approval. To the extent they apply, they undermine, not support, Life Time's claim.

In *Hoffman*, the petitioner argued that the sixth phase of the PUD could not be approved because the factual or evidentiary circumstances regarding the adequacy of school services had changed since the original PUD was approved and therefore the sixth phase of the PUD was subject to different standards. *Hoffman*, 20 Or LUBA at 71. LUBA rejected that argument on the grounds that the original PUD and the standards it adopted may not be reconsidered simply because there have been changes in the factual circumstances since the PUD was originally approved. *Id.* at 71-72. LUBA made it clear, however, that its conclusion was based on the assumption that the original

PUD is still valid and the sixth phase of the PUD was timely: “Under the procedures adopted by the city, as long as a PUD phase is consistent with the [original PUD] and remains on the approved time schedule, there is no requirement that the factual predicates underlying the original [PUD] approval be reexamined when the anticipated phases are approved.” *Id.* at 72. (Emphasis added). Under *Hoffman*, the outcome in this case is different because the PUD Approval expired.

In *Westlake*, which involved the same PUD as *Hoffman*, LUBA reiterated its conclusion that changes in factual circumstances need not be considered provided the underlying PUD is still valid. LUBA explained: “so long as [the PUD] approval remains valid, an applicant may submit a final development plan, consistent with the [PUD], without having to address changes in factual circumstances that might have prevented [PUD] approval in the first place.”¹ *Westlake*, Slip Op. p.3. Neither *Hoffman* nor *Westlake* are applicable because the underlying PUDs were still valid and the issue before LUBA was whether or not changes in factual or evidentiary circumstances must be considered as part of the PUD phased development. In this case, the question is whether the expiration of the PUD approval affects a development proposal in the PUD that specifically relied on and is contingent upon the PUD.

The Director’s reliance on Life Time’s hypothetical regarding in-process trips of previous approved development is different and inapplicable to this situation. The expiration of the PUD Approval does not merely change the in-process trips that other development proposal must factor into their traffic impact analysis, it changes the required standards for the traffic impact analysis and the scope of transportation improvements that will ultimately be required for all development proposals in the PUD. Therefore, the situation in this case is more similar to an amendment to the transportation standards. There is no question that a change in the transportation standards is not a change in factual circumstances.

Since the Life Time project relied on and is contingent upon the PUD, Life Time must demonstrate that it has a vested right to continue the project development notwithstanding the expiration of the PUD. The vested rights test is addressed in *Clackamas County v. Holmes*, 265 Or 193, 508 P2d 190 (1973). In *Holmes*, the property owner had only partially constructed a processing plant when the County adopted a zoning ordinance that prohibited such a use. The court rejected the property owner’s argument that the processing plant was a nonconforming use because the construction was not complete and therefore the use had not commenced, and instead concluded that the property owner was required to establish that it had a “vested right” to complete the construction. The court articulated how to determine if a vested right exists:

[I]n order for a landowner to have acquired a vested right to proceed with the construction, the commencement of the construction must have been substantial, or substantial costs toward completion of the job must have been incurred. *Id.* at 197.

The court went on to explain that to determine if a vested right exists the courts apply a “ratio test” that compares the expenditures incurred prior to the change that made the development nonconforming to the total cost of the project. *Id.* at 197-98. Although the court did not adopt a

¹ It is important to note that Life Time left out the critical “so long as [the PUD] approval remains valid” when it quoted this portion of LUBA’s decision. Application Narrative, p.8.

definitive ratio that satisfies the test, the court determined that a ratio of 1 to 14 in that case was sufficient. *Id.* at 199.

The court in *Holmes* also stated that the expenditure ratio should not be the only factor considered, rather courts should also consider the good faith of the landowner, whether or not the landowner had notice of any proposed zoning or zoning amendments prior to starting improvements, whether or not the expenditures were related to the completed project or could apply to various other uses. *Id.* at 198. Moreover, the actions taken by the landowner “should rise beyond mere contemplated use or preparation”. *Id.* at 199 (citing *Washington County v. Stark*, 10 Or App 384, 499 P2d 1337 (1972)). See also *Union Oil Co. of California v. Board of County Com’rs of Clackamas County*, 81 Or App 1, 5, 724 P2d 341 (1986) (holding that of the \$128,678 spent in connection with the property, “only \$5,778 of petitioner’s expenditures could be included in the ‘substantial expenditure’ calculation, because the remaining amounts were not ‘directly related to use of the property as a service station,’ the purpose of the approved project); *Pohrman v. Klamath County Com’rs*, 25 Or App 613, 616, 550 P2d 1236 (1976) (“[P]laintiff had the property surveyed and had septic tank test holes dug. These activities cost about \$14,000. No [subdivision] lots were sold; no homes were constructed. . . there was evidence for the Board to find that plaintiff’s acts were preparatory. . .”).

Applying the vested rights analysis in this case, it is clear that Life Time cannot establish a vested right to complete its project. Life Time has not commenced any construction activity and therefore it clearly cannot satisfy the expenditure ratio test. To the extent Life Time expended money on this project, it was all preparatory work pursuing the permits for the project which do not count for purposes of the expenditure ratio test. Life Time knew when it was pursuing its land use approval that the PUD was scheduled to expire on November 5, 2019 and could not be extended any further. It pursued this project understanding that there was a risk the PUD would expire before Life Time could even commence construction of its project. Therefore, Life Time cannot demonstrate that it has a vested right to commence and complete the construction of its project.

The Director erred in concluding that *Holmes* does not apply simply because it did not involve a PUD. The Director’s assumption that only Supreme Court cases involving a PUD are applicable to this case is contrary to Oregon law. *Holmes* did not limit the holding to the specific facts of that case but rather adopted broader vested rights principals that apply in all land use cases. *Holmes* stands for the general proposition that if the approval standards upon which a development proposal was approved changed before the development is fully constructed or under use, the applicant must demonstrate that it has a vested right to complete the development. Since the expiration of the PUD Approval changes the transportation standards upon which Life Time was approved, Life Time must establish that it has a vested right to proceed with the project. Because it is impossible for Life Time to establish a vested right since it has not commenced any construction, the Life Time project approval expired as well.

4. The appeal fee, as established by resolution of the City Council.

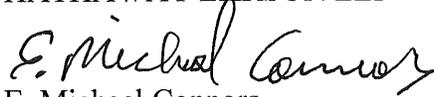
We enclosed a check in the amount of \$250 for the appeal fee as designated in the City’s Notice of Decision.

Conclusion

Both the PUD Approval and Life Time project approval expired. The mere construction of a foundation for an accessory guard shack associated with an interim surface parking lot that was not contemplated by the PUD cannot possibly vest a PUD of this size, scope and intensity. Since the Life Time project relied on and is contingent upon the PUD Approval, Life Time must demonstrate that it has a vested right to continue the project development. Life Time cannot establish a vested right because it has not commenced any construction activity and it knew there was a risk the PUD would expire when it was seeking land use approval for the project. Therefore, the City Council should reverse the Decision and declare both the PUD Approval and the Life Time project approval invalid.

Very truly yours,

HATHAWAY LARSON LLP



E. Michael Connors

cc: Client
Enclosures



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City of Beaverton

FEB 14 2020

Planning Division

Staff Report

STAFF REPORT DATE: March 6, 2019

HEARING DATE: March 13, 2019

TO: Interested Parties

FROM: Jana Fox, Current Planning Manager

PROPOSAL: **Sunset Surface Parking
CU2018-0023 / DR2018-0167**

LOCATION: The site is generally located adjacent to the Sunset Transit Center, south of SW Barnes Road, west of the Highway 217 off-ramp, north of Highway 26, and east of the Sunset Station access road. Tax Lots 100 and 200 on Washington County Tax Assessor's Map 1S102CB.

SUMMARY: The applicant, J. Peterkort Company, requests approval of the following land use applications to construct a surface parking lot, guard structure, and associated site improvements. A Conditional Use for Parking as the Principal Use in the Station Community-Sunset (SC-S) zoning district. Design Review Three approval for the phased construction of a 460 stall surface parking lot, an approximately 200 square foot guard structure, a Design Review Build Out Concept Plan showing how future density can be accommodated on site, and associated site improvements.

APPLICANT /
PROPERTY OWNER: J. Peterkort Company
Loid Ditmars
9755 SW Barnes Road, Suite 690
Portland, OR 97225

APPLICANT'S
REPRESENTATIVE: David Evans & Associates
Kevin Apperson
2100 SW River Parkway
Portland, OR 97225

DECISION: **APPROVAL of CU2018-0023 / DR2018-0167 (Sunset Surface Parking) subject to Conditions of Approval.**

BACKGROUND FACTS

Key Application Dates

Application	Submittal Date	Application Deemed Complete	Final Written Decision Date	365-Day*
CU2018-0023	November 26, 2018	January 22, 2019	May 22, 2019	January 22, 2020
DR2018-0167	November 26, 2018	January 22, 2019	May 22, 2019	January 22, 2020

* Pursuant to Section 50.25.9 of the Development Code this is the latest date, with a continuance, by which a final written decision on the proposal can be made.

Existing Conditions Table

Zoning	Station Community-Sunset (SC-S)	
Current Development	Vacant	
Site Size & Location	The site is generally located adjacent to the Sunset Transit Center, south of SW Barnes Road, west of the Highway 217 off-ramp, north of Highway 26, and east of the Sunset Transit Center access road. Tax Lots 100 and 200 on Washington County Tax Assessor's Map 1S102CB.	
NAC	Central Beaverton	
Surrounding Uses	Zoning: <u>North:</u> SC-S <u>South:</u> Hwy 26 & SC-MU <u>East:</u> Hwy 26/Hwy 217/Barnes Intersection <u>West:</u> SC-S	Uses: <u>North:</u> Vacant <u>South:</u> MAX light rail & Highway 26 <u>East:</u> Hwy 26/Hwy 217/Barnes Intersection <u>West:</u> Vacant

DESCRIPTION OF APPLICATION AND TABLE OF CONTENTS

	<u>Page No.</u>
<u>Attachment A:</u> Facilities Review Committee Technical Review and Recommendation Report	FR1 – FR12
<u>Attachment B:</u> CU2018-0023 <i>New Conditional Use</i>	CU1-CU5
<u>Attachment C:</u> DR2018-0167 <i>Design Review Three</i>	DR1-DR20
<u>Attachment D:</u> <i>Conditions of Approval</i>	COA1–COA7

Exhibits

Exhibit 1. Materials submitted by Staff

- Exhibit 1.1 Sunset Station & Barnes Road PUD Map (page SR-4 of this report)
- Exhibit 1.2 Vicinity Map (page SR-5 of this report)
- Exhibit 1.3 Aerial Map (page SR-6 of this report)

Exhibit 2. Public Comment

None Received

Exhibit 3. Materials submitted by the Applicant

- Exhibit 3.1 Submittal Package including plans

Exhibit 4. External Agency Comment

- Exhibit 4.1 Conditions of Approval submitted by Washington County, March 4, 2019
- Exhibit 4.2 Conditions of Approval submitted by ODOT, February 28, 2019
- Exhibit 4.3 TriMet Letter, December 21, 2018

Project Overview

The applicant, J. Peterkort Company, proposes a two phase 460 space surface parking lot as a principal use in the Station Community-Sunset zoning district. In addition to the parking lot a 200 square foot guard structure is proposed. The applicant has been working with TriMet to established shared access of the TriMet access road (Sunset Transit Center Access Road) to serve the proposed parking lot. In addition the applicant proposes

a secondary access to SW Barnes Road. Both accesses would provide vehicular and pedestrian access to the surface parking lot. TriMet has provided a letter stating that they are working with J. Peterkort Company to coordinate the access through the TriMet access road, subject to further coordination regarding bus queuing and signal timing. A condition of approval is necessary to ensure that TriMet has fully consented to the proposal prior to issuance of the Site Development Permit.

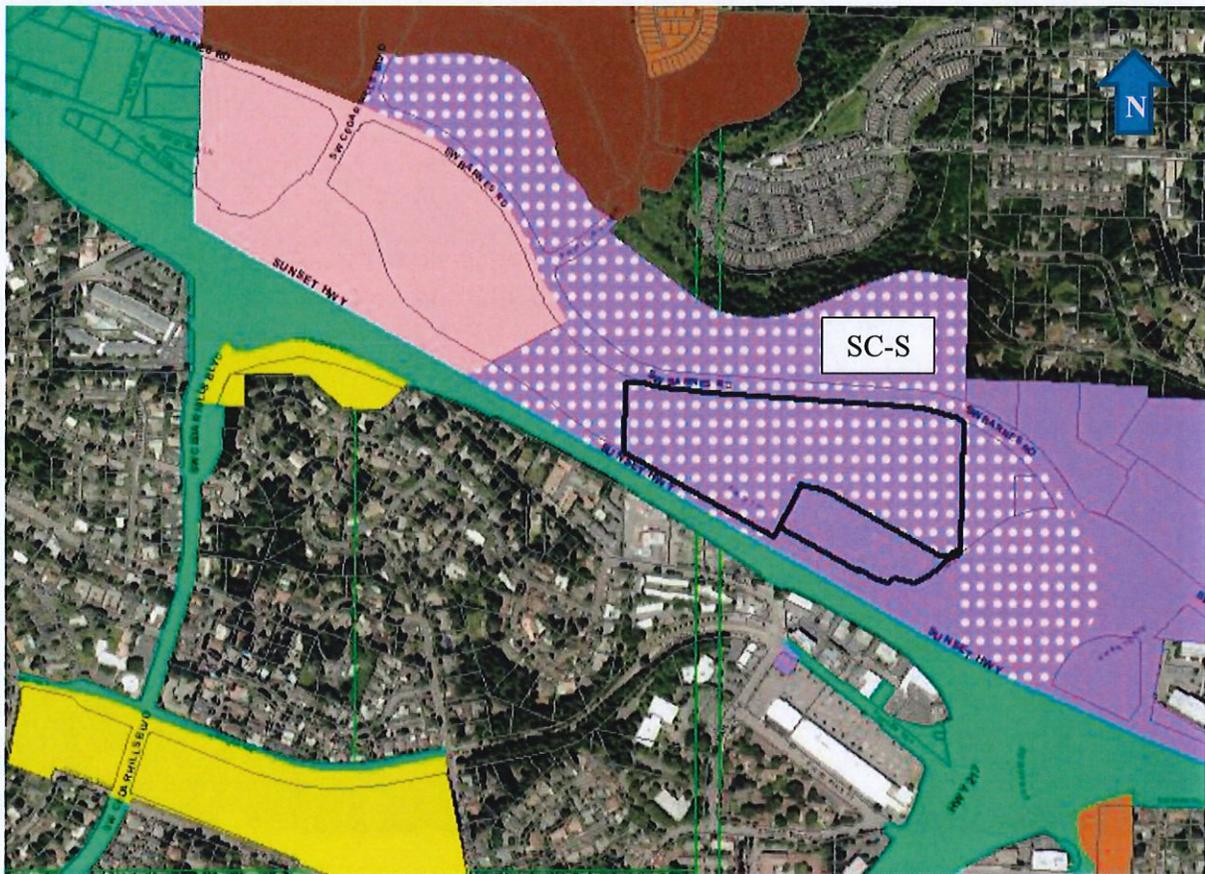
History

The subject site is located within the Sunset Station and Barnes Road PUD (CU2013-0003) which was a master plan PUD primarily intended to provide a transportation framework for the area and identify ultimate transportation facility buildout required with development within the PUD area. The PUD land use order contained a list of conditioned transportation improvements for the full buildout of the PUD. In addition the requirement that as physical development is proposed within the PUD area, each project is required to provide a mini-TIA which assesses the anticipated trips from the specific proposed development, compared to the overall anticipated trips in the PUD and identify which, if any, transportation improvements from the PUD conditions are triggered by the proposed development beyond standard frontage improvements and dedication. The applicant has provided a mini-TIA in conformance with the PUD requirements. Please find the map below (Exhibit 1.1), showing the extent of the properties located within the Sunset Station and Barnes Road PUD for context.

EXHIBIT 1.1



Sunset Station and Barnes Road PUD Vicinity Map



**Sunset Surface Parking
CU2018-0023 / DR208-0167
Zoning Map**



**Sunset Surface Parking
CU2018-0023 / DR208-0167
Aerial Map**

**FACILITIES REVIEW COMMITTEE
TECHNICAL REVIEW AND RECOMMENDATIONS
Sunset Surface Parking
CU2018-0023 / DR2018-0167**

Section 40.03.1 Facilities Review Committee:

The Facilities Review Committee has conducted a technical review of the application, in accordance with the criteria contained in Section 40.03 of the Development Code. The Committee's findings and recommended conditions of approval are provided to the decision-making authority. As they will appear in the Staff Report, the Facilities Review Conditions may be re-numbered and placed in different order.

The decision-making authority will determine whether the application as presented meets the Facilities Review approval criteria for the subject application and may choose to adopt, not adopt, or modify the Committee's findings, below.

The Facilities Review Committee Criteria are reviewed for all criteria that are applicable to the submitted application as identified below:

- **All twelve (12) criteria are applicable to both the Conditional Use (CU2018-0023) and Design Review Three (DR2018-0167) applications.**
- A. All critical facilities and services related to the proposed development have, or can be improved to have, adequate capacity to serve the proposed development at the time of its completion.***

Chapter 90 of the Development Code defines "critical facilities" to be services that include public water, public sanitary sewer, storm water drainage and retention, transportation, and fire protection. The Committee finds that the proposal includes, or can be improved to have, necessary on-site and off-site connections and improvements to public water, public sanitary sewer and storm water drainage facilities.

Public Water, Sanitary Sewer and Storm

The City of Beaverton is the sanitary and storm sewer provider to the site. Tualatin Valley Water District (TVWD) is the water service provider to the site.

TVWD water service is available from existing waterlines located in SW Barnes Road as well as along the Tri-Met access road to the west of the proposed parking area. Water is readily available to serve the proposed guard structure. Water for irrigation is proposed to be provided from the existing well on the site. Potable water for the guard structure must be provided from a public water source. There is adequate water capacity to serve the proposed development.

City of Beaverton sanitary sewer service must be extended from an existing line in SW Valeria View Drive through SW Barnes Road to serve the subject site. There is

sufficient capacity to serve the proposed development with the sanitary sewer line extension.

Storm water from the parking area will be treated through a water quality facility located in the center of the parking area and will then be conveyed through a new connection to the public storm system in SW Barnes Road. There is adequate storm water capacity to serve the proposed development.

The Facilities Review Committee in review of the proposal finds that the capacity of the existing systems are adequate to support the increase uses of these critical facilities.

Transportation

The subject site is adjacent to SW Barnes Road, between the Highway 217 terminus and the TriMet Sunset Transit Center access road, north of Highway 26. The subject site is part of the Sunset Station and Barnes Road PUD which was approved in 2013 and involved extensive transportation modeling and trip analysis. The conditions of approval for the PUD spell out all the transportation improvements that are necessary over the course of development of the entire PUD. As each phase of development is proposed a mini-TIA must be completed to determine what improvements are required for the proposed development. Given that this facility is intended to generate, at full build-out, an additional 304 a.m., and 311 p.m., peak hour trips, the impacts of the proposed development are significantly less than those anticipated at full build out of this site, as identified in the PUD (1,228 a.m. and 1,844 p.m. peak trips). As the trip generation for this proposal is significantly less than those anticipated by the full buildout of this parcel large scale mitigation improvements associated with this parcel are not yet warranted, and will be required with later phases of development.

TriMet has an easement on the Sunset Transit Center access road to the signalized intersection at SW Barnes Road. The applicant is working with TriMet on its proposal to jointly use the access road. The parking lot is likely to heavily serve transit riders. TriMet has provided a letter to the City indicating that it supports this concept and will continue to work with the applicant on this approach, but is concerned that bus queue times may be extended at that intersection. The applicant and TriMet are working to establish an understanding regarding modifications that would be needed to the intersection in the event delays on bus routes occur. While it is likely that this access point will be utilized as part of the proposal, the applicant has also provided a secondary access point on SW Barnes Road which can be utilized in the case that an agreement is not reached with TriMet. The applicant has provided a worst case analysis in their TIA that evaluates that secondary SW Barnes Road intersection in the event it becomes the only point of access for the parking area. In addition the applicant provided in a supplemental addendum to the TIA an analysis of the trip split would both access points be utilized, as is intended.

The Sunset Station and Barnes Road PUD approved access locations for the entirety of the PUD, including the station site parcel, on which this proposed development is located. The PUD identified which intersections were to ultimately be full movement with signals and which were to be right-in/right-out only. The

applicant proposes to align the secondary access to SW Barnes Road at the future signalized intersection location. At this time, the proposed trip generation is not sufficient to warrant full signalization of the intersection so interim right-in/right-out access is proposed until a signal is warranted by future development. The applicant has provided a supplemental memorandum dated February 26, 2019 which analysis the proposed option of both accesses to the surface parking lot being constructed and available. The previous TIA only included analysis for either/or worst case scenario options for the private street to SW Barnes Road and the TriMet access road, respectively. The additional analysis has been reviewed by Washington County who have provided findings and conditions in Exhibit 4.1 attached hereto stating that they concur with the applicant's TIA and supplemental addendum and the findings provided therein.

The applicant's site plan shows sidewalk construction along SW Barnes Road, which will be required, as a condition of approval, to meet City standards of 10 feet in width with trees in tree wells every 30 feet on center. The applicant's plans do not show sidewalks extending east of the proposed Barnes Road access. The applicant has requested to utilize the existing TriMet pedestrian connection through the transit center connecting to the SW Barnes Road/Highway 217 intersection to provide the needed pedestrian connection to the existing pedestrian system east of the subject site. Given that no new construction is proposed on the eastern portion of the site staff concurs with the request so long as TriMet consents and adequate pedestrian lighting is provided. Staff recommends a condition of approval that pedestrian access to the east be provided either through a public sidewalk along SW Barnes Road or by utilizing the existing TriMet walkway and ensuring adequate lighting for either option.

ODOT has provided recommended conditions of approval for the proposed surface parking facility, included herein as Exhibit 4.2. No conditions of approval have been included in the recommended conditions of approval.

Fire Protection

Fire protection will be provided to the site by Tualatin Valley Fire and Rescue Department (TVF&R).The applicant has provided a service provider letter from TVF&R with no conditions of approval.

The Committee finds that the proposed development will provide the required critical facilities, as conditioned. Therefore, the Committee finds the proposal meets the criterion for approval.

Therefore, the Committee finds that by meeting the conditions of approval the proposal meets the criterion for approval.

B. Essential facilities and services related to the proposed development are available, or can be made available, with adequate capacity to serve the development prior to its occupancy. In lieu of providing essential facilities and services, a specific plan may be approved if it adequately demonstrates that essential facilities, services, or both will be provided to serve the proposed development within five (5) years of occupancy.

Chapter 90 of the Development Code defines “essential facilities” to be services that include schools, transit improvements, police protection, and pedestrian and bicycle facilities in the public right-of-way.

Schools

The proposed development does not include new housing units and therefore does not directly affect the Beaverton School District (BSD).

Transit Improvements

The proposed site is located directly adjacent to TriMet’s Sunset Transit Center which is served by Blue and Red line MAX light rail as well as numerous bus lines. The applicant proposes pedestrian connections from the parking lot to the transit center. In addition the applicant proposes to utilize the TriMet access road in order to provide additional parking spaces to serve the transit center, as well as other local uses. No additional transit improvements are necessary in association with the proposed parking lot development.

Police

The Beaverton Police Department serves, and will continue to serve, the subject site.

Pedestrian and Bicycle Facilities

The subject site is adjacent to SW Barnes Road, west of Highway 217 and north of Highway 26. The sites frontage is not improved with bicycle and pedestrian facilities. The applicant’s proposal shows the addition of sidewalks along the development area frontage from the TriMet access road to the Barnes Road access to the parking lot. As discussed in response to criterion A above, staff recommends a condition of approval that sidewalks be provided between the Tri-met access point and the proposed parking lot access point, and either continuing on to the signalized intersection of Barnes Road and the Highway 217 off-ramp along SW Barnes Road or utilizing the existing pedestrian connection from Sunset Transit Center. Both routes provide a pedestrian connection from the parking lot to connect with existing pedestrian facilities in the area. Adequate pedestrian scale lighting must be provided along frontage improvements.

Parks

The site will continue to be served by the Tualatin Hills Park and Recreation District (THPRD).

The Committee has reviewed the proposal and has found that the essential facilities and services to serve the site are adequate to accommodate the proposal as conditioned.

Therefore, the Committee finds that by meeting the conditions of approval the proposal meets the criterion for approval.

- C. *The proposed development is consistent with all applicable provisions of Chapter 20 (Land Uses) unless the applicable provisions are modified by means of one or more applications which shall be already approved or which shall be considered concurrently with the subject application; provided, however, if the approval of the proposed development is contingent upon one or more additional applications, and the same is not approved, then the proposed development must comply with all applicable provisions of Chapter 20 (Land Uses).***

Staff cites the Code Conformance Analysis chart at the end of the Facilities Review Report, which evaluates the project as it relates to applicable code requirements of Chapter 20 for the Station Community-Sunset (SC-S) zone, as applicable to the aforementioned criterion. As demonstrated in the chart, the development proposal meets all applicable standards by meeting the conditions of approval.

Therefore, the Committee finds that by meeting the conditions of approval the proposal meets the criterion for approval.

- D. *The proposed development is consistent with all applicable provisions of Chapter 60 (Special Requirements) and all improvements, dedications, or both, as required by the applicable provisions of Chapter 60 (Special Requirements), are provided or can be provided in rough proportion to the identified impact(s) of the proposed development.***

The Committee cites the Code Conformance Analysis chart at the end of this report, which evaluates the proposal as it relates the applicable Code requirements of Chapter 60, as applicable to the above mentioned criteria. Staff will provide findings for the applicable Design Review Guidelines (Code Section 60.05) within the Design Review section of the staff report.

Therefore, the Committee finds that by meeting the conditions of approval, the proposal meets the criterion.

- E. *Adequate means are provided or can be provided to ensure continued periodic maintenance and necessary normal replacement of the following private common facilities and areas, as applicable: drainage facilities, roads and other improved rights-of-way, structures, recreation facilities, landscaping, fill and excavation areas, screening and fencing, ground cover, garbage and recycling storage areas, and other facilities not subject to maintenance by the City or other public agency.***

The applicant states that the owners will provide for routine maintenance of the proposed parking lot and guard structure. The shared TriMet access point, if consented to by TriMet, will be the subject of a joint maintenance agreement between the two parties. The access from SW Barnes Road will be the responsibility of the applicant to maintain. The applicant has not proposed a trash enclosure, but states that trash will be collected regularly from the site. In order to ensure an attractive and easy to maintain facility staff recommends a condition of approval that the applicant provide a trash enclosure and screen it consistent with the Design Standards in Chapter 60 of the Development Code. The proposal, as conditioned, will not preclude adequate maintenance of the proposed facilities. Staff concurs that the property can be maintained by the property owner in accordance with the requirements of the City of Beaverton.

Therefore, the Committee finds that by meeting the conditions of approval the proposal meets the criterion for approval.

F. There are safe and efficient vehicular and pedestrian circulation patterns within the boundaries of the development.

In review of Criterion F, staff incorporates the findings prepared in response to A and B above. The applicant proposes to connect to SW Barnes Road at the intersection location approved with the Sunset Station and Barnes Road PUD in 2013. The proposed parking lot does not generate sufficient trips to warrant signalization of the intersection at this time. As the intersection will not yet be signalized, as is its ultimate requirement, the Barnes Road access will be right-in/right-out until such time as signalization is warranted, with future intensification of development on the site. In addition to the SW Barnes Road connection the applicant proposes to connect to the existing TriMet access for Sunset Transit Center and the Sunset Park and Ride garage. The two access points will be connected via a private access drive which will provide a single point of access to the proposed parking lot. Access control to the parking lot will be provided with automated gates and pay systems. The internal parking lot circulation for vehicles is safe and efficient.

Pedestrian connections are proposed along the site entrance to the parking lot from both site entry points. Within the parking lot area east-west connections are proposed through the parking areas as well as to Sunset Transit Center. No north-south connections are proposed within the parking lot area, however in order to provide greater connectivity and safe walking areas within the parking lot a centrally located north-south pedestrian connection will be required as a condition of approval.

In review of the plan, the Committee finds that by meeting the recommended conditions of approval, the site will have safe and efficient vehicular and pedestrian circulation patterns within the boundaries of the development.

Therefore, the Committee finds that by meeting the conditions of approval the proposal meets the criterion for approval.

G. The development's on-site vehicular and pedestrian circulation systems connect to the surrounding circulation systems in a safe, efficient, and direct manner.

In review of Criterion G, staff incorporates the findings prepared in response to A, B and D above, including conditions. The applicant will be required to provide sidewalks along SW Barnes Road and to connect to existing pedestrian systems to the east and west of the proposed development as well as additional pedestrian connections within the parking lot area. By meeting the conditions of approval the pedestrian circulation systems will connect with the surrounding circulation system in a safe, efficient and direct manner. The on-site vehicular system will connect to the surrounding transportation system in a safe, efficient and direct manners.

Therefore, the Committee finds that by meeting the conditions of approval the proposal meets the criterion for approval.

H. Structures and public facilities serving the development site are designed in accordance with adopted City codes and standards and provide adequate fire protection, including, but not limited to, fire flow.

Fire protection will be provided to the site by TVF&R. TVF&R has provided a Service Provider Letter for the proposed development with no associated conditions of approval. The proposal will also be required to show compliance to the City's Building Code Standards prior to issuance of building permits, which includes compliance with other TVF&R standards.

Therefore, the Committee finds that by meeting the conditions of approval the proposal meets the criterion for approval.

I. Structures and public facilities serving the development site are designed in accordance with adopted City codes and standards and provide adequate protection from crime and accident, as well as protection from hazardous conditions due to inadequate, substandard or ill-designed development.

The applicant states that the proposal includes an on-site security presence to discourage crime. The applicant proposes on-site lighting for the parking area and will be required to provide lighting for all pedestrian area proposed or conditioned, in compliance with the City's Technical Lighting Standards.

The Committee finds that review of the construction documents at the building and site development permit stages will ensure protection from hazardous conditions due to inadequate, substandard or ill-designed development.

Therefore, the Committee finds that by meeting the conditions of approval the proposal meets the criterion for approval.

J. Grading and contouring of the development site is designed to accommodate the proposed use and to mitigate adverse effect(s) on neighboring properties, public right-of-way, surface drainage, water storage facilities, and the public storm drainage system.

The applicant states that grading will be designed to mitigate adverse impacts to neighboring properties as well as public systems. Grading will be limited to the area identified for the surface parking lot and access points. Minimal amounts of grading are necessary to construct the proposed improvements.

The applicant has submitted a Preliminary Storm Water Management Report, which demonstrate compliance with existing regulations and quantifies the runoff from the site. Storm water will be treated in a surface storm water system through the center of the parking area and ultimately connect to the public storm water system in Barnes Road.

The City Engineer has reviewed the proposed grading and Storm Report, and has identified recommended standard conditions of approval. These recommended conditions are necessary to ensure the proposed site work will be in compliance with adopted codes and standards and to ensure the proposal will not have an adverse impact to surrounding properties.

Therefore, the Committee finds that by meeting the conditions of approval the proposal meets the criterion for approval.

K. Access and facilities for physically handicapped people are incorporated into the development site and building design, with particular attention to providing continuous, uninterrupted access routes.

The applicant will be required to meet all applicable accessibility standards of the Uniform Building Code, the Uniform Fire Code, and other standards as required by the American Disabilities Act (ADA). Conformance with the technical design standards for Code accessibility requirements are to be shown on the approved construction plans associated with Site Development and Building Permit approvals. The Committee finds that as proposed, it appears that the general site layout can meet accessibility requirements. Accessibility is thoroughly evaluated through the site development and building permitting reviews. As a condition of approval, the site shall be in conformance with all ADA requirements. This requirement is in conformance with the Development Code.

Therefore, the Committee finds that by meeting the conditions of approval the proposal meets the criterion for approval.

L. The application includes all required submittal materials as specified in Section 50.25.1 of the Development Code.

The application was submitted on November 26, 2018. The application was deemed complete on January 22, 2019. In the review of the materials during the application review, the Committee finds that all applicable application submittal requirements, identified in Section 50.25.1 are contained within this proposal.

Therefore, the Committee finds that the proposal meets the criterion for approval.

**Code Conformance Analysis
Chapter 20 Use and Site Development Requirements
Station Community-Sunset (SC-S) District**

CODE STANDARD	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE?
Development Code Section 20.20.20 (Station Community-Sunset)			
Use - Conditional	Parking as a principal use	The applicant proposes a two phased 460 space parking lot with 260 spaces in phase one and 200 spaces in phase two.	Subject to CU approval
Development Code Section 20.20.15 (Regional Center-Transit Oriented)			
Minimum/Maximum Lot Area	None	The proposal does not include changes to the existing parcel.	N/A
Floor Area Ratio	Min: 0.60 Min. w/ DRBC: 0.00 Max: None	The proposed includes a request for a Design Review Build-out Concept Plan (DRBCP) to show how future floor area can be accommodated on site in order to meet the minimum FAR in future development phases.	Yes, subject to DR approval
Minimum Lot Dimensions	None	N/A	N/A
Minimum Yard Setbacks Front Side Rear	0 ft. 0 ft. 0 ft.	All setbacks are in excess of the zero foot minimum. Only a small guard structure is proposed on site.	Yes
Maximum Front Yard Setback	Governed by Design Review	Front yard setbacks are regulated by Design Review as the site is adjacent to a Major Pedestrian Route.	See DR Findings
Maximum Building Height	120'	The proposed building height of the guard structure is approximately 10 feet.	Yes

Chapter 60 – Special Requirements

CODE STANDARD	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE?
Development Code Section 60.05			
Design Review Principles, Standards, and Guidelines	Requirements for new development and redevelopment.	Construction of a new parking lot as well as a guard structure and associated landscaping. The applicant has requested a Design Review Build-out Concept Plan in order to provide less than the minimum FAR with this phase of development.	Refer to DR findings
Development Code Section 60.10			
Floodplain Regulations	Requirements for development within floodplains.	The subject site is not within the floodplain.	N/A
Development Code Section 60.25			
Off-Street Loading	Off-street loading requirements.	No loading is required for a parking lot.	N/A
Development Code Section 60.30			
Off-street motor vehicle parking	There are no parking requirements for Parking as a Principal Use for vehicles or bicycles.	The applicant proposes 460 parking spaces over two phases of development as well as 23 bicycle parking spaces.	Yes
Development Code Section 60.40			
Sign Regulations	Requirements pertaining to the size and location of signs	Signs are not approved through the Design Review process. Sign permits will be needed prior to installation.	N/A
Development Code Section 60.55			
Transportation Facilities	Regulations pertaining to the construction or reconstruction of transportation facilities.	Refer to Facilities Review Committee findings herein.	Yes, w/COA

Development Code Section 60.60			
Trees & Vegetation	Regulations pertaining to the removal and preservation of trees.	The applicant does not propose to remove any trees of sufficient size to be considered Community Trees and no protected trees exist on the site.	N/A
Development Code Section 60.65			
Utility Undergrounding	All existing overhead utilities and any new utility service lines within the project and along any existing frontage, except high voltage lines (>57kV) must be placed underground.	The applicant proposes to underground overhead utilities where frontage improvements are required. The Committee proposes a standard condition of approval to ensure utility undergrounding complies with Section 60.65.	Yes-with COA
Development Code Section 60.67			
Significant Natural Resources	Regulations pertaining to Significant Natural Resources	There are not significant natural resources on the site.	N/A

**CU2018-0023
ANALYSIS AND FINDINGS FOR
CONDITIONAL USE APPROVAL**

Section 40.03.1 Facilities Review Approval Criteria:

The applicant for development must establish that the application complies with all relevant standards in conformance with Section 50.25.1.B and all the following criteria have been met:

Facilities Review Approval Criteria Section 40.03.1.A-L

Staff has reviewed the applicable Facilities Review criteria in Attachment A to this report. Staff cites the findings presented in Attachment A in response to the Facilities Review approval criteria. As identified in Attachment A, above, the proposal meets Criteria A-L, and therefore meets the criterion for approval.

Therefore, the Committee finds that the proposal meets the criteria.

Section 40.15.15.3.C New Conditional Use Approval Criteria:

In order to approve a New Conditional Use application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. *The proposal satisfies the threshold requirements for a Conditional Use application.*

The applicant proposes a 460 space surface parking lot with an approximately 200 square foot guard structure. The proposed parking is the primary use of the site, therefore is classified as 'Parking, as a Principal Use' which is a Conditional Use in the Station Community-Sunset (SC-S) zoning district, meeting Threshold 1 for a New Conditional Use:

- 1. The proposed use is conditionally permitted in the underlying zoning district and a prior Conditional use approval for the proposed use is not already in effect.*

Therefore, staff finds the proposal meets the criterion for approval.

2. *All City application fees related to the application under consideration by the decision making authority have been submitted.*

The applicant paid the required fee associated with a New Conditional Use application.

Therefore, staff finds the proposal meets the criterion for approval.

3. *The proposal will comply with the applicable policies of the Comprehensive Plan.*

The applicant's response to Criterion No. 3 states that the proposal satisfies the applicable sections of the Comprehensive Plan. Staff cites the following comprehensive plan policies and associated findings as applicable to this criterion:

Chapter 3 (Land Use Element)

Goal 3.6.1: Support pedestrian-oriented mixed use areas.

Policies:

- a) *Provide for a mix of commercial, residential, employment, and civic uses at relatively high densities to create vibrant, walkable areas where many activities can be accomplished on foot or by bike or transit.*
- b) *Uses may be mixed vertically (i.e. within a single building on different floors) or horizontally (i.e. within different buildings), but should be mixed so that different uses are within easy walking distance of one another.*
- c) *Limit or prohibit auto-oriented commercial uses, including vehicle sales and services, drive-through uses, and uses requiring extensive outdoor storage, to enhance the pedestrian environment.*

In response to a-c above the applicant states that they acknowledge the goals for station communities such as Station Community-Sunset. Further the applicant states that the proposed surface parking lot is intended as an interim use and has been designed to allow further development and intensification of the remainder of the property as well as over the proposed surface parking area. In aligning with the applicant's intention that this use is interim in nature staff recommends a condition of approval that the Conditional Use expire should the active use of the surface parking facility cease for a period of one year or greater. The applicant has further provided a Design Review Build Out Concept Plan which identifies how the site can be further intensified to meet the intended development identified above. Staff finds that the applicant's proposal does not preclude compliance with the policies identified above.

Goal 3.6.4: Station Communities: Encourage development and redevelopment around light rail stations that leverages proximity to light rail as an amenity for urban living/working and supports a variety of transportation modes.

Policies:

- a) *Encourage vertical mixed use development that provides for street-level retail while accommodating housing or office uses above, to support businesses that rely on foot traffic.*

The applicant, states that the proposed development is intended as an interim use until such time as the intended high density mixed use development is constructed on the station parcel. The envisioned development will include street level retail with a mixture of housing situation above. The design of the surface parking facility is intended to facilities development on the remainder of the site as well as redevelopment of the surface parking lot by aligning the parking lot with the intended future block pattern, which allows for an urban style street grid within the site.

- b) *Incorporate high-density residential development, particularly within a half-mile walking distance of the light rail station, to provide the highest accessibility to light rail to the greatest number of households.*

The applicant states that the owner is committed to promoting a variety of multi-story mixed use buildings within half-mile of the light rail station in order to promote walking and convenient access. The DRBCP provided by the applicant shows the intended layout of the site, including the general street pattern within the site. The SC-S zoning district has minimum residential densities that must be met within the district boundaries (all properties within the SC-S zoning district are within the Sunset Station and Barnes Road PUD). As development occurs within the PUD boundary staff evaluates the proposal to ensure the minimum housing number of 1899 units is not precluded by the proposed development. The proposal for the surface parking lot does not preclude meeting the minimum housing requirements of the SC-S zoning district, as adequate additional space is provided to meet the housing goals as well as the design of the parking lot to facilitate redevelopment.

- c) *Encourage new multi-story commercial / employment development that increases the number of employees who have direct and convenient access to transit.*

The applicant states that based on the DRBCP the site will contain 9 blocks with a variety of multi-story commercial/housing structures. The preliminary program provided in the DRBCP shows approximately 60,000 square feet of commercial space and 988 dwelling units on the site. Given the proximity of the development to the Sunset Transit Center the full build out of the site would provide convenient access to transit for residents and employees in the area. The parking lot as proposed is intended to serve as a park and ride facility, supporting transit access into the downtown core in the interim, helping to meet the demand for park and ride facilities that the existing garage cannot accommodate.

- d) *Limit surface parking to encourage compact development and reduce the space between buildings to support walking between destinations.*

The applicant states that the proposed development is an interim use until the site is redeveloped with a mix of high density residential and commercial uses. The applicant's DRBCP provides a street grid and building footprint plan that shows a dense style of urban development is envisioned including parking within or below proposed structures. It is ultimately intended that the surface parking lot be replaced with structured parking beneath the development thus reducing the amount of surface parking and creating a walkable urban grid of development. The subject site is currently vacant, the proposal for a surface parking facility will provide significant pedestrian improvements to the area, including external and internal sidewalks and pedestrian connections to the transit center.

- e) *Within a half-mile of the light rail station platform and along routes that are likely to be used by pedestrians to access public transportation, require development to provide the pedestrian-oriented design features such as windows, awnings, detailed building facades and street furniture.*

Staff cites the Design Standard analysis included in the Design Review Three section of this report as applicable to this policy. The applicant is proposing, and conditioned to provide, a robust pedestrian network through and adjacent to the proposed surface parking lot. The only structure proposed is the guard structure which is limited in size to 200 square feet and provides for a small office and bathroom facility for the security officer who will be on site. All future development on the site will be required to comply with the Design Standards and

Guidelines as well which reflect this Comprehensive Plan policy.

Therefore, staff finds that by meeting the conditions of approval, the criterion is met.

4. *The size, dimensions, configuration, and topography of the site and natural and man-made features on the site can reasonably accommodate the proposal.*

In response to Criterion No. 4, the applicant states that the site is located on a parcel that contains 22.61 acres. The proposed surface parking area will utilize just under 5.5 acres of the subject site, leaving a large percentage of the site available for additional development. **The application additionally states that the proposed parking area is intended to be an interim use of the site and can be easily modified to adapt to future redevelopment.** The applicant proposes to align the access to the site with the fully signalized future intersection, as approved with the Sunset Station & Barnes Road PUD. The proposed access drive is designed to accommodate a future internal block pattern to facilitate the intended level of urban style development on the site. The applicant has applied for a Design Review Build-out Concept Plan (DRBCP) which shows how future intensification of the site can be provided to meet the envisioned intensity of development. Staff finds that the site can accommodate the proposed surface parking lot, the design proposed allowed for further development and redevelopment of the site to desired intensities.

Therefore, staff finds the proposal meets the criterion for approval.

5. *The location, size, and functional characteristics of the proposal are such that it can be made reasonably compatible with and have minimal impact on livability and appropriate use and development of properties in the surrounding area of the subject site.*

In response to Criterion No. 5, the applicant states that the proposed development is compatible and complementary to the existing Sunset Transit Center currently operated by TriMet. Functionally the surface parking lot provides additional capacity immediately adjacent to the TriMet park and ride facility which is routinely over capacity, particularly during peak commuting times. The proposed internal connection to the TriMet access and parking structure would allow for overflow parking into the proposed surface parking lot. The applicant states that the parking lot will help to reduce illegal parking on private property north of SW Barnes Road as well as on-street parking south of Highway 26, near the pedestrian bridge over Highway 26.

The subject site is bounded by major roads on three sides and an internal TriMet access road on the fourth side. Residential uses are not located within close proximity of the site. Impacts of the proposed surface parking lot will be minimal in relation to the existing uses in the area which are primarily office and medical uses.

Staff finds that the size, location and functional characteristics of the proposal are reasonably compatible with and have minimal impact on surrounding uses.

Therefore, staff finds the proposal meets the criterion for approval.

6. *Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.*

The applicant submitted the application on November 26, 2019 and was deemed complete on January 22, 2019. A Design Review Three application is being processed concurrently with the subject request for a Conditional Use. The Conditional Use application is dependent upon approval of the Design Review Three application. Staff recommends a condition of approval which states that approval of the Conditional Use application is subject to approval of the associated applications.

Therefore, staff finds that by satisfying the conditions of approval, the proposal will meet the criterion for approval.

Recommendation

Based on the facts and findings presented, staff recommends **APPROVAL** of **CU2018-0023 (Sunset Surface Parking)** subject to the applicable conditions identified in Attachment D.

**DR2018-0167
ANALYSIS AND FINDINGS FOR
DESIGN REVIEW THREE APPROVAL**

Section 40.03.1 Facilities Review Approval Criteria:

The applicant for development must establish that the application complies with all relevant standards in conformance with Section 50.25.1.B and all the following criteria have been met:

Facilities Review Approval Criteria Section 40.03.1.A-L

Staff has reviewed the applicable Facilities Review criteria in Attachment A to this report. Staff cites the findings presented in Attachment A in response to the Facilities Review approval criteria. As identified in Attachment A, above, the proposal meets Criteria A-L, and therefore meets the criterion for approval.

Therefore, the Committee finds that the proposal meets the criteria.

Planning Commission Standards for Approval:

Section 40.20.15.3.C of the Development Code provides standards to govern the decisions of the Commission as they evaluate and render decisions on Design Review Applications. The Commission will determine whether the application as presented, meets the Design Review Three approval criteria. The Commission may choose to adopt, not adopt or modify the Committee's findings. In this portion of the report, staff evaluates the application in accordance with the criteria for Type 3 Design Review.

Section 40.20.15.3.C Approval Criteria: In order to approve a Design Review Three application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. *The proposal satisfies the threshold requirements for a Design Review Three application.*

The applicant proposes to construct a 460 space surface parking lot, with a guard structure, over two phases. The subject site is located in the Station Community-Sunset (SC-S) zoning district and has a minimum Floor Area Ratio (FAR) requirement of 0.60. The proposed guard structure will not meet the minimum FAR requirements of the SC-S zoning district, as such the applicant proposes to utilize the Design Review Build-out Concept Plan (DRBCP) option, described in Section 40.20.15.5 of the Development Code. Additionally the applicant proposes to construct the parking lot in two phases, the first phase including 263 parking spaces, access road, guard structure, and associated site improvements. The second phase would reconfigure three parking spaces to allow for a total of 460 parking spaces across both phases. The applicant's plans, which utilize the DRBCP option described in Section 40.20.10.5 of the Development Code meet Threshold 5 for a Design Review Three.

5. Projects proposed utilizing the options described in Section 40.20.10.5.

Therefore, staff finds that the criterion is met.

2. ***All City application fees related to the application under consideration by the decision making authority have been submitted.***

The applicant paid the required fees for a Design Review Three application.

Therefore, staff finds that the criterion is met.

3. ***For proposals meeting Design Review Three application thresholds numbers 1 through 6, the proposal is consistent with all applicable provisions of Sections 60.05.35 through 60.05.50 (Design Guidelines).***

Staff cites the Design Guidelines Analysis at the end of this Design Review section, which evaluates the project as it relates the applicable Design Review Guidelines found in Section 60.05 of the Development Code. Staff reviews each Guideline with respect to the applicability of the Guideline to the project, the applicant's response and illustrative representation of the proposal. Staff provides an evaluation of the proposal in relation to the Guideline and a statement as to whether the Guideline is met.

Therefore, staff find the proposal will meet the criterion for approval by meeting the conditions of approval.

4. ***For additions to or modifications of existing development, the proposal is consistent with all applicable provisions of Sections 60.05.35 through 60.05.50 (Design Guidelines) or can demonstrate that the additions or modifications are moving towards compliance of specific Design Guidelines if any of the following conditions exist:***

- a. ***A physical obstacle such as topography or natural feature exists and prevents the full implementation of the applicable guideline; or***
- b. ***The location of existing structural improvements prevent the full implementation of the applicable guideline; or***
- c. ***The location of the existing structure to be modified is more than 300 feet from a public street.***

The project proposal is a new development. Therefore, this criterion, which pertains to additions or modification of existing development, does not apply.

Therefore, staff find the criterion is not applicable.

5. ***For DRBCP proposals which involve the phasing of required floor area, the proposed project shall demonstrate how future development of the site, to the minimum development standards established in this Code or greater, can be realistically achieved at ultimate build out of the DRBCP.***

The applicant proposes to utilize the DRBCP process for the proposed development. Development Code Section 40.20.10.5.A contains three provisions which must be met in order for a DRBCP to be approved:

- 1. Include a plan and narrative intended to address feasibility of constructing future phases, consistent with applicable development standards of the Development Code within the total site area where the project is proposed, and may include abutting properties if under same ownership;*
- 2. Not rely on the removal of a structure in an early phase in order to demonstrate compliance in later phases;*
- 3. Compliance with any applicable Design Standards and/or Guidelines shall not be deferred to future phases of a DRBCP.*

In response to criterion 1. The applicant's current proposal for surface parking includes an approximately 200 square foot guard structure as the only floor area proposed at this time. The applicant has provided a DRBCP concept plan on sheet C201 that shows an internal street grid which creates urban style blocks and identifies moderate building square footages that range from two (2) to four (4) stories per block based on the provided lot coverages and square footages.

The SC-S zoning district has a maximum height of 120 feet, with no minimum setbacks. This site is intended for intense urban style development. The applicant has stated that the surface parking lot is intended as an interim use and that the parking lot has been designed to allow for continued intensification of the site, as well as future redevelopment of the parking lot into urban style development.

Given the maximum heights and desired intensities on the site the applicant's DRBCP analysis is a fairly conservative estimate for future potential intensification of the site. With the proposed gross floor area identified in the table on sheet C201 of the applicants plans as a total of 667,115 square feet and the net parcel size as 15.35 acres the proposed DRBCP buildout is at a 0.95 FAR.

The applicant, through the Sunset Station & Barnes Road PUD, has identified and received approval for specific access locations to SW Barnes Road. The applicant has aligned their primary access location to SW Barnes Road where the future signalized intersection is approved. The applicant's traffic analysis shows that there are not currently sufficient trips to warrant full signalization of the intersection, however by aligning the access with the future signalization area the applicant has created an access road that can serve future additional development to the site and provide signalization when sufficient trips are proposed to warrant full signalization. Staff finds that the design of the proposed surface parking lot allows for future intensification of the site by aligning the parking lot infrastructure with an urban block pattern on the subject site which can serve future intensification.

In response to criterion 2. The applicants proposal shows development only outside of the surface parking area as counting toward meeting the FAR requirement with future

development. While it is intended that the parking lot is an interim improvement the applicant has provided plans showing that the minimum FAR may be reasonably met on the site without relying on removal of the guard structure.

In response to criterion 3. Staff cites the Design Guidelines analysis contained in this report which finds that the proposal meets, or can be conditioned to meet the Design Guidelines applicable to the proposed development.

Therefore, staff finds that by meeting the conditions of approval the criterion is met.

6. ***For proposals meeting Design Review Three application Threshold numbers 7 or 8, where the applicant has decided to address a combination of standards and guidelines, the proposal is consistent with all applicable provisions of Sections 60.05.15 through 60.05.30 (Design Standards) except for the Design Standard(s) where the proposal is instead subject to the applicable corresponding Design Guideline(s). [ORD 4531; March 2010]***

The project proposal meets application Threshold #5 and, accordingly, is not subject to Design Standards.

Therefore, staff find the criterion is not applicable.

7. ***For proposals meeting Design Review Three application Threshold numbers 7 or 8, the proposal is consistent with all applicable provisions of Sections 60.05.15 through 60.05.30 (Design Standards) except for the Design Standard(s) where the proposal is applying to instead meet the applicable Design Guideline(s).***

The project proposal meets application Threshold #5 and, accordingly, is not subject to Design Standards.

Therefore, staff find the criterion is not applicable.

8. ***Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.***

The applicant has submitted all documents related to this request for Design Review Three approval. A Conditional Use application is being processed concurrently with the subject request for Design Review Three. The Design Review Three application is dependent upon approval of the Conditional Use application. Staff recommend a condition of approval which states that approval of the Design Review Three application is subject to approval of the Conditional Use application.

Therefore, staff finds that by meeting the conditions of approval the criterion is met.

DESIGN REVIEW GUIDELINES ANALYSIS

In the following analysis, staff have only identified the Design Guidelines which are relevant to the subject development proposal. Non-relevant Guidelines have been omitted.

60.05.35 *Building Design and Orientation Guidelines.* *Unless otherwise noted, all guidelines apply in all zoning districts.*

1. *Building Elevation Design Through Articulation and Variety*

B. *Building elevations should be varied and articulated to provide visual interest to pedestrians. Within larger projects, variations in architectural elements such as: building elevations, roof levels, architectural features, and exterior finishes should be provided. (Standard 60.05.15.1.A and B)*

The only building proposed with this project is a guard structure located near the parking lot entrance. The applicant state that the proposed building is designed in a rustic northwest style with cultured stone wainscoting on the lower third of the building with lap siding on the upper two-thirds of the building. The building has 12 inch eaves around its entirety. The northern elevation has windows which face the automated entrance gates. The western elevation has windows and a door as well as a six foot covered porch area. The guard structure is 200 square feet in size with a 10 foot front elevation width and 20 foot side elevation length, excluding the 6 foot covered porch area. The eastern and southern elevations are screened by significant landscaping, including shrubs, trees, and ground cover. The structure is set back 20 feet from the sidewalk along the private street and uses vegetation to provide screening and interest along the street facing elevations. Staff concurs that adequate visual interest is provided.

Therefore, staff find the Guideline is met.

C. *To balance horizontal features on longer building elevations, vertical building elements, such as building entries, should be emphasized. (Standard 60.05.15.1.B)*

The applicant states that the guard structure is only 20 feet long and 10 feet wide and due to the limited size of the building the entrance will receive standard treatment and contain a man door, and a windows. The entry is covered by a 6 foot porch area which is accentuated with rough timber pillars holding up the roof structure. Given the small size of the building staff finds that vertical elements area adequate emphasized.

Therefore, staff find the Guideline is met.

D. *Buildings should promote and enhance a comfortable pedestrian scale and orientation. This guideline does not apply to buildings in industrial districts where the principal use of the building is manufacturing, assembly, fabricating, processing, packing, storage, wholesale or distribution activities. (Standard 60.05.15.1.B) [ORD 4531; March 2010]*

The applicant states that the proposed guard structure is intended to be an accessory use in support of the surface parking area. The building itself is a single story structure that is of pedestrian scale. The building entrance contains a standard man door and a window. The entrance will also have a covered porch which is located on the pedestrian walkway between the public street sidewalk and the parking lot entrance. The guard structure is also set back from the private street in order to let landscaping be the predominant feature experienced by pedestrians along the sidewalk. Staff concurs that the buildings are of a comfortable pedestrian scale.

Therefore, staff find the Guideline is met.

E. Building elevations visible from and within 200 feet of an adjacent street or major parking area should be articulated with architectural features such as windows, dormers, off-setting walls, alcoves, balconies or bays, or by other design features that reflect the building's structural system. Undifferentiated blank walls facing a street, common green, shared court, or major parking area should be avoided. (Standards 60.05.15.1.B, C, and D) [ORD 4542; May 2010]

The applicant states that all sides of the structure have been architecturally treated. The building is located along the access to a surface parking lot and set back 20 feet from a private street. The applicant proposes to utilize different exterior materials, windows, a porch, a door, and vegetation to provide visual interest to the 200 square foot structure. The eastern wall which is 20 feet in length and contains two material treatments will be further broke up by 3 trees and dense shrub which break up the façade area. Staff finds that the proposed guard structure is adequately articulated.

Therefore, staff find the Guideline is met.

2. Roof Forms as Unifying Elements

A. Roof forms should be distinctive and include variety and detail when viewed from the street. Sloped roofs should have a significant pitch and building focal points should be highlighted. (Standards 60.05.15.2.A and B)

The applicant states that the guard structure is sloped with 12 inch eaves and a 6 foot porch cover. The pitch of the roof structure is 5/12 providing a significant pitch and focal point. Staff concurs that the roof provides significant pitch and a focal point.

Therefore, staff find the Guideline is met.

B. Flat roofs should include distinctive cornice treatments. (Standard 60.05.15.2.C)

The applicant does not propose a flat roof.

Therefore, staff find the Guideline is not applicable.

3. Primary building entrances

- A. *Excluding manufacturing, assembly, fabricating, processing, packing, storage and wholesale and distribution activities which are the principle use of a building in industrial districts, the design of buildings should incorporate features such as arcades, roofs, porches, alcoves, porticoes, awnings, and canopies to protect pedestrians from the rain and sun. (Standard 60.05.15.3.A)*

The applicant states that the building entry contains a covered porch six (6) feet deep and ten (10) feet in width, providing weather protection from rain and sun. Staff have reviewed the primary building entrance design and concur with the applicant that the design of the entrances is differentiated and provides weather protection for pedestrians.

Therefore, staff find the Guideline is met.

- B. *Special attention should be given to designing a primary building entrance that is both attractive and functional. Primary entrances should incorporate changes in mass, surface, or finish to emphasize the entrance. (Standard 60.05.15.3.B)*

The applicant states that the guard structure contains a covered porch area 60 square feet in size and the facade is treated with a cultured stone wainscot, lap siding, window and a man door. The front façade is only 10 feet wide, the porch provides a change in massing from other elevations, however the door and window take up the majority of the elevation. Staff concur with the applicant that the primary building entrance is adequately emphasized.

Therefore, staff find the Guideline is met.

4. Exterior Building Materials

- A. *Exterior building materials and finishes should convey an impression of permanence and durability. Materials such as masonry, stone, wood, terra cotta, and tile are encouraged. Windows are also encouraged, where they allow views to interior activity areas or displays. (Standard 60.05.15.4.A)*

The applicant states that the dominant materials proposed for exterior walls are cultured stone wainscot and lap siding. Windows are proposed on two elevations. Staff concurs with the applicant that the proposed materials convey a sense of durability and adequate windows are provided.

Therefore, staff find the Guideline is met.

- B. *Where masonry is used for exterior finish, decorative patterns (other than running*

bond pattern) should be considered, especially at entrances, building corners and at the pedestrian level. These decorative patterns may include multi-colored masonry units, such as brick, tile, stone, or cast stone, in a layered or geometric pattern, or multi-colored ceramic tile bands used in conjunction with materials such as concrete. This guideline does not apply to developments in Industrial zones, where masonry is used for exterior finishes. (Standards 60.05.15.4.B and C)

The applicant states that the lower third of the building is treated with cultured stone wainscoting which resembles basalt. No brick is proposed to be used. The variation in the proposed wainscoting is sufficient to provide visual interest. Staff concurs that adequate decorative patterns are provided in the wainscoting.

Therefore, staff find the Guideline is met.

- 5. *Screening of Equipment.*** *All roof, surface, and wall-mounted mechanical, electrical, communications, and service equipment should be screened from view from adjacent public streets by the use of parapets, walls, fences, enclosures, dense evergreen foliage, or by other suitable means. (Standards 60.05.15.5.A through C)*

The applicant states that no rooftop units are proposed. One ground mounted heating unit is proposed, the applicant states it will be screened to the extent possible. Staff recommends a condition of approval that all mechanical units be screened in conformance with Design Standards 60.05.15.5.A-C.

Therefore, staff find that by meeting the conditions of approval the Guideline is met.

- 6. *Building Location and Orientation in Multiple Use and Commercial districts.***

A. Buildings should be oriented and located within close proximity to public streets and public street intersections. The overall impression, particularly on Class 1 Major Pedestrian Routes, should be that architecture is the predominant design element over parking areas and landscaping. Property size, shape and topographical conditions should also be considered, together with existing and proposed uses of the building and site, when determining the appropriate location and orientation of buildings. (Standard 60.05.15.6.A and B)

The site abuts SW Barnes Road which is a Major Pedestrian Route. The only structure proposed is a guard structure, which by its nature should be located near the entrance to the surface parking area so the security guard can attend to any issues that may arise when people use the automated system and provide security to the adjacent parking lot. While buildings are generally desired along Major Pedestrian Routes the small size of the guard structure would not provide significant street enclosure as is desired by this guideline, should it be placed at the street. Staff finds that given the proposed use of the building and the site as a surface parking lot the location and orientation of the guard structure is appropriate. Future development and redevelopment of the site with significant floor area will provide development adjacent to

SW Barnes Road as well as along future internal streets creating the envisioned pedestrian environment.

Therefore, staff find the Guideline is met.

B. *On Class 1 Major Pedestrian Routes, the design of buildings located at the intersection of two streets should consider the use of a corner entrance to the building.* (Standard 60.05.15.6.B and D)

The site is abutted by only one Major Pedestrian Route.

Therefore, staff find the Guideline is not applicable.

C. *On Class 1 Major Pedestrian Routes, building entrances should be oriented to streets, or have reasonably direct connections to streets and pedestrian and transit facilities.* (Standard 60.05.15.6.C and D)

As previously discussed the guard structure is located along the entrance drive to the surface parking area. However the site provides direct pedestrian access to Sunset Transit Center, the anticipated major destination of patrons of the parking lot. The proposal includes the addition of sidewalks along SW Barnes Road, the new internal private street, as well as through the parking area and connecting to Sunset Transit Center and TriMet's internal pedestrian network that also leads to SW Barnes Road at the Highway 217 off-ramp which provides pedestrian access to Saint Vincent Hospital and other offices uses in the vicinity. Staff finds that reasonably direct connections to street and pedestrian and transit facilities are provided.

Therefore, staff find the Guideline is met.

7. Building Scale Along Major Pedestrian Routes.

A. *Architecture helps define the character and quality of a street. Along Major Pedestrian Routes, low height, single story buildings located at the right-of-way edge are discouraged except where detached single family dwellings are permitted.* (Standard 60.05.15.7.A and B)

The applicant states that the guard structure is an auxiliary structure to the primary surface parking use and is proposed to be an interim use. Given the small size, 200 square feet, and purpose of the structure, weather protection and restroom facilities for a security guard, it is not practical for the structure to be more than one story in height. The use is set back from the street to serve the needs of the parking facility. Due to the location of the building if it were to be more than one story in height it would not serve to provide street enclosure. The applicant has proposed plantings along the public street to provide visual screening for the parking area. Staff finds that the proposed single story structure is appropriate, and is not located at the right-of-way edge.

Therefore, staff find the Guideline is met.

- B. *Building heights at or near the street should help form a sense of enclosure, but should not create an undifferentiated height wall out of scale with pedestrians. Building heights at the street edge should be no higher than sixty (60) feet without the upper portions of the building being set back from the vertical building line of the lower building stories. (Standard 60.05.15.7.A)*

No buildings are proposed near the Major Pedestrian Route, SW Barnes Road.

Therefore, staff find the Guideline is not applicable.

8. Ground Floor Elevations on Commercial and Multiple Use Buildings.

- A. *Excluding residential only development, ground floor building elevations should be pedestrian oriented and provide views into retail, office or lobby space, pedestrian entrances or retail display windows. (Standard 60.05.15.8.A)*

The applicant states that the ground floor elevations are treated with architectural features including windows, doors, and differentiated materials. Given the relatively small size, and the use of the building as a guard structure, the windows and door are located on two of the elevations. The remaining two elevations are heavily landscaped to provide additional screening and visual interest. The internal uses of the building, are an office with windows, and a restroom. The restroom facility which occupies the rear of the structure is not suited for windows. Staff concur that views into the space are provided where reasonable and landscape screening is provided in areas windows are not appropriate.

Therefore, staff find the Guideline is met.

60.05.40. Circulation and Parking Design Guidelines. *Unless otherwise noted, all guidelines apply in all zoning districts.*

1. **Connections to public street system.** *The on-site circulation system and the abutting street system should provide for efficient access and circulation, and should connect the project to abutting streets. (Standard 60.05.40.1)*

The applicant states that the proposed on-site pedestrian, bicycle, and motor vehicle circulation system and the abutting street system should provide for efficient access and circulation, and will connect to abutting streets. The applicant proposes to connect to SW Barnes Road at the location of the future signalized intersection, as approved by the Sunset Station and Barnes Road PUD. In the interim the proposed intersection with SW Barnes Road will be right-in / right-out only until future development provides sufficient warrants to allow for construction of the traffic signal. The applicant proposes a pork-chop style median at the access drive to limit traffic to right-in / right-out. In addition the applicant proposes a connection to the TriMet access road which currently

has a signalized intersection with SW Barnes Road. Sidewalks are proposed, and conditioned, along SW Barnes Road along the improvement frontage as well as along the internal private street and connecting to the pedestrian circulation system at Sunset Transit Center. The proposal can be found to adequately connect to the public transportation system.

Therefore, staff find that by meeting the conditions of approval the Guideline is met.

2. *Loading area, solid waste facilities, and similar improvements.*

A. *On-site service, storage and similar activities should be designed and located so that these facilities are screened from an abutting public street. (Standard 60.05.20.2)*

The applicant states that due to the nature of the proposal there are no loading or solid waste facilities but that trash will be removed via regular service through the local waste hauler. The applicant does not proposed a trash enclosure. While the proposal will likely result in limited waste, trash facilities will be necessary, as such staff recommends a condition of approval that the applicant provide a trash enclosure that meets the screening requirements of Section 60.05.20.2 of the Development Code. Staff finds that by providing a trash enclosure consistent with the screening requirements of Section 60.05.20.2 the proposal will meet the criterion for approval.

Therefore, staff find that by meeting the conditions of approval the Guideline is met.

B. *Except in Industrial districts, loading areas should be deigned and located so that these facilities are screened from an abutting public street, or are shown to be compatible with local business operations. (Standard 60.05.20.2)*

No loading areas are proposed or required.

Therefore, staff find the Guideline is not applicable.

3. *Pedestrian circulation.*

A. *Pedestrian connections should be made between on-site buildings, parking areas, and open spaces. (Standard 60.05.20.3.A)*

The applicant provides pedestrian connections to the public street system, the guard station, and Sunset Transit Center. The applicant provides east/west pedestrian connections through the parking area, however north/south connections are not provided outside of the sidewalk along the private street. Staff proposes a condition of approval that a north/south centrally located pedestrian connection be provided in both phases to better connect parking spaces to exterior destinations.

Therefore, staff find that by meeting the conditions of approval the Guideline is met.

B. Pedestrian connections should connect on-site facilities to abutting pedestrian facilities and streets unless separated by barriers such as natural features, topographical conditions, or structures. (Standard 60.05.20.3.A)

The applicant provides a pedestrian connection to SW Barnes Road and the TriMet access road along the private street. There are significant grades between the proposed parking lot and the public street along SW Barnes Road as well as the TriMet access. The applicants proposed connections are sufficient given the natural barriers which preclude more frequent connections.

Therefore, staff find the Guideline is met.

C. Pedestrian connections should link building entrances to nearby streets and other pedestrian destinations. (Standard 60.05.20.3.B)

The applicant provides direct pedestrian connections from the parking lot and guard structure to SW Barnes Road and Sunset Transit Center. Staff concur that pedestrian connections are provided to adjacent public streets.

Therefore, staff find the Guideline is met.

D. Pedestrian connections to streets through parking areas should be evenly spaced and separated from vehicles (Standard 60.05.20.3.C through E)

The applicant provides pedestrian connections that run east/west through the parking area and are generally separated from drive isles and parking areas. The applicant has not proposed north/south connections through the parking area, as such staff recommends a condition of approval that the applicant provide a centrally located north/south connection in each phase of development. Due to the steep slopes between SW Barnes Road and the TriMet access road more frequent pedestrian connections to the public street system are precluded.

Therefore, staff find that by meeting the conditions of approval the Guideline is met.

E. Excluding manufacturing, assembly, fabricating, processing, packing, storage and wholesale and distribution activities which are the principle use of a building in industrial districts, pedestrian connections designed for high levels of pedestrian activity should be provided along all streets. (Standard 60.05.20.3.A through H)

The applicant provides sidewalks along all public streets as well as an extensive internal east/west pedestrian walkway system. With the addition of the north/south pedestrian

connection staff finds that the pedestrian system is adequate.

Therefore, staff find that by meeting the conditions of approval the Guideline is met.

F. Pedestrian connections should be designed for safe pedestrian movement and constructed of hard durable surfaces. (Standards 60.05.20.3.F through G)

Pedestrian ways are designed for safe movement and constructed with hard surface materials. The applicant proposes to construct pedestrian connections with concrete, it is not clear what material is proposed when pedestrian connections cross drive aisles, as such staff recommends a condition of approval that where pedestrian connections cross drive aisles they shall be constructed of concrete to provide visual separation. With the proposed condition of approval staff concurs that the applicant has proposed hard durable differentiated surfaces for pedestrian connections.

Therefore, staff find that by meeting the conditions of approval the Guideline is met.

- 4. *Street frontages and parking areas.* Landscape or other screening should be provided when surface parking areas are located along public streets. (Standard 60.05.20.4)**

The applicant states that the surface parking areas will be landscaped with a mixture of trees, shrubs and ground cover. Parking stalls located along the perimeter will be screened with a landscape hedge. The applicant's landscape hedge shows a dense row of shrubs along SW Barnes Road to block headlight glare from the parking lot. Existing trees along the street frontage are proposed to remain and additional trees planted to provide additional screening of the surface parking lot. In addition, the parking lot is located approximately ten (10) feet in height above the sidewalk due to the existing grades of the site and contains landscape screening. Staff concurs that screening is provided along public streets.

Therefore, staff find the Guideline is met.

- 5. *Parking area landscaping.* Landscape islands and a tree canopy should be provided to minimize the visual impact of large parking areas. (Standard 60.05.20.5.A through D)**

The applicant proposes landscape islands containing trees and ground cover. The applicant states that parking areas are designed with landscape islands dividing larger rows of parking spaces and providing trees to soften and shade the parking lots.

Therefore, staff find the Guideline is met.

6. Off-Street parking area frontage in Multiple-Use zones.

- A. *Surface parking should occur to the side or rear of buildings and should not occur at the corner of two Major Pedestrian Routes. (Standard 60.05.20.6)*

The applicant proposes parking as a principle use at this location, intending surface parking to be an interim use of the site. The applicant states that as future development and redevelopment occur on the site the parking lot and guard structure will be removed and replaced with buildings located along street frontages. As for the current proposal, SW Barnes Road is a Major Pedestrian Route. The only building proposed at this time is a guard structure which is located at the entrance to the parking lot. The guard structure would not reasonably serve its function or providing security and assistance if it were located along SW Barnes Road, away from the entrance to the parking lot and the anticipated primary destination of parking lot users, Sunset Transit Center. The parking lot is set back approximately 20 feet from the public right of way, is approximately 10 feet above the sidewalk grade, and is further screened with shrubs and trees. The parking lot is intended to be an interim use of the site, being replaced by future structures which will provide a street presence along SW Barnes Road. Parking is not proposed at the intersections of Major Pedestrian Routes.

Therefore, staff find the Guideline is met.

- B. *Surface parking areas should not be the predominant design element along Major Pedestrian Routes and should be located on the site to safely and conveniently serve the intended users of the development, without precluding future site intensification. (Standard 60.05.20.6)*

The proposed parking location is designed in close proximity to Sunset Transit Center to serve anticipated users and act as overflow parking for the Sunset Transit Center parking structure which often fills up early in the morning commute. The proposed location west of the private street will allow the future street network to the east of the parking lot to be developed while allowing the parking lot to continue to function. The location of the parking will include a future connection to the existing bridge over the TriMet access and future intensification is intended of the proposed surface parking use which is intended to be interim. Parking areas along the Major Pedestrian Route are screened by landscape areas.

Therefore, staff find the Guideline is met.

7. Sidewalks along streets and primary building elevations in Multiple Use and Commercial districts.

- A. *Pedestrian connections designed for high levels of pedestrian activity should be provided along all streets. (Standard 60.05.20.7.A)*

The applicant states that the sidewalks provided meet the Engineering Design Manual street standards for their street classifications. The applicant proposes sidewalks along

the street frontage between the TriMet access road and the internal private street, along the private street and connecting to the TriMet pedestrian network. Staff recommends a condition of approval that TriMet consent to the connection to their internal transportation system prior to Site Development Permit issuance or the applicant provide additional sidewalks along the remainder of the parcel frontage which are not impacted by the proposed development in order to provide a pedestrian connection to the Barnes Road/Highway 217 intersection. Staff concurs that the provided pedestrian facilities are sufficient and designed to accommodate the proposed use.

Therefore, staff find that by meeting the Guideline is met.

B. *Pedestrian connections should be provided along primary building elevations having building and tenant entrances. (Standard 60.05.20.7.B)*

Pedestrian connections link the guard structure entrance to SW Barnes Road, the parking area and Sunset Transit Center. The proposal provides pedestrian connections to the building entrance.

Therefore, staff find the Guideline is met.

8. *Connect on-site buildings, parking, and other improvements with identifiable streets and drive aisles in Residential, Multiple Use, and Commercial districts.*

A. *On-site circulation should be easily recognized and identified, and include a higher level of improvements such as curbs, sidewalks, and landscaping compared to parking lot aisles. (Standard 60.05.20.8)*

The proposal includes construction of a private street which contains sidewalks providing access to pedestrians to and from the parking facility between SW Barnes Road and Sunset Transit Center. The private street contains 10 foot wide sidewalks and trees in tree wells, per Development Code standards. Curbs and sidewalks are included in the design. All drive aisle pedestrian crossings will be conditioned to be concrete or other paving treatments to differentiate from the vehicular pavement.

Therefore, staff find that by meeting the conditions of approval the Guideline is met.

B. *Long, continuous parking aisles should be avoided if possible, and landscaped as necessary to minimize the visual impact. (Standard 60.05.20.8)*

The applicant states that internal walkways break up the parking aisles. The applicant also proposes landscape islands are regular intervals which provide shade and visual interest. Staff recommends a condition of approval that a north/south pedestrian connection be provided through the parking area with each phase of development to further break up long drive aisles and provide for safe pedestrian paths to Sunset Transit Center and other uses in the area. Staff concurs that the applicant provides

adequate landscaping to minimize the visual impact of the proposed parking facilities.

Therefore, staff find that by meeting the conditions of approval the Guideline is met.

60.05.45. Landscape, Open Space and Natural Areas Design Guidelines. *Unless otherwise noted, all guidelines apply in all zoning districts.*

3. Minimum landscaping for conditional uses in Residential districts and for developments in Multiple Use, Commercial, and Industrial Districts.

A. *Landscaping should soften the edges of buildings and parking areas, add aesthetic interest and generally increase the attractiveness of a development and its surroundings. (Standard 60.05.25.3.A, B, and D)*

The applicant states that a combination of foundation plantings, landscape plantings and lawn areas will define and enhance guard structure and parking lot, as well as provide visual screening. Special attention is being paid to soften the edges of the building and parking area along the north side of the site where the elevation of the parking area is approximately ten feet higher than the street elevation. Staff concurs that the proposed landscaping softens the edges of the building and parking areas and adds aesthetic interest.

Therefore, staff find the Guideline is met.

B. *Plazas and common areas designed for pedestrian traffic should be surfaced with a combination of landscape and decorative pavers or decorative concrete. (Standard 60.05.25.3.C)*

The proposal does not include any pedestrian plazas.

Therefore, staff find the Guideline is not applicable.

C. *Use of native vegetation should be emphasized for compatibility with local and regional climatic conditions. (Standard 60.05.25.3.A and B)*

The applicant states that to the extent possible native vegetation will be utilized. The applicant proposes use of native or climatically appropriate plants.

Therefore, staff find the Guideline is met.

D. *Existing mature trees and vegetation should be retained and incorporated, when possible, into the site design of a development. (Standard 60.05.25.3.A and B)*

The applicant states that existing trees and vegetation are proposed to remain on site.

Staff concurs that the existing trees will be retained and included as part of the landscape screening along SW Barnes Road.

Therefore, staff find the Guideline is met.

E. *A diversity of tree and shrub species should be provided in required landscaped areas. (Standard 60.05.25.3)*

The applicant states that the landscaping plan demonstrates a diversity of tree and shrub species.

Therefore, staff find the Guideline is met.

6. ***Retaining Walls.*** *Retaining walls over six (6) feet in height or greater than fifty (50) feet in length should be architecturally treated, incorporated into the overall landscape plan, or screened by landscape material. (Standard 60.05.25.5)*

The applicant states that no retaining walls are proposed.

Therefore, staff find the Guideline is not applicable.

7. ***Fences and Walls***

A. *Fences and walls should be constructed of attractive, durable materials. (Standard 60.05.25.6)*

The applicant states that no new fencing is proposed.

Therefore, staff find the Guideline is not applicable.

B. *Fences and walls constructed in front yards adjacent to public streets should provide the opportunity to view into the setback from the street unless high traffic volumes or other conflicts warrant greater security and protection. (Standard 60.05.25.6)*

The applicant states that no new fences or walls are proposed.

Therefore, staff find the Guideline is not applicable.

8. ***Changes to existing on-site surface contours at residential property lines.*** *The perimeters of properties should be graded in a manner to avoid conflicts with abutting residential properties such as drainage impacts, damage to tree root zones, and blocking sunlight. (Standard 60.05.25.10)*

The subject site does not abut any residentially zoned property.

Therefore, staff find the Guideline is not applicable.

9. ***Integrate water quality, quantity or both facilities.*** Aboveground stormwater detention and treatment facilities should be integrated into the design of a development site and, if visible from a public street, should appear as a component of the landscape design. (Standard 60.05.25.11)

The applicant states that aboveground stormwater detention and treatment facilities have been integrated into the parking lot layout and will be conveyed to SW Barnes Road and ultimately into the regional detention facility near the intersection of Johnson Creek and SW Cedar Hills Boulevard.

Therefore, staff find the Guideline is met.

10. ***Natural Areas.*** Natural features that are indigenous to a development site, such as streams, wetlands, and mature trees should be preserved, enhanced and integrated when reasonably possible into the development plan. (Standard 60.05.25.12)

There are no natural areas on site.

Therefore, staff find the Guideline is met.

11. ***Landscape Buffering and Screening***

A. *A landscape buffer should provide landscape screening, and horizontal separation between different zoning districts and between non-residential land uses and residential land uses. The buffer should not be applicable along property lines where existing natural features such as flood plains, wetlands, riparian zones and identified significant groves already provide a high degree of visual screening.* (Standard 60.05.25.13)

The subject site is surrounded by Sunset Transit Center and Highway 26 to the south, Highway 217 to the east, SW Barnes Road, vacant land, and existing commercial development to the north as well as land zoned SC-S to the west. No buffering is necessary given the nature of the surrounding uses and the impacts of the proposed use.

Therefore, staff find the Guideline is met.

- 60.05.50. Lighting Design Guidelines.** Unless otherwise noted, all guidelines apply in all zoning districts. (Standard 60.05.30.1 and 2)

1. *Lighting should be utilized to maximize safety within a development through strategic placement of pole-mounted, non-pole mounted and bollard luminaries.*

The applicant states that lighting will be placed to maximize safety within the development through strategic placement of pole-mounted luminaires. The applicant has provided a lighting plan that shows compliance with the City's Technical Lighting Standards.

Therefore, staff find the Guideline is met.

- 2. Pedestrian scale lighting should be an integral part of the design concept except for industrial projects. Poles and fixtures for pole-mounted lighting should be of a consistent type throughout the project. The design of wall-mounted lighting should be appropriate to the architectural design features of the building.*

The applicant states that pedestrian scale lighting is an integral part of the lighting design. Pedestrian scale lighting is located along the walkways leading from the surface parking area to TriMet's walkways along the northern side of the parking garage. Pedestrian scale lighting will also be placed on and around the pedestrian pay stations. The applicant has provided a lighting plan that shows compliance with the City's Technical Lighting Standards

Therefore, staff find the Guideline is met.

- 3. Lighting should minimize direct and indirect glare impacts to abutting and adjacent properties and streets by incorporating lens-shields, shades or other measures to screen the view of light sources from residences and streets.*

The applicant states that luminaires will have lens shields, shades or other measures to screen the view of light sources from residences and streets. The applicant has provided a lighting plan that shows compliance with the City's Technical Lighting Standards.

Therefore, staff find the Guideline is met.

- 4. On-site lighting should comply with the City's Technical Lighting Standards. Where the proposal does not comply with the Technical Lighting Standards, the applicant should describe the unique circumstances attributed to the use or site where compliance with the standard is either infeasible or unnecessary.*

The applicant has provided a lighting plan that shows compliance with the City's Technical Lighting Standards. Staff will verify continued compliance at the time of Site Development permit issuance.

Therefore, staff find the Guideline is met.

Recommendation

Based on the facts and findings presented, staff recommend **APPROVAL** of **DR2018-0167 (Sunset Surface Parking)**, subject to the applicable conditions identified in Attachment D.

CONDITIONS OF APPROVAL

CU2018-0023 Conditional Use

A. Prior to any site work commencing and issuance of the site development permit, the applicant shall:

1. Ensure that the Design Review Three (DR2018-0167) application has been approved and is consistent with the submitted plans. (Planning/JF)
2. The Conditional Use permit shall run with the land and shall continue to be valid upon a change in ownership of the site, unless the use ceases for a period of one year or greater, at which time the Conditional Use permit shall be considered expired. (Planning/JF)
3. Final decision shall expire automatically two (2) years from the effective date of decision unless the approval is enacted either through establishment of the use within the two (2) year time period. (Planning/JF)

DR2018-0167 Design Review Three

A. Prior to any site work commencing and issuance of the site development permit, the applicant shall:

1. Submit a narrative that responds to all applicable conditions of approval and discusses how each condition has or will be satisfied prior to issuance of the Site Development Permit. (Site Development Div./JJD)
2. Submit the required plans, application form, fee, and other items needed for a complete site development permit application per the applicable review checklist. (Site Development Div./JJD)
3. Contract with a professional engineer to design and monitor the construction for any work governed by Beaverton Municipal Code 9.05.020, as set forth in Resolution 4542 (2019 City Engineering Design Manual and Standard Drawings), Beaverton Development Code (Ordinance 2050, 4010 +rev.), the Clean Water Services District Design and Construction Standards (April 2017, Resolution and Ordinance 2017-05), and the City Standard Agreement to Construct and Retain Design Professionals in Oregon. (Site Development Div./JJD)
4. Submit a completed and executed City Standard Agreement to Construct Improvements and Retain Design Professional(s) Registered in Oregon. After the site development permit is issued, the City Engineer and the Planning Director must approve all revisions as set out in Ordinances 2050, 4010+rev., and Resolution 4542; however, any required land use action shall be final prior to City staff approval of the engineering plan revision and work commencing as revised. (Site Development Div./JJD)

5. Have the ownership of the subject property guarantee all public improvements, site grading, storm water management (quality and quantity) facilities including plantings, private streets, and common driveway paving by submittal of a City-approved security. The security approval by the City consists of a review by the City Attorney for form and the City Engineer for amount, equivalent to 100 percent or more of estimated construction costs. (Site Development Div./JJD)
6. Submit any required off-site easements, executed and ready for recording, to the City after approval by the City Engineer for legal description of the area encumbered and City Attorney as to form, including any approvals needed from TriMet. (Site Development Div./JJD)
7. Submit to the City a copy of issued permits or other approvals needed from Washington County for work within, and/or construction access to the SW Barnes Road right of way. (Site Development Div./JJD)
8. Have obtained the Tualatin Valley Fire and Rescue District Fire Marshal's approval of the site development plans. (Site Development Div./JJD)
9. Submit a copy of issued permits or other approvals needed from the Tualatin Valley Water District for public water system construction, backflow prevention facilities, and service extensions. (Site Development Div./JJD)
10. Submit a copy of issued permits or other approvals needed from the Clean Water Services District for storm system connections as a part of the City's plan review process. (Site Development Div./JJD)
11. Submit plans for erosion control per 1200-CN General Permit (DEQ/CWS/City Erosion Control Joint Permit) requirements to the City. The applicant shall use the plan format per requirements for sites between 1 and 4.99 acres adopted by DEQ and Clean Water Services. (Site Development Div./JJD)
12. Contact Building Department at (503) 526-2409 or (503)350-4079 to obtain a Plumbing Permit from the Building Department for the proposed onsite utilities. Submit the Plumbing Permit application concurrently with the Site Development Permit application. (Site Development Div./TDM)
13. Provide final construction plans and a final drainage report, as generally outlined in the submitted preliminary drainage report, demonstrating compliance with CWS Resolution and Order 2017-05 in regard to water quality treatment and City of Beaverton Engineering Design Manual Chapter 5 requirements for detention. In this report, provide record drawings of the existing, regional storm water detention facility that is proposed to serve this development. These record drawings are required for city acceptance of this private, regional detention facility. (Site Development Div./JJD and SAS)

14. Provide plans that delineate all areas on the site that are inundated during a 100-year storm event, including the safe overflow conveyance from proposed constructed stormwater management facilities. On all plan sheets that show grading and elevations, the 100 year inundation level shall be identified. (Site Development Div./JJD)
15. Submit to the City a certified impervious surface determination of the entire site prepared by the applicant's engineer, architect, or surveyor. The certification shall consist of an analysis and calculations determining the square footage of all impervious surfaces, in square feet. Calculations shall indicate the square footage of pre-existing impervious surfaces, all new impervious surface area created, and total final impervious surface area on the entire site after construction. (Site Development Div./JJD)
16. Pay storm water system development charges (storm water quantity and overall system conveyance) for any net new impervious area proposed. The fee-in-lieu for storm water quantity management may be waived if record drawings of the Johnson Creek regional detention facility are provided including tributary areas, flow control structure detail, and plans to restore maintenance access to the facility. (Site Development Div./JJD & SAS)
17. Submit an owner-executed, notarized, City/CWS standard private stormwater facilities maintenance agreement, with maintenance plan and all standard exhibits, ready for recording with Washington County Records. (Site Development Div./JJD)
18. Provide plans for street lights (Option C unless otherwise approved by the City Operations and Maintenance Director) and for the placement of underground utility lines along street frontages, within the site, and for services to the proposed new development. If existing utility poles along existing street frontages must be moved to accommodate the proposed improvements, the affected lines must be either undergrounded or a fee in lieu of undergrounding paid per Section 60.65 of the Development Code. (Site Development Div./JJD)
19. The following shall be recorded with Washington County (*Contact John Kidd, Survey Division: 846-7932*): (Washington County/NV)
 - a. Dedication of additional right-of-way to meet 51 feet from the centerline of SW Barnes Road along the entire site's frontage, including adequate corner radius for a future signal and associated equipment at the intersection with the new private street access.
 - b. Recordation of a cross access easement between Sunset Transit Center Drive (TL200) and the new private street (TL100).
20. Submit to Washington County Public Assurance Staff (503-846-3843): (Washington County/NV)

- a. Completed "Design Option" form, Geotech/Pavement Report, and Engineer's Checklist (Appendix "E" of the County Road Standards).
 - b. \$10,00.00 Administration Deposit.
 - c. A copy of the City's Notice of Decision and the County's Letter dated March 4, 2019.
 - d. Provide evidence that the document under 19.a (dedication of ROW) has been recorded.
 - e. Preliminary certification of adequate sight distance for the access point to SW Barnes Road, in accordance with County Code, prepared and stamped by a registered professional engineer, as well as:
 - i. A detailed list of improvements necessary to produce adequate intersection sight distance at the proposed new public street access.
 - f. Engineering plans to County standards for construction of the following public improvements:
 - i. Construct a right-in/right-out only (stop controlled) private street access on SW Barnes Road. Construction of a traffic separator median and/or a pork chop is required and subject to a design exception approval by the County Engineer.
 - ii. Construct 10 foot wide sidewalk with tree wells along the site's frontage of SW Barnes Road from Sunset Transit Center Drive to the proposed public street access.
 - iii. Install street lighting at the new private street access to County Standards. Modifications to existing street lighting shall be to County standards.
 - iv. Install conduit and other underground infrastructure required for a future traffic signal at the new private street access.
 - v. Install traffic signal interconnect on the site's frontage of SW Barnes Road from the new private street access to Sunset Transit Center Drive.
21. Obtain a Washington County Facility Permit upon completion of the following: (Washington County/NV)
- a. Engineering Division approval of plans and a financial assurance for the construction of the public improvements listed in conditions 20.f.
22. Ensure that the Conditional Use (CU2018-0023) application has been approved and is consistent with the submitted plans. (Planning/JF)

23. Provide a plan showing at minimum one additional centrally located north-south pedestrian connection through the parking lot, connecting to the east-west walkways from the perimeter banks of parking stalls. (Planning/JF)
24. Provide written consent from TriMet for the use of the access road. If consent is not provided all access must be from SW Barnes Road. (Planning/JF)
25. Provide a plan showing construction of a minimum 10 foot wide public sidewalk, with trees in tree wells every 30 feet, from the TriMet access road intersection to the proposed SW Barnes Road parking lot access road. (Planning/JF)
26. Provide a plan showing pedestrian crossings through the parking area are of a differentiated paving material, such as concrete. (Planning/JF)
27. Provide a plan showing any exterior mechanical units are screened in conformance with the Design Standards of Section 60.05.15.5.A-C. (Planning/JF)
28. Provide plans showing construction of a trash enclosure in conformance with the screening requirements of Section 60.05.20.2 of the Development Code. (Planning/JF)
29. Provide plans showing construction of a minimum 10 foot wide public sidewalk, with trees in tree wells every 30 feet, from the proposed SW Barnes Road parking lot access road to the intersection of SW Barnes Road and Highway 217 unless all of the following are met: (Planning/JF)
 - a. A public easement is provided from TriMet consenting to the use of the pedestrian pathway connecting the proposed parking lot to the Barnes Road and Highway 217 intersection.
 - b. A lighting plan is provided showing adequate pedestrian scale lighting, in compliance with the City's Technical Lighting Standards, along the entirety of the pedestrian access on the TriMet property. Additional lighting may be proposed if sufficient lighting does not currently exist, with property owner consent.

B. Prior to building permit issuance for a building, the applicant shall:

30. Submit a complete site development permit application and obtain the issuance of site development permit from the Site Development Division. A foundation only permit for the guard structure may be issued prior to full Site Development Permit issuance if the City's review is complete and subject only to outside agency permit issuance required for full Site Development Permit issuance. No additional building permits may be issued prior to full Site Development Permit issuance. (Site Development Div./JJD)

31. Make provisions for installation of all mandated erosion control measures to achieve City inspector approval at least 24 hours prior to call for foundation footing form inspection from the Building Division. (Site Development Div./JJD)

C. Prior to final occupancy permit issuance of each building permit, the applicant shall:

32. Have substantially completed the site development improvements as determined by the City Engineer. (Site Development Div./JJD)

33. Have the landscaping completely installed or provide for erosion control measures around any disturbed or exposed areas per Clean Water Services standards. (Site Development Div./JJD)

34. Have placed underground all affected, applicable existing overhead utilities and any new utility service lines within the project and along any existing street frontage as determined at permit issuance. (Site Development Div./JJD)

35. Install or replace, to City specifications, all sidewalks which are missing, damaged, deteriorated, or removed by construction. (Site Development Div./JJD)

36. Ensure all site improvements, including grading and landscaping are completed in accordance with plans marked "Exhibit A", except as modified by the decision making authority in conditions of approval. (On file at City Hall). (Planning/JF)

37. Ensure all construction is completed in accordance with the Materials and Finishes form and Materials Board, both marked "Exhibit B", except as modified by the decision making authority in conditions of approval. (On file at City Hall). (Planning/JF)

38. Ensure construction of all buildings, walls, fences and other structures are completed in accordance with the elevations and plans marked "Exhibit C", except as modified by the decision making authority in conditions of approval. (On file at City Hall). (Planning/JF)

39. Ensure all landscape areas are served by an underground landscape irrigation system. For approved xeriscape (drought-tolerant) landscape designs and for the installation of native or riparian plantings, underground irrigation is not required provided that temporary above-ground irrigation is provided for the establishment period. (Planning/JF)

40. Ensure that the planting of all approved trees has occurred. Trees shall have a minimum caliper of 1-1/2 inches. Each tree is to be adequately staked. Street trees shall be a species on the approved City Street Tree List.

(Planning/JF)

41. Ensure all exterior lighting fixtures are installed and operational. Illumination from light fixtures, except for street lights, shall be limited to no greater than 0.5 foot-candle at the property line as measured in the vertical and horizontal plane. (Planning/JF)
42. Obtain a Final Site Distance Certification for access to SW Barnes Road. (Washington County/NV)
43. The road improvements required in condition 20.f above shall be completed and accepted by Washington County. (Washington County/NV)

D. Prior to release of performance security, the applicant shall:

44. Have completed the site development improvements as determined by the City Engineer and met all outstanding conditions of approval as determined by the City Engineer and Planning Director. Additionally, the applicant and professional(s) of record shall have met all obligations under the City Standard Agreement to Construct Improvements and Retain Design Professional Registered in Oregon, as determined by the City Engineer. (Site Development Div./JJD)
45. If applicable, submit any required on-site easements, executed and ready for recording, to the City after approval by the City Engineer for area encumbered and City Attorney as to form. The applicant's engineer or surveyor shall verify all pre-existing and proposed easements are of sufficient width to meet City standards. (Site Development Div./JJD)
46. Provide a post-construction cleaning, system maintenance, and StormFilter recharge/replacement servicing report per manufacturer's recommendations for the site's proprietary storm water treatment systems by a CONTECH qualified maintenance provider as determined by the City Engineer. Additionally, another servicing report from the maintenance provider will be required prior to release of the required maintenance (warranty) security. (Site Development Div./JJD)
47. Provide an additional performance security for 100 percent of the cost of plants, planting materials, and any maintenance labor (including irrigation) necessary to achieve establishment of the treatment vegetation within the reconstructed surface water quality facility, as determined by the Public Works Director. If the plants are not well established (as determined by the Public Works Director) within a period of two years from the date of substantial completion, a plan shall be submitted by the engineer of record and landscape architect (or wetland biologist) that documents any needed remediation. The remediation plan shall be completely implemented and deemed satisfactory by the City Operations Director prior to release of the security. (Site Development Div./JJD)



WASHINGTON COUNTY, OREGON

Department of Land Use and Transportation, Operations & Maintenance Division
1400 SW Walnut Street, MS 51, Hillsboro, Oregon 97123-5625
(503) 846-7623 · FAX: (503) 846-7620

March 4, 2019

To: Jana Fox - Current Planning Supervisor

From: Naomi Vogel - Associate Planner

RE: JPC Surface Parking Lot
City File Number: CU2018-0023/DR2018-0167
County File Number: CP19-907
Tax Map and Lot Number: 1S102CB00100
Location: SW Barnes Road/Sunset Station Transit Drive

Washington County Department of Land Use and Transportation has reviewed this development application to construct in two phases a 460 lot surface parking lot with access via Sunset Station Transit Drive and via a new interim right-in/right-out only private street access (future signalized intersection) on SW Barnes Road, a County-maintained Arterial (5 lanes).

A Traffic Impact Analysis prepared by David Evans and Associates (December 2018) and supplemental addendum (February 26, 2019) was submitted in accordance with Washington County R&O 86-96 (Determining Traffic Safety Improvements). County staff has reviewed the TIA and concurs with the findings of the analysis and addendum.

I. PRIOR TO ISSUANCE OF THE SITE DEVELOPMENT PERMIT BY THE CITY OF BEAVERTON:

A. The following shall be recorded with Washington County (*Contact John Kidd, Survey Division: 846-7932*):

1. Dedication of additional right-of-way to meet 51 feet from the centerline of SW Barnes Road along the entire site's frontage, including adequate corner radius for a future signal and associated equipment at the intersection with the new public street access.

2. Recordation of a cross access easement between Sunset Transit Center Drive (TL 200) and the new private street (TL 100).

B. Submit to **Washington County** Public Assurance Staff (503-846-3843):

1. Completed "Design Option" form, Geotech/Pavement Report, and Engineer's Checklist (Appendix "E" of the County Road Standards).

2. **\$10,000.00** Administration Deposit.

NOTE: The Administration Deposit is a cost-recovery account used to pay for County services provided to the developer, including plan review and approval, field inspections, as-built approval, and project administration. The Administration Deposit amount noted above is an estimate of what it will cost to provide these services. If, during the course of the project, the Administration Deposit account is running low, additional funds will be requested to cover the estimated time left on the project (at then-current rates per the adopted Washington County Fee Schedule). If there are any unspent funds at project close out, they will be refunded to the applicant. Any point of contact with County staff can be a chargeable cost. If project plans are not complete or do not comply with County standards and codes, costs will be higher. There is a charge to cover the cost of every field inspection. Costs for enforcement actions will also be charged to the applicant.

3. A copy of the City's Notice of Decision and the County's Letter dated March 4, 2019.

4. Provide evidence that the documents under **I.A.** have been recorded.

5. Preliminary certification of adequate sight distance for the access point to SW Barnes Road, in accordance with County Code, prepared and stamped by a registered professional engineer, as well as:

- a. A detailed list of improvements necessary to produce adequate intersection sight distance at the proposed new public street access.

6. Engineering plans to County standards for construction of the following public improvements:

Note: Improvements within the ROW may be required to be relocated or modified to permit the construction of the public improvements. All public improvements and modifications shall meet current County and ADA standards.

- a. Construct a right-in/right-out only (stop-controlled) private street access on SW Barnes Road. Construction of a traffic separator median and/or a pork chop is required and subject to a design exception approval by the County Engineer.

- b. Construct 10 foot wide sidewalk with tree wells along the site's frontage of SW Barnes Road from Sunset Transit Center Drive to the proposed private street access.

- c. Install street lighting at the new private street access to County Standards. Modifications to existing street lighting shall be to County standards.

- d. Install conduit and other underground infrastructure required for a future traffic signal at the new private street access.

e. Install traffic signal interconnect on the site's frontage of SW Barnes Road from the new private street access to Sunset Transit Center Drive.

C. Obtain a Washington County **Facility Permit** upon completion of the following:

1. Engineering Division approval of plans and a financial assurance for the construction of the public improvements listed in conditions **I.B.6.**

II. PRIOR TO OCCUPANCY BY THE CITY OF BEAVERTON:

A. Submit a **Final Sight Distance Certification** for access to SW Barnes Road.

B. The road improvements required in condition **I.B.6.** above shall be completed and accepted by Washington County.

If you have any questions, please contact me at 503-846-7639.

Cc: Transportation File



Oregon

Kate Brown, Governor

EXHIBIT 4.2

Department of Transportation

Region 1 Headquarters
123 NW Flanders Street
Portland, Oregon 97209
(503) 731.8200
FAX (503) 731.8259

February 28, 2018

ODOT #8609

ODOT Response

Project Name: Peterkort Sunset Surface Parking Lot	State Highway: OR 217
Jurisdiction: City of Beaverton	
Site Address: No situs, SW Barnes Rd - Hwy 26, Beaverton, OR	

The site of this proposed land use action is in the vicinity of the Barnes Rd/OR 217 intersection. ODOT has permitting authority for this facility and an interest in ensuring that this proposed land use is compatible with its safe and efficient operation. **Please direct the applicant to the District Contact indicated below to determine permit requirements and obtain application information.**

COMMENTS AND RECOMMENDED CONDITIONS OF APPROVAL

The proposed development will add vehicle trips to the Barnes Rd/OR 217 intersection. The traffic impact analysis for the development did not follow in full the ODOT Analysis and Procedures Manual. ODOT recommends that the applicant be required to comply with the Peterkort PUD condition 10 a, b, and e as stated below:

10. At the intersection of Barnes Road and Highway 217.

a. For the northbound approach widen Highway 217 off ramp to provide three through lanes with a storage length of 240 feet, two right turn lanes with a storage length of 240 feet. Install vehicle detection sensors to identify excessive northbound queue spillback and integrate to an advance warning sign for the OR 217/Barnes Road off-ramp to slow speeds approaching the ramp.

b. Pay ODOT \$250,000 as a contribution towards a variable message sign/variable speed sign to be installed by ODOT on OR 217 northbound between SW Walker Road and the Barnes Road off-ramp.

e. Signal modification to accommodate the widening and signaling the northbound right-turn movement.

All alterations within the State highway right of way are subject to the ODOT Highway Design Manual (HDM) standards. Alterations along the State highway but outside of ODOT right-of-way may also be subject to ODOT review pending its potential impact to safe operation of the highway. If proposed alterations deviate from ODOT standards a Design Exception Request must be prepared by a licensed engineer for review by ODOT Technical Services. Preparation of a Design Exception request does not guarantee its ultimate approval. Until more detailed plans have been reviewed, ODOT cannot make a determination whether design elements will require a Design Exception.

Permits and Agreements to Work in State Right of Way

- An ODOT Miscellaneous Permit must be obtained for all work in the highway right of way. When the total value of improvements within the ODOT right of way is estimated to be \$100,000 or more, an agreement with ODOT is required to address the transfer of ownership of the improvement to ODOT. An Intergovernmental Agreement (IGA) is required for agreements involving local governments and a Cooperative Improvement Agreement (CIA) is required for private sector agreements. The agreement shall address the work standards that must be followed, maintenance responsibilities, and compliance with ORS 276.071, which includes State of Oregon prevailing wage requirements.

Note: All ODOT permits and approvals must reach 100% plans before the District Contact will sign-off on a local jurisdiction building permit, or other necessary requirement prior to construction.

If a CIA is required, it may take up to **6 months** to process.

Please send a copy of the Notice of Decision including conditions of approval to:

ODOT Region 1 Planning
Development Review
123 NW Flanders St
Portland, OR 97209

Region1_DEVREV_Applications@odot.state.or.us

Development Review Planner: Marah Danielson	503.731.8258, marah.b.danielson@odot.state.or.us
Traffic Contact: Avi Tayar, P.E.	503.731.8221
District Contact: via email	D2BUP@odot.state.or.us

December 21, 2018

Mr. Scott Eaton
Cairn Pacific
1015 NW 11th Avenue, Suite 242
Portland, OR 97209

Dear Mr. Eaton:

Thank you for contacting TriMet regarding J. Peterkort and Company's interest in a two phase plan to construct a 260 space surface parking facility at the Sunset Transit Center and a second phase to construct 200 additional spaces, and accessing those lots via TriMet's access road. TriMet would like to express its conditional support for development of the phase one proposed parking lot and will agree to the use of its access road for this purpose provided that JPC and TriMet can reach agreement on strategies to assess the potential degradation of TriMet bus movements into and out of the site and a framework for remediating any significant degradation if it is determined that the traffic generated by the parking lot unduly impacts TriMet bus movements.

As stated above, TriMet's primary concern is that the use of the access road by TriMet's buses not be substantially hindered or delayed due to the increased traffic generated by the proposed surface lots.

To address that concern, TriMet would like to suggest a set of agreements with JPC on the following issues, prior to agreeing to the use of its access road:

1. JPC and TriMet will jointly fund a baseline analysis of the Barnes Road – Access Road intersection prior to the opening of the phase one surface lot to determine the current average wait time for buses departing via the access road. A similar analysis will be jointly commissioned by JPC and TriMet after the phase one lot has been open and operating for six months. The analysis will assess whether there has been any discernable degradation in wait times for TriMet buses using the access road, and if so, to what degree.
2. If the before and after analysis determines that average individual bus wait times have been increased by more than one minute in the p.m. peak due to the new parking facility, JPC agrees to work with TriMet to identify strategies to reduce delay for TriMet buses, including, but not limited to:
 - a. Joint funding of an analysis of strategies to reduce impacts on TriMet bus travel times, including but not limited to changes to timing of traffic signals on Barnes Road, restriping lanes on the access road, or implementing a transit queue jump lane on the access road to allow buses to move through the intersection ahead of single occupant vehicle queues.
 - b. Jointly funding traffic engineering and other work needed to support the required applications to city and county authorities to implement changes determined to be necessary by the joint study to bring average transit bus travel times during the p.m. peak back to within 30 seconds of the wait times experienced before the opening of the phase one parking lot.

- c. Jointly applying for and funding any necessary applications to city and county transportation and land use agencies to effectuate the changes determined to be necessary to bring bus travel time performance to within the 30 second degradation threshold.
 - d. Jointly determining a shared-cost model for the construction and implementation of strategies to remediate bus travel times.
3. TriMet's agreement to the use of its access road is limited to the proposed 260 stall phase one parking lot only and does not extend to any expansion of that lot nor any other development on JPC land within the Barnes Road, Sunset Transit Center Access Road boundary. JPC agrees not to build any additional parking or development within this boundary beyond this lot that relies on use of the TriMet access road without first securing agreement from TriMet.
 4. This agreement is for the use of the access road situated to the west of the Sunset Transit Center and does not include use of the access road to the east of Sunset Transit Center.

In addition to these conditions, TriMet would like to work with JPC on a cooperative basis to explore the following opportunities:

1. TriMet would like to explore opportunities for the potential joint operation of the proposed surface parking lots and the Sunset Parking Garage. TriMet is assessing the opportunity of charging at the Sunset Parking Garage and would like to explore the potential efficiencies of joint operations including fee collection, pricing and security patrols.
2. TriMet is interested in exploring development on and above its station area and parking structure and would like to explore opportunities for transit oriented development, joint development, public-private partnerships or other approaches to maximizing the development potential for both TriMet and JPC controlled property in the area.

Again, TriMet conditionally supports the development of the phase one surface parking facility and would like to partner with JPC in facilitating the overall development of this area in a way that supports and is supported by the transit center and light rail station. We would like to provide access to the lot via the TriMet access road, provided that we can reach agreement on a set of conditions and measures, similar to those suggested above, that ensure that access to and from the site for TriMet's buses is not substantially diminished.

Please feel to contact me with any thoughts or concerns.

Sincerely,



Doug Kelsey
General Manager



HATHAWAY LARSON

Koback · Connors · Heth

EXHIBIT APP 1.2

Received
Planning Division
03/16/2020

March 16, 2020

VIA EMAIL

Jana Fox
Planning Manager
City of Beaverton
Community Development Department
Planning Division
PO Box 4755
Beaverton, OR 97076

Re: **Appeal of Director’s Decision to Approve Life Time Fitness Director’s Interpretation, Casefile No. APP2020-0001**
LTF Real Estate Company, Inc.’s Application No. DI2019-003
Supplemental Appeal Letter
Our Client: Beaverton Business Owners, LLC

Dear Ms. Fox:

As you know, this firm represents Beaverton Business Owners, LLC (“Beaverton Business Owners”) with respect to the above-referenced appeal of the Director’s Interpretation decision (the “Decision”) regarding LTF Real Estate Company, Inc.’s (“Life Time”) Application No. DI2019-003 (the “Application”). We are submitting the attached partial transcript of the Planning Commission’s hearing for the Peterkort Surface Parking Lot Application No. CU2018-0023/DR2018-0167 on March 13, 2019 (the “Planning Commission Transcript”). The start and stop times are provided for each portion of the hearing transcribed based on the City’s video/audio feed for this Planning Commission March 13, 2019 hearing agenda item available on the City’s website. Please submit this letter and the attached Planning Commission Transcript to the City Council in support of our appeal.

Beaverton Business Owners is appealing the Decision in part on the grounds that the guard shack foundation cannot vest the PUD approval Order No. 2337, CU2013-0003, Order Approving Sunset Station & Barnes Road PUD (“PUD Approval”) because: (a) the surface parking lot was proposed and approved as a temporary use, not a principal use of the PUD; and (b) the guard shack is only an accessory use to the surface parking lot. Appeal letter from E. Michael Connors, dated February 14, 2020 (the “Appeal Letter”), p.3-5. The Appeal Letter demonstrated that the surface parking lot was proposed and approved as a temporary or interim use, and the guard shack is only an accessory use to this temporary use on the staff report for the Sunset Surface Parking Lot project,

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dated March 6, 2019 (the “Staff Report”) and the Planning Commission’s findings for Order No. 2685, CU2018-0023 Order Approving Sunset Surface Parking, New Conditional Use (the “Parking Lot Approval”). Appeal Letter, p.3-5. The Planning Commission Transcript further substantiates these facts and explains why the Planning Commission limited its approval in this manner.

During the staff presentation, the staff repeatedly stated that the guard shack is only an accessory use to the parking lot. The staff noted that the guard shack “is just intended as an **accessory use** to have someone onsite for security or if there are issues with the mechanical gates to assist people” and is “a fairly short structure **intended to be accessory to the parking lot.**” Planning Commission Transcript, p.2-3. (Emphasis added).

The applicant J. Peterkort Company (“Peterkort”) made it clear during their presentation that the parking lot is a temporary use designed to gauge the area parking needs and it will be demolished and developed later consistent with the PUD Approval. Peterkort’s representative Scott Eaton explained:

So this is something that’s, um, it’s definitely a cost that it’s doing us some good, it’s hard to look at something like **this that is basically going to be demolished**, but at the same time, in order for us to build enough parking and subterranean under the buildings that we plan to construct here, we need to know how much we need to build. And that’s the reason for this. Planning Commission Transcript, p.4. (Emphasis added).

Mr. Eaton referred to the parking lot as “a **temporary use**” and acknowledged that it does not satisfy the FAR requirements: “None of our plans for this site are to meet the minimum FAR for this site.” Planning Commission Transcript, p.5. (Emphasis added).

The Planning Commission expressed concerns about the proposal and explained why a standalone parking lot conflicts with several approval criteria and is inconsistent with the pedestrian-oriented mixed use goals for this area which the PUD Approval relied upon. Commissioner Nye explained:

I’m having a hard time seeing how this project meets the chapter 3 goal of supporting pedestrian-oriented mixed-use areas and specifically the policies associated with that: A, B, and C. I honestly had a really hard time getting into the application because I couldn’t get past that element – having a parking-only development does not seem to support the goals of this area.

* * * * *

My issue is that **what’s being proposed is something that’s incongruent with the goals of the district with no development associated with it.** And I’m hearing that you have stuff coming, but **there’s nothing for us tonight of the current application that says this is supporting a bigger overall development that’s, you know, happening.**

* * * * *

[A]s a primary, standalone application, it doesn't seem to support the goals of a mixed-use development. And I guess, I'm still not getting there. Like I said, I understand your development predicament, but **I think there are other ways to get there, and that this just isn't meeting our goals.** Planning Commission Transcript, p.6-7. (Emphasis added).

In response to these concerns, the Peterkort representatives took the position that the Planning Commission could approve it notwithstanding the inconsistencies with the approval criteria because it is only a temporary use. Planning Commission Transcript, p.6-9.

Commissioner Uba raised the need to limit the approval to a temporary use to ensure that it was only allowed on a temporary basis:

So, to put a parking lot in an area that we're expecting high density doesn't look right. But we understand why you want to do it. **It's like an experiment. At the same time, I think, as you rightfully said, it's temporary. Maybe we need a COA somewhere here to clarify that this is only temporary.** Because the way everything is written now, it looks like it's going to be permanent. Planning Commission Transcript, p.10. (Emphasis added).

Mr. Eaton agreed to this concept: "I think we completely agree." Planning Commission Transcript, p.10.

Commissioner Nye asked what Peterkort considered to be a temporary timeframe and Mr. Eaton agreed to five (5) years.

Commissioner Nye: I guess, one follow-up question to that is **what is, in your mind, a temporary time period for this parking lot?**

Eaton: Hal just tapped me here and said **"what if we just did a review of it at 5 years?"** Planning Commission Transcript, p.10. (Emphasis added).

To address the temporary nature of the parking lot, the Planning Commission approved the proposal based on Condition of Approval No. 1.b which provided that the Parking Lot Approval expired: "5 years after issuance of a certificate of occupancy unless there is an active land use entitlement for a minimum of 80,000 square feet of non-residential floor area or 200 dwelling units on the station site." Moreover, the Planning Commission limited the parking lot to a maximum of 10 years even if the remainder of the PUD was developed consistent with the PUD Approval. Parking Lot Approval, Condition of Approval No. 1.c. The Planning Commission expressly limited the approval to a temporary approval that will expire in order ensure that the primary or permanent development contemplated under the PUD Approval is constructed.

As we explained in the Appeal Letter, the guard shack foundation cannot vest the PUD Approval because the guard shack is only an accessory use to a temporary use. "Substantial construction" only applies to "the completion of construction of footings for the building where the principal use will take place." BDC Chapter 90. A "principal use" is defined as: "The main or primary purpose of which land or a structure is designed, arranged or intended or for which it is occupied or maintained."

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BDC Chapter 90. A temporary use that is required to be demolished and does not satisfy the applicable criteria cannot qualify as a principal use because it clearly is not the primary purpose for which the land or structure is intended. And an accessory use to the temporary use clearly cannot vest the entire PUD.

Both the PUD Approval and Life Time project approval expired. The mere construction of a foundation for a building that is accessory to a temporary use that was not contemplated by the PUD Approval cannot vest a PUD of this size, scope and intensity. Since the Life Time project relied on and is contingent upon the PUD Approval, Life Time cannot establish a vested right because it has not commenced any construction activity and it knew there was a risk the PUD would expire when it was seeking land use approval for the project. Therefore, the City Council should reverse the Decision and declare both the PUD Approval and the Life Time project approval invalid.

Very truly yours,

HATHAWAY LARSON LLP



E. Michael Connors

cc: Client
Enclosures

Partial Transcript
Planning Commission Hearing - March 13, 2019
Peterkort Surface Parking Lot Application No. CU2018-0023/DR2018-0167

This document provides a partial transcript of the relevant portions of the Planning Commission's hearing on March 13, 2019 for the Peterkort Surface Parking Lot Application No. CU2018-0023/DR2018-0167. Start and stop times are provided for each portion of the hearing transcribed based on the City's video/audio of the Planning Commission available online.

Start 7:49

Jana Fox: All right. Good evening chairwoman Nye and commissioners. I'm Jana Fox, current planning manager. I'm here tonight to talk about the Sunset Surface Parking proposal. And I've got – kind of to piggyback on what Ms. Slatinsky said, I have some background for you. This particular property, the Sunset Stations site, as it's generally called, surrounds Sunset Transit Center and it is part of the Sunset Station and Barnes Road PUD, which I believe maybe three of the seven of you were on the planning commission in 2013 when this PUD was originally approved. So for those of you who were, this is a bit of a refresher, and for those of you who weren't, this is a little bit of background. Um, this PUD was primarily a transportation exercise. The applicant identified a broad range of potential uses on each site. Not that they were tied to those uses, but those uses then informed a transportation impact analysis that looked at all of the transportation improvements that would be necessary to make a full and dense urban-style mixed-use development happen in this area. As you'll note in your staff report and on the map, these parcels are on the north and south side of Barnes Road. They also run all the way from the intersection of Barnes Road, Highway 26, and 217 near St. Vincent's hospital, all the way past the Cedar Hills Boulevard and Barnes Road intersection and Highway 26 just south of there. So the planning process for that PUD involved a significant amount of coordination with ODOT, with Washington County, who is the street authority for Barnes Road, and the City of Beaverton, as well as the applicant team. So as part of the applicant's PUD proposal and subsequent approval, there was a very long list of transportation improvements that will have to be completed as these developments move along, and the way that that works is every time a development comes in on one of these parcels, the applicant has to do what we've kind of called a "mini-TIA," which means that they look at what trips are actually generated from the use that they are proposing at this time, and how that compares to the overall amount of trips that were entitled for this development overall as the full PUD build-out. And with that, that analysis, the additional identification is which of those laundry list of transportation improvements – and there are many – are triggered by any given phase of development. In this case, the number of trips that are proposed are not huge in comparison to the overall amount, and so the improvements we are looking at are more focused on frontage improvements. However, it's anticipated that the improvements are going to be fairly large for subsequent phases of the development we're going to see out here as the sites intensify. So that's just a little bit of background to put some context on this proposal, that it's part of a larger, um, a larger area and a larger PUD approval, which you probably got some hint of in the staff report, so this is just trying to round that out a bit.

So the project itself. So, as you can see on the project site, the red dot in the picture on the left is sunset transit center. You'll note that this site is near the Highway 217 and 26 on ramp and off ramp system, and the parcel in question is the orange-outlined parcel around the transit center. You'll also see through the middle of the picture on your left, the existing kind of road that comes around that is the current road that serves sunset transit center, the parking garage, and the buses to the west, to give you context. On the drawing on the right, you will see the applicant's proposal. The darker gray phase is the proposed phase one, which has 263 parking spaces in the first phase, with the option for a phase two that reconfigures three of those spaces, then adds another 200 spaces. And that's in the white. The applicant has also, um, shown a – you'll see it comes across as pretty dark in this image – access road that connects to the existing sunset transit center and to Barnes road. As part of the PUD approval, the actual connection locations to Barnes road where either fully signalized intersections or right-in, right-out intersections were approved at that time, so the applicant is limited on where they can connect Barnes's access, controlled by Washington County given that it is a very major street, we don't want a lot of driveways in very many places. So the applicant is proposing to connect at a pre-approved access location, per the PUD. However, the number of trips at the parking lot, even at full build-out is not sufficient to warrant full signalization at that intersection, and so they are proposing a right-in, right-out at this time. The absolute, ultimate design of that will have to be approved by Washington County in terms of a pork chop or a median, and there is a condition of approval to that effect.

All right. So this project contains a conditional use application because parking as a principal use is a conditional use in the station community sunset zoning district and a design review three application. The design review three is because the applicant has a design review concept build-out plan, which is a tool for those of you newer to the commission, that is used when the applicant is not proposing to meet the minimum floor area ration in the zoning district with a current proposal. So they have to show how the floor area can be met in the subsequent development phases to ensure that they're not precluding the build-out of the site, the ultimate desired potential. So I've got a site plan here from the applicant. So, noting just where Barnes Road is, this is also a colored rendering so it's a little easier to see things on. **So you can see the guard structure is there in a little bit of off-white with the arrow pointing toward it. It's fairly small in comparison to the parking lot, and that is just intended as an accessory use to have someone onsite for security or if there are issues with the mechanical gates to assist people.** You can also start to see here the sidewalk network along the internal street as well as throughout the parking lot itself. I would note staff has included a condition of approval requiring an additional north-south pedestrian connection through the middle of the parking lot since one is not proposed currently. That would be they'd have to do one with the first phase and then when they come back to build the second phase, they'll have to continue that or provide a new one that connects in.

All right. I do want to touch on the design review build-out concept plan. And this was also provided in a memo that you received yesterday. The one in the packet was not the correct one. The one we provided to you yesterday is the one that was used by staff in their evaluation. So you can see that the applicant has show that there is a block pattern. What I would like to note on

this and is, I believe, noted in the applicant's memo that you received yesterday is that the one out-of-date piece of this is that the access they're showing is not fully aligned. Their newer proposals move that access to head B ultimate access point. So what you're seeing on the DRBCP, those two access points that look parallel to Barnes Road will be one. That's – just did not get updated to match the most recent alignment of the street at its ultimate location. So to clarify, that's why you see these odd two parallel streets. That is not the intent. But the applicant has shown what we would consider, based on this zoning district, a fairly conservative development of four stories. The height in this zoning district is 120 feet. So there's substantial ability to go quite a bit taller with future development. The applicant's DRBCP did not show any floor area ratio calculations on top of the parking lot, however, given potential land values, I think it's realistic that that would redevelop as actual commercial development in the future. But, to be conservative, in the design review build-out concept plan, that piece was omitted just to show that it could be done without having to remove the parking lot to meet the minimum FAR. And then the last piece, the applicant is proposing the guard structure, which is of course subject to design review requirements. It's a 200-square-foot structure. It basically contains a desk and a little bit of space for the security guard, as well as a restroom. The two sides that face the internal driveway – um, the internal drive access – where the guard would be looking out have windows and doors. I also have a materials board I'll prop up on a chair for you – it's fairly large – to pass around. There's a stone base as you can see and lap siding along the side as well as a pitched roof with a 60-square-foot covered porch area around the front of the guard structure. The two sides that are not articulated with windows are covered with fairly dense vegetation as you can see in the landscape plan that basically try to blend that into the background. **It's a fairly – it's a fairly short structure intended to be accessory to the parking lot.**

With that, staff is recommending approval of Sunset Surface Parking subject to the conditions of approval, and I am happy to answer any questions you may have. Actually, sorry, I forgot I have one more thing. I wanted to introduce an additional piece of public testimony that you received. You did have two memos, one from March 12 yesterday that you received via email and on the dais this evening, and another one from today that had a piece of public testimony from Jake Mintz and Eric Mace that was received this afternoon, as well as a colored landscape rendering I used in my proposal from the applicant. At the hearing, we received from the applicant exhibit 3.4, which is an email exchange with TriMet just reiterating the support for the application because they did not have time to get their letter in. So there is a kind of star next to the piece I believe they want you to pay attention to. So please consider those as part of the public record this evening. Now I'm here to answer questions.

Stop 17:36

Start 21:49

Scott Eaton (Peterkort Representative): Good evening commissioners. I had hoped that the first use would be a little bit more exciting than this. Commissioner Winter is the only familiar face back from the PUD approval days. This process for us started, I think, back in about 2009 with the writing of the new SES code. I'm starting there because that was also a process of public involvement, where we met with the neighborhood and people in the area to talk about, you know, what we were writing into the code with Jana and other members of the staff at that point, and one of the biggest things that we heard from the local neighborhood was the lack of parking at the Sunset Transit Center Garage. So for any of you who know and are familiar with it, you know that it's filled every morning by about 10 minutes to seven, and then kind of magically around 3:45 in the afternoon, some stalls start opening up again. If you're a neighbor, you realize that parking – if it's not policed – is poached from anywhere from the hospital to Peterkort Center office buildings all the way over to all of the streets that surround Cedar Hills – the old Cedar Hills shopping center across the freeway. So there is a lot of pent-up demand for this station. So anyone getting into the development business at this site has to acknowledge that all parking has to be monitored and managed. So this is not necessarily something we wanted to have to do, but we knew even back then because of the demand, we needed to somehow measure it. We started talking to TriMet back then as well. TriMet had always realized that this garage was probably too small to begin with, and this is basically our case study to try to figure out how to maybe differently manage parking, how to nominally charge for it in order to manage it, but then also to try to figure out before we have other uses on site, how much we have to forecast demand for the ultimate development, because as Jana said, this is going to be a very dense development. So we're looking at densities that are much more urban than anything else in the area. If we were in Portland with product like this, we would probably be developing far less parking just because we would be in the urban core and it's served well by mass transit. This is an anomaly because it's served very well with mass transit, but the demand from the park and ride and the neighborhood is extremely large. And so there's this nominal rate that says OK, no one's going pay the same at this location to park and ride a train or a bus downtown, but there has to be something done so that maybe there's more capacity during the day. So we can't tell you much about how we're going to manage this yet because we don't know, but that's what this part of the parking lot is designed for. We will have the automated arms and the ticketing that you're used to, but we don't really know exactly how we're going to charge. We hear from the neighbors that monthly parking is really high on their list, but if we did all monthly parking, we wouldn't be accommodating anyone who would like to park, go to an appointment downtown, and then come back in the middle of the day. **So this is something that's, um, it's definitely a cost that it's doing us some good, it's hard to look at something like this that is basically going to be demolished, but at the same time, in order for us to build enough parking and subterranean under the buildings that we plan to construct here, we need to know how much we need to build. And that's the reason for this.** Let's see, have I missed anything here? Oh, we did have a public meeting for this. Had a little – you know, it was kind of funny in a way. We had a lot of positive feedback. We expected that there would be a fair amount of negative feedback because “surface parking” with no associated use is usually not a very popular item. Not in this case. Everyone that came basically said, “Yes, this is great. We need this.” I just

thought you'd like to hear that because I didn't expect that at the public meeting. I think I'm going to quit talking now and introduce Hal Keaver with David Evans and Associates. They are the land planners and civil engineers for all the work that we're doing there. And I'm sorry. I didn't introduce myself. I apologize. I just heard commissioner Winter say that. I am Scott Eaton. My business partner Lance and I are assisting the Peterkorts in this development

Stop 27:19

Start 42:35

Commissioner Lawler: I have a clarification. This design review build-out concept plan – that's kind of a mouthful – my understanding this evening, and correct me if I'm wrong, is that you do not need this area to be the PUD development because you have covered your density in other block, is that correct? Or will you be eventually developing this with residential and commercial as part of the original PUD plan?

Eaton: This will ultimately be developed over. When I stated earlier that it's kind of hard to spend a few million dollars on this parking lot when it's a temporary use, but at this point, we are starting at the far eastern edge of the station site, which is this site, and this is – we're just going to work our way west. So this made the most sense with regard to the way we plan to develop the site, but also with regard to the access and ingress and egress to the TriMet garage.

Hal Keaver (Peterkort Representative): If I may add to answer you a little bit more specifically, we can build out the required FAR without developing this site, but to go to Scott's point, we intend to develop this site.

Commissioner Lawler: So will the utilities – and I think of water, sewer and electric – I mean, I know you're bringing some up to serve the guard shack, but will you be oversizing it to basically accommodate the eventual development of this site?

Keaver: That's a great question, and um, we're working with Clean Water Services and the City on those capacity issues, and what we have decided to do because – those of you who may not have been here when we had done a different master plan and the market was different, the uses were different. And so with residential development, it requires a much higher sanitary sewer capacity, and so we have developed a master plan for that so that not only all of the station's site can be developed at the highest density, but so can what we call the Holly site, and then parcel 12, which is directly north of Barnes road. And so, as a matter of fact, we have to provide the city with those calculations as well as Clean Water Services so that they're done. The one thing I didn't mention is that for this parking lot, we are paralleling the storm sewer that we're bringing up from Valeria View with the sanitary sewer where that was planned when we put in Valeria View.

Commissioner Lawler: Yeah, I saw those drawings in there, so I was curious. Thank you.

Eaton: Commissioner Lawler, to further answer your question, **Hal mentioned the minimum FAR requirement per the zone. None of our plans for this site are to meet the minimum FAR for this site. It's actually all going to be predicated by the number of trips, and we have a lot of traffic trips in our TIA that was done with the PUD. So it'll be a very dense area.**

Stop 46:17

Start 1:03:39

Commissioner Nye: Ok, so that's the end of my technical questions. Um, I have much broader concerns with the application, actually, in that **I'm having a hard time seeing how this project meets the chapter 3 goal of supporting pedestrian-oriented mixed-use areas and specifically the policies associated with that: A, B, and C. I honestly had a really hard time getting into the application because I couldn't get past that element – having a parking-only development does not seem to support the goals of this area.** So I'm hoping you can address that and help me over that barrier.

Eaton: Well, I didn't expect this, so bear with me here for just a second. But, I think what this is attempting to do is maximize the density and the pedestrian aspects of this development far greater than what would be standard protocol for a suburban area like this. So when we're talking about the effect – and I know that you know about this stuff very well – it's really a challenge for us to figure out how much parking we have to build, and we want this to be a pedestrian-dominated development. We want trails here that lead all the way to the west end of the properties. **There is almost no way for us to know and be able to talk to lenders about how much parking to build here with any kind of rough ideas about what is justifiable.** In reality, we'd like to build no parking. Because as far as we know, nobody pays for parking in this area. So you can imagine what a hit that is to our ability to produce a margin in our pro formas. **So we're testing this out to make it as much of a pedestrian environment as we possibly can.** And I know that building a parking lot doesn't seem intuitive for that, but we're not in downtown, and we're not in Hillsboro. So we're in this place that is the first stop outside of the city, and it seems like it's very attractive for urban development, but at this point we're looking to build three times more parking in our buildings because we think that people have a "suburban mentality," and we're hoping that they don't. So this is not a mixed use development. It's also why it was written into the zone as a conditional use. I mean, this was very specific to this station site because it was such an issue with demand. If you build a parking stall, it will be filled by people that are within a mile and a half of this station riding transit.

Commissioner Nye: Oh, I don't have any doubt that the parking lot would be used as a park and ride. I don't – that's not my issue. **My issue is that what's being proposed is something that's incongruent with the goals of the district with no development associated with it. And I'm hearing that you have stuff coming, but there's nothing for us tonight of the current application that says this is supporting a bigger overall development that's, you know, happening.** And I can understand the issue of not being able to have comps for "I need this

much parking for this kind of development in this kind of neighborhood.” If this parking lot as a primary use came in with an apartment building across the street, you’re saying we’re building the parking lot because we don’t know how much parking we’re going to need, so it’s surplus parking for what we think we need at our building and we’re going to be flexible with its use – **I can see that kind of application, but as a primary, standalone application, it doesn’t seem to support the goals of a mixed-use development. And I guess, I’m still not getting there. Like I said, I understand your development predicament, but I think there are other ways to get there, and that this just isn’t meeting our goals.**

Eaton: So will you feel differently when you see the applications coming in for the buildings on the easterly portion of the site?

Commissioner Nye: If this came in with a land use application, those – yes.

Eaton: Um, the reason we – I mean this – On the easterly end of the site, we have planned for an office building that got extremely ugly very quickly because of parking. So I guess to back up so you can be part of our process, we ended up with two fairly attractive timber buildings, and then a parking structure that, you know, because of us not knowing the parking, all of a sudden we had “well, let’s tuck a little bit under here,” and then “well, no we can’t afford that,” and now all of a sudden there’s a parking structure next to the second attractive building that dominated the site. So if you back up in our life, as we’re trying to start, and then you look at this monstrosity, we didn’t want another parking structure on the station. We want it to be active uses, as much subterranean as possible, and we don’t want, you know, we don’t want to have to build too much of it. So we’re a little bit behind the eight ball because that massing study, that office study actually happened prior to the massing study. We were chasing a tenant. We’re chasing another tenant right now, and we literally don’t want to have to build much, if any, above-grade parking. We don’t want to see the cars. So, this really is necessary because we are “rippable” basalt down 30 feet. Um, we hope it’s “rippable.” But you can imagine if we were on the other side of the West Hills right now, we would only need about .3 stalls per unit. I know you know this market extremely well. Would you be able to build in your best wisdom only .3 stalls per unit here? No, and then when you ask yourself “how many do I really build?” I can’t answer that question to save my life! I don’t know. And with the influence of the transit ridership on this site, that could either save you or kill you. It’s one of those things – this is such an anomaly to try to figure out for a dense suburban area that we’re trying to make it urban, but we’re also trying to develop it to a margin where we can attract investors, and that’s really difficult where they can go and pay more for the land, but we end up paying as much for the parking, the additional parking that we’re having to build as that land costs on the other side of the hills. So if that was – I was trying to give you the step-by-step that led us here, but if I would’ve shown you a picture of the office building parking garage, it probably would’ve been – actually, it would’ve been a great thing to bring to show you this. We don’t actually plan to build that building any longer. Now we’re looking at residential buildings on the east end of the site, and we’re trying to, like I said, that might be the only place on the site where we have some above-grade parking because after the site is graded, it’s a little higher, we’ll tuck it in, and still probably do at least one level sub-T and have half of the building propped up against the easterly property boundary.

Commissioner Nye: Ok.

Eaton: Did I ramble too much?

Commissioner Nye: No. But I still don't know if I'm over the hurdle. But I'm also only one voice.

Eaton: In our mind – can I answer it a different way?

Commissioner Nye: Yeah

Eaton: This is no different than trying to find out the capacity to the sewer line to the site. It is just another utility, and we're trying to figure out a way to gauge – I mean, at least for the sewer lines we can count how many toilets we have. We can't count how many cars because the parking that's there is filled every day, and it's static and we can't count it. Even our guys can't count it because they don't know how many people might drive to the site if there was parking stalls there.

Commissioner Nye: Right. But your ultimate goal, I don't believe, is to provide – I mean I don't think the goals for this area is to provide more park and ride parking as an end result. Or maybe that is your goal.

Eaton: Well, it is to provide enough parking to the retail amenities and, you know, office and residents on the site. And if we're wrong in gauging that, all of a sudden it doesn't work like a hub like it's supposed to for the transit at the site either.

Commissioner Nye: But how is providing a new park and ride informing how much parking you need to support new housing onsite?

Eaton: If we build 3,000 apartments right there on this site and we don't have any other parking, and we just have TriMet – the garage filling up every day just like it does now, where do we park the parkers who are coming for, you know, to eat at the new restaurants that are there. And how do we do a big tray like we do in the diagram that was up there where we have some short-term parking on the first grade down, and then maybe office and residential on the floors lower. I mean, that – those are the questions we're trying to ask right now, but we're asking those questions at \$55,000 a stall. Now, I mean, I guess to really put a period on this, maybe we're not ready yet based on the density. Actually, here's another way to answer this. Our best pro forma right now is a very tall building – I mean, still within the code, but a very tall building for this site. So it also magnifies the impact of, "Ok, exactly how many stalls do I need underneath this building and now what is my block dimension?" We're trying to figure out how to go three floors down and have it accommodate just what's going on in the building. And now all of a sudden it's becoming a challenge for, ok so how do we manage this in order for retail drivers to come to this site knowing that some of those stalls will be taken by transit riders as well? Does that help at all? Or not?

Commissioner Nye: I'm not sure it does. We'll see.

Eaton: 230 units in one building with only the ability to go three floors down?

Commissioner Nye: Yeah.

Eaton: Yeah. All of a sudden, I'm running out of parking in the footprint of the building even though I'm committed to going sub-T.

Commissioner Nye: Right. I think it just goes back to the discussion of what is this parking lot serving and how is it being used and the fact that it – it's serving as a park and ride with no other development associated with it.

Eaton: Well, so I'm not, um. Let me say this a different way then, too. If we were going with the minimum density, I think minimum density on the station is 32 units an acre. I would be able to do one above-grade parking garage to accommodate all of my retail parking, and the rest of the parking could be surface. Because we're pushing the density in a place where we don't have anything to look to for demand other than filled-up spaces everywhere within three-quarters of a mile of the station, we can't gauge it. So we're trying to do it in a place that, you know, when you put a pinpoint on a map, all of a sudden this place fills up with parking because, you know, it's all free. This place fills up more than almost any place downtown, where it's charged. We're not trying to do this, we're trying to solve for it. Because our density is growing immensely with regard to us underwriting the development, now we're challenged with "Ok, how do we even guess right?" So I may not have answered it again. I'm trying.

Commissioner Nye: Ok. I have other questions from commissioners, so maybe it'll help. Uh, Commissioner Overhage?

Commissioner Overhage: It's just a really simple one. When you keep talking about subterranean parking, and so I just wanted to verify there's no watershed under here that would prevent subterranean parking, is there?

Eaton: Not that we know of.

Commissioner Overhage: I only ask that because that's been a problem for Washington Park's development, for example, so there are some areas with a mountainous topography that that has precluded subterranean parking. So to the best of your ability, any studies you have done show that it's buildable down for your future?

Eaton: Yes. That's correct. Well, only to 30 feet.

Commissioner Overhage: Well, you can drill, but it's expensive.

Eaton: Yes.

Commissioner Nye: Commissioner Uba?

Commissioner Uba: (inaudible) I need all kinds of help tonight. I'm glad I'm in good company.

Eaton: Me too, Commissioner, me too.

Commissioner Uba: I'm in good company. Thank you guys. The chair is bringing up an interesting point. I'm sure you would agree to that. This is a station community, and as you

rightfully said, it's supposed to be dense, and it's going to be dense. That's what we all expect of that area because that location, in my view, is an extension of downtown Portland. Period.

Eaton: I agree.

Commissioner Uba: So, to put a parking lot in an area that we're expecting high density doesn't look right. But we understand why you want to do it. **It's like an experiment. At the same time, I think, as you rightfully said, it's temporary. Maybe we need a COA somewhere here to clarify that this is only temporary. Because the way everything is written now, it looks like it's going to be permanent.** That's something I would like us to consider, because I do agree with you. But initially when I read this, briefly, quickly, I assumed based on what I saw that it was temporary. I said "Oh yeah, this is a great site." But you're going to be charging money. TriMet is not charging money. Although I think I read something in here that said they are interested in working with you to, in the future, to figure out how to charge money for their own – for their own building. Yeah, all of this is an experiment, but although it's a great location, it's an extension of downtown Portland. So we need to figure something out so this – so we're clear here that this is a temporary parking lot. What do you think about that proposal, and also my fellow commissioners, what do you think about that?

Eaton: **I think that is – I think we completely agree.** I mean, I think we completely agree because we know what we're writing the land value into the ultimate density and it's not economic for this to be a parking lot later anyway. **Um, we don't like to waste \$2.5 million on a parking lot, but um, I guess I ineffectively tried to explain what we're wrestling with, with parking in order to achieve the kind of urban environment that we want.** Maybe if I was more articulate I could've gotten that point across, but, you know, most downtown buildings have a parking ratio of about one per thousand. We feel like we need more than that here, and it's a challenge to get to anything that feels like it's, you know, probably accommodating the demand that we will have with our 30-foot ability to go subterranean. As far as the temporary, I don't – you know, the density that's allowable on this site – you know, I wish I had a massing plan done right now so that I could tell you how much GLA we could build up to this line. But I don't have that information available yet. I have to believe it's a pretty – we will all find it to be a very dramatic, very urban, bring Portland over the hills type number.

Commissioner Uba: So, with that said, is there a way staff can propose a condition, or a COA that this conditional use for this development would be recognized -

Staff: I suggest we get through the applicant presentation, and conduct the public hearing, and proceed according to the normal order of the meeting, and staff can certainly start putting something together that the commission can then consider and the applicant can consider.

Commissioner Nye: I guess, one follow-up question to that is **what is, in your mind, a temporary time period for this parking lot?**

Eaton: **Hal just tapped me here and said "what if we just did a review of it at 5 years?"** And in my mind, I'm thinking, ok, if I'm starting at the east end of this site and I'm building – let's say I've built a dozen buildings on the east end. In five years, I don't think I can build that, but in

five years, you'll all feel a lot better about what we're doing there and you'll see the density we're discussing right now. Is it an amenity to have it there for various reasons? You know, we will know what we can do there at that point, but then the other thing that might be nice is just that it's there for capacity for ridership. I don't know. And I'd hate to just wad it up just because we're concerned about density when, if we're proving out density and we're just going from east to west, is it still acceptable to have it there? Maybe we have a review that says, you know, with certain conditions that says, "Do we still like this here?"

Commissioner Nye: Ok, Commissioner Winter had some questions.

Commissioner Winter: So in my humble opinion, what we're running into are the nuances of a design review concept build-out plan, which Commissioner Overhage touched upon right out of the gate which kind of set the terms. There is no endgame. There is no end of the earth and then they fall off the table thing in a design review concept build-out plan. They have as long as they need. Staff is well aware of my concerns with this. But the point is it's legal and we do it all the time. So as far as putting in a condition of approval that says they have to have this done by X date, that's not in the game plan for a design review concept build-out plan. They can say "we're going to develop this site here, and we're going to develop five more plots, too. We don't know when." And that's perfectly – they have that right.

Commissioner Nye: Well, I think my issue is not with the design review, it is with the conditional use application, which is not the design build-out concept plan. And a time frame on the parking lot as a primary use could be tied to the conditional use application if the commission was inclined to approve it. So I think as we all – or most of us, or many of us have some issues with design build-out concept plan, to me that's not the issue tonight.

Commissioner Winter: And I don't agree.

Commissioner Nye: Did you have others?

Commissioner Winter: That's fine. It's something we've wrestled with for years.

Commissioner Nye: Yep.

Eaton: Chair Nye, what – I mean you've heard me wrestle with it. I'm trying to wrestle with it transparently for you so that you know what we're dealing with. **We don't want to be in the parking business.** We're trying to figure this out. I know that you deal with this kind of stuff all the time. We've been dealing with people who deal with it all the time, and the best guidance we could get on how many stalls we should use to test, well it's somewhere between 250 and 500, and that's from the expert in the region with regard to parking. Nobody seems to really put a range on this particular site with this kind of density in an area where you still look around and it's just all suburban. Everyone's terrified. Including me.

Commissioner Nye: You can't walk to the grocery store from here right now.

Eaton: Pardon me?

Commissioner Nye: You can't walk to the grocery store from here right now.

Eaton: No, no. We wish we had a grocery store here right now. We're working on that, too. But, um, case in point, people park in that parking lot at the grocery store, and walk to the station. Typically in downtown, they won't walk that far, or so they say, but this is really an anomaly here. **We're not trying to build parking here. We wish we actually didn't have to and we could just build the permanent stuff because that is not the Peterkort's family – the Peterkort family's idea of a good investment. Talking about spending this kind of money and then ripping it out?** It hasn't gone over very well. But we want the plan to look like a pedestrian-dominated urban environment, skinny streets, and if the cars are there, we'd like them not to be visible. And we'd really like to avoid what I call the "Bellevue Effect," which is the heavy, heavy podium, you know total block [motions rectangle]. I hate that in the worst way. So we are trying to figure out how to afford almost all subterranean parking in a place where we're not supposed to be able to afford it yet. I mean, four dollars a day doesn't seem like much – that's what we're being told is probably the price. But it also might be creative enough if there's short-term use throughout the day that, even though it's not very expensive, it's providing flexibility for those day users that nobody really knows how many exist right now because there's no place for them to park. How many come and go because it's easier to park here than it is to drive downtown. That could be just creative enough that we could afford the right amount of parking. With 30 feet down, our total parking here ends up being about 3400 stalls total. When you look at the density on this site, someday nobody will be able to drive to this site and ride the transit station. It will all just be fed by people walking from this hub. So it's really a challenge because 3400 stalls doesn't put a dent in the ultimate density that's in walking distance of this site. And then here's the other issue. Financing parking today with things like autonomous cars and ride shares and all this stuff – it's – I hate the fact that we talk about parking all the time, but nobody knows how much of it to build, nobody knows if they want to lend on it, and 34 – I can't do the math – 3400 times \$50,000 – the land is worth negative \$200 per foot. So it's nice that we have a very patient longtime owner, but we wouldn't be able to be playing with these things if we didn't.

Stop 1:31:59

Received
 Planning Division
 03/02/2020



March 2, 2020

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VIA EMAIL(JFOX@BEAVERTONOREGON.GOV)

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 City Council
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Re: Life Time Fitness Director's Interpretation (DI2019-0003)

Dear Mayor Doyle and Members of the Beaverton City Council:

My office represents LTF Real Estate Company, Inc. ("Life Time") in connection with the above-referenced application. On February 5, 2020, the Community Development Department ("Staff") issued the Notice of Decision for the Life Time Fitness Director's Interpretation (DI2019-003) (the "Director's Interpretation"). On February 14, 2020, Beaverton Business Owners, LLC ("BBO") filed an appeal of the Director's Interpretation (the "Appeal").

The Director's Interpretation concerns the vesting of the Sunset Station and Barnes Road Planned Unit Development (CU2013-0003) ("PUD"), which was approved on November 13, 2013 and was set to expire on November 5, 2019. The PUD encompasses approximately 80 acres along SW Barnes Road and includes 7 parcels.

The Director's Interpretation also concerns two developments within the PUD area. First, the Sunset Surface Parking facility (CU2018-0023/DR2018-0167) was approved by the Planning Commission on March 13, 2019. The Planning Commission's decision was not appealed and became final on April 9, 2019. Second, the Life Time Fitness project (DR2018-0128/LO2018-0005/SDM2018-0007/TP2018-0009) was approved by the Planning Commission on June 12, 2019. BBO appealed the Planning Commission's approval, and the City Council issued a final decision denying the appeal and affirming the Planning Commission on July 16, 2019 (APP2019-0002). The City Council's decision was appealed and is now pending before the Oregon Land Use Board of Appeals ("LUBA").

The Director's Interpretation adopted the following conclusions concerning the PUD and the developments within the PUD:

1. Construction of the footing of the guard structure authorized by the Sunset Surface Parking approval constituted "substantial

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construction,” which vested the Sunset Surface Parking approval and the PUD pursuant to BDC 50.90.3.B.2;

2. It is unnecessary to determine whether commencement of construction of the Sunset Surface Parking facility constituted a “change in use,” which vested the Sunset Surface Parking approval and the PUD pursuant to BDC 50.90.3.B.1; and
3. If the PUD had expired on November 5, 2019, the expiration of the PUD would have no effect on the Life Time Fitness approval.

The purpose of this letter is to respond to the Appeal arguments concerning the first and third conclusions in the Director’s Interpretation.

Conclusion No. 1: Construction of the Guard Structure Foundation is “Substantial Construction,” which Vests the Sunset Surface Parking approval and the PUD.

Substantial construction is one method to vest a development approval under the Beaverton Development Code (“Code” or “BDC”). The Code provides:

“[a] decision shall expire according to Section 50.90.1, unless one of the following occurs prior to the date of expiration: . . .

B. The development authorized by the decision has commenced as defined herein. . . .

2. In the case of development requiring construction, a construction permit has been issued and substantial construction pursuant thereto has taken place[.]”

BDC 50.90.3.B.2.

“Substantial construction is defined as, “Providing there are buildings on the site, the completion of construction of footings for the building where the principal use will take place shall constitute substantial construction...” BDC Ch. 90. Thus, the “substantial construction” vesting method requires (1) issuance of a construction permit, (2) completion of construction of footings (pursuant to the construction permit) for the building where the principal use will take place. “Principal use” means “[t]he main or primary purpose of which land or a structure is designed, arranged or intended or for which it is occupied or maintained.” BDC Ch. 90.

In this case, the principal use of the Sunset Surface Parking approval is parking. The project applicant J. Peterkort Company (“Peterkort”) applied for New Conditional Use and Design Review approvals for the Sunset Surface Parking facility, which the City approved. Order Nos. 2685 and 2686 approving the Sunset Surface Parking facility are attached as Exhibit A. The City’s approval of the Sunset Surface Parking facility is now final. The Notice of Final Decision dated April 9, 2019 is attached as Exhibit B.

The guard structure is the only building on the Sunset Surface Parking site and is a part of the parking facility. Staff Report for Sunset Surface Parking, at CU-1 (Mar. 6, 2019), attached as Exhibit C. The City issued a construction permit (BP2019-2788) for the foundation of the guard structure on October 10, 2019. *See* Letter from Peter Livingston and Jana Fox (Nov. 4, 2019), attached as Exhibit D. The applicant constructed the foundation of the guard structure, including the footings, pursuant to the construction permit, which was verified by City inspection on October 23, 2019. *Id.* Vesting of the Sunset Station and Barnes Road PUD was achieved by (1) issuance of a construction permit for the guard structure foundation and (2) completion of the guard structure foundation (including footings) pursuant to the permit.

There is no dispute that a construction permit was issued for the guard structure or that the construction of the building’s footings are complete. BBO’s challenges relate to use of the building, arguments which, for the reasons described below, should be rejected, and Staff’s vesting conclusions should be confirmed by City Council.

A. Describing the parking facility as an “interim use” does not change the approval of “Parking as the Principal Use.”

BBO argues that construction of the guard structure foundation did not vest the PUD, because the guard structure is a “interim use,” and therefore cannot be a “principal use” for the purpose of determining whether substantial construction occurred. This argument ignores the City’s explicit statements that parking is the principal use of the Sunset Surface Parking site. Further, the duration of how long a use will occur is immaterial to whether the use is considered a “principal use” for vesting purposes.

First, the Planning Commission unequivocally approved parking as the principal use of the Sunset Surface Parking application. The Staff Report explains:

“The applicant proposes a 460 space surface parking lot with an approximately 200 square foot guard structure. The proposed parking is the primary use of the site, [and] therefore is classified as ‘Parking, as a Principal Use’ which is a Conditional Use in the Station Community-Sunset (SC-S) zoning district, meeting Threshold 1 for a New Conditional Use[.]”

Staff Report for Sunset Surface Parking, CU-1 (Mar. 6, 2019) (emphasis added).

Likewise, the final order approving the Sunset Surface Parking application states that “[t]he matter came before the Planning Commission on March 13, 2019, on a request for a New Conditional Use application **for Parking as the Principal Use**,” which was granted. Order No. 2685, p. 1 (Mar. 28, 2019) (emphasis added). The Planning Commission could not have been clearer that parking is the “principal use” of the site.

Further, approval of parking as an interim use does preclude classifying parking as the principal use of the site. “Interim use” is not a defined term in the Code.¹ In this case, the Planning Commission described the Sunset Surface Parking facility as “interim,” because Peterkort intends to eventually construct a high-density mixed-use development on the site. Staff Report for Sunset Surface Parking, CU-2 (Mar. 6, 2019). In connection with the parking facility application, Peterkort applied for a Design Review Build-out Concept Plan (DRBCP), which shows how future intensification of the site can be provided to meet the envisioned intensity of development. *Id.* at CU-4. To ensure redevelopment occurs, the Planning Commission conditioned the Sunset Surface Parking approval to expire under the following conditions:

- “a. If CU 2013-0003 (Sunset Station & Barnes Road PUD) expires.
- “b. 5 years after issuance of a certificate of occupancy unless there is an active land use entitlement for a minimum of 80,000 square feet of non-residential floor area or 200 dwelling units on the station site.
- “c. 10 years after issuance of a certificate of occupancy.”

Order No. 2685, p. 3 (Mar. 28, 2019).

The fact that the Planning Commission imposed limitations on the Sunset Surface Parking approval does not change the Planning Commission’s approval of “Parking as the Principal Use” of the site. Quite simply, whether or not a use qualifies as a principal use does not consider the duration of the use. Here, when approving the Sunset Surface Parking, the Planning Commission acknowledged that the use was intended to transition to another use and imposed conditions to ensure the same, but Planning Commission nevertheless approved “Parking as the

¹ By contrast, the Code defines “Temporary Use” as “[a] short-term, seasonal, or intermittent use.” BDC Ch. 90. BBO initially argued that the parking facility is “temporary use,” BBO Letter, p. 2 (Dec. 26, 2019), but has not reasserted that argument.

Principal Use.” That finding was not challenged, is final, and it is appropriate to rely upon that finding when making a vesting determination.

BBO further argues that the Sunset Surface Parking facility did not comply with applicable approval criteria, and therefore cannot be the “principal use” of the site. *Even if* the Sunset Surface Parking facility could not have complied with approval criteria if approved as a permanent use, the time to argue that point has passed. The City’s approval of the Sunset Surface Parking facility is final.

B. The guard structure is a part of the parking facility that was approved as the principal use.

BBO also argues that construction of the guard structure foundation did not constitute “substantial construction” because the guard structure is an accessory use. Appeal, p. 4.

The definition of “Parking, as the Principal Use” is “[a] *facility* providing for the temporary parking of automobiles and transportation vehicles which arrive and depart daily.” BDC Ch. 90 (emphasis added). In this case, the guard structure is part of the Sunset Surface Parking “facility” approved as the principal use of the site. The guard structure includes an office with windows and a restroom, and is intended to house a security guard to provide security for and to attend to any issues concerning the parking facility. Staff Report for Sunset Surface Parking, DR-8, DR-10 (Mar. 6, 2019). The principal use of the guard structure, therefore, is parking. Notably, the definition of “substantial construction” does not require that the principal use take place *within* the building. The definition of “substantial construction” requires construction of the foundation of “the building *where* the principal use will take place”—it does not require construction of the foundation of “the building *within which* the principal use will take place.” See BDC Ch. 90. Thus, the principal use need only occur at the building; it need not occur inside the building. If the City intended to define “substantial construction” by reference to the building *within which* the principal use occurs, the City would have required substantial construction of the “principal building,” which is defined as “[a] structure within which is conducted the principal use of the lot.” BDC Ch. 90.

BBO leans heavily on the use of the words “accessory” and “auxiliary” in the Staff Report, each of which were used *once* in the 50-page report. These descriptors, however, were applied in the context the Design Review criteria. See Staff Report for Sunset Surface Parking, DR-6, DR-9 (Mar. 6, 2019). The Staff Report does not include any discussion of BDC 60.50.05, which establishes criteria for accessory uses and structures. Nor does the Staff Report classify the guard structure as a non-parking use. Rather, Staff and the Planning Commission approved the guard structure as a part of the parking facility, which is the principal use of the site.

Further, the guard structure is the *only* proposed building on the project site. Staff Report for Sunset Surface Parking, DR-14 (Mar. 6, 2019). The Code requires that, “[p]roviding there are buildings on site, the completion of construction of footings for the building where the principal use will take place shall constitute substantial construction.” BDC Ch. 90 (emphasis added). In this case, there is a single building on the site (the guard structure), and so substantial construction may only be completed by construction of the footings of the guard structure. Under BBO’s reasoning, demonstrating substantial construction for the Sunset Surface Parking approval would be an impossibility, because there are no other buildings on the site through which substantial construction could be demonstrated.²

C. Substantial construction of a development within the PUD area vests the entire PUD.

BBO’s third argument is that allowing the PUD to vest based on construction of the guard structure footing is contrary to the purpose of imposing an expiration period on the PUD. Appeal, p. 6. In support of this argument, BBO argues that the guard structure is too small, the PUD is too big, and the parking facility was not an intended use for the PUD.

As a threshold matter, BBO disregards the effect of substantial construction on the Sunset Surface Parking approval. The Planning Commission imposed a two-year expiration period on the Sunset Surface Parking approval. Order No. 2685, p. 3 (Mar. 28, 2019). Construction of the guard structure foundation was substantial construction that vested the Sunset Station Parking approval, precluding its expiration. BBO skips over the effect of construction of the guard structure foundation on the Sunset Station Parking approval, and instead argues that such construction did not vest the PUD.

Contrary to BBO’s assertion, when the Sunset Surface Parking approval vested, the entire PUD vested. The Staff Report for the PUD explains:

“In order to act on the entitlements granted by thus [sic] PUD on the specific parcels, the property owner will be required to submit appropriate land use application in the future which demonstrate how the proposed development will meet the Development Code in effect at the time of the application submittal and the conditions of CU 2013-0003 If CU 2013-0003 is approved, once a subsequent development approval is granted, and substantial construction as defined in Chapter 90 of the Development Code

² An alternative argument would be that the construction constitutes a “change in use” under BDC 50.90.3.B.1, but BBO likewise contends that BDC 50.90.3.B.1 is inapplicable, Appeal, p. 7, leaving no alternative avenue to vest the Sunset Surface Parking approval.

has taken place, the PUD and associated transportation trips will be vested for the full build out of the PUD area.”

Staff Report (CU2013-003), p. 6 (Oct. 23, 2013) (emphasis added), attached as Exhibit E.

The Planning Commission granted a subsequent development approval when it approved the Sunset Surface Parking facility, and substantial construction occurred when Peterkort constructed the guard structure foundation pursuant to the issued foundation-only building permit. Thus, pursuant to the PUD, construction of the guard structure foundation vested “the PUD and associated transportation trips . . . for the full build out of the PUD area.” *Id.*

Contrary to BBO’s argument, the PUD did not identify specific uses for development within the PUD area. Staff has explained that “the intention of the PUD is not to dictate the uses proposed on any specific site.” Staff Memorandum (APP2019-0002), p. 1 (July 3, 2019), attached as Exhibit F; *see also* Order No. 2337, p. 1 (Nov. 5, 2013) (“No new development or physical improvements are proposed in conjunction with this [PUD].”). Rather, the PUD is “primarily intended to provide a transportation framework for the area and identify ultimate transportation facility buildout required with development within the PUD area.” Staff Report for Sunset Surface Parking, SR-4 (Mar. 6, 2019). Because the PUD did not approve specific uses, BBO’s argument that the Sunset Surface Parking facility was “not even contemplated by the PUD” is a red herring.

BBO’s argument that the PUD is too large, and the guard structure is too small, for construction of the guard structure to vest the PUD, is also unpersuasive. This argument implies that vesting requirements depend on (1) the size of the constructed building or (2) the size of the PUD. Neither premise has any basis in the Code nor in the final order approving the PUD. With respect to the first, the Code defines “substantial construction” to require construction of footings for the building where the principal use will take place. BDC Ch. 90. Nothing in the definition of “substantial construction” mentions building size; the size of the building is irrelevant to determining whether substantial construction has taken place. Similarly, with respect to the second premise, substantial construction of any “subsequent development approval” vests “the full build out of the PUD area.” Staff Report (CU2013-003), p. 6 (Oct. 23, 2013). The size of the PUD has no relevance to a vesting determination. Ultimately, BBO suggests that something *more* than substantial construction of the Sunset Surface Parking approval is required to vest the PUD but does not articulate what that might be.

Finally, Staff and the Planning Commission contemplated and intended that construction of the guard structure footing would vest the entire PUD. Condition of Approval No. 30 to the Final Order approving the Sunset Surface Parking Design Review Three (DR2018-0167) application requires issuance of a Site Development Permit prior to building permit issuance. Order No. 2686, p. 8 (Mar. 28, 2019). However, that conditional allows “[a] foundation only permit for the

guard structure [to be] issued prior to full Site Development Permit issuance if the City’s review is complete and subject only to outside agency permit issuance required for full Site Development Permit issuance.” *Id.* The purpose of this provision was to allow early issuance of a construction permit for the guard structure foundation, with the intent of completing substantial construction and vesting the Sunset Surface Parking approval and the PUD.

Conclusion No. 3: Even if the PUD Expired, the Life Time Fitness Approval is Final.

The Life Time Fitness approval is final land use decision.³ That decision found that the Life Time Fitness project includes transportation improvements that fully mitigate traffic impacts from the project. BBO now argues that expiration of the PUD, if it occurred, causes the Life Time Fitness approval to automatically expire. BBO’s argument is an impermissible collateral attack on the City’s final land use decision. Further, contrary to BBO’s argument, the vested rights doctrine has no relevance in determining whether the Life Time Fitness approval remains in effect.

A. The Life Time Fitness approval is a final land use decision, not subject to collateral attack.

As a general principle, issues that were resolved in a final discretionary land use decision cannot be later raised in a subsequent land use proceeding to argue that the original land use decision was substantively or procedurally incorrect. *E.g., Safeway, Inc. v. City of North Bend*, 47 Or LUBA 489, 500 (2004). Such arguments are sometimes referred to as impermissible “collateral attacks” on the earlier land use decision.

The principle against collateral attacks is rooted in the finality of land use decisions. This principle “promotes stability and repose; that is, once the time for appeal has passed, interested persons can rely on the finality of a given land use decision in determining their course of action.” *Woodcock v. Land Conservation and Development Commission*, 51 Or. App. 577, 581 (1981).

Hoffman v. City of Lake Oswego, 20 Or LUBA 64 (1990) and *Westlake Homeowner’s Assoc. v. City of Lake Oswego*, 25 Or LUBA 145 (1993) are just two examples of the application of the principal against collateral attack in the context of an approved PUD. In those cases, LUBA held

³ The fact that the Life Time Approval has been appealed to LUBA does not alter the finality of the decision. On appeal, LUBA’s review is limited to the record and the issues that were before the City Council. An opponent cannot go before LUBA and raise new issues or evidence that was not before the City Council.

that issues resolved at the time of adoption of a PUD need not be revisited at the time of subsequent development approvals if the PUD was still in effect.

BBO argues that neither *Hoffman* nor *Westlake* apply if the PUD is now expired. BBO is correct that *Hoffman* and *Westlake* require a valid PUD. But the validity of the PUD is evaluated at the time the development application is submitted—not at some future time after the development has been approved. In *Westlake*, LUBA required that the PUD be valid at the time of application submittal: “so long as [the PUD] approval remains valid, an applicant may submit a final development plan, consistent with the [PUD], without having to address changes in factual circumstances[.]” 25 Or LUBA 145 (emphasis added). Indeed, it would be absurd to require an applicant to address changes in factual circumstances that occur during some indefinite time period *after* final approval of the development.

Such is the case here. The PUD was in effect when Life Time submitted its development application, and the PUD remained in effect when the City approved the Life Time Fitness project. The Life Time Fitness approval is a final land use decision. BBO cannot rely on expiration of the PUD as grounds to invalidate the City’s final land use decision, and BBO cites no authority or precedent for such an attack.

BBO nevertheless contends that the City *must* reexamine the Life Time Fitness approval, because the project “relied on and was contingent upon” trip assumptions and mitigation measures in the PUD. Appeal, p. 8. BBO has not pointed to any evidence demonstrating that, if the PUD expired, the transportation mitigations identified by Life Time are inadequate to mitigate impacts of the Life Time Fitness project. Further, even if such evidence did exist, it would not be grounds for requiring the City to reopen the final Life Time Fitness approval—let alone grounds for nullifying the approval.

B. The vested rights doctrine is inapplicable, because the PUD is not a zoning ordinance, and expiration of the PUD does not cause the Life Time Fitness project to be a nonconforming use.

Proceeding on the assumption that expiration of the PUD, if it occurred, would cause the Life Time Fitness approval to automatically expire, BBO argues that Life Time’s only recourse would be the common law vested rights doctrine. Appeal, p. 9. This argument misunderstands the vested rights doctrine. The vested rights doctrine has no relevance here, because the PUD is not a zoning ordinance which, if changed, would cause the Project to be a nonconforming use.

“Vested rights refer to the right to continue the development of a use that is no longer allowed under current land use regulations.” *O’Shea v. City of Bend*, 49 Or LUBA 498 (2005) (citing *Clackamas Co. v. Holmes*, 265 Or. 193, 197 (1973)). Courts have described vested rights claims as a species of nonconforming use. *See Fountain Village Development Co. v. Multnomah*

County, 176 Or. App. 213 (2001). This is because a “vested right is essentially the right to finish construction or to fully implement the use that is, or will be, a nonconforming use when completed.” *Wal-Mart Stores, Inc. v. City of Hood River*, 72 Or LUBA 1 (2015).

In this case, the PUD is not a land use regulation, and the Life Time Fitness project is not a nonconforming use, and so the vested rights doctrine is inapplicable.

The vested rights doctrine is only relevant where there is a change in the applicable land use regulation or comprehensive plan. *See, e.g., Smith v. City of Gearhart*, 71 Or LUBA 184 (2015). “Land use regulation” means “any local government zoning ordinance, land division ordinance . . . or similar general ordinance establishing standards for implementing a comprehensive plan.” ORS 197.015(11). The PUD is not a City-adopted “zoning ordinance.” *See Athletic Club of Bend v. City of Bend*, 63 Or LUBA 467 (2011) (“[T]he PUD Master Plan itself is neither city-adopted ‘standards and criteria’ nor part of the city’s ‘development ordinance.’”) (emphasis added). Thus, expiration of the PUD is not a change in law that triggers the vested rights doctrine.

If the PUD *were* a land use regulation, the “goal post” statute at ORS 227.178(3)(a) would apply, and would require that the Life Time Fitness project be subject to the “standards and criteria that were applicable at the time the application was first submitted.” *See DLCD v. Jefferson County*, 220 Or. App. 518, 523 (2008). Thus, a subsequent alleged expiration of the PUD would have no impact on the Life Time Fitness project.

Moreover, expiration of the PUD would not cause the Life Time Fitness project to be a nonconforming use. “A lawful nonconforming use of land is one that is contrary to a land use ordinance but that nonetheless is allowed to continue because the use lawfully existed prior to the enactment of the ordinance.”⁴ *Rogue Advocates v. Board of Comm. of Jackson County*, 277 Or. App. 651, 654 (2016), *rev. dismissed*, 362 Or. 269 (2017) (internal quotation marks omitted).

The Sunset Station and Barnes Road PUD does not authorize approval of the Life Time Fitness project. Rather, the PUD identifies the full set of transportation improvements required to develop the entire PUD. Staff Memo (CU2013-0002), p. 6 (Oct. 23, 2013). To determine the scope of required improvements, the PUD assumed a generic mix of uses would be developed within the PUD area, and the PUD applicant completed a traffic impact analysis based on those assumed uses. *Id.* at 6; Staff Memorandum (APP2019-0002), p. 1 (July 3, 2019). The

⁴ Likewise, City Code Chapter 30, governing nonconforming uses, applies to “lots, structures, uses of land and structures, and characteristics of uses that were lawful when established, but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendments.” BDC 30.05.1. “[T]his ordinance” means the Development Code, which is Ordinance 2050—“this ordinance” does not include the PUD.

transportation improvements are listed as conditions of approval to the final order approving the PUD. Order No. 2337 (Nov. 5, 2013).

The PUD did not approve specific development within the PUD area. Staff Report (CU2013-0003), p. 13 (Oct. 23, 2013). The PUD also did not substitute or alter the approval criteria applicable to the Life Time Fitness Project. Instead, the PUD imposes *an additional* requirement that applicants for developments within the PUD area to provide a supplemental-, or “mini-,” TIA to determine which transportation improvements are warranted by the proposed development. *Id.* at 12. The supplemental TIA is not in lieu of complying with all transportation-related approval criteria. Instead, it “guide[s] the timing of transportation improvements” within the PUD by “help[ing] local decision makers identify which improvements should occur with each development phase.” *Id.* at 12. Ultimately, the PUD contemplated that impacts of specific developments within the PUD area would “be determined by the future land use application review processes and not by this land use application (PUD) review.” *Id.* at 6. That is precisely what occurred with Life Time’s Fitness project. The “mini” TIA demonstrated compliance with Code’s the transportation-related approval criteria, and when mitigation measures were imposed, the list of the PUD’s assumed transportation mitigation measures was consulted.

Very truly yours,



Dana L. Krawczuk

Exhibits:

- Exhibit A - Order Nos. 2685, 2686 (Mar. 28, 2019)
- Exhibit B - Notice of Final Decision (Apr. 9, 2019)
- Exhibit C - Staff Report for Sunset Surface Parking (Mar. 6, 2019)
- Exhibit D - Letter from Peter Livingston and Jana Fox (Nov. 4, 2019)
- Exhibit E - Staff Report (CU2013-0003) (Oct. 13, 2013)
- Exhibit F - Staff Memorandum (APP2019-0002) (July 3, 2019)

cc: Megan Eaton, LTF Real Estate Company, Inc.

14009177_v7

**BEFORE THE PLANNING
COMMISSION FOR
THE CITY OF BEAVERTON,
OREGON**

After recording return to:
City of Beaverton, City Recorder:
12725 SW Millikan Way
P.O. Box 4755
Beaverton, OR 97076

IN THE MATTER OF A REQUEST FOR APPROVAL) ORDER NO. 2685
OF A CONDITIONAL USE FOR PARKING AS A) CU2018-0023 ORDER APPROVING
PRINCIPAL USE IN THE SC-S ZONING DISTRICT) SUNSET SURFACE PARKING, NEW
(SUNSET SURFACE PARKING) J. PETERKORT) CONDITIONAL USE.
COMPANY, APPLICANT.)

The matter came before the Planning Commission on March 13, 2019, on a request for a New Conditional Use application for Parking as the Principal Use in the Station Community-Sunset (SC-S) zoning district. The site is generally located adjacent to the Sunset Transit Center, south of SW Barnes Road, west of the Highway 217 off-ramp, north of Highway 26, and east of the Sunset Station access road. Tax Lots 100 and 200 on Washington County Tax Assessor's Map 1S102CB.

Pursuant to Ordinance 2050 (Development Code) Section 50.45, the Planning Commission conducted a public hearing and considered testimony and exhibits on the subject proposal.

The Commission discussed their concern that the proposed surface parking lot as a principal use of the site and whether that was consistent with the Comprehensive Plan Policies 3.6.1 (Support pedestrian-oriented mixed use

areas) and 3.6.4 (Station Communities), including policies related to providing vertically mixed uses, limiting auto-oriented uses, and promoting walkable areas. The applicant explained how understanding the total parking demand at the station site was integral to right-sizing the parking for future development phases, including dense mixed use development. The Commission found that with a condition of approval to ensure that the conditional use was intended help facilitate full buildout of the site and not a permanent principal use of the site, that the proposal met the Comprehensive Plan policies. The Commission agreed to the following condition of approval which identified expirations dates for the Conditional Use approval:

1. *CU2018-0023 (Sunset Surface Parking) shall expire:*
 - a. *If CU2013-0003 (Sunset Station & Barnes Road PUD) expires.*
 - b. *5 years after issuance of a certificate of occupancy unless there is an active land use entitlement for a minimum of 80,000 square feet of non-residential floor area or 200 dwelling units on the station site.*
 - c. *10 years after issuance of a certificate of occupancy.*

The Commission, after holding the public hearing and considering all oral and written testimony, adopts the Staff Report dated March 6, 2019, supplemental memoranda dated March 12, 2019 and March 13, 2019, supplemental findings provided in this land use order, and the findings contained therein, as applicable to the approval criteria contained in Sections 40.03 and 40.15.15.3.C of the Development Code.

Therefore, **IT IS HEREBY ORDERED** that **CU2018-0023** is **APPROVED**, based on the testimony, reports and exhibits, and evidence

presented during the public hearing on the matter and based on the facts, findings, and conclusions found in the Staff Report, dated March 6, 2019, supplemental memoranda dated March 12, 2019 and March 13, 2019, and this land use order, subject to the conditions of approval as follows:

1. CU2018-0023 (Sunset Surface Parking) shall expire:
 - a. If CU2013-0003 (Sunset Station & Barnes Road PUD) expires.
 - b. 5 years after issuance of a certificate of occupancy unless there is an active land use entitlement for a minimum of 80,000 square feet of non-residential floor area or 200 dwelling units on the station site.
 - c. 10 years after issuance of a certificate of occupancy.

A. Prior to any site work commencing and issuance of the site development permit, the applicant shall:

2. Ensure that the Design Review Three (DR2018-0167) application has been approved and is consistent with the submitted plans. (Planning/JF)
3. The Conditional Use permit shall run with the land and shall continue to be valid upon a change in ownership of the site, unless the use ceases for a period of one year or greater, at which time the Conditional Use permit shall be considered expired. (Planning/JF)
4. Final decision shall expire automatically two (2) years from the effective date of decision unless the approval is enacted either through establishment of the use within the two (2) year time period. (Planning/JF)

Motion **CARRIED**, by the following vote:

AYES: Lawler, Uba, Brucker, Nye, Winter.
NAYS: Matar, Overhage.
ABSTAIN: None.
ABSENT: None.

Dated this 28th day of March, 2019.

To appeal the decision of the Planning Commission, as articulated in Land Use Order No. 2685 an appeal must be filed on an Appeal form provided by the Director at the City of Beaverton Community Development Department's office by no later than 4:30 p.m. on April 8, 2019.

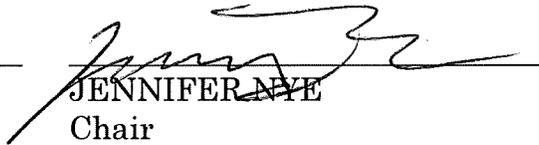
PLANNING COMMISSION
FOR BEAVERTON, OREGON

ATTEST:

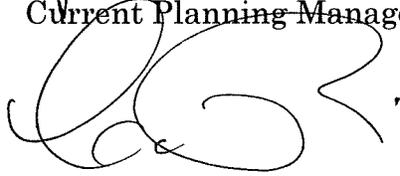
APPROVED:



JANA FOX
Current Planning Manager



JENNIFER NYE
Chair



CARMIN RUIZ
Recording Secretary

**BEFORE THE PLANNING
COMMISSION FOR
THE CITY OF BEAVERTON,
OREGON**

After recording return to:
City of Beaverton, City Recorder:
12725 SW Millikan Way
P.O. Box 4755
Beaverton, OR 97076

IN THE MATTER OF A REQUEST FOR APPROVAL) ORDER NO. 2686
OF A DESIGN REVIEW THREE FOR PARKING AS) DR2018-0167 ORDER APPROVING
NEW SURFACE PARKING LOT (SUNSET) SUNSET SURFACE PARKING, DESIGN REVIEW
SURFACE PARKING) J. PETERKORT COMPANY,) THREE.
APPLICANT.)

The matter came before the Planning Commission on March 13, 2019, on a request for a Design Review Three approval for a new two phase, 460 stall surface parking lot with a 200 square foot guard structure, and associated improvements. The applicant proposed to utilize the Design Review Build-out Concept Plan (DRBCP) tool. The site is generally located adjacent to the Sunset Transit Center, south of SW Barnes Road, west of the Highway 217 off-ramp, north of Highway 26, and east of the Sunset Station access road. Tax Lots 100 and 200 on Washington County Tax Assessor’s Map 1S102CB.

Pursuant to Ordinance 2050 (Development Code) Section 50.45, the Planning Commission conducted a public hearing and considered testimony and exhibits on the subject proposal.

The Commission identified an error in condition of approval 20.b in which the amount of administrative deposit required to Washington County

was written as \$10,00.00 instead of the required \$10,000.00. The ten thousand dollar deposit is consistent with the condition of approval letter provided by Washington County, dated March 4, 2019. The Commission amended condition of approval 20.b to read “\$10,000.00 Administrative Deposit”.

The applicant requested to remove condition of approval 28, requiring a trash enclosure be provided consistent with Section 60.05.20.2 as the security guard would remove the trash from the on-site receptacles and drive it across the street to the existing Peterkort office development for placement in their trash enclosure. Staff reiterated their concern that should the sites not be under separate ownership that there would be no place for trash to be placed. The Commission concurred that a trash enclosure be provided in a manner consistent with Section 60.05.20.2 of the Development Code and did not remove condition of approval 28.

The Commission, after holding the public hearing and considering all oral and written testimony, adopts the Staff Report dated March 6, 2019, supplemental memoranda dated March 12, 2019 and March 13, 2019, supplemental findings provided in this land use order, and the findings contained therein, as applicable to the approval criteria contained in Sections 40.03 and 40.20.15.3.C of the Development Code.

Therefore, **IT IS HEREBY ORDERED** that **DR2018-0167** is **APPROVED**, based on the testimony, reports and exhibits, and evidence presented during the public hearing on the matter and based on the facts, findings, and conclusions found in the Staff Report, dated March 6, 2019,

supplemental memoranda dated March 12, 2019 and March 13, 2019, and this land use order, subject to the conditions of approval as follows:

A. Prior to any site work commencing and issuance of the site development permit, the applicant shall:

1. Submit a narrative that responds to all applicable conditions of approval and discusses how each condition has or will be satisfied prior to issuance of the Site Development Permit. (Site Development Div./JJD)
2. Submit the required plans, application form, fee, and other items needed for a complete site development permit application per the applicable review checklist. (Site Development Div./JJD)
3. Contract with a professional engineer to design and monitor the construction for any work governed by Beaverton Municipal Code 9.05.020, as set forth in Resolution 4542 (2019 City Engineering Design Manual and Standard Drawings), Beaverton Development Code (Ordinance 2050, 4010 +rev.), the Clean Water Services District Design and Construction Standards (April 2017, Resolution and Ordinance 2017-05), and the City Standard Agreement to Construct and Retain Design Professionals in Oregon. (Site Development Div./JJD)
4. Submit a completed and executed City Standard Agreement to Construct Improvements and Retain Design Professional(s) Registered in Oregon. After the site development permit is issued, the City Engineer and the Planning Director must approve all revisions as set out in Ordinances 2050, 4010+rev., and Resolution 4542; however, any required land use action shall be final prior to City staff approval of the engineering plan revision and work commencing as revised. (Site Development Div./JJD)
5. Have the ownership of the subject property guarantee all public improvements, site grading, storm water management (quality and quantity) facilities including plantings, private streets, and common driveway paving by submittal of a City-approved security. The security approval by the City consists of a review by the City Attorney for form and the City Engineer for amount, equivalent to 100 percent or more of estimated construction costs. (Site Development Div./JJD)

6. Submit any required off-site easements, executed and ready for recording, to the City after approval by the City Engineer for legal description of the area encumbered and City Attorney as to form, including any approvals needed from TriMet. (Site Development Div./JJD)
7. Submit to the City a copy of issued permits or other approvals needed from Washington County for work within, and/or construction access to the SW Barnes Road right of way. (Site Development Div./JJD)
8. Have obtained the Tualatin Valley Fire and Rescue District Fire Marshal's approval of the site development plans. (Site Development Div./JJD)
9. Submit a copy of issued permits or other approvals needed from the Tualatin Valley Water District for public water system construction, backflow prevention facilities, and service extensions. (Site Development Div./JJD)
10. Submit a copy of issued permits or other approvals needed from the Clean Water Services District for storm system connections as a part of the City's plan review process. (Site Development Div./JJD)
11. Submit plans for erosion control per 1200-CN General Permit (DEQ/CWS/City Erosion Control Joint Permit) requirements to the City. The applicant shall use the plan format per requirements for sites between 1 and 4.99 acres adopted by DEQ and Clean Water Services. (Site Development Div./JJD)
12. Contact Building Department at (503) 526-2409 or (503)350-4079 to obtain a Plumbing Permit from the Building Department for the proposed onsite utilities. Submit the Plumbing Permit application concurrently with the Site Development Permit application. (Site Development Div./TDM)
13. Provide final construction plans and a final drainage report, as generally outlined in the submitted preliminary drainage report, demonstrating compliance with CWS Resolution and Order 2017-05 in regard to water quality treatment and City of Beaverton Engineering Design Manual Chapter 5 requirements for detention. In this report, provide record drawings of the existing, regional storm water detention

facility that is proposed to serve this development. These record drawings are required for city acceptance of this private, regional detention facility. (Site Development Div./JJD and SAS)

14. Provide plans that delineate all areas on the site that are inundated during a 100-year storm event, including the safe overflow conveyance from proposed constructed stormwater management facilities. On all plan sheets that show grading and elevations, the 100 year inundation level shall be identified. (Site Development Div./JJD)
15. Submit to the City a certified impervious surface determination of the entire site prepared by the applicant's engineer, architect, or surveyor. The certification shall consist of an analysis and calculations determining the square footage of all impervious surfaces, in square feet. Calculations shall indicate the square footage of pre-existing impervious surfaces, all new impervious surface area created, and total final impervious surface area on the entire site after construction. (Site Development Div./JJD)
16. Pay storm water system development charges (storm water quantity and overall system conveyance) for any net new impervious area proposed. The fee-in-lieu for storm water quantity management may be waived if record drawings of the Johnson Creek regional detention facility are provided including tributary areas, flow control structure detail, and plans to restore maintenance access to the facility. (Site Development Div./JJD & SAS)
17. Submit an owner-executed, notarized, City/CWS standard private stormwater facilities maintenance agreement, with maintenance plan and all standard exhibits, ready for recording with Washington County Records. (Site Development Div./JJD)
18. Provide plans for street lights (Option C unless otherwise approved by the City Operations and Maintenance Director) and for the placement of underground utility lines along street frontages, within the site, and for services to the proposed new development. If existing utility poles along existing street frontages must be moved to accommodate the proposed improvements, the affected lines must be either undergrounded or a fee in lieu of undergrounding paid per

Section 60.65 of the Development Code. (Site Development Div./JJD)

19. The following shall be recorded with Washington County (Contact John Kidd, Survey Division: 846-7932): (Washington County/NV)
 - a. Dedication of additional right-of-way to meet 51 feet from the centerline of SW Barnes Road along the entire site's frontage, including adequate corner radius for a future signal and associated equipment at the intersection with the new private street access.
 - b. Recordation of a cross access easement between Sunset Transit Center Drive (TL200) and the new private street (TL100).
20. Submit to Washington County Public Assurance Staff (503-846-3843): (Washington County/NV)
 - a. Completed "Design Option" form, Geotech/Pavement Report, and Engineer's Checklist (Appendix "E" of the County Road Standards).
 - b. \$10,000.00 Administration Deposit.
 - c. A copy of the City's Notice of Decision and the County's Letter dated March 4, 2019.
 - d. Provide evidence that the document under 19.a (dedication of ROW) has been recorded.
 - e. Preliminary certification of adequate sight distance for the access point to SW Barnes Road, in accordance with County Code, prepared and stamped by a registered professional engineer, as well as:
 - i. A detailed list of improvements necessary to produce adequate intersection sight distance at the proposed new public street access.
 - f. Engineering plans to County standards for construction of the following public improvements:
 - i. Construct a right-in/right-out only (stop controlled)

private street access on SW Barnes Road. Construction of a traffic separator median and/or a pork chop is required and subject to a design exception approval by the County Engineer.

- ii. Construct 10 foot wide sidewalk with tree wells along the site's frontage of SW Barnes Road from Sunset Transit Center Drive to the proposed public street access.
 - iii. Install street lighting at the new private street access to County Standards. Modifications to existing street lighting shall be to County standards.
 - iv. Install conduit and other underground infrastructure required for a future traffic signal at the new private street access.
 - v. Install traffic signal interconnect on the site's frontage of SW Barnes Road from the new private street access to Sunset Transit Center Drive.
21. Obtain a Washington County Facility Permit upon completion of the following: (Washington County/NV)
- a. Engineering Division approval of plans and a financial assurance for the construction of the public improvements listed in conditions 20.f.
22. Ensure that the Conditional Use (CU2018-0023) application has been approved and is consistent with the submitted plans. (Planning/JF)
23. Provide a plan showing at minimum one additional centrally located north-south pedestrian connection through the parking lot, connecting to the east-west walkways from the perimeter banks of parking stalls. (Planning/JF)
24. Provide written consent from TriMet for the use of the access road. If consent is not provided all access must be from SW Barnes Road. (Planning/JF)
25. Provide a plan showing construction of a minimum 10 foot wide public sidewalk, with trees in tree wells every 30 feet, from the TriMet access road intersection to the proposed SW

Barnes Road parking lot access road. (Planning/JF)

26. Provide a plan showing pedestrian crossings through the parking area are of a differentiated paving material, such as concrete. (Planning/JF)
27. Provide a plan showing any exterior mechanical units are screened in conformance with the Design Standards of Section 60.05.15.5.A-C. (Planning/JF)
28. Provide plans showing construction of a trash enclosure in conformance with the screening requirements of Section 60.05.20.2 of the Development Code. (Planning/JF)
29. Provide plans showing construction of a minimum 10 foot wide public sidewalk, with trees in tree wells every 30 feet, from the proposed SW Barnes Road parking lot access road to the intersection of SW Barnes Road and Highway 217 unless all of the following are met: (Planning/JF)
 - a. A public easement is provided from TriMet consenting to the use of the pedestrian pathway connecting the proposed parking lot to the Barnes Road and Highway 217 intersection.
 - b. A lighting plan is provided showing adequate pedestrian scale lighting, in compliance with the City's Technical Lighting Standards, along the entirety of the pedestrian access on the TriMet property. Additional lighting may be proposed if sufficient lighting does not currently exist, with property owner consent.

B. Prior to building permit issuance for a building, the applicant shall:

30. Submit a complete site development permit application and obtain the issuance of site development permit from the Site Development Division. A foundation only permit for the guard structure may be issued prior to full Site Development Permit issuance if the City's review is complete and subject only to outside agency permit issuance required for full Site Development Permit issuance. No additional building permits may be issued prior to full Site Development Permit issuance. (Site Development Div./JJD)
31. Make provisions for installation of all mandated erosion

control measures to achieve City inspector approval at least 24 hours prior to call for foundation footing form inspection from the Building Division. (Site Development Div./JJD)

C. Prior to final occupancy permit issuance of each building permit, the applicant shall:

32. Have substantially completed the site development improvements as determined by the City Engineer. (Site Development Div./JJD)
33. Have the landscaping completely installed or provide for erosion control measures around any disturbed or exposed areas per Clean Water Services standards. (Site Development Div./JJD)
34. Have placed underground all affected, applicable existing overhead utilities and any new utility service lines within the project and along any existing street frontage as determined at permit issuance. (Site Development Div./JJD)
35. Install or replace, to City specifications, all sidewalks which are missing, damaged, deteriorated, or removed by construction. (Site Development Div./JJD)
36. Ensure all site improvements, including grading and landscaping are completed in accordance with plans marked "Exhibit A", except as modified by the decision making authority in conditions of approval. (On file at City Hall). (Planning/JF)
37. Ensure all construction is completed in accordance with the Materials and Finishes form and Materials Board, both marked "Exhibit B", except as modified by the decision making authority in conditions of approval. (On file at City Hall). (Planning/JF)
38. Ensure construction of all buildings, walls, fences and other structures are completed in accordance with the elevations and plans marked "Exhibit C", except as modified by the decision making authority in conditions of approval. (On file at City Hall). (Planning/JF)
39. Ensure all landscape areas are served by an underground landscape irrigation system. For approved xeriscape (drought-

tolerant) landscape designs and for the installation of native or riparian plantings, underground irrigation is not required provided that temporary above-ground irrigation is provided for the establishment period. (Planning/JF)

40. Ensure that the planting of all approved trees has occurred. Trees shall have a minimum caliper of 1-1/2 inches. Each tree is to be adequately staked. Street trees shall be a species on the approved City Street Tree List. (Planning/JF)
41. Ensure all exterior lighting fixtures are installed and operational. Illumination from light fixtures, except for street lights, shall be limited to no greater than 0.5 foot-candle at the property line as measured in the vertical and horizontal plane. (Planning/JF)
42. Obtain a Final Site Distance Certification for access to SW Barnes Road. (Washington County/NV)
43. The road improvements required in condition 20.f above shall be completed and accepted by Washington County. (Washington County/NV)

D. Prior to release of performance security, the applicant shall:

44. Have completed the site development improvements as determined by the City Engineer and met all outstanding conditions of approval as determined by the City Engineer and Planning Director. Additionally, the applicant and professional(s) of record shall have met all obligations under the City Standard Agreement to Construct Improvements and Retain Design Professional Registered in Oregon, as determined by the City Engineer. (Site Development Div./JJD)
45. If applicable, submit any required on-site easements, executed and ready for recording, to the City after approval by the City Engineer for area encumbered and City Attorney as to form. The applicant's engineer or surveyor shall verify all pre-existing and proposed easements are of sufficient width to meet City standards. (Site Development Div./JJD)
46. Provide a post-construction cleaning, system maintenance, and StormFilter recharge/replacement servicing report per manufacturer's recommendations for the site's proprietary

storm water treatment systems by a CONTECH qualified maintenance provider as determined by the City Engineer. Additionally, another servicing report from the maintenance provider will be required prior to release of the required maintenance (warranty) security. (Site Development Div./JJD)

47. Provide an additional performance security for 100 percent of the cost of plants, planting materials, and any maintenance labor (including irrigation) necessary to achieve establishment of the treatment vegetation within the reconstructed surface water quality facility, as determined by the Public Works Director. If the plants are not well established (as determined by the Public Works Director) within a period of two years from the date of substantial completion, a plan shall be submitted by the engineer of record and landscape architect (or wetland biologist) that documents any needed remediation. The remediation plan shall be completely implemented and deemed satisfactory by the City Operations Director prior to release of the security. (Site Development Div./JJD)

Motion **CARRIED**, by the following vote:

AYES: Lawler, Uba, Brucker, Matar, Nye, Overhage, Winter.
NAYS: None.
ABSTAIN: None.
ABSENT: None.

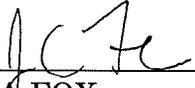
Dated this 28th day of March, 2019.

To appeal the decision of the Planning Commission, as articulated in Land Use Order No. 2685 an appeal must be filed on an Appeal form provided by the Director at the City of Beaverton Community Development Department's office by no later than 4:30 p.m. on April 8, 2019.

PLANNING COMMISSION
FOR BEAVERTON, OREGON

ATTEST:

APPROVED:



JANA FOX
Current Planning Manager



JENNIFER NYE
Chair



CARMIN RUIZ
Recording Secretary



DECISION FINAL

April 9, 2019

To whom it may concern:

RE: CU2018-0023 / DR2018-0167 Sunset Surface Parking

Please be advised that the Planning Commission's decision of March 13, 2019, on the above referenced application was not appealed, therefore, the decision is final.

If you have any questions, please contact me at (503) 526-3710.

Sincerely,

A handwritten signature in blue ink, appearing to read "JCF", is written over the typed name.

Jana Fox
Planning Manager

cc: Lois, Ditmars -J. Peterkort Company
Kevin Apperson-David Evans & Associates
Virginia Bruce
Project File

Jake Mintz
Erik Mace
Washington County DLUT



Staff Report

STAFF REPORT DATE: March 6, 2019

HEARING DATE: March 13, 2019

TO: Interested Parties

FROM: Jana Fox, Current Planning Manager

PROPOSAL: **Sunset Surface Parking
CU2018-0023 / DR2018-0167**

LOCATION: The site is generally located adjacent to the Sunset Transit Center, south of SW Barnes Road, west of the Highway 217 off-ramp, north of Highway 26, and east of the Sunset Station access road. Tax Lots 100 and 200 on Washington County Tax Assessor's Map 1S102CB.

SUMMARY: The applicant, J. Peterkort Company, requests approval of the following land use applications to construct a surface parking lot, guard structure, and associated site improvements. A Conditional Use for Parking as the Principal Use in the Station Community-Sunset (SC-S) zoning district. Design Review Three approval for the phased construction of a 460 stall surface parking lot, an approximately 200 square foot guard structure, a Design Review Build Out Concept Plan showing how future density can be accommodated on site, and associated site improvements.

APPLICANT /
PROPERTY OWNER: J. Peterkort Company
Loid Ditmars
9755 SW Barnes Road, Suite 690
Portland, OR 97225

APPLICANT'S
REPRESENTATIVE: David Evans & Associates
Kevin Apperson
2100 SW River Parkway
Portland, OR 97225

DECISION: **APPROVAL of CU2018-0023 / DR2018-0167 (Sunset Surface Parking) subject to Conditions of Approval.**

BACKGROUND FACTS

Key Application Dates

Application	Submittal Date	Application Deemed Complete	Final Written Decision Date	365-Day*
CU2018-0023	November 26, 2018	January 22, 2019	May 22, 2019	January 22, 2020
DR2018-0167	November 26, 2018	January 22, 2019	May 22, 2019	January 22, 2020

* Pursuant to Section 50.25.9 of the Development Code this is the latest date, with a continuance, by which a final written decision on the proposal can be made.

Existing Conditions Table

Zoning	Station Community-Sunset (SC-S)	
Current Development	Vacant	
Site Size & Location	The site is generally located adjacent to the Sunset Transit Center, south of SW Barnes Road, west of the Highway 217 off-ramp, north of Highway 26, and east of the Sunset Transit Center access road. Tax Lots 100 and 200 on Washington County Tax Assessor's Map 1S102CB.	
NAC	Central Beaverton	
Surrounding Uses	Zoning: <u>North:</u> SC-S <u>South:</u> Hwy 26 & SC-MU <u>East:</u> Hwy 26/Hwy 217/Barnes Intersection <u>West:</u> SC-S	Uses: <u>North:</u> Vacant <u>South:</u> MAX light rail & Highway 26 <u>East:</u> Hwy 26/Hwy 217/Barnes Intersection <u>West:</u> Vacant

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Exhibits

Exhibit 1. Materials submitted by Staff

Exhibit 1.1 Sunset Station & Barnes Road PUD Map (page SR-4 of this report)

Exhibit 1.2 Vicinity Map (page SR-5 of this report)

Exhibit 1.3 Aerial Map (page SR-6 of this report)

Exhibit 2. Public Comment

None Received

Exhibit 3. Materials submitted by the Applicant

Exhibit 3.1 Submittal Package including plans

Exhibit 4. External Agency Comment

Exhibit 4.1 Conditions of Approval submitted by Washington County, March 4, 2019

Exhibit 4.2 Conditions of Approval submitted by ODOT, February 28, 2019

Exhibit 4.3 TriMet Letter, December 21, 2018

Project Overview

The applicant, J. Peterkort Company, proposes a two phase 460 space surface parking lot as a principal use in the Station Community-Sunset zoning district. In addition to the parking lot a 200 square foot guard structure is proposed. The applicant has been working with TriMet to established shared access of the TriMet access road (Sunset Transit Center Access Road) to serve the proposed parking lot. In addition the applicant proposes

a secondary access to SW Barnes Road. Both accesses would provide vehicular and pedestrian access to the surface parking lot. TriMet has provided a letter stating that they are working with J. Peterkort Company to coordinate the access through the TriMet access road, subject to further coordination regarding bus queuing and signal timing. A condition of approval is necessary to ensure that TriMet has fully consented to the proposal prior to issuance of the Site Development Permit.

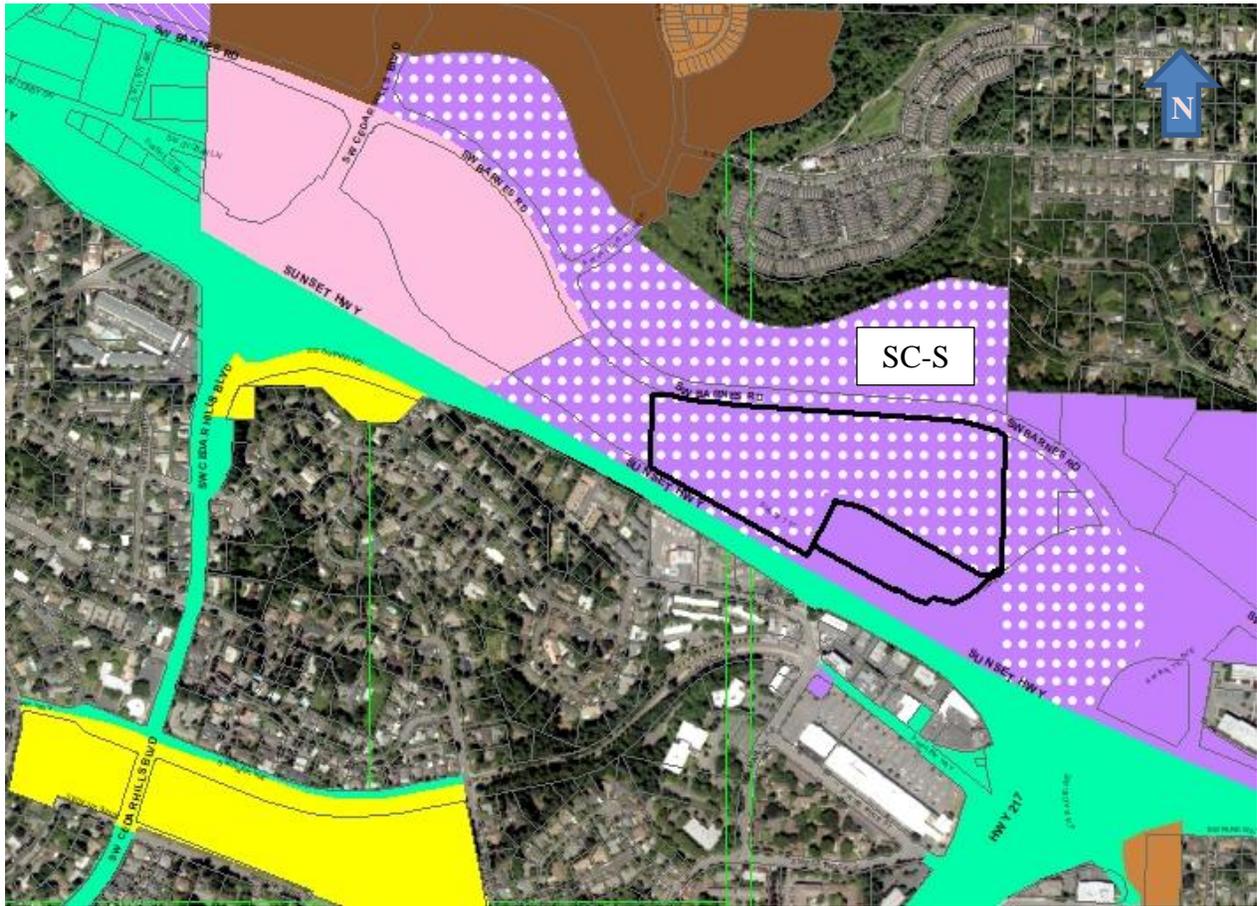
History

The subject site is located within the Sunset Station and Barnes Road PUD (CU2013-0003) which was a master plan PUD primarily intended to provide a transportation framework for the area and identify ultimate transportation facility buildout required with development within the PUD area. The PUD land use order contained a list of conditioned transportation improvements for the full buildout of the PUD. In addition the requirement that as physical development is proposed within the PUD area, each project is required to provide a mini-TIA which assesses the anticipated trips from the specific proposed development, compared to the overall anticipated trips in the PUD and identify which, if any, transportation improvements from the PUD conditions are triggered by the proposed development beyond standard frontage improvements and dedication. The applicant has provided a mini-TIA in conformance with the PUD requirements. Please find the map below (Exhibit 1.1), showing the extent of the properties located within the Sunset Station and Barnes Road PUD for context.

EXHIBIT 1.1



Sunset Station and Barnes Road PUD Vicinity Map



**Sunset Surface Parking
CU2018-0023 / DR208-0167
Zoning Map**



**Sunset Surface Parking
CU2018-0023 / DR208-0167
Aerial Map**

**FACILITIES REVIEW COMMITTEE
TECHNICAL REVIEW AND RECOMMENDATIONS
Sunset Surface Parking
CU2018-0023 / DR2018-0167**

Section 40.03.1 Facilities Review Committee:

The Facilities Review Committee has conducted a technical review of the application, in accordance with the criteria contained in Section 40.03 of the Development Code. The Committee's findings and recommended conditions of approval are provided to the decision-making authority. As they will appear in the Staff Report, the Facilities Review Conditions may be re-numbered and placed in different order.

The decision-making authority will determine whether the application as presented meets the Facilities Review approval criteria for the subject application and may choose to adopt, not adopt, or modify the Committee's findings, below.

The Facilities Review Committee Criteria are reviewed for all criteria that are applicable to the submitted application as identified below:

- **All twelve (12) criteria are applicable to both the Conditional Use (CU2018-0023) and Design Review Three (DR2018-0167) applications.**

A. All critical facilities and services related to the proposed development have, or can be improved to have, adequate capacity to serve the proposed development at the time of its completion.

Chapter 90 of the Development Code defines "critical facilities" to be services that include public water, public sanitary sewer, storm water drainage and retention, transportation, and fire protection. The Committee finds that the proposal includes, or can be improved to have, necessary on-site and off-site connections and improvements to public water, public sanitary sewer and storm water drainage facilities.

Public Water, Sanitary Sewer and Storm

The City of Beaverton is the sanitary and storm sewer provider to the site. Tualatin Valley Water District (TVWD) is the water service provider to the site.

TVWD water service is available from existing waterlines located in SW Barnes Road as well as along the Tri-Met access road to the west of the proposed parking area. Water is readily available to serve the proposed guard structure. Water for irrigation is proposed to be provided from the existing well on the site. Potable water for the guard structure must be provided from a public water source. There is adequate water capacity to serve the proposed development.

City of Beaverton sanitary sewer service must be extended from an existing line in SW Valeria View Drive through SW Barnes Road to serve the subject site. There is

sufficient capacity to serve the proposed development with the sanitary sewer line extension.

Storm water from the parking area will be treated through a water quality facility located in the center of the parking area and will then be conveyed through a new connection to the public storm system in SW Barnes Road. There is adequate storm water capacity to serve the proposed development.

The Facilities Review Committee in review of the proposal finds that the capacity of the existing systems are adequate to support the increase uses of these critical facilities.

Transportation

The subject site is adjacent to SW Barnes Road, between the Highway 217 terminus and the TriMet Sunset Transit Center access road, north of Highway 26. The subject site is part of the Sunset Station and Barnes Road PUD which was approved in 2013 and involved extensive transportation modeling and trip analysis. The conditions of approval for the PUD spell out all the transportation improvements that are necessary over the course of development of the entire PUD. As each phase of development is proposed a mini-TIA must be completed to determine what improvements are required for the proposed development. Given that this facility is intended to generate, at full build-out, an additional 304 a.m., and 311 p.m., peak hour trips, the impacts of the proposed development are significantly less than those anticipated at full build out of this site, as identified in the PUD (1,228 a.m. and 1,844 p.m. peak trips). As the trip generation for this proposal is significantly less than those anticipated by the full buildout of this parcel large scale mitigation improvements associated with this parcel are not yet warranted, and will be required with later phases of development.

TriMet has an easement on the Sunset Transit Center access road to the signalized intersection at SW Barnes Road. The applicant is working with TriMet on its proposal to jointly use the access road. The parking lot is likely to heavily serve transit riders. TriMet has provided a letter to the City indicating that it supports this concept and will continue to work with the applicant on this approach, but is concerned that bus queue times may be extended at that intersection. The applicant and TriMet are working to establish an understanding regarding modifications that would be needed to the intersection in the event delays on bus routes occur. While it is likely that this access point will be utilized as part of the proposal, the applicant has also provided a secondary access point on SW Barnes Road which can be utilized in the case that an agreement is not reached with TriMet. The applicant has provided a worst case analysis in their TIA that evaluates that secondary SW Barnes Road intersection in the event it becomes the only point of access for the parking area. In addition the applicant provided in a supplemental addendum to the TIA an analysis of the trip split would both access points be utilized, as is intended.

The Sunset Station and Barnes Road PUD approved access locations for the entirety of the PUD, including the station site parcel, on which this proposed development is located. The PUD identified which intersections were to ultimately be full movement with signals and which were to be right-in/right-out only. The

applicant proposes to align the secondary access to SW Barnes Road at the future signalized intersection location. At this time, the proposed trip generation is not sufficient to warrant full signalization of the intersection so interim right-in/right-out access is proposed until a signal is warranted by future development. The applicant has provided a supplemental memorandum dated February 26, 2019 which analysis the proposed option of both accesses to the surface parking lot being constructed and available. The previous TIA only included analysis for either/or worst case scenario options for the private street to SW Barnes Road and the TriMet access road, respectively. The additional analysis has been reviewed by Washington County who have provided findings and conditions in Exhibit 4.1 attached hereto stating that they concur with the applicant's TIA and supplemental addendum and the findings provided therein.

The applicant's site plan shows sidewalk construction along SW Barnes Road, which will be required, as a condition of approval, to meet City standards of 10 feet in width with trees in tree wells every 30 feet on center. The applicant's plans do not show sidewalks extending east of the proposed Barnes Road access. The applicant has requested to utilize the existing TriMet pedestrian connection through the transit center connecting to the SW Barnes Road/Highway 217 intersection to provide the needed pedestrian connection to the existing pedestrian system east of the subject site. Given that no new construction is proposed on the eastern portion of the site staff concurs with the request so long as TriMet consents and adequate pedestrian lighting is provided. Staff recommends a condition of approval that pedestrian access to the east be provided either through a public sidewalk along SW Barnes Road or by utilizing the existing TriMet walkway and ensuring adequate lighting for either option.

ODOT has provided recommended conditions of approval for the proposed surface parking facility, included herein as Exhibit 4.2. No conditions of approval have been included in the recommended conditions of approval.

Fire Protection

Fire protection will be provided to the site by Tualatin Valley Fire and Rescue Department (TVF&R).The applicant has provided a service provider letter from TVF&R with no conditions of approval.

The Committee finds that the proposed development will provide the required critical facilities, as conditioned. Therefore, the Committee finds the proposal meets the criterion for approval.

Therefore, the Committee finds that by meeting the conditions of approval the proposal meets the criterion for approval.

B. Essential facilities and services related to the proposed development are available, or can be made available, with adequate capacity to serve the development prior to its occupancy. In lieu of providing essential facilities and services, a specific plan may be approved if it adequately demonstrates that essential facilities, services, or both will be provided to serve the proposed development within five (5) years of occupancy.

Chapter 90 of the Development Code defines “essential facilities” to be services that include schools, transit improvements, police protection, and pedestrian and bicycle facilities in the public right-of-way.

Schools

The proposed development does not include new housing units and therefore does not directly affect the Beaverton School District (BSD).

Transit Improvements

The proposed site is located directly adjacent to TriMet’s Sunset Transit Center which is served by Blue and Red line MAX light rail as well as numerous bus lines. The applicant proposes pedestrian connections from the parking lot to the transit center. In addition the applicant proposes to utilize the TriMet access road in order to provide additional parking spaces to serve the transit center, as well as other local uses. No additional transit improvements are necessary in association with the proposed parking lot development.

Police

The Beaverton Police Department serves, and will continue to serve, the subject site.

Pedestrian and Bicycle Facilities

The subject site is adjacent to SW Barnes Road, west of Highway 217 and north of Highway 26. The sites frontage is not improved with bicycle and pedestrian facilities. The applicant’s proposal shows the addition of sidewalks along the development area frontage from the TriMet access road to the Barnes Road access to the parking lot. As discussed in response to criterion A above, staff recommends a condition of approval that sidewalks be provided between the Tri-met access point and the proposed parking lot access point, and either continuing on to the signalized intersection of Barnes Road and the Highway 217 off-ramp along SW Barnes Road or utilizing the existing pedestrian connection from Sunset Transit Center. Both routes provide a pedestrian connection from the parking lot to connect with existing pedestrian facilities in the area. Adequate pedestrian scale lighting must be provided along frontage improvements.

Parks

The site will continue to be served by the Tualatin Hills Park and Recreation District (THPRD).

The Committee has reviewed the proposal and has found that the essential facilities and services to serve the site are adequate to accommodate the proposal as conditioned.

Therefore, the Committee finds that by meeting the conditions of approval the proposal meets the criterion for approval.

C. The proposed development is consistent with all applicable provisions of Chapter 20 (Land Uses) unless the applicable provisions are modified by means of one or more applications which shall be already approved or which shall be considered concurrently with the subject application; provided, however, if the approval of the proposed development is contingent upon one or more additional applications, and the same is not approved, then the proposed development must comply with all applicable provisions of Chapter 20 (Land Uses).

Staff cites the Code Conformance Analysis chart at the end of the Facilities Review Report, which evaluates the project as it relates to applicable code requirements of Chapter 20 for the Station Community-Sunset (SC-S) zone, as applicable to the aforementioned criterion. As demonstrated in the chart, the development proposal meets all applicable standards by meeting the conditions of approval.

Therefore, the Committee finds that by meeting the conditions of approval the proposal meets the criterion for approval.

D. The proposed development is consistent with all applicable provisions of Chapter 60 (Special Requirements) and all improvements, dedications, or both, as required by the applicable provisions of Chapter 60 (Special Requirements), are provided or can be provided in rough proportion to the identified impact(s) of the proposed development.

The Committee cites the Code Conformance Analysis chart at the end of this report, which evaluates the proposal as it relates the applicable Code requirements of Chapter 60, as applicable to the above mentioned criteria. Staff will provide findings for the applicable Design Review Guidelines (Code Section 60.05) within the Design Review section of the staff report.

Therefore, the Committee finds that by meeting the conditions of approval, the proposal meets the criterion.

E. Adequate means are provided or can be provided to ensure continued periodic maintenance and necessary normal replacement of the following private common facilities and areas, as applicable: drainage facilities, roads and other improved rights-of-way, structures, recreation facilities, landscaping, fill and excavation areas, screening and fencing, ground cover, garbage and recycling storage areas, and other facilities not subject to maintenance by the City or other public agency.

The applicant states that the owners will provide for routine maintenance of the proposed parking lot and guard structure. The shared TriMet access point, if consented to by TriMet, will be the subject of a joint maintenance agreement between the two parties. The access from SW Barnes Road will be the responsibility of the applicant to maintain. The applicant has not proposed a trash enclosure, but states that trash will be collected regularly from the site. In order to ensure an attractive and easy to maintain facility staff recommends a condition of approval that the applicant provide a trash enclosure and screen it consistent with the Design Standards in Chapter 60 of the Development Code. The proposal, as conditioned, will not preclude adequate maintenance of the proposed facilities. Staff concurs that the property can be maintained by the property owner in accordance with the requirements of the City of Beaverton.

Therefore, the Committee finds that by meeting the conditions of approval the proposal meets the criterion for approval.

F. There are safe and efficient vehicular and pedestrian circulation patterns within the boundaries of the development.

In review of Criterion F, staff incorporates the findings prepared in response to A and B above. The applicant proposes to connect to SW Barnes Road at the intersection location approved with the Sunset Station and Barnes Road PUD in 2013. The proposed parking lot does not generate sufficient trips to warrant signalization of the intersection at this time. As the intersection will not yet be signalized, as is its ultimate requirement, the Barnes Road access will be right-in/right-out until such time as signalization is warranted, with future intensification of development on the site. In addition to the SW Barnes Road connection the applicant proposes to connect to the existing TriMet access for Sunset Transit Center and the Sunset Park and Ride garage. The two access points will be connected via a private access drive which will provide a single point of access to the proposed parking lot. Access control to the parking lot will be provided with automated gates and pay systems. The internal parking lot circulation for vehicles is safe and efficient.

Pedestrian connections are proposed along the site entrance to the parking lot from both site entry points. Within the parking lot area east-west connections are proposed through the parking areas as well as to Sunset Transit Center. No north-south connections are proposed within the parking lot area, however in order to provide greater connectivity and safe walking areas within the parking lot a centrally located north-south pedestrian connection will be required as a condition of approval.

In review of the plan, the Committee finds that by meeting the recommended conditions of approval, the site will have safe and efficient vehicular and pedestrian circulation patterns within the boundaries of the development.

Therefore, the Committee finds that by meeting the conditions of approval the proposal meets the criterion for approval.

G. The development's on-site vehicular and pedestrian circulation systems connect to the surrounding circulation systems in a safe, efficient, and direct manner.

In review of Criterion G, staff incorporates the findings prepared in response to A, B and D above, including conditions. The applicant will be required to provide sidewalks along SW Barnes Road and to connect to existing pedestrian systems to the east and west of the proposed development as well as additional pedestrian connections within the parking lot area. By meeting the conditions of approval the pedestrian circulation systems will connect with the surrounding circulation system in a safe, efficient and direct manner. The on-site vehicular system will connect to the surrounding transportation system in a safe, efficient and direct manners.

Therefore, the Committee finds that by meeting the conditions of approval the proposal meets the criterion for approval.

H. Structures and public facilities serving the development site are designed in accordance with adopted City codes and standards and provide adequate fire protection, including, but not limited to, fire flow.

Fire protection will be provided to the site by TVF&R. TVF&R has provided a Service Provider Letter for the proposed development with no associated conditions of approval. The proposal will also be required to show compliance to the City's Building Code Standards prior to issuance of building permits, which includes compliance with other TVF&R standards.

Therefore, the Committee finds that by meeting the conditions of approval the proposal meets the criterion for approval.

I. Structures and public facilities serving the development site are designed in accordance with adopted City codes and standards and provide adequate protection from crime and accident, as well as protection from hazardous conditions due to inadequate, substandard or ill-designed development.

The applicant states that the proposal includes an on-site security presence to discourage crime. The applicant proposes on-site lighting for the parking area and will be required to provide lighting for all pedestrian area proposed or conditioned, in compliance with the City's Technical Lighting Standards.

The Committee finds that review of the construction documents at the building and site development permit stages will ensure protection from hazardous conditions due to inadequate, substandard or ill-designed development.

Therefore, the Committee finds that by meeting the conditions of approval the proposal meets the criterion for approval.

J. Grading and contouring of the development site is designed to accommodate the proposed use and to mitigate adverse effect(s) on neighboring properties, public right-of-way, surface drainage, water storage facilities, and the public storm drainage system.

The applicant states that grading will be designed to mitigate adverse impacts to neighboring properties as well as public systems. Grading will be limited to the area identified for the surface parking lot and access points. Minimal amounts of grading are necessary to construct the proposed improvements.

The applicant has submitted a Preliminary Storm Water Management Report, which demonstrate compliance with existing regulations and quantifies the runoff from the site. Storm water will be treated in a surface storm water system through the center of the parking area and ultimately connect to the public storm water system in Barnes Road.

The City Engineer has reviewed the proposed grading and Storm Report, and has identified recommended standard conditions of approval. These recommended conditions are necessary to ensure the proposed site work will be in compliance with adopted codes and standards and to ensure the proposal will not have an adverse impact to surrounding properties.

Therefore, the Committee finds that by meeting the conditions of approval the proposal meets the criterion for approval.

K. Access and facilities for physically handicapped people are incorporated into the development site and building design, with particular attention to providing continuous, uninterrupted access routes.

The applicant will be required to meet all applicable accessibility standards of the Uniform Building Code, the Uniform Fire Code, and other standards as required by the American Disabilities Act (ADA). Conformance with the technical design standards for Code accessibility requirements are to be shown on the approved construction plans associated with Site Development and Building Permit approvals. The Committee finds that as proposed, it appears that the general site layout can meet accessibility requirements. Accessibility is thoroughly evaluated through the site development and building permitting reviews. As a condition of approval, the site shall be in conformance with all ADA requirements. This requirement is in conformance with the Development Code.

Therefore, the Committee finds that by meeting the conditions of approval the proposal meets the criterion for approval.

L. The application includes all required submittal materials as specified in Section 50.25.1 of the Development Code.

The application was submitted on November 26, 2018. The application was deemed complete on January 22, 2019. In the review of the materials during the application review, the Committee finds that all applicable application submittal requirements, identified in Section 50.25.1 are contained within this proposal.

Therefore, the Committee finds that the proposal meets the criterion for approval.

Code Conformance Analysis
Chapter 20 Use and Site Development Requirements
Station Community-Sunset (SC-S) District

CODE STANDARD	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE?
Development Code Section 20.20.20 (Station Community-Sunset)			
Use - Conditional	Parking as a principal use	The applicant proposes a two phased 460 space parking lot with 260 spaces in phase one and 200 spaces in phase two.	Subject to CU approval
Development Code Section 20.20.15 (Regional Center-Transit Oriented)			
Minimum/Maximum Lot Area	None	The proposal does not include changes to the existing parcel.	N/A
Floor Area Ratio	Min: 0.60 Min. w/ DRBC: 0.00 Max: None	The proposed includes a request for a Design Review Build-out Concept Plan (DRBCP) to show how future floor area can be accommodated on site in order to meet the minimum FAR in future development phases.	Yes, subject to DR approval
Minimum Lot Dimensions	None	N/A	N/A
Minimum Yard Setbacks Front Side Rear	0 ft. 0 ft. 0 ft.	All setbacks are in excess of the zero foot minimum. Only a small guard structure is proposed on site.	Yes
Maximum Front Yard Setback	Governed by Design Review	Front yard setbacks are regulated by Design Review as the site is adjacent to a Major Pedestrian Route.	See DR Findings
Maximum Building Height	120'	The proposed building height of the guard structure is approximately 10 feet.	Yes

Chapter 60 – Special Requirements

CODE STANDARD	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE?
Development Code Section 60.05			
Design Review Principles, Standards, and Guidelines	Requirements for new development and redevelopment.	Construction of a new parking lot as well as a guard structure and associated landscaping. The applicant has requested a Design Review Build-out Concept Plan in order to provide less than the minimum FAR with this phase of development.	Refer to DR findings
Development Code Section 60.10			
Floodplain Regulations	Requirements for development within floodplains.	The subject site is not within the floodplain.	N/A
Development Code Section 60.25			
Off-Street Loading	Off-street loading requirements.	No loading is required for a parking lot.	N/A
Development Code Section 60.30			
Off-street motor vehicle parking	There are no parking requirements for Parking as a Principal Use for vehicles or bicycles.	The applicant proposes 460 parking spaces over two phases of development as well as 23 bicycle parking spaces.	Yes
Development Code Section 60.40			
Sign Regulations	Requirements pertaining to the size and location of signs	Signs are not approved through the Design Review process. Sign permits will be needed prior to installation.	N/A
Development Code Section 60.55			
Transportation Facilities	Regulations pertaining to the construction or reconstruction of transportation facilities.	Refer to Facilities Review Committee findings herein.	Yes, w/COA

Development Code Section 60.60			
Trees & Vegetation	Regulations pertaining to the removal and preservation of trees.	The applicant does not proposed to remove any trees of sufficient size to be considered Community Trees and no protected trees exist on the site.	N/A
Development Code Section 60.65			
Utility Undergrounding	All existing overhead utilities and any new utility service lines within the project and along any existing frontage, except high voltage lines (>57kV) must be placed underground.	The applicant proposes to underground overhead utilities where frontage improvements are required. The Committee proposes a standard condition of approval to ensure utility undergrounding complies with Section 60.65.	Yes-with COA
Development Code Section 60.67			
Significant Natural Resources	Regulations pertaining to Significant Natural Resources	There are not significant natural resources on the site.	N/A

**CU2018-0023
ANALYSIS AND FINDINGS FOR
CONDITIONAL USE APPROVAL**

Section 40.03.1 Facilities Review Approval Criteria:

The applicant for development must establish that the application complies with all relevant standards in conformance with Section 50.25.1.B and all the following criteria have been met:

Facilities Review Approval Criteria Section 40.03.1.A-L

Staff has reviewed the applicable Facilities Review criteria in Attachment A to this report. Staff cites the findings presented in Attachment A in response to the Facilities Review approval criteria. As identified in Attachment A, above, the proposal meets Criteria A-L, and therefore meets the criterion for approval.

Therefore, the Committee finds that the proposal meets the criteria.

Section 40.15.15.3.C New Conditional Use Approval Criteria:

In order to approve a New Conditional Use application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. *The proposal satisfies the threshold requirements for a Conditional Use application.*

The applicant proposes a 460 space surface parking lot with an approximately 200 square foot guard structure. The proposed parking is the primary use of the site, therefore is classified as 'Parking, as a Principal Use' which is a Conditional Use in the Station Community-Sunset (SC-S) zoning district, meeting Threshold 1 for a New Conditional Use:

- 1. The proposed use is conditionally permitted in the underlying zoning district and a prior Conditional use approval for the proposed use is not already in effect.*

Therefore, staff finds the proposal meets the criterion for approval.

2. *All City application fees related to the application under consideration by the decision making authority have been submitted.*

The applicant paid the required fee associated with a New Conditional Use application.

Therefore, staff finds the proposal meets the criterion for approval.

3. *The proposal will comply with the applicable policies of the Comprehensive Plan.*

The applicant's response to Criterion No. 3 states that the proposal satisfies the applicable sections of the Comprehensive Plan. Staff cites the following comprehensive plan policies and associated findings as applicable to this criterion:

Chapter 3 (Land Use Element)

Goal 3.6.1: Support pedestrian-oriented mixed use areas.

Policies:

- a) *Provide for a mix of commercial, residential, employment, and civic uses at relatively high densities to create vibrant, walkable areas where many activities can be accomplished on foot or by bike or transit.*
- b) *Uses may be mixed vertically (i.e. within a single building on different floors) or horizontally (i.e. within different buildings), but should be mixed so that different uses are within easy walking distance of one another.*
- c) *Limit or prohibit auto-oriented commercial uses, including vehicle sales and services, drive-through uses, and uses requiring extensive outdoor storage, to enhance the pedestrian environment.*

In response to a-c above the applicant states that they acknowledge the goals for station communities such as Station Community-Sunset. Further the applicant states that the proposed surface parking lot is intended as an interim use and has been designed to allow further development and intensification of the remainder of the property as well as over the proposed surface parking area. In aligning with the applicant's intention that this use is interim in nature staff recommends a condition of approval that the Conditional Use expire should the active use of the surface parking facility cease for a period of one year or greater. The applicant has further provided a Design Review Build Out Concept Plan which identifies how the site can be further intensified to meet the intended development identified above. Staff finds that the applicant's proposal does not preclude compliance with the policies identified above.

Goal 3.6.4: Station Communities: Encourage development and redevelopment around light rail stations that leverages proximity to light rail as an amenity for urban living/working and supports a variety of transportation modes.

Policies:

- a) *Encourage vertical mixed use development that provides for street-level retail while accommodating housing or office uses above, to support businesses that rely on foot traffic.*

The applicant, states that the proposed development is intended as an interim use until such time as the intended high density mixed use development is constructed on the station parcel. The envisioned development will include street level retail with a mixture of housing situation above. The design of the surface parking facility is intended to facilities development on the remainder of the site as well as redevelopment of the surface parking lot by aligning the parking lot with the intended future block pattern, which allows for an urban style street grid within the site.

- b) *Incorporate high-density residential development, particularly within a half-mile walking distance of the light rail station, to provide the highest accessibility to light rail to the greatest number of households.*

The applicant states that the owner is committed to promoting a variety of multi-story mixed use buildings within half-mile of the light rail station in order to promote walking and convenient access. The DRBCP provided by the applicant shows the intended layout of the site, including the general street pattern within the site. The SC-S zoning district has minimum residential densities that must be met within the district boundaries (all properties within the SC-S zoning district are within the Sunset Station and Barnes Road PUD). As development occurs within the PUD boundary staff evaluates the proposal to ensure the minimum housing number of 1899 units is not precluded by the proposed development. The proposal for the surface parking lot does not preclude meeting the minimum housing requirements of the SC-S zoning district, as adequate additional space is provided to meet the housing goals as well as the design of the parking lot to facilitate redevelopment.

- c) *Encourage new multi-story commercial / employment development that increases the number of employees who have direct and convenient access to transit.*

The applicant states that based on the DRBCP the site will contain 9 blocks with a variety of multi-story commercial/housing structures. The preliminary program provided in the DRBCP shows approximately 60,000 square feet of commercial space and 988 dwelling units on the site. Given the proximity of the development to the Sunset Transit Center the full build out of the site would provide convenient access to transit for residents and employees in the area. The parking lot as proposed is intended to serve as a park and ride facility, supporting transit access into the downtown core in the interim, helping to meet the demand for park and ride facilities that the existing garage cannot accommodate.

- d) *Limit surface parking to encourage compact development and reduce the space between buildings to support walking between destinations.*

The applicant states that the proposed development is an interim use until the site is redeveloped with a mix of high density residential and commercial uses. The applicant's DRBCP provides a street grid and building footprint plan that shows a dense style of urban development is envisioned including parking within or below proposed structures. It is ultimately intended that the surface parking lot be replaced with structured parking beneath the development thus reducing the amount of surface parking and creating a walkable urban grid of development. The subject site is currently vacant, the proposal for a surface parking facility will provide significant pedestrian improvements to the area, including external and internal sidewalks and pedestrian connections to the transit center.

- e) *Within a half-mile of the light rail station platform and along routes that are likely to be used by pedestrians to access public transportation, require development to provide the pedestrian-oriented design features such as windows, awnings, detailed building facades and street furniture.*

Staff sites the Design Standard analysis included in the Design Review Three section of this report as applicable to this policy. The applicant is proposing, and conditioned to provide, a robust pedestrian network through and adjacent to the proposed surface parking lot. The only structure proposed is the guard structure which is limited in size to 200 square feet and provides for a small office and bathroom facility for the security officer who will be on site. All future development on the site will be required to comply with the Design Standards and

Guidelines as well which reflect this Comprehensive Plan policy.

Therefore, staff finds that by meeting the conditions of approval, the criterion is met.

4. *The size, dimensions, configuration, and topography of the site and natural and man-made features on the site can reasonably accommodate the proposal.*

In response to Criterion No. 4, the applicant states that the site is located on a parcel that contains 22.61 acres. The proposed surface parking area will utilize just under 5.5 acres of the subject site, leaving a large percentage of the site available for additional development. The application additionally states that the proposed parking area is intended to be an interim use of the site and can be easily modified to adapt to future redevelopment. The applicant proposes to align the access to the site with the fully signalized future intersection, as approved with the Sunset Station & Barnes Road PUD. The proposed access drive is designed to accommodate a future internal block pattern to facilitate the intended level of urban style development on the site. The applicant has applied for a Design Review Build-out Concept Plan (DRBCP) which shows how future intensification of the site can be provided to meet the envisioned intensity of development. Staff finds that the site can accommodate the proposed surface parking lot, the design proposed allowed for further development and redevelopment of the site to desired intensities.

Therefore, staff finds the proposal meets the criterion for approval.

5. *The location, size, and functional characteristics of the proposal are such that it can be made reasonably compatible with and have minimal impact on livability and appropriate use and development of properties in the surrounding area of the subject site.*

In response to Criterion No. 5, the applicant states that the proposed development is compatible and complementary to the existing Sunset Transit Center currently operated by TriMet. Functionally the surface parking lot provides additional capacity immediately adjacent to the TriMet park and ride facility which is routinely over capacity, particularly during peak commuting times. The proposed internal connection to the TriMet access and parking structure would allow for overflow parking into the proposed surface parking lot. The applicant states that the parking lot will help to reduce illegal parking on private property north of SW Barnes Road as well as on-street parking south of Highway 26, near the pedestrian bridge over Highway 26.

The subject site is bounded by major roads on three sides and an internal TriMet access road on the fourth side. Residential uses are not located within close proximity of the site. Impacts of the proposed surface parking lot will be minimal in relation to the existing uses in the area which are primarily office and medical uses.

Staff finds that the size, location and functional characteristics of the proposal are reasonably compatible with and have minimal impact on surrounding uses.

Therefore, staff finds the proposal meets the criterion for approval.

6. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

The applicant submitted the application on November 26, 2019 and was deemed complete on January 22, 2019. A Design Review Three application is being processed concurrently with the subject request for a Conditional Use. The Conditional Use application is dependent upon approval of the Design Review Three application. Staff recommends a condition of approval which states that approval of the Conditional Use application is subject to approval of the associated applications.

Therefore, staff finds that by satisfying the conditions of approval, the proposal will meet the criterion for approval.

Recommendation

Based on the facts and findings presented, staff recommends **APPROVAL** of **CU2018-0023 (Sunset Surface Parking)** subject to the applicable conditions identified in Attachment D.

**DR2018-0167
ANALYSIS AND FINDINGS FOR
DESIGN REVIEW THREE APPROVAL**

Section 40.03.1 Facilities Review Approval Criteria:

The applicant for development must establish that the application complies with all relevant standards in conformance with Section 50.25.1.B and all the following criteria have been met:

Facilities Review Approval Criteria Section 40.03.1.A-L

Staff has reviewed the applicable Facilities Review criteria in Attachment A to this report. Staff cites the findings presented in Attachment A in response to the Facilities Review approval criteria. As identified in Attachment A, above, the proposal meets Criteria A-L, and therefore meets the criterion for approval.

Therefore, the Committee finds that the proposal meets the criteria.

Planning Commission Standards for Approval:

Section 40.20.15.3.C of the Development Code provides standards to govern the decisions of the Commission as they evaluate and render decisions on Design Review Applications. The Commission will determine whether the application as presented, meets the Design Review Three approval criteria. The Commission may choose to adopt, not adopt or modify the Committee's findings. In this portion of the report, staff evaluates the application in accordance with the criteria for Type 3 Design Review.

Section 40.20.15.3.C Approval Criteria: In order to approve a Design Review Three application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. *The proposal satisfies the threshold requirements for a Design Review Three application.*

The applicant proposes to construct a 460 space surface parking lot, with a guard structure, over two phases. The subject site is located in the Station Community-Sunset (SC-S) zoning district and has a minimum Floor Area Ratio (FAR) requirement of 0.60. The proposed guard structure will not meet the minimum FAR requirements of the SC-S zoning district, as such the applicant proposes to utilize the Design Review Build-out Concept Plan (DRBCP) option, described in Section 40.20.15.5 of the Development Code. Additionally the applicant proposes to construct the parking lot in two phases, the first phase including 263 parking spaces, access road, guard structure, and associated site improvements. The second phase would reconfigure three parking spaces to allow for a total of 460 parking spaces across both phases. The applicant's plans, which utilize the DRBCP option described in Section 40.20.10.5 of the Development Code meet Threshold 5 for a Design Review Three.

5. *Projects proposed utilizing the options described in Section 40.20.10.5.*

Therefore, staff finds that the criterion is met.

2. ***All City application fees related to the application under consideration by the decision making authority have been submitted.***

The applicant paid the required fees for a Design Review Three application.

Therefore, staff finds that the criterion is met.

3. ***For proposals meeting Design Review Three application thresholds numbers 1 through 6, the proposal is consistent with all applicable provisions of Sections 60.05.35 through 60.05.50 (Design Guidelines).***

Staff cites the Design Guidelines Analysis at the end of this Design Review section, which evaluates the project as it relates the applicable Design Review Guidelines found in Section 60.05 of the Development Code. Staff reviews each Guideline with respect to the applicability of the Guideline to the project, the applicant's response and illustrative representation of the proposal. Staff provides an evaluation of the proposal in relation to the Guideline and a statement as to whether the Guideline is met.

Therefore, staff find the proposal will meet the criterion for approval by meeting the conditions of approval.

4. ***For additions to or modifications of existing development, the proposal is consistent with all applicable provisions of Sections 60.05.35 through 60.05.50 (Design Guidelines) or can demonstrate that the additions or modifications are moving towards compliance of specific Design Guidelines if any of the following conditions exist:***
 - a. ***A physical obstacle such as topography or natural feature exists and prevents the full implementation of the applicable guideline; or***
 - b. ***The location of existing structural improvements prevent the full implementation of the applicable guideline; or***
 - c. ***The location of the existing structure to be modified is more than 300 feet from a public street.***

The project proposal is a new development. Therefore, this criterion, which pertains to additions or modification of existing development, does not apply.

Therefore, staff find the criterion is not applicable.

5. ***For DRBCP proposals which involve the phasing of required floor area, the proposed project shall demonstrate how future development of the site, to the minimum development standards established in this Code or greater, can be realistically achieved at ultimate build out of the DRBCP.***

The applicant proposes to utilize the DRBCP process for the proposed development. Development Code Section 40.20.10.5.A contains three provisions which must be met in order for a DRBCP to be approved:

- 1. Include a plan and narrative intended to address feasibility of constructing future phases, consistent with applicable development standards of the Development Code within the total site area where the project is proposed, and may include abutting properties if under same ownership;*
- 2. Not rely on the removal of a structure in an early phase in order to demonstrate compliance in later phases;*
- 3. Compliance with any applicable Design Standards and/or Guidelines shall not be deferred to future phases of a DRBCP.*

In response to criterion 1. The applicant's current proposal for surface parking includes an approximately 200 square foot guard structure as the only floor area proposed at this time. The applicant has provided a DRBCP concept plan on sheet C201 that shows an internal street grid which creates urban style blocks and identifies moderate building square footages that range from two (2) to four (4) stories per block based on the provided lot coverages and square footages.

The SC-S zoning district has a maximum height of 120 feet, with no minimum setbacks. This site is intended for intense urban style development. The applicant has stated that the surface parking lot is intended as an interim use and that the parking lot has been designed to allow for continued intensification of the site, as well as future redevelopment of the parking lot into urban style development.

Given the maximum heights and desired intensities on the site the applicant's DRBCP analysis is a fairly conservative estimate for future potential intensification of the site. With the proposed gross floor area identified in the table on sheet C201 of the applicant's plans as a total of 667,115 square feet and the net parcel size as 15.35 acres the proposed DRBCP buildout is at a 0.95 FAR.

The applicant, through the Sunset Station & Barnes Road PUD, has identified and received approval for specific access locations to SW Barnes Road. The applicant has aligned their primary access location to SW Barnes Road where the future signalized intersection is approved. The applicant's traffic analysis shows that there are not currently sufficient trips to warrant full signalization of the intersection, however by aligning the access with the future signalization area the applicant has created an access road that can serve future additional development to the site and provide signalization when sufficient trips are proposed to warrant full signalization. Staff finds that the design of the proposed surface parking lot allows for future intensification of the site by aligning the parking lot infrastructure with an urban block pattern on the subject site which can serve future intensification.

In response to criterion 2. The applicant's proposal shows development only outside of the surface parking area as counting toward meeting the FAR requirement with future

development. While it is intended that the parking lot is an interim improvement the applicant has provided plans showing that the minimum FAR may be reasonably met on the site without relying on removal of the guard structure.

In response to criterion 3. Staff cites the Design Guidelines analysis contained in this report which finds that the proposal meets, or can be conditioned to meet the Design Guidelines applicable to the proposed development.

Therefore, staff finds that by meeting the conditions of approval the criterion is met.

6. ***For proposals meeting Design Review Three application Threshold numbers 7 or 8, where the applicant has decided to address a combination of standards and guidelines, the proposal is consistent with all applicable provisions of Sections 60.05.15 through 60.05.30 (Design Standards) except for the Design Standard(s) where the proposal is instead subject to the applicable corresponding Design Guideline(s). [ORD 4531; March 2010]***

The project proposal meets application Threshold #5 and, accordingly, is not subject to Design Standards.

Therefore, staff find the criterion is not applicable.

7. ***For proposals meeting Design Review Three application Threshold numbers 7 or 8, the proposal is consistent with all applicable provisions of Sections 60.05.15 through 60.05.30 (Design Standards) except for the Design Standard(s) where the proposal is applying to instead meet the applicable Design Guideline(s).***

The project proposal meets application Threshold #5 and, accordingly, is not subject to Design Standards.

Therefore, staff find the criterion is not applicable.

8. ***Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.***

The applicant has submitted all documents related to this request for Design Review Three approval. A Conditional Use application is being processed concurrently with the subject request for Design Review Three. The Design Review Three application is dependent upon approval of the Conditional Use application. Staff recommend a condition of approval which states that approval of the Design Review Three application is subject to approval of the Conditional Use application.

Therefore, staff finds that by meeting the conditions of approval the criterion is met.

DESIGN REVIEW GUIDELINES ANALYSIS

In the following analysis, staff have only identified the Design Guidelines which are relevant to the subject development proposal. Non-relevant Guidelines have been omitted.

60.05.35 *Building Design and Orientation Guidelines.* *Unless otherwise noted, all guidelines apply in all zoning districts.*

1. *Building Elevation Design Through Articulation and Variety*

B. *Building elevations should be varied and articulated to provide visual interest to pedestrians. Within larger projects, variations in architectural elements such as: building elevations, roof levels, architectural features, and exterior finishes should be provided.* (Standard 60.05.15.1.A and B)

The only building proposed with this project is a guard structure located near the parking lot entrance. The applicant state that the proposed building is designed in a rustic northwest style with cultured stone wainscoting on the lower third of the building with lap siding on the upper two-thirds of the building. The building has 12 inch eaves around its entirety. The northern elevation has windows which face the automated entrance gates. The western elevation has windows and a door as well as a six foot covered porch area. The guard structure is 200 square feet in size with a 10 foot front elevation width and 20 foot side elevation length, excluding the 6 foot covered porch area. The eastern and southern elevations are screened by significant landscaping, including shrubs, trees, and ground cover. The structure is set back 20 feet from the sidewalk along the private street and uses vegetation to provide screening and interest along the street facing elevations. Staff concurs that adequate visual interest is provided.

Therefore, staff find the Guideline is met.

C. *To balance horizontal features on longer building elevations, vertical building elements, such as building entries, should be emphasized.* (Standard 60.05.15.1.B)

The applicant states that the guard structure is only 20 feet long and 10 feet wide and due to the limited size of the building the entrance will receive standard treatment and contain a man door, and a windows. The entry is covered by a 6 foot porch area which is accentuated with rough timber pillars holding up the roof structure. Given the small size of the building staff finds that vertical elements area adequate emphasized.

Therefore, staff find the Guideline is met.

D. *Buildings should promote and enhance a comfortable pedestrian scale and orientation. This guideline does not apply to buildings in industrial districts where the principal use of the building is manufacturing, assembly, fabricating, processing, packing, storage, wholesale or distribution activities.* (Standard 60.05.15.1.B) [ORD 4531; March 2010]

The applicant states that the proposed guard structure is intended to be an accessory use in support of the surface parking area. The building itself is a single story structure that is of pedestrian scale. The building entrance contains a standard man door and a window. The entrance will also have a covered porch which is located on the pedestrian walkway between the public street sidewalk and the parking lot entrance. The guard structure is also set back from the private street in order to let landscaping be the predominant feature experienced by pedestrians along the sidewalk. Staff concurs that the buildings are of a comfortable pedestrian scale.

Therefore, staff find the Guideline is met.

E. Building elevations visible from and within 200 feet of an adjacent street or major parking area should be articulated with architectural features such as windows, dormers, off-setting walls, alcoves, balconies or bays, or by other design features that reflect the building's structural system. Undifferentiated blank walls facing a street, common green, shared court, or major parking area should be avoided. (Standards 60.05.15.1.B, C, and D) [ORD 4542; May 2010]

The applicant states that all sides of the structure have been architecturally treated. The building is located along the access to a surface parking lot and set back 20 feet from a private street. The applicant proposes to utilize different exterior materials, windows, a porch, a door, and vegetation to provide visual interest to the 200 square foot structure. The eastern wall which is 20 feet in length and contains two material treatments will be further broke up by 3 trees and dense shrub which break up the façade area. Staff finds that the proposed guard structure is adequately articulated.

Therefore, staff find the Guideline is met.

2. Roof Forms as Unifying Elements

A. Roof forms should be distinctive and include variety and detail when viewed from the street. Sloped roofs should have a significant pitch and building focal points should be highlighted. (Standards 60.05.15.2.A and B)

The applicant states that the guard structure is sloped with 12 inch eaves and a 6 foot porch cover. The pitch of the roof structure is 5/12 providing a significant pitch and focal point. Staff concurs that the roof provides significant pitch and a focal point.

Therefore, staff find the Guideline is met.

B. Flat roofs should include distinctive cornice treatments. (Standard 60.05.15.2.C)

The applicant does not propose a flat roof.

Therefore, staff find the Guideline is not applicable.

3. Primary building entrances

- A. *Excluding manufacturing, assembly, fabricating, processing, packing, storage and wholesale and distribution activities which are the principle use of a building in industrial districts, the design of buildings should incorporate features such as arcades, roofs, porches, alcoves, porticoes, awnings, and canopies to protect pedestrians from the rain and sun. (Standard 60.05.15.3.A)*

The applicant states that the building entry contains a covered porch six (6) feet deep and ten (10) feet in width, providing weather protection from rain and sun. Staff have reviewed the primary building entrance design and concur with the applicant that the design of the entrances is differentiated and provides weather protection for pedestrians.

Therefore, staff find the Guideline is met.

- B. *Special attention should be given to designing a primary building entrance that is both attractive and functional. Primary entrances should incorporate changes in mass, surface, or finish to emphasize the entrance. (Standard 60.05.15.3.B)*

The applicant states that the guard structure contains a covered porch area 60 square feet in size and the facade is treated with a cultured stone wainscot, lap siding, window and a man door. The front façade is only 10 feet wide, the porch provides a change in massing from other elevations, however the door and window take up the majority of the elevation. Staff concur with the applicant that the primary building entrance is adequately emphasized.

Therefore, staff find the Guideline is met.

4. Exterior Building Materials

- A. *Exterior building materials and finishes should convey an impression of permanence and durability. Materials such as masonry, stone, wood, terra cotta, and tile are encouraged. Windows are also encouraged, where they allow views to interior activity areas or displays. (Standard 60.05.15.4.A)*

The applicant states that the dominant materials proposed for exterior walls are cultured stone wainscot and lap siding. Windows are proposed on two elevations. Staff concurs with the applicant that the proposed materials convey a sense of durability and adequate windows are provided.

Therefore, staff find the Guideline is met.

- B. *Where masonry is used for exterior finish, decorative patterns (other than running*

bond pattern) should be considered, especially at entrances, building corners and at the pedestrian level. These decorative patterns may include multi-colored masonry units, such as brick, tile, stone, or cast stone, in a layered or geometric pattern, or multi-colored ceramic tile bands used in conjunction with materials such as concrete. This guideline does not apply to developments in Industrial zones, where masonry is used for exterior finishes. (Standards 60.05.15.4.B and C)

The applicant states that the lower third of the building is treated with cultured stone wainscoting which resembles basalt. No brick is proposed to be used. The variation in the proposed wainscoting is sufficient to provide visual interest. Staff concurs that adequate decorative patterns are provided in the wainscoting.

Therefore, staff find the Guideline is met.

- 5. *Screening of Equipment.*** *All roof, surface, and wall-mounted mechanical, electrical, communications, and service equipment should be screened from view from adjacent public streets by the use of parapets, walls, fences, enclosures, dense evergreen foliage, or by other suitable means. (Standards 60.05.15.5.A through C)*

The applicant states that no rooftop units are proposed. One ground mounted heating unit is proposed, the applicant states it will be screened to the extent possible. Staff recommends a condition of approval that all mechanical units be screened in conformance with Design Standards 60.05.15.5.A-C.

Therefore, staff find that by meeting the conditions of approval the Guideline is met.

- 6. *Building Location and Orientation in Multiple Use and Commercial districts.***

- A. *Buildings should be oriented and located within close proximity to public streets and public street intersections. The overall impression, particularly on Class 1 Major Pedestrian Routes, should be that architecture is the predominant design element over parking areas and landscaping. Property size, shape and topographical conditions should also be considered, together with existing and proposed uses of the building and site, when determining the appropriate location and orientation of buildings. (Standard 60.05.15.6.A and B)***

The site abuts SW Barnes Road which is a Major Pedestrian Route. The only structure proposed is a guard structure, which by its nature should be located near the entrance to the surface parking area so the security guard can attend to any issues that may arise when people use the automated system and provide security to the adjacent parking lot. While buildings are generally desired along Major Pedestrian Routes the small size of the guard structure would not provide significant street enclosure as is desired by this guideline, should it be placed at the street. Staff finds that given the proposed use of the building and the site as a surface parking lot the location and orientation of the guard structure is appropriate. Future development and redevelopment of the site with significant floor area will provide development adjacent to

SW Barnes Road as well as along future internal streets creating the envisioned pedestrian environment.

Therefore, staff find the Guideline is met.

B. *On Class 1 Major Pedestrian Routes, the design of buildings located at the intersection of two streets should consider the use of a corner entrance to the building.* (Standard 60.05.15.6.B and D)

The site is abutted by only one Major Pedestrian Route.

Therefore, staff find the Guideline is not applicable.

C. *On Class 1 Major Pedestrian Routes, building entrances should be oriented to streets, or have reasonably direct connections to streets and pedestrian and transit facilities.* (Standard 60.05.15.6.C and D)

As previously discussed the guard structure is located along the entrance drive to the surface parking area. However the site provides direct pedestrian access to Sunset Transit Center, the anticipated major destination of patrons of the parking lot. The proposal includes the addition of sidewalks along SW Barnes Road, the new internal private street, as well as through the parking area and connecting to Sunset Transit Center and TriMet's internal pedestrian network that also leads to SW Barnes Road at the Highway 217 off-ramp which provides pedestrian access to Saint Vincent Hospital and other offices uses in the vicinity. Staff finds that reasonably direct connections to street and pedestrian and transit facilities are provided.

Therefore, staff find the Guideline is met.

7. Building Scale Along Major Pedestrian Routes.

A. *Architecture helps define the character and quality of a street. Along Major Pedestrian Routes, low height, single story buildings located at the right-of-way edge are discouraged except where detached single family dwellings are permitted.* (Standard 60.05.15.7.A and B)

The applicant states that the guard structure is an auxiliary structure to the primary surface parking use and is proposed to be an interim use. Given the small size, 200 square feet, and purpose of the structure, weather protection and restroom facilities for a security guard, it is not practical for the structure to be more than one story in height. The use is set back from the street to serve the needs of the parking facility. Due to the location of the building if it were to be more than one story in height it would not serve to provide street enclosure. The applicant has proposed plantings along the public street to provide visual screening for the parking area. Staff finds that the proposed single story structure is appropriate, and is not located at the right-of-way edge.

Therefore, staff find the Guideline is met.

- B. *Building heights at or near the street should help form a sense of enclosure, but should not create an undifferentiated height wall out of scale with pedestrians. Building heights at the street edge should be no higher than sixty (60) feet without the upper portions of the building being set back from the vertical building line of the lower building stories. (Standard 60.05.15.7.A)*

No buildings are proposed near the Major Pedestrian Route, SW Barnes Road.

Therefore, staff find the Guideline is not applicable.

8. *Ground Floor Elevations on Commercial and Multiple Use Buildings.*

- A. *Excluding residential only development, ground floor building elevations should be pedestrian oriented and provide views into retail, office or lobby space, pedestrian entrances or retail display windows. (Standard 60.05.15.8.A)*

The applicant states that the ground floor elevations are treated with architectural features including windows, doors, and differentiated materials. Given the relatively small size, and the use of the building as a guard structure, the windows and door are located on two of the elevations. The remaining two elevations are heavily landscaped to provide additional screening and visual interest. The internal uses of the building, are an office with windows, and a restroom. The restroom facility which occupies the rear of the structure is not suited for windows. Staff concur that views into the space are provided where reasonable and landscape screening is provided in areas windows are not appropriate.

Therefore, staff find the Guideline is met.

60.05.40. *Circulation and Parking Design Guidelines.* Unless otherwise noted, all guidelines apply in all zoning districts.

1. ***Connections to public street system.*** *The on-site circulation system and the abutting street system should provide for efficient access and circulation, and should connect the project to abutting streets. (Standard 60.05.40.1)*

The applicant states that the proposed on-site pedestrian, bicycle, and motor vehicle circulation system and the abutting street system should provide for efficient access and circulation, and will connect to abutting streets. The applicant proposes to connect to SW Barnes Road at the location of the future signalized intersection, as approved by the Sunset Station and Barnes Road PUD. In the interim the proposed intersection with SW Barnes Road will be right-in / right-out only until future development provides sufficient warrants to allow for construction of the traffic signal. The applicant proposes a pork-chop style median at the access drive to limit traffic to right-in / right-out. In addition the applicant proposes a connection to the TriMet access road which currently

has a signalized intersection with SW Barnes Road. Sidewalks are proposed, and conditioned, along SW Barnes Road along the improvement frontage as well as along the internal private street and connecting to the pedestrian circulation system at Sunset Transit Center. The proposal can be found to adequately connect to the public transportation system.

Therefore, staff find that by meeting the conditions of approval the Guideline is met.

2. Loading area, solid waste facilities, and similar improvements.

A. *On-site service, storage and similar activities should be designed and located so that these facilities are screened from an abutting public street. (Standard 60.05.20.2)*

The applicant states that due to the nature of the proposal there are no loading or solid waste facilities but that trash will be removed via regular service through the local waste hauler. The applicant does not proposed a trash enclosure. While the proposal will likely result in limited waste, trash facilities will be necessary, as such staff recommends a condition of approval that the applicant provide a trash enclosure that meets the screening requirements of Section 60.05.20.2 of the Development Code. Staff finds that by providing a trash enclosure consistent with the screening requirements of Section 60.05.20.2 the proposal will meet the criterion for approval.

Therefore, staff find that by meeting the conditions of approval the Guideline is met.

B. *Except in Industrial districts, loading areas should be deigned and located so that these facilities are screened from an abutting public street, or are shown to be compatible with local business operations. (Standard 60.05.20.2)*

No loading areas are proposed or required.

Therefore, staff find the Guideline is not applicable.

3. Pedestrian circulation.

A. *Pedestrian connections should be made between on-site buildings, parking areas, and open spaces. (Standard 60.05.20.3.A)*

The applicant provides pedestrian connections to the public street system, the guard station, and Sunset Transit Center. The applicant provides east/west pedestrian connections through the parking area, however north/south connections are not provided outside of the sidewalk along the private street. Staff proposes a condition of approval that a north/south centrally located pedestrian connection be provided in both phases to better connect parking spaces to exterior destinations.

Therefore, staff find that by meeting the conditions of approval the Guideline is met.

B. Pedestrian connections should connect on-site facilities to abutting pedestrian facilities and streets unless separated by barriers such as natural features, topographical conditions, or structures. (Standard 60.05.20.3.A)

The applicant provides a pedestrian connection to SW Barnes Road and the TriMet access road along the private street. There are significant grades between the proposed parking lot and the public street along SW Barnes Road as well as the TriMet access. The applicants proposed connections are sufficient given the natural barriers which preclude more frequent connections.

Therefore, staff find the Guideline is met.

C. Pedestrian connections should link building entrances to nearby streets and other pedestrian destinations. (Standard 60.05.20.3.B)

The applicant provides direct pedestrian connections from the parking lot and guard structure to SW Barnes Road and Sunset Transit Center. Staff concur that pedestrian connections are provided to adjacent public streets.

Therefore, staff find the Guideline is met.

D. Pedestrian connections to streets through parking areas should be evenly spaced and separated from vehicles (Standard 60.05.20.3.C through E)

The applicant provides pedestrian connections that run east/west through the parking area and are generally separated from drive isles and parking areas. The applicant has not proposed north/south connections through the parking area, as such staff recommends a condition of approval that the applicant provide a centrally located north/south connection in each phase of development. Due to the steep slopes between SW Barnes Road and the TriMet access road more frequent pedestrian connections to the public street system are precluded.

Therefore, staff find that by meeting the conditions of approval the Guideline is met.

E. Excluding manufacturing, assembly, fabricating, processing, packing, storage and wholesale and distribution activities which are the principle use of a building in industrial districts, pedestrian connections designed for high levels of pedestrian activity should be provided along all streets. (Standard 60.05.20.3.A through H)

The applicant provides sidewalks along all public streets as well as an extensive internal east/west pedestrian walkway system. With the addition of the north/south pedestrian

connection staff finds that the pedestrian system is adequate.

Therefore, staff find that by meeting the conditions of approval the Guideline is met.

F. Pedestrian connections should be designed for safe pedestrian movement and constructed of hard durable surfaces. (Standards 60.05.20.3.F through G)

Pedestrian ways are designed for safe movement and constructed with hard surface materials. The applicant proposes to construct pedestrian connections with concrete, it is not clear what material is proposed when pedestrian connections cross drive aisles, as such staff recommends a condition of approval that where pedestrian connections cross drive aisles they shall be constructed of concrete to provide visual separation. With the proposed condition of approval staff concurs that the applicant has proposed hard durable differentiated surfaces for pedestrian connections.

Therefore, staff find that by meeting the conditions of approval the Guideline is met.

- 4. *Street frontages and parking areas.* Landscape or other screening should be provided when surface parking areas are located along public streets. (Standard 60.05.20.4)**

The applicant states that the surface parking areas will be landscaped with a mixture of trees, shrubs and ground cover. Parking stalls located along the perimeter will be screened with a landscape hedge. The applicant's landscape hedge shows a dense row of shrubs along SW Barnes Road to block headlight glare from the parking lot. Existing trees along the street frontage are proposed to remain and additional trees planted to provide additional screening of the surface parking lot. In addition, the parking lot is located approximately ten (10) feet in height above the sidewalk due to the existing grades of the site and contains landscape screening. Staff concurs that screening is provided along public streets.

Therefore, staff find the Guideline is met.

- 5. *Parking area landscaping.* Landscape islands and a tree canopy should be provided to minimize the visual impact of large parking areas. (Standard 60.05.20.5.A through D)**

The applicant proposes landscape islands containing trees and ground cover. The applicant states that parking areas are designed with landscape islands dividing larger rows of parking spaces and providing trees to soften and shade the parking lots.

Therefore, staff find the Guideline is met.

6. Off-Street parking area frontage in Multiple-Use zones.

- A. *Surface parking should occur to the side or rear of buildings and should not occur at the corner of two Major Pedestrian Routes. (Standard 60.05.20.6)*

The applicant proposes parking as a principle use at this location, intending surface parking to be an interim use of the site. The applicant states that as future development and redevelopment occur on the site the parking lot and guard structure will be removed and replaced with buildings located along street frontages. As for the current proposal, SW Barnes Road is a Major Pedestrian Route. The only building proposed at this time is a guard structure which is located at the entrance to the parking lot. The guard structure would not reasonably serve its function or providing security and assistance if it were located along SW Barnes Road, away from the entrance to the parking lot and the anticipated primary destination of parking lot users, Sunset Transit Center. The parking lot is set back approximately 20 feet from the public right of way, is approximately 10 feet above the sidewalk grade, and is further screened with shrubs and trees. The parking lot is intended to be an interim use of the site, being replaced by future structures which will provide a street presence along SW Barnes Road. Parking is not proposed at the intersections of Major Pedestrian Routes.

Therefore, staff find the Guideline is met.

- B. *Surface parking areas should not be the predominant design element along Major Pedestrian Routes and should be located on the site to safely and conveniently serve the intended users of the development, without precluding future site intensification. (Standard 60.05.20.6)*

The proposed parking location is designed in close proximity to Sunset Transit Center to serve anticipated users and act as overflow parking for the Sunset Transit Center parking structure which often fills up early in the morning commute. The proposed location west of the private street will allow the future street network to the east of the parking lot to be developed while allowing the parking lot to continue to function. The location of the parking will include a future connection to the existing bridge over the TriMet access and future intensification is intended of the proposed surface parking use which is intended to be interim. Parking areas along the Major Pedestrian Route are screened by landscape areas.

Therefore, staff find the Guideline is met.

7. Sidewalks along streets and primary building elevations in Multiple Use and Commercial districts.

- A. *Pedestrian connections designed for high levels of pedestrian activity should be provided along all streets. (Standard 60.05.20.7.A)*

The applicant states that the sidewalks provided meet the Engineering Design Manual street standards for their street classifications. The applicant proposes sidewalks along

the street frontage between the TriMet access road and the internal private street, along the private street and connecting to the TriMet pedestrian network. Staff recommends a condition of approval that TriMet consent to the connection to their internal transportation system prior to Site Development Permit issuance or the applicant provide additional sidewalks along the remainder of the parcel frontage which are not impacted by the proposed development in order to provide a pedestrian connection to the Barnes Road/Highway 217 intersection. Staff concurs that the provided pedestrian facilities are sufficient and designed to accommodate the proposed use.

Therefore, staff find that by meeting the Guideline is met.

B. *Pedestrian connections should be provided along primary building elevations having building and tenant entrances. (Standard 60.05.20.7.B)*

Pedestrian connections link the guard structure entrance to SW Barnes Road, the parking area and Sunset Transit Center. The proposal provides pedestrian connections to the building entrance.

Therefore, staff find the Guideline is met.

8. *Connect on-site buildings, parking, and other improvements with identifiable streets and drive aisles in Residential, Multiple Use, and Commercial districts.*

A. *On-site circulation should be easily recognized and identified, and include a higher level of improvements such as curbs, sidewalks, and landscaping compared to parking lot aisles. (Standard 60.05.20.8)*

The proposal includes construction of a private street which contains sidewalks providing access to pedestrians to and from the parking facility between SW Barnes Road and Sunset Transit Center. The private street contains 10 foot wide sidewalks and trees in tree wells, per Development Code standards. Curbs and sidewalks are included in the design. All drive aisle pedestrian crossings will be conditioned to be concrete or other paving treatments to differentiate from the vehicular pavement.

Therefore, staff find that by meeting the conditions of approval the Guideline is met.

B. *Long, continuous parking aisles should be avoided if possible, and landscaped as necessary to minimize the visual impact. (Standard 60.05.20.8)*

The applicant states that internal walkways break up the parking aisles. The applicant also proposes landscape islands are regular intervals which provide shade and visual interest. Staff recommends a condition of approval that a north/south pedestrian connection be provided through the parking area with each phase of development to further break up long drive aisles and provide for safe pedestrian paths to Sunset Transit Center and other uses in the area. Staff concurs that the applicant provides

adequate landscaping to minimize the visual impact of the proposed parking facilities.

Therefore, staff find that by meeting the conditions of approval the Guideline is met.

60.05.45. Landscape, Open Space and Natural Areas Design Guidelines. *Unless otherwise noted, all guidelines apply in all zoning districts.*

3. Minimum landscaping for conditional uses in Residential districts and for developments in Multiple Use, Commercial, and Industrial Districts.

A. *Landscaping should soften the edges of buildings and parking areas, add aesthetic interest and generally increase the attractiveness of a development and its surroundings.* (Standard 60.05.25.3.A, B, and D)

The applicant states that a combination of foundation plantings, landscape plantings and lawn areas will define and enhance guard structure and parking lot, as well as provide visual screening. Special attention is being paid to soften the edges of the building and parking area along the north side of the site where the elevation of the parking area is approximately ten feet higher than the street elevation. Staff concurs that the proposed landscaping softens the edges of the building and parking areas and adds aesthetic interest.

Therefore, staff find the Guideline is met.

B. *Plazas and common areas designed for pedestrian traffic should be surfaced with a combination of landscape and decorative pavers or decorative concrete.* (Standard 60.05.25.3.C)

The proposal does not include any pedestrian plazas.

Therefore, staff find the Guideline is not applicable.

C. *Use of native vegetation should be emphasized for compatibility with local and regional climatic conditions.* (Standard 60.05.25.3.A and B)

The applicant states that to the extent possible native vegetation will be utilized. The applicant proposes use of native or climatically appropriate plants.

Therefore, staff find the Guideline is met.

D. *Existing mature trees and vegetation should be retained and incorporated, when possible, into the site design of a development.* (Standard 60.05.25.3.A and B)

The applicant states that existing trees and vegetation are proposed to remain on site.

Staff concurs that the existing trees will be retained and included as part of the landscape screening along SW Barnes Road.

Therefore, staff find the Guideline is met.

E. *A diversity of tree and shrub species should be provided in required landscaped areas. (Standard 60.05.25.3)*

The applicant states that the landscaping plan demonstrates a diversity of tree and shrub species.

Therefore, staff find the Guideline is met.

6. ***Retaining Walls.*** *Retaining walls over six (6) feet in height or greater than fifty (50) feet in length should be architecturally treated, incorporated into the overall landscape plan, or screened by landscape material. (Standard 60.05.25.5)*

The applicant states that no retaining walls are proposed.

Therefore, staff find the Guideline is not applicable.

7. ***Fences and Walls***

A. *Fences and walls should be constructed of attractive, durable materials. (Standard 60.05.25.6)*

The applicant states that no new fencing is proposed.

Therefore, staff find the Guideline is not applicable.

B. *Fences and walls constructed in front yards adjacent to public streets should provide the opportunity to view into the setback from the street unless high traffic volumes or other conflicts warrant greater security and protection. (Standard 60.05.25.6)*

The applicant states that no new fences or walls are proposed.

Therefore, staff find the Guideline is not applicable.

8. ***Changes to existing on-site surface contours at residential property lines.*** *The perimeters of properties should be graded in a manner to avoid conflicts with abutting residential properties such as drainage impacts, damage to tree root zones, and blocking sunlight. (Standard 60.05.25.10)*

The subject site does not abut any residentially zoned property.

Therefore, staff find the Guideline is not applicable.

- 9. *Integrate water quality, quantity or both facilities.*** *Aboveground stormwater detention and treatment facilities should be integrated into the design of a development site and, if visible from a public street, should appear as a component of the landscape design. (Standard 60.05.25.11)*

The applicant states that aboveground stormwater detention and treatment facilities have been integrated into the parking lot layout and will be conveyed to SW Barnes Road and ultimately into the regional detention facility near the intersection of Johnson Creek and SW Cedar Hills Boulevard.

Therefore, staff find the Guideline is met.

- 10. *Natural Areas.*** *Natural features that are indigenous to a development site, such as streams, wetlands, and matures trees should be preserved, enhanced and integrated when reasonably possible into the development plan. (Standard 60.05.25.12)*

There are no natural areas on site.

Therefore, staff find the Guideline is met.

- 11. *Landscape Buffering and Screening***

A. A landscape buffer should provide landscape screening, and horizontal separation between different zoning districts and between non-residential land uses and residential land uses. The buffer should not be applicable along property lines where existing natural features such as flood plains, wetlands, riparian zones and identified significant groves already provide a high degree of visual screening. (Standard 60.05.25.13)

The subject site is surrounded by Sunset Transit Center and Highway 26 to the south, Highway 217 to the east, SW Barnes Road, vacant land, and existing commercial development to the north as well as land zoned SC-S to the west. No buffering is necessary given the nature of the surrounding uses and the impacts of the proposed use.

Therefore, staff find the Guideline is met.

- 60.05.50. *Lighting Design Guidelines.*** *Unless otherwise noted, all guidelines apply in all zoning districts. (Standard 60.05.30.1 and 2)*

- 1. Lighting should be utilized to maximize safety within a development through strategic placement of pole-mounted, non-pole mounted and bollard luminaries.*

The applicant states that lighting will be placed to maximize safety within the development through strategic placement of pole-mounted luminaires. The applicant has provided a lighting plan that shows compliance with the City's Technical Lighting Standards.

Therefore, staff find the Guideline is met.

- 2. Pedestrian scale lighting should be an integral part of the design concept except for industrial projects. Poles and fixtures for pole-mounted lighting should be of a consistent type throughout the project. The design of wall-mounted lighting should be appropriate to the architectural design features of the building.*

The applicant states that pedestrian scale lighting is an integral part of the lighting design. Pedestrian scale lighting is located along the walkways leading from the surface parking area to TriMet's walkways along the northern side of the parking garage. Pedestrian scale lighting will also be placed on and around the pedestrian pay stations. The applicant has provided a lighting plan that shows compliance with the City's Technical Lighting Standards

Therefore, staff find the Guideline is met.

- 3. Lighting should minimize direct and indirect glare impacts to abutting and adjacent properties and streets by incorporating lens-shields, shades or other measures to screen the view of light sources from residences and streets.*

The applicant states that luminaires will have lens shields, shades or other measures to screen the view of light sources from residences and streets. The applicant has provided a lighting plan that shows compliance with the City's Technical Lighting Standards.

Therefore, staff find the Guideline is met.

- 4. On-site lighting should comply with the City's Technical Lighting Standards. Where the proposal does not comply with the Technical Lighting Standards, the applicant should describe the unique circumstances attributed to the use or site where compliance with the standard is either infeasible or unnecessary.*

The applicant has provided a lighting plan that shows compliance with the City's Technical Lighting Standards. Staff will verify continued compliance at the time of Site Development permit issuance.

Therefore, staff find the Guideline is met.

Recommendation

Based on the facts and findings presented, staff recommend **APPROVAL** of **DR2018-0167 (Sunset Surface Parking)**, subject to the applicable conditions identified in Attachment D.

CONDITIONS OF APPROVAL

CU2018-0023 Conditional Use

A. Prior to any site work commencing and issuance of the site development permit, the applicant shall:

1. Ensure that the Design Review Three (DR2018-0167) application has been approved and is consistent with the submitted plans. (Planning/JF)
2. The Conditional Use permit shall run with the land and shall continue to be valid upon a change in ownership of the site, unless the use ceases for a period of one year or greater, at which time the Conditional Use permit shall be considered expired. (Planning/JF)
3. Final decision shall expire automatically two (2) years from the effective date of decision unless the approval is enacted either through establishment of the use within the two (2) year time period. (Planning/JF)

DR2018-0167 Design Review Three

A. Prior to any site work commencing and issuance of the site development permit, the applicant shall:

1. Submit a narrative that responds to all applicable conditions of approval and discusses how each condition has or will be satisfied prior to issuance of the Site Development Permit. (Site Development Div./JJD)
2. Submit the required plans, application form, fee, and other items needed for a complete site development permit application per the applicable review checklist. (Site Development Div./JJD)
3. Contract with a professional engineer to design and monitor the construction for any work governed by Beaverton Municipal Code 9.05.020, as set forth in Resolution 4542 (2019 City Engineering Design Manual and Standard Drawings), Beaverton Development Code (Ordinance 2050, 4010 +rev.), the Clean Water Services District Design and Construction Standards (April 2017, Resolution and Ordinance 2017-05), and the City Standard Agreement to Construct and Retain Design Professionals in Oregon. (Site Development Div./JJD)
4. Submit a completed and executed City Standard Agreement to Construct Improvements and Retain Design Professional(s) Registered in Oregon. After the site development permit is issued, the City Engineer and the Planning Director must approve all revisions as set out in Ordinances 2050, 4010+rev., and Resolution 4542; however, any required land use action shall be final prior to City staff approval of the engineering plan revision and work commencing as revised. (Site Development Div./JJD)

5. Have the ownership of the subject property guarantee all public improvements, site grading, storm water management (quality and quantity) facilities including plantings, private streets, and common driveway paving by submittal of a City-approved security. The security approval by the City consists of a review by the City Attorney for form and the City Engineer for amount, equivalent to 100 percent or more of estimated construction costs. (Site Development Div./JJD)
6. Submit any required off-site easements, executed and ready for recording, to the City after approval by the City Engineer for legal description of the area encumbered and City Attorney as to form, including any approvals needed from TriMet. (Site Development Div./JJD)
7. Submit to the City a copy of issued permits or other approvals needed from Washington County for work within, and/or construction access to the SW Barnes Road right of way. (Site Development Div./JJD)
8. Have obtained the Tualatin Valley Fire and Rescue District Fire Marshal's approval of the site development plans. (Site Development Div./JJD)
9. Submit a copy of issued permits or other approvals needed from the Tualatin Valley Water District for public water system construction, backflow prevention facilities, and service extensions. (Site Development Div./JJD)
10. Submit a copy of issued permits or other approvals needed from the Clean Water Services District for storm system connections as a part of the City's plan review process. (Site Development Div./JJD)
11. Submit plans for erosion control per 1200-CN General Permit (DEQ/CWS/City Erosion Control Joint Permit) requirements to the City. The applicant shall use the plan format per requirements for sites between 1 and 4.99 acres adopted by DEQ and Clean Water Services. (Site Development Div./JJD)
12. Contact Building Department at (503) 526-2409 or (503)350-4079 to obtain a Plumbing Permit from the Building Department for the proposed onsite utilities. Submit the Plumbing Permit application concurrently with the Site Development Permit application. (Site Development Div./TDM)
13. Provide final construction plans and a final drainage report, as generally outlined in the submitted preliminary drainage report, demonstrating compliance with CWS Resolution and Order 2017-05 in regard to water quality treatment and City of Beaverton Engineering Design Manual Chapter 5 requirements for detention. In this report, provide record drawings of the existing, regional storm water detention facility that is proposed to serve this development. These record drawings are required for city acceptance of this private, regional detention facility. (Site Development Div./JJD and SAS)

14. Provide plans that delineate all areas on the site that are inundated during a 100-year storm event, including the safe overflow conveyance from proposed constructed stormwater management facilities. On all plan sheets that show grading and elevations, the 100 year inundation level shall be identified. (Site Development Div./JJD)
15. Submit to the City a certified impervious surface determination of the entire site prepared by the applicant's engineer, architect, or surveyor. The certification shall consist of an analysis and calculations determining the square footage of all impervious surfaces, in square feet. Calculations shall indicate the square footage of pre-existing impervious surfaces, all new impervious surface area created, and total final impervious surface area on the entire site after construction. (Site Development Div./JJD)
16. Pay storm water system development charges (storm water quantity and overall system conveyance) for any net new impervious area proposed. The fee-in-lieu for storm water quantity management may be waived if record drawings of the Johnson Creek regional detention facility are provided including tributary areas, flow control structure detail, and plans to restore maintenance access to the facility. (Site Development Div./JJD & SAS)
17. Submit an owner-executed, notarized, City/CWS standard private stormwater facilities maintenance agreement, with maintenance plan and all standard exhibits, ready for recording with Washington County Records. (Site Development Div./JJD)
18. Provide plans for street lights (Option C unless otherwise approved by the City Operations and Maintenance Director) and for the placement of underground utility lines along street frontages, within the site, and for services to the proposed new development. If existing utility poles along existing street frontages must be moved to accommodate the proposed improvements, the affected lines must be either undergrounded or a fee in lieu of undergrounding paid per Section 60.65 of the Development Code. (Site Development Div./JJD)
19. The following shall be recorded with Washington County (*Contact John Kidd, Survey Division: 846-7932*): (Washington County/NV)
 - a. Dedication of additional right-of-way to meet 51 feet from the centerline of SW Barnes Road along the entire site's frontage, including adequate corner radius for a future signal and associated equipment at the intersection with the new private street access.
 - b. Recordation of a cross access easement between Sunset Transit Center Drive (TL200) and the new private street (TL100).
20. Submit to Washington County Public Assurance Staff (503-846-3843): (Washington County/NV)

- a. Completed "Design Option" form, Geotech/Pavement Report, and Engineer's Checklist (Appendix "E" of the County Road Standards).
 - b. \$10,00.00 Administration Deposit.
 - c. A copy of the City's Notice of Decision and the County's Letter dated March 4, 2019.
 - d. Provide evidence that the document under 19.a (dedication of ROW) has been recorded.
 - e. Preliminary certification of adequate sight distance for the access point to SW Barnes Road, in accordance with County Code, prepared and stamped by a registered professional engineer, as well as:
 - i. A detailed list of improvements necessary to produce adequate intersection sight distance at the proposed new public street access.
 - f. Engineering plans to County standards for construction of the following public improvements:
 - i. Construct a right-in/right-out only (stop controlled) private street access on SW Barnes Road. Construction of a traffic separator median and/or a pork chop is required and subject to a design exception approval by the County Engineer.
 - ii. Construct 10 foot wide sidewalk with tree wells along the site's frontage of SW Barnes Road from Sunset Transit Center Drive to the proposed public street access.
 - iii. Install street lighting at the new private street access to County Standards. Modifications to existing street lighting shall be to County standards.
 - iv. Install conduit and other underground infrastructure required for a future traffic signal at the new private street access.
 - v. Install traffic signal interconnect on the site's frontage of SW Barnes Road from the new private street access to Sunset Transit Center Drive.
21. Obtain a Washington County Facility Permit upon completion of the following: (Washington County/NV)
- a. Engineering Division approval of plans and a financial assurance for the construction of the public improvements listed in conditions 20.f.
22. Ensure that the Conditional Use (CU2018-0023) application has been approved and is consistent with the submitted plans. (Planning/JF)

23. Provide a plan showing at minimum one additional centrally located north-south pedestrian connection through the parking lot, connecting to the east-west walkways from the perimeter banks of parking stalls. (Planning/JF)
24. Provide written consent from TriMet for the use of the access road. If consent is not provided all access must be from SW Barnes Road. (Planning/JF)
25. Provide a plan showing construction of a minimum 10 foot wide public sidewalk, with trees in tree wells every 30 feet, from the TriMet access road intersection to the proposed SW Barnes Road parking lot access road. (Planning/JF)
26. Provide a plan showing pedestrian crossings through the parking area are of a differentiated paving material, such as concrete. (Planning/JF)
27. Provide a plan showing any exterior mechanical units are screened in conformance with the Design Standards of Section 60.05.15.5.A-C. (Planning/JF)
28. Provide plans showing construction of a trash enclosure in conformance with the screening requirements of Section 60.05.20.2 of the Development Code. (Planning/JF)
29. Provide plans showing construction of a minimum 10 foot wide public sidewalk, with trees in tree wells every 30 feet, from the proposed SW Barnes Road parking lot access road to the intersection of SW Barnes Road and Highway 217 unless all of the following are met: (Planning/JF)
 - a. A public easement is provided from TriMet consenting to the use of the pedestrian pathway connecting the proposed parking lot to the Barnes Road and Highway 217 intersection.
 - b. A lighting plan is provided showing adequate pedestrian scale lighting, in compliance with the City's Technical Lighting Standards, along the entirety of the pedestrian access on the TriMet property. Additional lighting may be proposed if sufficient lighting does not currently exist, with property owner consent.

B. Prior to building permit issuance for a building, the applicant shall:

30. Submit a complete site development permit application and obtain the issuance of site development permit from the Site Development Division. A foundation only permit for the guard structure may be issued prior to full Site Development Permit issuance if the City's review is complete and subject only to outside agency permit issuance required for full Site Development Permit issuance. No additional building permits may be issued prior to full Site Development Permit issuance. (Site Development Div./JJD)

31. Make provisions for installation of all mandated erosion control measures to achieve City inspector approval at least 24 hours prior to call for foundation footing form inspection from the Building Division. (Site Development Div./JJD)

C. Prior to final occupancy permit issuance of each building permit, the applicant shall:

32. Have substantially completed the site development improvements as determined by the City Engineer. (Site Development Div./JJD)
33. Have the landscaping completely installed or provide for erosion control measures around any disturbed or exposed areas per Clean Water Services standards. (Site Development Div./JJD)
34. Have placed underground all affected, applicable existing overhead utilities and any new utility service lines within the project and along any existing street frontage as determined at permit issuance. (Site Development Div./JJD)
35. Install or replace, to City specifications, all sidewalks which are missing, damaged, deteriorated, or removed by construction. (Site Development Div./JJD)
36. Ensure all site improvements, including grading and landscaping are completed in accordance with plans marked "Exhibit A", except as modified by the decision making authority in conditions of approval. (On file at City Hall). (Planning/JF)
37. Ensure all construction is completed in accordance with the Materials and Finishes form and Materials Board, both marked "Exhibit B", except as modified by the decision making authority in conditions of approval. (On file at City Hall). (Planning/JF)
38. Ensure construction of all buildings, walls, fences and other structures are completed in accordance with the elevations and plans marked "Exhibit C", except as modified by the decision making authority in conditions of approval. (On file at City Hall). (Planning/JF)
39. Ensure all landscape areas are served by an underground landscape irrigation system. For approved xeriscape (drought-tolerant) landscape designs and for the installation of native or riparian plantings, underground irrigation is not required provided that temporary above-ground irrigation is provided for the establishment period. (Planning/JF)
40. Ensure that the planting of all approved trees has occurred. Trees shall have a minimum caliper of 1-1/2 inches. Each tree is to be adequately staked. Street trees shall be a species on the approved City Street Tree List.

(Planning/JF)

41. Ensure all exterior lighting fixtures are installed and operational. Illumination from light fixtures, except for street lights, shall be limited to no greater than 0.5 foot-candle at the property line as measured in the vertical and horizontal plane. (Planning/JF)
42. Obtain a Final Site Distance Certification for access to SW Barnes Road. (Washington County/NV)
43. The road improvements required in condition 20.f above shall be completed and accepted by Washington County. (Washington County/NV)

D. Prior to release of performance security, the applicant shall:

44. Have completed the site development improvements as determined by the City Engineer and met all outstanding conditions of approval as determined by the City Engineer and Planning Director. Additionally, the applicant and professional(s) of record shall have met all obligations under the City Standard Agreement to Construct Improvements and Retain Design Professional Registered in Oregon, as determined by the City Engineer. (Site Development Div./JJD)
45. If applicable, submit any required on-site easements, executed and ready for recording, to the City after approval by the City Engineer for area encumbered and City Attorney as to form. The applicant's engineer or surveyor shall verify all pre-existing and proposed easements are of sufficient width to meet City standards. (Site Development Div./JJD)
46. Provide a post-construction cleaning, system maintenance, and StormFilter recharge/replacement servicing report per manufacturer's recommendations for the site's proprietary storm water treatment systems by a CONTECH qualified maintenance provider as determined by the City Engineer. Additionally, another servicing report from the maintenance provider will be required prior to release of the required maintenance (warranty) security. (Site Development Div./JJD)
47. Provide an additional performance security for 100 percent of the cost of plants, planting materials, and any maintenance labor (including irrigation) necessary to achieve establishment of the treatment vegetation within the reconstructed surface water quality facility, as determined by the Public Works Director. If the plants are not well established (as determined by the Public Works Director) within a period of two years from the date of substantial completion, a plan shall be submitted by the engineer of record and landscape architect (or wetland biologist) that documents any needed remediation. The remediation plan shall be completely implemented and deemed satisfactory by the City Operations Director prior to release of the security. (Site Development Div./JJD)



WASHINGTON COUNTY, OREGON

Department of Land Use and Transportation, Operations & Maintenance Division
1400 SW Walnut Street, MS 51, Hillsboro, Oregon 97123-5625
(503) 846-7623 · FAX: (503) 846-7620

March 4, 2019

To: Jana Fox - Current Planning Supervisor

From: Naomi Vogel - Associate Planner

RE: JPC Surface Parking Lot
City File Number: CU2018-0023/DR2018-0167
County File Number: CP19-907
Tax Map and Lot Number: 1S102CB00100
Location: SW Barnes Road/Sunset Station Transit Drive

Washington County Department of Land Use and Transportation has reviewed this development application to construct in two phases a 460 lot surface parking lot with access via Sunset Station Transit Drive and via a new interim right-in/right-out only private street access (future signalized intersection) on SW Barnes Road, a County-maintained Arterial (5 lanes).

A Traffic Impact Analysis prepared by David Evans and Associates (December 2018) and supplemental addendum (February 26, 2019) was submitted in accordance with Washington County R&O 86-96 (Determining Traffic Safety Improvements). County staff has reviewed the TIA and concurs with the findings of the analysis and addendum.

I. PRIOR TO ISSUANCE OF THE SITE DEVELOPMENT PERMIT BY THE CITY OF BEAVERTON:

A. The following shall be recorded with Washington County (*Contact John Kidd, Survey Division: 846-7932*):

1. Dedication of additional right-of-way to meet 51 feet from the centerline of SW Barnes Road along the entire site's frontage, including adequate corner radius for a future signal and associated equipment at the intersection with the new public street access.

2. Recordation of a cross access easement between Sunset Transit Center Drive (TL 200) and the new private street (TL 100).

B. Submit to **Washington County** Public Assurance Staff (503-846-3843):

1. Completed "Design Option" form, Geotech/Pavement Report, and Engineer's Checklist (Appendix "E" of the County Road Standards).
2. **\$10,000.00** Administration Deposit.

NOTE: The Administration Deposit is a cost-recovery account used to pay for County services provided to the developer, including plan review and approval, field inspections, as-built approval, and project administration. The Administration Deposit amount noted above is an estimate of what it will cost to provide these services. If, during the course of the project, the Administration Deposit account is running low, additional funds will be requested to cover the estimated time left on the project (at then-current rates per the adopted Washington County Fee Schedule). If there are any unspent funds at project close out, they will be refunded to the applicant. Any point of contact with County staff can be a chargeable cost. If project plans are not complete or do not comply with County standards and codes, costs will be higher. There is a charge to cover the cost of every field inspection. Costs for enforcement actions will also be charged to the applicant.

3. A copy of the City's Notice of Decision and the County's Letter dated March 4, 2019.
4. Provide evidence that the documents under **I.A.** have been recorded.
5. Preliminary certification of adequate sight distance for the access point to SW Barnes Road, in accordance with County Code, prepared and stamped by a registered professional engineer, as well as:
 - a. A detailed list of improvements necessary to produce adequate intersection sight distance at the proposed new public street access.
6. Engineering plans to County standards for construction of the following public improvements:

Note: Improvements within the ROW may be required to be relocated or modified to permit the construction of the public improvements. All public improvements and modifications shall meet current County and ADA standards.

- a. Construct a right-in/right-out only (stop-controlled) private street access on SW Barnes Road. Construction of a traffic separator median and/or a pork chop is required and subject to a design exception approval by the County Engineer.
- b. Construct 10 foot wide sidewalk with tree wells along the site's frontage of SW Barnes Road from Sunset Transit Center Drive to the proposed private street access.
- c. Install street lighting at the new private street access to County Standards. Modifications to existing street lighting shall be to County standards.
- d. Install conduit and other underground infrastructure required for a future traffic signal at the new private street access.

e. Install traffic signal interconnect on the site's frontage of SW Barnes Road from the new private street access to Sunset Transit Center Drive.

C. Obtain a Washington County **Facility Permit** upon completion of the following:

1. Engineering Division approval of plans and a financial assurance for the construction of the public improvements listed in conditions **I.B.6.**

II. PRIOR TO OCCUPANCY BY THE CITY OF BEAVERTON:

A. Submit a **Final Sight Distance Certification** for access to SW Barnes Road.

B. The road improvements required in condition **I.B.6.** above shall be completed and accepted by Washington County.

If you have any questions, please contact me at 503-846-7639.

Cc: Transportation File



Oregon

Kate Brown, Governor

Department of Transportation

Region 1 Headquarters
123 NW Flanders Street
Portland, Oregon 97209
(503) 731.8200
FAX (503) 731.8259

February 28, 2018

ODOT #8609

ODOT Response

Project Name: Peterkort Sunset Surface Parking Lot	State Highway: OR 217
Jurisdiction: City of Beaverton	
Site Address: No situs, SW Barnes Rd - Hwy 26, Beaverton, OR	

The site of this proposed land use action is in the vicinity of the Barnes Rd/OR 217 intersection. ODOT has permitting authority for this facility and an interest in ensuring that this proposed land use is compatible with its safe and efficient operation. **Please direct the applicant to the District Contact indicated below to determine permit requirements and obtain application information.**

COMMENTS AND RECOMMENDED CONDITIONS OF APPROVAL

The proposed development will add vehicle trips to the Barnes Rd/OR 217 intersection. The traffic impact analysis for the development did not follow in full the ODOT Analysis and Procedures Manual. ODOT recommends that the applicant be required to comply with the Peterkort PUD condition 10 a, b, and e as stated below:

- 10. At the intersection of Barnes Road and Highway 217.
 - a. For the northbound approach widen Highway 217 off ramp to provide three through lanes with a storage length of 240 feet, two right turn lanes with a storage length of 240 feet. Install vehicle detection sensors to identify excessive northbound queue spillback and integrate to an advance warning sign for the OR 217/Barnes Road off-ramp to slow speeds approaching the ramp.
 - b. Pay ODOT \$250,000 as a contribution towards a variable message sign/variable speed sign to be installed by ODOT on OR 217 northbound between SW Walker Road and the Barnes Road off-ramp.
 - e. Signal modification to accommodate the widening and signaling the northbound right-turn movement.

All alterations within the State highway right of way are subject to the ODOT Highway Design Manual (HDM) standards. Alterations along the State highway but outside of ODOT right-of-way may also be subject to ODOT review pending its potential impact to safe operation of the highway. If proposed alterations deviate from ODOT standards a Design Exception Request must be prepared by a licensed engineer for review by ODOT Technical Services. Preparation of a Design Exception request does not guarantee its ultimate approval. Until more detailed plans have been reviewed, ODOT cannot make a determination whether design elements will require a Design Exception.

Permits and Agreements to Work in State Right of Way

- An ODOT Miscellaneous Permit must be obtained for all work in the highway right of way. When the total value of improvements within the ODOT right of way is estimated to be \$100,000 or more, an agreement with ODOT is required to address the transfer of ownership of the improvement to ODOT. An Intergovernmental Agreement (IGA) is required for agreements involving local governments and a Cooperative Improvement Agreement (CIA) is required for private sector agreements. The agreement shall address the work standards that must be followed, maintenance responsibilities, and compliance with ORS 276.071, which includes State of Oregon prevailing wage requirements.

Note: All ODOT permits and approvals must reach 100% plans before the District Contact will sign-off on a local jurisdiction building permit, or other necessary requirement prior to construction.

If a CIA is required, it may take up to **6 months** to process.

Please send a copy of the Notice of Decision including conditions of approval to:

ODOT Region 1 Planning
Development Review
123 NW Flanders St
Portland, OR 97209

Region1_DEVREV_Applications@odot.state.or.us

Development Review Planner: Marah Danielson	503.731.8258, marah.b.danielson@odot.state.or.us
Traffic Contact: Avi Tayar, P.E.	503.731.8221
District Contact: via email	D2BUP@odot.state.or.us

December 21, 2018

Mr. Scott Eaton
Cairn Pacific
1015 NW 11th Avenue, Suite 242
Portland, OR 97209

Dear Mr. Eaton:

Thank you for contacting TriMet regarding J. Peterkort and Company's interest in a two phase plan to construct a 260 space surface parking facility at the Sunset Transit Center and a second phase to construct 200 additional spaces, and accessing those lots via TriMet's access road. TriMet would like to express its conditional support for development of the phase one proposed parking lot and will agree to the use of its access road for this purpose provided that JPC and TriMet can reach agreement on strategies to assess the potential degradation of TriMet bus movements into and out of the site and a framework for remediating any significant degradation if it is determined that the traffic generated by the parking lot unduly impacts TriMet bus movements.

As stated above, TriMet's primary concern is that the use of the access road by TriMet's buses not be substantially hindered or delayed due to the increased traffic generated by the proposed surface lots.

To address that concern, TriMet would like to suggest a set of agreements with JPC on the following issues, prior to agreeing to the use of its access road:

1. JPC and TriMet will jointly fund a baseline analysis of the Barnes Road – Access Road intersection prior to the opening of the phase one surface lot to determine the current average wait time for buses departing via the access road. A similar analysis will be jointly commissioned by JPC and TriMet after the phase one lot has been open and operating for six months. The analysis will assess whether there has been any discernable degradation in wait times for TriMet buses using the access road, and if so, to what degree.
2. If the before and after analysis determines that average individual bus wait times have been increased by more than one minute in the p.m. peak due to the new parking facility, JPC agrees to work with TriMet to identify strategies to reduce delay for TriMet buses, including, but not limited to:
 - a. Joint funding of an analysis of strategies to reduce impacts on TriMet bus travel times, including but not limited to changes to timing of traffic signals on Barnes Road, restriping lanes on the access road, or implementing a transit queue jump lane on the access road to allow buses to move through the intersection ahead of single occupant vehicle queues.
 - b. Jointly funding traffic engineering and other work needed to support the required applications to city and county authorities to implement changes determined to be necessary by the joint study to bring average transit bus travel times during the p.m. peak back to within 30 seconds of the wait times experienced before the opening of the phase one parking lot.

- c. Jointly applying for and funding any necessary applications to city and county transportation and land use agencies to effectuate the changes determined to be necessary to bring bus travel time performance to within the 30 second degradation threshold.
 - d. Jointly determining a shared-cost model for the construction and implementation of strategies to remediate bus travel times.
3. TriMet's agreement to the use of its access road is limited to the proposed 260 stall phase one parking lot only and does not extend to any expansion of that lot nor any other development on JPC land within the Barnes Road, Sunset Transit Center Access Road boundary. JPC agrees not to build any additional parking or development within this boundary beyond this lot that relies on use of the TriMet access road without first securing agreement from TriMet.
 4. This agreement is for the use of the access road situated to the west of the Sunset Transit Center and does not include use of the access road to the east of Sunset Transit Center.

In addition to these conditions, TriMet would like to work with JPC on a cooperative basis to explore the following opportunities:

1. TriMet would like to explore opportunities for the potential joint operation of the proposed surface parking lots and the Sunset Parking Garage. TriMet is assessing the opportunity of charging at the Sunset Parking Garage and would like to explore the potential efficiencies of joint operations including fee collection, pricing and security patrols.
2. TriMet is interested in exploring development on and above its station area and parking structure and would like to explore opportunities for transit oriented development, joint development, public-private partnerships or other approaches to maximizing the development potential for both TriMet and JPC controlled property in the area.

Again, TriMet conditionally supports the development of the phase one surface parking facility and would like to partner with JPC in facilitating the overall development of this area in a way that supports and is supported by the transit center and light rail station. We would like to provide access to the lot via the TriMet access road, provided that we can reach agreement on a set of conditions and measures, similar to those suggested above, that ensure that access to and from the site for TriMet's buses is not substantially diminished.

Please feel to contact me with any thoughts or concerns.

Sincerely,



Doug Kelsey
General Manager



November 4, 2019

Hal Kever
Atwell, LLC
9755 SW Barnes Road, Suite 150
Portland, OR 97225

RE: Sunset Station & Barnes Road PUD Vesting

Dear Mr. Kever:

You requested that the City provide you with a letter regarding the vesting of the Sunset Station & Barnes Road PUD (CU2013-0003) by construction and inspection approval of the guard house for the Sunset Surface Parking Lot (CU2018-0023 / DR2018-0061). The sections of the Beaverton Development Code that are relevant to this request are below:

Section 50.90. Expiration of a Decision.

1. Except as otherwise specifically provided in a specific decision or in this Code, a final decision made pursuant to this Chapter shall expire automatically on the following schedule unless the approval is enacted either through construction or establishment of use within the specified time period.

.....

- B. Two (2) years from the effective date of decision:

.....

Conditional Use (Section 40.15.15.4)

Section 50.93. Extension of a Decision.

1. An application to extend the expiration date of a decision made pursuant to the Development Code may be filed only before the decision expires as provided in Section 50.90 or before the decision expires as provided in the appropriate subsection of the specific application contained in Chapter 40 (Applications).

.....

3. A land use decision may be extended no more than two (2) times.
4. Extension of a land use decision for an application . . . may be granted for a period of time not to exceed two (2) years.

Chapter 90: Definitions.

Substantial Construction. Providing there are buildings on the site, the completion of construction of footings for the building where the principal use will take place shall constitute substantial construction....

The Sunset Station & Barnes Road PUD (CU2013-0003) received approval on November 5, 2013. CU2013-0003 had a two year period prior to expiration per Section 50.90.1.B of

the Development Code, which would have made the expiration date November 5, 2015. The applicant subsequently extended the decision twice, per Section 50.93.4 of the Development Code, case files EXT2015-0004 and EXT2017-0003. The final expiration date for the Sunset Station & Barnes Road PUD (CU2013-0003) after the two valid time extensions is November 5, 2019, unless per Section 50.90 “the approval is enacted either through construction or establishment of the use within the specified time period.”

As the Sunset Station & Barnes Road PUD did not entitle any specific development proposals, subsequent land use applications and construction in reliance on those entitlements were required to meet the “enacted” provision of Section 50.90. On March 28, 2019, the Sunset Surface Parking (CU2018-0023 / DR2018-0167) applications were approved by the City of Beaverton. This proposal included construction of a building, a guard house.

As per the definition of Substantial Construction found in Chapter 90 of the Development Code, for a land use application involving a building, substantial construction is considered to have taken place once completion of construction of the footings occurs for the building where the principal use that will take place occurs. Since there is only one building on the site, and since this provision applies when construction of any building is involved, the guard house is considered the building for which the footings must be constructed in order to vest the guard house approval.

A building permit (BP2019-2788) was issued for the foundation only construction of the guard house on October 10, 2019. An inspection of the constructed foundation per BP2019-2788 resulted in approval on October 23, 2019. This approval means the Sunset Surface Parking Lot (CU2018-0023 / DR2018-0167) application is considered vested and will not expire.

The Sunset Surface Parking Lot project (CU2018-0023 / DR2018-0167) is the first application approved under the Sunset Station & Barnes Road PUD (CU2013-0003) to vest. Vesting of the parking lot approval serves to vest the entire Sunset Station & Barnes Road PUD (CU2013-0003) as of October 23, 2019, prior to the November 5, 2019 expiration date.

Please let us know if you have any additional questions.

Thank you,



Peter Livingston
Assistant City Attorney



Jana Fox
Current Planning Manager



STAFF REPORT

HEARING DATE: October 30, 2013

TO: Planning Commission

FROM: Jana Fox, Associate Planner *JCF EAS*

PROPOSAL: **Sunset Station & Barnes Road PUD**

LOCATION: Washington County Tax Assessors Map 1S103AB Tax Lot 1200, Map 1S103A0 Tax Lots, 1700 and 2200, Map 1S102B0 Tax Lot 500, Map 1S102CB Tax Lot 100, Map 1S102CA Tax Lot 600, and Map 1S103AD Tax Lot 600

ZONING: Urban High Density (R1), Corridor Commercial (CC), and Station Community-Sunset (SC-S)

SUMMARY: The applicant, J. Peterkort Co., proposes a conceptual Planned Unit Development (PUD), approximately 80 acres in size. The proposal includes allocation of residential units and commercial/office square footages for the seven identified parcels. No new development or physical improvements are proposed in conjunction with this Planned Unit Development.

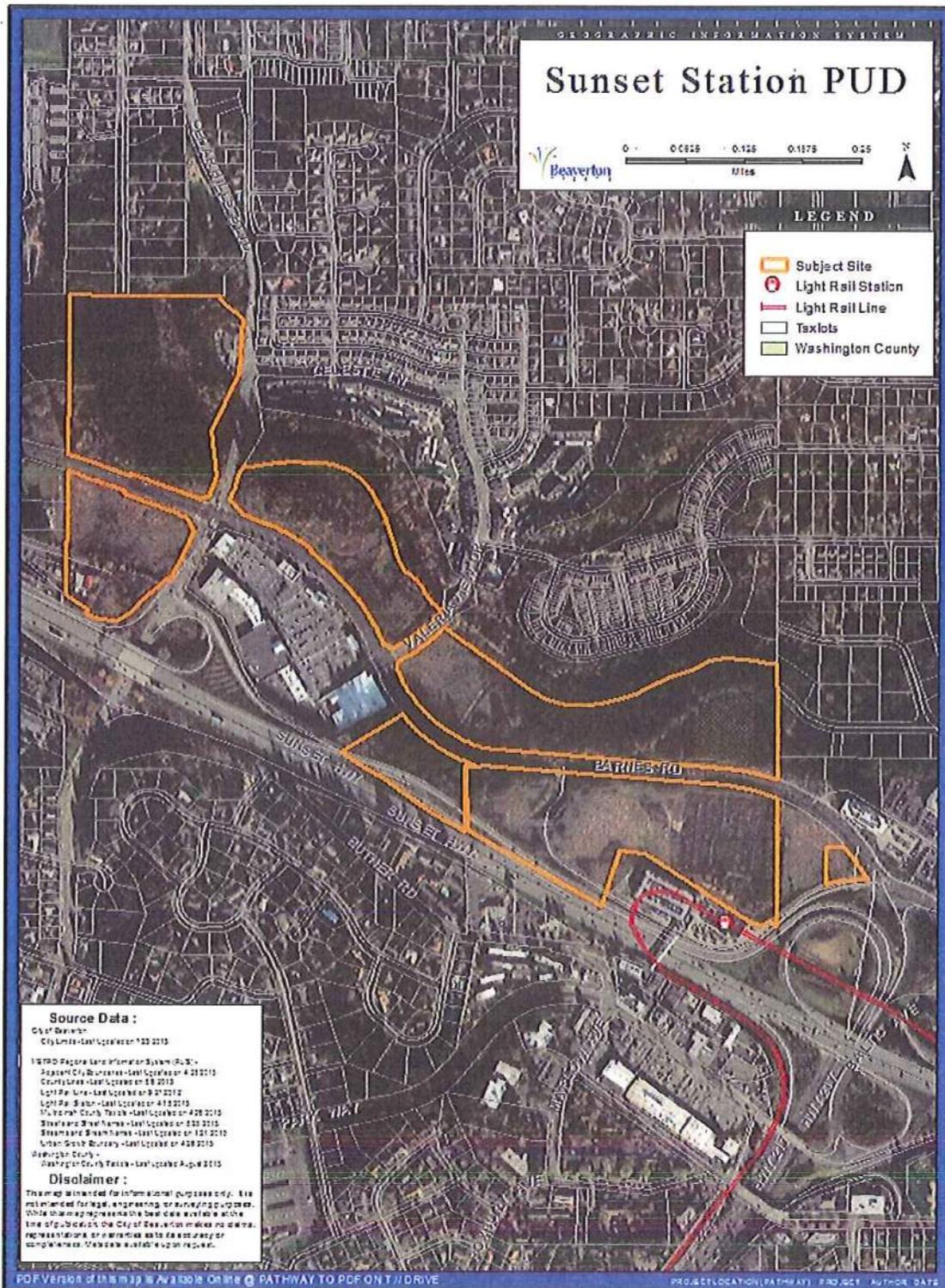
APPLICANT: J. Peterkort & Company
Scott Eaton
9755 SW Barnes Road
Portland, OR 97225

PROPERTY OWNERS: J. Peterkort & Company
9755 SW Barnes Road
Portland, OR 97255

APPLICANT'S REPRESENTATIVE: WH Pacific, Inc
Jimmy Bellomy
9755 SW Barnes Road, Ste. 300
Portland, OR 97225

RECOMMENDATIONS: **CU2013-0003 (Sunset Station & Barnes Road PUD):**
Approval subject to conditions identified at the end of this report.

Aerial Map



BACKGROUND FACTS

Key Application Dates

<u>Application</u>	<u>Submittal Date</u>	<u>Deemed Complete</u>	<u>Final Written Decision Date</u>	<u>240-Day*</u>
CU2013-0003	April 17, 2013	July 16, 2013	March 12, 2014	March 12, 2014

* Pursuant to Section 50.25.8 of the Development Code this is the latest date, without a continuance, by which a final written decision on the proposal can be made.

Existing Conditions Table

Zoning	Urban High Density (R1), Corridor Commercial (CC), and Station Community-Sunset (SC-S)	
Current Development	Vacant	
Site Size & Location	79.4 Acres	
NAC	Central Beaverton	
Surrounding Uses	Zoning: North: Urban High Density (R1) & Washington County TO:R40-80 & TO:R80-120 South: Highway 26 East: Washington County R-5 & Washington County TO:BUS West: Station Community-High Density Residential (SC-HRD) & Washington County TO:RC & TO:BUS	Uses: North: Natural Resource Areas South: Highway 26 East: Detached Housing & Commercial Office West: Vacant & Commercial

Site History

The PUD proposal is comprised of seven sites known generally as: Town Square Two, Parcel 1, Parcel 7, Parcel 12, Parcel 17, Sunset Station, and Hillside. The table below summarizes when the parcels were annexed to the City and when City of Beaverton Land Use and Zoning Designations were conferred upon the properties.

Parcel Name	Tax Lot	Annexation Application & Ordinance	Annexation Effective Date	Rezoning Application	Land Use Designation Application	Ordinance & Effective Date
Town Square Two	1S103A01700	ANX2004-0013 ORD-4334	February 7, 2005	ZMA2011-0003 (Corridor Commercial)	CPA2011-0003 (Corridor)	ORD 4581/4582 March 6, 2012
Parcel 1	1S103AB00200	ANX2011-0001 ORD-4562	March 4, 2011	ZMA2011-0003 (Urban High Density)	CPA2011-0003 (Corridor)	ORD 4581/4582 March 6, 2012
Parcel 7	1S103A02200	ANX2004-0013 ORD-4334	February 7, 2005	ZMA2011-0002 (Station Community-Sunset)	CPA2011-0002 (Station Community)	ORD 4598 January 9, 2013 (ORD 4579/4580 March 6, 2012)
Parcel 12/17	1S102B00500	ANX2011-0001 ORD-4562	March 4, 2011	ZMA2011-0002 (Station Community-Sunset)	CPA2011-0002 (Station Community)	ORD 4598 January 9, 2013 (ORD 4579/4580 March 6, 2012)
Sunset Station	1S102CB00100 1S102CA00600	ANX2004-0013 ORD-4334	February 7, 2005	ZMA2011-0002 (Station Community-Sunset)	CPA2011-0002 (Station Community)	ORD 4598 January 9, 2013 (ORD 4579/4580 March 6, 2012)
Hillside	1S103AD00600	ANX2004-0013 ORD-4334	February 7, 2005	ZMA2011-0002 (Station Community-Sunset)	CPA2011-0002 (Station Community)	ORD 4598 January 9, 2013 (ORD 4579/4580 March 6, 2012)

Sunset Station & Barnes Road Planned Unit Development (PUD) Application Scope

CU 2013-0003, the Sunset Station and Barnes Road Planned Unit Development (PUD) is a unique application in that no specific development is being requested to be authorized. Rather, the application is proposing the City authorize a generalized development plan for the subject parcels. Each parcel has been assigned specific proposed uses with commensurate vehicle trip generation for each proposed use. The application materials also review the full potential transportation impacts associated with the full development of the parcels within the PUD area. The submitted materials analyze the potential impacts in current conditions rather than deferring the traffic impact analysis to a future date. A key purpose of this PUD application is to demonstrate the feasibility of the proposed development and the feasibility of providing the necessary and appropriate mitigation measures on a holistic basis rather than on a parcel by parcel basis.

The staff analysis which follows identifies issues and potential mitigation measures associated with the generalized development plan which will need to be addressed in subsequent land use actions. In many cases, some potential development specific impacts and the sequence of implementing specific transportation mitigation measures identified in this PUD, if approved, will have to be determined by the future land use application review processes and not by this land use application (PUD) review.

If approved, CU 2013-0003 will establish a range of uses authorized to be located on specific parcels within the boundaries of the proposed PUD. Moreover, an approval of the PUD will establish the range of necessary mitigation measures to the transportation system in the area. In order to act on the entitlements granted by this PUD on the specific parcels, the property owner will be required to submit appropriate land use applications in the future which demonstrate how the proposed development will meet the Development Code in effect at the time of application submittal and the conditions of CU 2013-0003. The development of the Sunset Station and Barnes Road PUD will be at least a two-step land use application review process. CU 2013-0003 is the first step. If CU 2013-0003 is approved, once a subsequent development approval is granted, and substantial construction as defined in Chapter 90 of the Development Code has taken place, the PUD and associated transportation trips will be vested for the full build out of the PUD area.

DESCRIPTION OF APPLICATION AND TABLE OF CONTENTS

	PAGE No.
Attachment A: Facilities Review Committee Technical Review and Recommendation Report	8-27
Attachment B: CU2013-0003 Planned Unit Development (Type 3) reviews an 80 acre conceptual Planned Unit Development with associated transportation improvements.	28-41
Attachment C: Conditions of Approval	42-51

Exhibits

Exhibit 1. Materials submitted by Staff

- Exhibit 1.1 Vicinity / Zoning Map (page 2 of this report)
- Exhibit 1.2 Aerial Map (page 3 of this report)

Exhibit 2. Materials submitted by the Applicant

- Exhibit 2.1 Written Statement & Drawings
- Exhibit 2.2 Transportation Impact Analysis (TIA)
- Exhibit 2.3 TIA Update Cover Memo, dated October 11, 2013
- Exhibit 2.4 Supplemental Simulation Analysis Memo, dated October 10, 2013

Exhibit 3. Materials submitted by Public Agencies

- Exhibit 3.1 Washington County, Steve Szigethy, dated September 25, 2013
- Exhibit 3.2 TriMet, Ben Baldwin, dated September 28, 2013
- Exhibit 3.3 Washington County, Jinde Zhu, dated October 3, 2013
- Exhibit 3.4 Washington County, Naomi Vogel, dated October 16, 2013
- Exhibit 3.5 ODOT, Marah Danielson, dated October 18, 2013
- Exhibit 3.6 TVF&R, Jeremy Foster, dated August 12, 2013

Exhibit 4. Public Comment

- Exhibit 4.1 Email from Craig J. Vogel & James Majors, dated August 4, 2013
- Exhibit 4.2 Email from Dorothy Detering, dated September 16, 2013
- Exhibit 4.3 Letter from Fred Lord, received September 19, 2013
- Exhibit 4.4 Letter from Christian G. Roebach, dated October 17, 2013
- Exhibit 4.5 Letter from Jake Mintz, dated October 18, 2013
- Exhibit 4.6 Letter from Megan Garvey, The Wetland Conservancy, received October 21, 2013

**DRAFT
FACILITIES REVIEW COMMITTEE
TECHNICAL REVIEW AND RECOMMENDATIONS
Sunset Station & Barnes Road PUD
CU2013-0003**

Section 40.03 Facilities Review Committee:

The Facilities Review Committee has conducted a technical review of the application, in accordance with the criteria contained in Section 40.03 of the Development Code. The Committee's findings and recommended conditions of approval are provided to the decision-making authority. As they will appear in the Staff Report, the Facilities Review Conditions may be re-numbered and placed in different order.

The decision-making authority will determine whether the application as presented meets the Facilities Review approval criteria for the subject application and may choose to adopt, not adopt, or modify the Committee's findings, below.

The Facilities Review Committee Criteria for Approval will be reviewed for all criteria that are applicable to the submitted applications as identified below:

- A. All critical facilities and services related to the development have, or can be improved to have, adequate capacity to serve the proposal at the time of its completion.***

Chapter 90 of the Development Code defines "critical facilities" to be services that include public water, public sanitary sewer, storm water drainage and retention, transportation, and fire protection. The Committee finds that the proposal includes or can provide necessary on-site and off-site connections and improvements to public water, public sanitary sewer and storm water drainage facilities.

Utilities

Water Service will be provided to the site by the Tualatin Valley Water District. The applicant provides an infrastructure plan that identifies the existing utilities in the area and the general location of proposed connections to serve future development of the site. The applicant generally proposes to connect to the existing water line in SW Barnes Road to serve future development. Additional development of private and public water lines will be required to serve all of the parcels. Tualatin Valley Water District was provided with a copy of the proposal and has not provided comments. At the time of a physical development proposal, the applicant will be required to show that adequate capacity exists to serve the site and make any necessary upgrades to public or private water lines in order to provide service to the site.

Sanitary sewer service to the site is provided by the City. The applicant provides an infrastructure plan that identifies the existing utilities in the area and the general location

of proposed connections to serve future development of the site. The applicant generally proposes to connect to the existing sanitary sewer line in SW Barnes Road to serve the development. Additional development of private and public sanitary sewer lines will be required to serve all of the parcels. At the time of a physical development proposal, the applicant will be required to show that adequate capacity exists to serve the site and make any necessary upgrades to public or private sanitary sewer lines in order to provide service to the site.

Storm water sewer service to the site is provided by the City. ODOT may be able to provide some storm drainage service to the Sunset Station site through its storm system in the vicinity of Barnes Road/Highway 217 and Highway 26. The applicant provides an infrastructure plan that identifies the existing utilities in the area and the general location of proposed connections to serve future development of the site. The applicant shows stormwater quality facilities on the Hillside Parcel, Parcel 17, Parcel 12, Parcel 7, and Parcel 1 to serve the development. Additional development of private and public storm sewer lines may be required to serve all of the parcels. At the time of a physical development proposal, the applicant will be required to show that adequate capacity exists to serve the site and make any necessary upgrades to public or private storm water sewer lines in order to provide service to the site.

The specific PUD proposal will not limit the ability of the property owner to develop the necessary utility infrastructure on the project site since no specific development will be authorized by an approval of the PUD. To ensure appropriate design and construction of the essential facilities including but not limited to utility connections, access to manholes and structures, maintenance requirements, and associated construction and utility phasing plans, the Committee finds that future applications for development must address this criteria and specific utility capacity and local service provision at the time of development.

Fire Protection

Fire protection will be provided to the site by Tualatin Valley Fire and Rescue Department (TVF&R). Comments from TVF&R (Exhibit 3.6) have been received and state that at this time as there is no physical development proposed TVF&R has no conditions related to the proposal. TVF&R staff notes that future development will be required to comply with all relevant TVF&R standards and that such compliance will be reviewed at the time of development application.

Transportation

Section 60.55.20 of the Beaverton Development Code requires a traffic impact analysis for any development proposal that will generate more than 200 new trips per day. To satisfy this Code requirement, the application included a traffic impact analysis (TIA) dated October 2013 by The Transpo Group and Transportation Consulting Group. The October 2013 TIA incorporates the initially submitted April 2013 TIA and additional information which was provided in three memoranda dated July 11, 2013, July 26, 2013 and September 16, 2013 from Michael Swenson of The Transpo Group and Don Odermott from the Transportation Consulting Group. Two additional transportation

memorandums, dated October 10, 2013 and October 11, 2013 were submitted with or after the October 2013 TIA. These memos provide supplemental queuing analysis and outlined the updates and inclusions made with the October 2013 TIA update. All of the supplemental memoranda we provided in response to questions raised by the reviewing agencies, the City, Washington County, and Oregon Department of Transportation (ODOT).

The area reviewed under the traffic impact analysis includes roads under the jurisdiction of the three agencies. ODOT has jurisdiction on Highways 26 and 217, including the interchange areas, Cedar Hills Boulevard between Barnes Road and Butner Road, and the intersection of Highway 217 and Barnes Road. Washington County has jurisdiction on Barnes Road (except the Highway 217 intersection), on Cedar Hills Boulevard from the Barnes Road intersection north, on Cedar Hills Boulevard from the Butner Road intersection south, and on Butner Road. The City of Beaverton has jurisdiction on SW 117th Avenue, Celeste Lane, and Valeria View Drive.

Barnes Road and Cedar Hills Boulevard are classified as arterials in Figure 3-2 of the City's Comprehensive Plan. Valeria View Drive and Celeste Lane are classified as collector streets. SW 117th Avenue is classified as a local street.

Under the City's Development Code, traffic analysis is required for the Area of Influence, which includes all major intersections where the new traffic generated by the development exceeds 5 percent of the existing traffic in the peak hour. The TIA shows the Area of Influence to include 45 intersections that are shown on Figure 4 of the TIA. The study area extends north to NW Cornell Road, south to Hall Boulevard, east to the Multnomah County boundary and west to NW 143rd Avenue.

Section 60.55.20.4 of the Beaverton Development Code requires that the TIA review traffic operation within the Area of Influence on the projected date of opening of the new development. In addition, the Code requires analysis of impacts on long-term traffic needs within the Area of Influence and discussion of how the proposed development will provide its roughly proportional share of the long-term improvement needs. Due to the size of the prospective PUD development and the long time needed to be completed, a conservative approach was used by assuming the full build out of the development will occur in 2035. This horizon year coincides with the adopted forecast year for the adopted Regional Transportation Plan and the Beaverton Transportation System plan. Transportation staff finds that the TIA is technically sound.

The TIA shows that upon full build-out by the year 2035 the proposal will generate approximately 44,500 daily trips. The peak hour traffic is anticipated to occur during the weekday PM peak period between 4 to 6 p.m. Approximately 3,600 vehicle trips will occur during the peak hour.

The TIA shows that eleven intersections will exceed current volume to capacity thresholds during the peak hours (e.g., cause congestion) if no transportation system improvements are made. These intersections are:

- SW Cedar Hills Boulevard / SW Barnes Road
- SW Cedar Hills Boulevard / US 26 EB Ramps
- SW Cedar Hills Boulevard / SW Butner Road
- SW Cedar Hills Boulevard / SW Jenkins Road
- SW 117th Avenue / SW Barnes Road
- SW 116th Avenue / SW Barnes Road
- SW Barnes Road / Towne Square West
- SW Barnes Road / SW Valeria View Drive
- SW Barnes Road / Sunset Station Drive
- OR 217 / SW Barnes Road
- SW Miller Road / SW Barnes Road

The TIA includes proposed mitigation measures (transportation system improvements) to ensure that all intersections will operate within current city, county, and state standards. The improvements include:

SW Cedar Hills Boulevard / SW Barnes Road

- Construction of a second eastbound right-turn lane
- Construction of a westbound right-turn Lane
- Construction of a second northbound through lane
- Construction of a second southbound left-turn lane

SW Cedar Hills Boulevard / US 26 EB Ramps

- Construction of a second southbound left-turn lane
- Construction of a northbound right-turn Lane
- Construction of a shared eastbound left/through/right-turn lane

SW Cedar Hills Boulevard / SW Butner Road

- Construction of a second eastbound left-turn lane
- Construction of a westbound right-turn lane
- Convert the northbound right-turn lane to a shared through/right-turn lane
- Add east/west split signal phasing

SW Cedar Hills Boulevard / SW Jenkins Road

- Construction of a southbound right-turn Lane

SW 117th Avenue / SW Barnes Road

- Construct a raised median island to restrict access to right-in/right-out

SW Barnes Road / SW 116th Avenue

- Construct a 3/4 lane roadway from NW Barnes Road to Choban Lane
- Construct a new traffic signal

SW Barnes Road / Towne Square West

- Restripe to add eastbound left-turn lane

- Construct a 3rd westbound through lane
- Modify the existing signal

SW Barnes Road / SW Valeria View Drive

- Restripe existing southbound through lane as a through / left-turn lane
- Operate the signal with north / south split phasing
- Restripe a 3rd westbound through lane

SW Barnes Road / Sunset Station Drive

- Restripe the northbound right lane to convert to a right/left-turn lane

OR 217 / SW Barnes Road

- Construct a second westbound left-turn lane
- Construct a second westbound right-turn lane
- Construct a 3rd northbound through lane from OR 217 to Barnes Road

SW Miller Road / SW Barnes Road

- Construct a second eastbound through lane 500 feet each side of Miller Road
- Construct a second southbound left-turn lane

In addition to the proposed mitigations listed above, Washington County, ODOT, and City staff compared the lane configuration under existing conditions with the final future 2035 lane configuration used in the analysis and identified additional mitigations that are detailed in the conditions of approval. Transportation staff finds that the post-development transportation system will have adequate capacity to serve the proposal at the time of completion of the mitigation improvements as shown in the recommended conditions of approval.

Given the large development area and the uncertainty regarding the future order of development on the parcels, staff has conditioned the applicant to provide a supplemental transportation analysis with each physical development proposal to identify which mitigation measures identified by this PUD approval are warranted by the future proposed development. This requirement is outlined in the Conditions of Approval. Transportation staff finds that a supplemental transportation analysis at the time of each proposed development is imperative in order to guide the timing of transportation improvements; and as development occurs will help local decision makers identify which improvements should occur with each development phase. Therefore staff recommend that each phase of proposed development require supplemental transportation analysis identifying the necessary improvements, identified in the conditions of approval. The supplemental transportation analysis shall also determine if the proposal is consistent with the trip generation assumptions of the October 2013 TIA prepared for the PUD master plan and adopted by the PUD.

A queuing analysis was submitted in the TIA and supplemental memorandum, dated October 10, 2013. Staff has provided a condition of approval that the applicant provide

lane and intersection geometry drawings which shows existing and proposed road details.

Washington County and ODOT have provided comments, including processes steps for future developments which are included as Exhibits 3.3, 3.4, and 3.5 of the staff report. These reports inform the applicant of process requirements and expectations for the respective agencies for future development.

Staff finds that the PUD does not propose specific development on any of the subject parcels. The PUD will establish uses of land and commensurate vehicle trips from the parcels and the transportation system. Even though new development improvements are not being proposed by the PUD, the PUD will not prevent the property owner from providing all critical facilities in the future when specific developments of the subject parcels is proposal. Therefore, staff recommend that upon completion of the recommended conditions of approval, the application satisfies this criterion.

FINDING: Therefore, the Committee finds that by meeting the conditions of approval, the proposal meets the criterion.

B. Essential facilities and services are available, or can be made available, with adequate capacity to serve the development prior to occupancy. In lieu of providing essential facilities and services, a specific plan may be approved if it adequately demonstrates that essential facilities, services, or both will be provided to serve the proposed development within five years of occupancy.

Chapter 90 of the Development Code defines "essential facilities" to be services that include schools, transit improvements, police protection, and pedestrian and bicycle facilities in the public right-of-way. The applicant's plans and materials were forwarded to City Transportation Staff, TriMet, City Police Department, and Tualatin Valley Fire and Rescue. Staff consulted with the Beaverton School District who declined to comment on the project until physical development is proposed in subsequent land use applications.

The site will be served by the Tualatin Hills Park and Recreation District (THPRD). Future development applications will be required to pay applicable THPRD systems development charges. Staff encourages the applicant to work with THPRD to provide parks in association with future development to meet the needs of new residents and the existing community.

The City of Beaverton Police will serve the development site. The Police Department has submitted no comments or recommendations to the Facilities Review Committee.

TriMet will serve the development site. TriMet has submitted comments and recommendations requesting that future development provide pedestrian and vehicle connections to the transit center and that TriMet remain involved in future development review (Exhibit 3.2). The site is most directly served by the red and blue line MAX and bus lines 20, 48, 50, 59, and 62. The applicant will have to coordinate future development of the Sunset Station parcel with TriMet who operates the Sunset Transit

Center which takes access through the Sunset Station site. TriMet has not identified the need for additional transit stops or other related transit improvements as a result of this PUD application. Additional transit stops or transit improvements may be required at the time of physical development of the site depending on the future demonstration of impact to existing transit facilities.

SW Barnes Road, adjacent to the subject site, contains bike lanes along all frontages and sidewalks along a portion of the street frontage. Future development will be required to provide full half street improvements, including sidewalks, at the time of development to complete the sidewalk network along the frontages of all parcels. Future street improvement will be required to continue to provide bike lanes in conformance with the Engineering Design Manual. Future development will be required to provide pedestrian connections to the public street system from the development in accordance with the requirements of the Development Code.

All new streets will be required to provide bicycle and pedestrian amenities in accordance with the standards of the agency having jurisdiction over the road and/or development.

The applicant has provided a conceptual pedestrian and bicycle circulation plan which shows general conceptual locations for future bike and pedestrian connections through the sites as well as existing and proposed bicycle and pedestrian facilities. This plan is not to be construed as a site specific pathway locational document. The submitted plan is conceptual and specific locations and connections will be evaluated in conjunction with future development of the subject sites.

The conditions of approval identify bicycle and pedestrian improvements to be made throughout the PUD area and the public right-of-way which will be required with future site specific development. The intent of the conditions of approval is to connect parcels within the PUD and to connect to transit opportunities. Staff finds that by meeting the conditions of approval the applicant meets the criterion for approval.

FINDING: Therefore, the Committee finds that by meeting the conditions of approval, the proposal meets the criterion.

C. The proposal is consistent with all applicable provisions of Chapter 20 (Land Uses) unless the applicable provisions are modified by means of one or more applications which shall be already approved or which shall be considered concurrently with the subject proposal.

Staff cites the Code Conformance Analysis chart at the end of this report, which evaluates the project as it relates the applicable Code requirements of Chapter 20 for the Corridor Commercial (CC), Urban High Density (R1) and Station Community-Sunset (SC-S) zones as applicable to the above mentioned criteria. As demonstrated on the

chart, the development proposal meets all applicable standards of Chapter 20. Future development proposals will be required to show continued compliance with the standards of Chapter 20. No physical development is proposed with this application.

FINDING: Therefore, the Committee finds that the proposal meets the criterion.

D. The proposed development is consistent with all applicable provisions of Chapter 60 (Special Regulations) and all improvements, dedications, or both, as required by the applicable provisions of Chapter 60 (Special Regulations), are provided or can be provided in rough proportion to the identified impact(s) of the proposal.

The Committee cites the Code Conformance Analysis chart at the end of this report, which evaluates the proposal as it relates the applicable Code requirements of Chapter 60 in response to the above mentioned criteria. Staff will provide findings for the Planned Unit Development (PUD) within the applicable sections of the staff report.

Traffic (BDC 60.55): Staff cites the response to criterion A of this report in response to Section 60.55 of the Development Code.

Street, Bicycle, and Pedestrian Connections (BDC 60.55.25): The proposal includes a conceptual plan for an on-site street network connecting to the existing system, specific details for the bike and pedestrian network will be included with proposals for physical development. The applicant has provided a conceptual bicycle and pedestrian circulation plan which identifies existing and future bicycle and pedestrian connections through and between parcels and crossing Barnes Road, the specifics of which will be determined at the time of Development Review for physical development. Currently the applicant proposes to provide pedestrian connections across Barnes Road at signalized intersections which will provide pedestrian signalized crossings in accordance with the requirements of the road agency having jurisdiction over the road. Staff recommends a proposed condition of approval which requires the application to provide pedestrian connections throughout the PUD which connect the parcels within the PUD and transit opportunities in conformance with Section 60.55 of the Development Code.

Transportation staff concurs with Washington County's recommendations included in the September 25, 2013 memo, *Active Transportation Recommendations for Peterkort Properties* (Exhibit 3.1) regarding active transportation infrastructure (bike, pedestrian, and transit access). The memorandum's findings and recommendations are incorporated by reference to this report. The recommendations are based on:

- system completeness, as indicated by gaps in the pedestrian/bicycle network;
- safety, comfort and potential usage level of active transportation facilities in the area;
- local neighborhood input heard through the county's Transportation System Plan update; and
- recent planning work completed by the County, including the Washington County Bicycle Facility Design Toolkit and the Washington County Bicycle and Pedestrian Improvement Prioritization Project.

The recommendations by Washington County, as outlined in the *Active Transportation Recommendations for Peterkort Properties*, are incorporated as suggestions to the applicant in planning for future phases of development in order to provide for a robust active transportation network in the vicinity of the proposed development. The active transportation recommendations outlined in the memo are not conditions of approval as they do not address specific deficiencies or safety concerns in relation to the PUD proposal and therefore cannot be required as conditions of approval. Many of the recommendations in the memo will be addressed at the time of physical development, including connections through and between parcels, completion of missing sidewalks, and pedestrian crossings. These improvements fit within the context of physical development which has yet to be proposed.

Street Width (BDC 60.55): Street width adequacy will be reviewed at the time of a future development review applications. Upon receipt of a development application, proposals will be evaluated for typical half-street frontage improvements including potential right-of-way dedication, curb, planter strip, sidewalk, and street trees.

Dedication of required right-of-way is to be of sufficient width to accommodate the required improvements as enumerated in the conditions of approval. Staff have evaluated the identified improvements and have determined that accommodating the needed right-of-way width of the improvements is feasible. Necessary right-of-way dedication shall occur with the first physical development within each parcel. Should a Land Division application be filed prior to submittal of an application for physical development the applicant shall be required to provide a reservation or tract upon the plat to accommodate the necessary future right-of-way dedication to meet the ultimate required right-of-way build out width. This reservation will ensure that necessary future right-of-way is reserved for the dedication that will be required at the time of physical development.

Access (BDC 60.55): The proposal includes several new access points along Barnes Road. Washington County has jurisdiction regarding access control on Barnes Road. As with frontage improvements, a determination regarding access control shall be made by County staff at the time of development review and review of the on-site local street network. The proposed access locations included in the proposal shall be considered conceptual only, until such time as they receive approval from Washington County for the required design exception. The applicant has submitted a Design Exception to Washington County. However, Washington County states in their memo dated, October 16, 2013 (Exhibit 3.4) that the proposed accesses shall be considered conceptual until they may be approved by a Design Exception at the time of development review.

Transit (BDC 60.55): TriMet, the Portland metropolitan area transit provider that owns the Sunset Transit Center adjacent to the proposed PUD and provides both bus and transit service to this area, has provided a letter of comment to the City of Beaverton with recommendations for the proposed development (Exhibit 3.2). The Beaverton Development Code (Section 60.55.40) recognizes that certain transit improvements or

pedestrian connections may be required to support transit use. Because the City of Beaverton is not the transit provider for the city, staff relies on TriMet staff for recommendations regarding transit infrastructure needs. Staff incorporates the letter from TriMet, including recommendations for future development as guidance for future development applications. TriMet will be provided with all future plans for physical development. Staff encourages the applicant to work with TriMet on future development of the project, particularly the Sunset Station site.

To meet the requirements of Section 60.65, all utilities will be required to be placed underground at the time of development.

The off-street loading standards of Section 60.25 and the off-street parking standards of Section 60.30 will be addressed at the time of physical development as these standards rely on building and site design in addition to proposed use. As no physical development is proposed with this PUD application these sections cannot be fully addressed at this time. Other provisions within Chapter 60 such as Design Review (60.05) and Land Division Standards (60.15) will likely apply to future development proposals. These provisions are not applicable to the PUD application and will be addressed by future development applications. However, the proposed PUD does not preclude compliance with these standards at the time of physical development of the subject parcels.

FINDING: Therefore, the Committee finds that by meeting the conditions of approval, the proposal meets the criterion.

E. Adequate means are provided or can be provided to ensure continued periodic maintenance and necessary normal replacement of the following private common facilities and areas, as applicable: drainage ditches, roads and other improved rights-of-way, structures, recreation facilities, landscaping, fill and excavation areas, screening and fencing, ground cover, garbage and recycling storage areas and other facilities not subject to maintenance by the City or other public agency.

The applicant does not propose physical development associated with this PUD application. Future development proposals will have to comply with this criterion.

FINDING: Therefore, the Committee finds that the criterion is not applicable.

F. There are safe and efficient vehicular and pedestrian circulation patterns within the boundaries of the development.

The applicant does not propose physical development at this time. Future physical development will be required to provide safe and efficient vehicular and pedestrian circulations patterns within the boundaries of the development. The applicant does provide an overview plan showing general new street locations and connections. As no

physical development is currently proposed the internal circulation patterns are not under review with this application.

FINDING: Therefore, the Committee finds that the criterion is not applicable.

G. The development's on-site vehicular and pedestrian circulation systems connect to the surrounding circulation systems in a safe, efficient, and direct manner.

The applicant has provided a plan showing future street connections for the proposed development. The applicant proposes two additional connections to SW Barnes Road than are currently show in the Washington County TSP, as such the applicant will be required to obtain design exceptions from Washington County in order to provide those connections. Staff cites the findings in criteria A and D as applicable to this criterion.

FINDING: Therefore, the Committee finds that by meeting the conditions of approval, the proposal meets the criterion.

H. Structures and public facilities serving the development site are designed in accordance with adopted City codes and standards and provide adequate fire protection, including, but not limited to, fire flow.

The applicant does not propose any physical development with this Planned Unit Development application. Future land use applications which propose physical development will be required to comply with adopted City codes and standards including providing adequate fire protection.

FINDING: Therefore, the Committee finds that the criterion is not applicable.

I. Structures and public facilities serving the development site are designed in accordance with adopted City codes and standards and provide adequate protection from hazardous conditions due to inadequate, substandard or ill-designed development.

The applicant does not propose any physical development with this Planned Unit Development application. Future land use applications which propose physical development will be required to comply with adopted City codes and standards and provide adequate protection from hazardous conditions.

FINDING: Therefore, the Committee finds that the criterion is not applicable.

J. Grading and contouring of the development site is designed to accommodate the proposed use and to mitigate adverse effect(s) on neighboring properties, public right-of-way, surface drainage, water storage facilities, and the public storm drainage system.

The applicant does not propose any physical development with this Planned Unit Development application. Future land use applications which propose physical development will be required to comply with grading standards.

FINDING: Therefore, the Committee finds that the criterion is not applicable.

K. Access and facilities for physically handicapped people are incorporated into the development site and building design, with particular attention to providing continuous, uninterrupted access routes.

The applicant does not propose any physical development with this Planned Unit Development application. Future land use applications which propose physical development will be required to meet all applicable accessibility standards of the International Building Code, Fire Code and other standards as required by the American Disabilities Act (ADA).

FINDING: Therefore, the Committee finds that the criterion is not applicable.

L. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code.

The applicant submitted the applications on April 17, 2013 and was deemed complete on July 16, 2013. In the review of the materials during the application review, the Committee finds that all applicable application submittal requirements, identified in Section 50.25.1 are contained within this proposal.

The review of the Faculties Review approval criteria and associated Chapter 20 and Chapter 60 requirements defer some detailed review to the time of development proposals, as no physical development is proposed with this PUD application. However, in the review of the applicants materials staff finds that the PUD, as proposed, does not preclude the applicant from feasibly complying with these standards at the time of development.

FINDING: Therefore, the Committee finds the proposal meets the criterion for approval.

Code Conformance Analysis
Chapter 20 Use and Site Development Requirements
Urban High Density (R1) Zoning District
Applicable to Parcel 1

CODE STANDARD	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE?
Development Code Section 20.05.20 (Urban High Density R1)			
Use- Permitted	Attached Dwellings	Attached Dwellings	Permitted
Development Code Section 20.05.15 (Urban High Density R1)			
Minimum Lot Area	1,000 sq. ft.	No Land Divisions are proposed.	N/A
Minimum Lot Dimensions Width Depth	14' Interior / 20' Corner none	No Land Divisions are proposed.	N/A
Minimum Yard Setbacks Front Side Rear Garage Garage Door to Rear Minimum Between Buildings	10' 0' / 5' / 10' 15' 5' or 18.5' 24' 6'	No physical development is proposed.	N/A
Maximum Building Height	60 feet	No physical development is proposed.	N/A
Development Code Section 20.25.05 – Density Calculations			
Minimum Residential Density	Gross Acreage: 10.12 Acres Less Slopes: -3.74 Acres Net Acreage: 6.38 Acres 6.38 Acres x 0.8 = 5.10 Acres 5.10 Acres = 222,156 sq. ft. 222,156 sq. ft. / 1000 sq. ft. / DU = 222 <i>Dwelling Units Minimum</i> 10.12 Acres = 440,827 sq. ft. 440,827 sq. ft. / 1000 sq. ft. / DU = 441 <i>Dwelling Units Maximum</i>	250 Dwelling Units Proposed	Yes

Code Conformance Analysis
Chapter 20 Use and Site Development Requirements
Corridor Commercial (CC) Zoning District
Applicable to Town Square 2 Parcel

CODE STANDARD	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE?
Development Code Section 20.10.20 (Corridor Commercial)			
Use- Permitted	Retail Trade	Retail Pharmacy	Permitted
	Eating & Drinking Establishments	Restaurant Coffee Shop w/ Drive Thru	Permitted
Development Code Section 20.10.15 (Corridor Commercial)			
Minimum Lot Area	None	No Land Divisions are proposed.	N/A
Minimum Lot Dimensions Width Depth	None None	No Land Divisions are proposed.	N/A
Minimum Yard Setbacks Front Side Rear	None* (over 60,000 sq. ft. governed by Chapter 60 of Development Code) None None	No physical development is proposed.	N/A
Maximum Building Height *Within 100' of a residentially zoned property	60 feet 35 feet	No physical development is proposed.	N/A
Development Code Section 20.25.10 – Floor Area Ratio			
Floor Area Ratio	None	0.47	N/A

Code Conformance Analysis
Chapter 20 Use and Site Development Requirements
Station Community-Sunset (SC-S) Zoning District
Applicable to Parcel 2, Parcel 1, Parcel 12, Parcel 17, Hillside Parcel and the
Sunset Station Parcel

CODE STANDARD	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE?
Development Code Section 20.20.20 (Station Community-Sunset)			
Parcel 7 Use-Permitted	Attached Dwellings	Mid-Rise Apartments	Permitted
	Office	Office	Permitted
Parcel 12 Use-Permitted	Attached Dwellings	Mid-Rise Apartments	Permitted
	Office	Office	Permitted
Parcel 17 Use-Permitted & Conditional	Attached Dwellings	Mid-Rise Apartments	Permitted
	Hotel	Hotel	Conditional
	Recreational Facility	Health/Fitness Club	Permitted
Sunset Station Parcel Use-Permitted & Conditional	Attached Dwellings	Mid-Rise Apartments	Permitted
	Hotel	Hotel	Conditional
	Commercial Amusement	Multi-Plex Theater	Permitted
	Office	Office	Permitted
	Retail	Retail	Permitted
Hillside Parcel Use-Permitted	Eating & Drinking Establishment	Restaurants	Permitted
	Attached Dwellings	Mid-Rise Apartments	Permitted
Development Code Section 20.20.15 (Station Community-Sunset)			
Minimum Lot Area	None	No Land Divisions are proposed.	N/A
Maximum Lot Area	None	No Land Divisions are proposed.	N/A
Residential Density			
Minimum (w/ in 400' of LRT Platform)	30 DU/Acre	See Section 20.25.10 Below	Yes
Minimum (greater than 400' of LRT Platform)	24 DU/Acre		
Maximum	None		
Floor Area Ratio (FAR)			
Minimum	0.60	See Section 20.25.10 Below	Yes
Minimum w/ DRBCP	0.0		

Maximum	None		
Maximum w/ DRBCP	None		
Minimum Lot Dimensions	Width: None Depth: None	No Land Divisions are proposed.	N/A
Yard Setbacks			
Front Minimum	0		
Front Maximum on MPR	Governed by Section 60.05.15.6 of Development Code		
Front Maximum not on MPR w/ Ground Floor Residential	10'		
Front Maximum not on MPR w/ Ground Floor Residential	20'	No physical development is proposed.	N/A
Side Minimum	None		
Side Maximum	None		
Rear Minimum	None		
Minimum Side/Rear Abutting Residential Zoned Property	20'		
Maximum Building Height			
Minimum	Refer to 60.05.15.7 or 60.05.35.7	No physical development is proposed.	N/A
Maximum	120'		
Other SC-S Zoning Requirements 20.20.40			
PUD	All property within the SC-S Zone must receive PUD approval prior to or concurrent with any land use approvals.	The applicant is applying for this PUD application prior to land use approvals for development.	Yes w/ PUD approval
Minimum Dwelling Units	1,899 Dwelling Units must be provided in the SC-S zone prior to full build-out.	The applicant proposes 1,925 dwelling units in the SC-S zone as part of this PUD approval.	Yes
Maximum Dwelling Units	5,115 Dwelling Units is the maximum permitted in the SC-S zone for all parcels combined.	The applicant proposes 1,925 dwelling units in the SC-S zone as part of this PUD approval.	Yes
Maximum Non-Residential Development	Non-Residential development shall not exceed 10,960,500 square feet.	The applicant proposes 1,367,000 square feet of non-residential development in the SC-S Zone.	Yes

Compliance with 20.20.40.2	Applicant shall demonstrate compliance with minimum and maximum residential and non-residential requirements (as listed above)	The applicant has allocated numbers consistent with the requirements of Section 20.20.40.2.	Yes
Traffic Impact Analysis	Development shall provide a TIA showing compliance with minimum dwelling unit requirements of Section 20.20.40.2 and identifying appropriate mitigation for deficiencies identified in the TIA.	The applicant has submitted a TIA in compliance with this criterion.	Yes
Residential Occupancy Requirements	No more than 80% of the non-residential floor area approved through a PUD may be constructed prior to construction of the minimum dwelling requirements for the SC-S zone.	The applicant acknowledges that only 80% of the non-residential floor area may be constructed prior to the minimum dwelling requirement being met. This shall be a condition of approval.	Yes w/ COA
Development Code Section 20.25.10 – Floor Area Ratio & Intensity			
Parcel 7	Gross Acreage: 11.93 Acres Less Slopes -2.72 Acres Net Acreage: 9.21 Acres	N/A	N/A
Net Acreage	Less 15% Infrastructure <i>Net Acreage: 7.83 Acres</i>		
Residential DU's (80%)	80% Net Acreage: 6.26 Acres 24 DU/Acre x 6.26 Acres = <i>150 Dwelling Units Minimum</i>	565 Dwelling Units Proposed	Yes
Commercial FAR (20%)	20% Net Acreage: 1.57 Acres 50,000 sq. ft. commercial/ 68,3890 <i>Proposed FAR 0.74 (0.6 Required)</i>	0.74 FAR Proposed	Yes
Parcel 12	Gross Acreage: 9.06 Acres Less Slopes -0.54 Acres Net Acreage: 8.52 Acres	N/A	N/A
Net Acreage	Less 15% Infrastructure <i>Net Acreage: 7.24 Acres</i>		
Residential DU's (80%)	80% Net Acreage: 5.79 Acres 24 DU/Acre x 5.79 Acres = <i>139 Dwelling Units Minimum</i>	460 Dwelling Units Proposed	Yes
Commercial FAR (20%)	20% Net Acreage: 1.45 Acres 50,000 sq. ft. commercial/ 63,162 <i>Proposed FAR 0.79 (0.6 Required)</i>	0.79 FAR Proposed	Yes
Parcel 17	Gross Acreage: 12.98 Acres Less Slopes -5.54 Acres Net Acreage: 7.44 Acres	N/A	N/A
Net Acreage	Less 15% Infrastructure <i>Net Acreage: 6.32 Acres</i>		
Residential DU's (60%)	60% Net Acreage: 3.79 Acres 24 DU/Acre x 3.79 Acres = <i>91 Dwelling Units Minimum</i>	600 Dwelling Units Proposed	Yes
Commercial FAR	40% Net Acreage: 2.53 Acres	2.61 FAR Proposed	Yes

(40%)	287,500 sq. ft. commercial/ 110,207 <i>Proposed FAR 2.61 (0.6 Required)</i>		
Sunset Station Net Acreage	Gross Acreage: 22.11 Acres Less Slopes -2.11 Acres Net Acreage: 20.00 Acres Less 15% Infrastructure <i>Net Acreage: 17.00 Acres (740,520 sq. ft)</i>	N/A	N/A
FAR (Mixed Use)	150 DU x 650 sq. ft /DU = 97,500 sq. ft. Residential + 1,082,500 sq. ft. Commercial Total 1,180,000 sq. ft. / 740,520 Proposed FAR 1.59 (0.6 Required)	1.59 FAR Proposed	Yes
Development Code Section 20.25.05 – Density Calculations			
Hillside Site Minimum Residential Density	Gross Acreage: 3.86 Acres Less Slopes: -2.40 Acres Net Acreage: 1.46 Acres 1.46 Acres x 0.8 = 1.17 Acres 1.17 Acres x 24 DU/Acre = <i>28 Dwelling Units Minimum</i>	150 Dwelling Units Proposed	Yes

CODE STANDARD	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE?
Development Code Section 60.05			
Design Review Principles, Standards, and Guidelines	Requirements for new development and redevelopment.	Design Review is not applicable as no physical development is proposed with this application.	N/A
Development Code Section 60.07			
Drive-Up window facilities	Requirements for drive-up, drive-through and drive-in facilities.	No physical development is proposed with this application.	N/A
Development Code Section 60.10			
Floodplain Regulations	Requirements for properties located in floodplain, floodway, or floodway fringe.	No physical development is proposed with this application.	N/A
Development Code Section 60.12			
Habitat Friendly and Low Impact Development Practices	Optional program offering various credits available for use of specific Habitat Friendly or Low Impact Development techniques.	No physical development is proposed with this application.	N/A
Development Code Section 60.15 – Land Division Standards			
Land Division Standards	Standards pertaining to Land Divisions	No physical development is proposed with this application.	N/A
Development Code Section 60.25 – Off Street Loading			
Loading Facilities	No loading facilities are required for this use.	No physical development is proposed with this application.	N/A
Development Code Section 60.30 – Off-Street Parking			
Off-street motor vehicle parking	Parking requirements for development.	No physical development is proposed with this application.	N/A
Development Code Section 60.35 – Planned Unit Development			
Planned Unit Development	Standards pertaining to Planned Unit Developments	The project will be reviewed for compliance in the relevant section of the staff report.	See CU Staff Report
Development Code Section 60.55 - Transportation			
Transportation Facilities	Regulations pertaining to the construction or reconstruction of transportation facilities.	Refer to Facilities Review Committee findings herein.	Yes- with COA
Development Code Section 60.60			
Trees & Vegetation	Regulations pertaining to the removal and preservation of trees.	No physical development is proposed with this application.	N/A
Development Code Section 60.65			
Utility Undergrounding	All existing overhead utilities and any new utility service lines within the project and along any existing frontage, except high voltage lines	To ensure the proposal meets requirements of this section, staff recommends a condition requiring undergrounding	Yes- with COA

	(>57kV) must be placed underground.	completion prior to occupancy for future development of the site.	
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Chapter 60 Special Requirements

RECOMMENDATION

The Facilities Review Committee finds that the proposal complies with all the technical criteria. The Committee recommends that the decision-making authority **APPROVE** the **Sunset Station & Barnes Road PUD (CU2013-0003)**, and adopt the conditions of approval identified in Attachment C.

**CU2013-0003
ANALYSIS AND FINDINGS FOR
CONDITIONAL USE APPROVAL**

Section 40.15.05 Conditional Use Applications; Purpose

The purpose of a Conditional Use application is to review uses that may be compatible in the underlying zoning district, but, because of their size, operation, or other characteristics, require review on a case-by-case basis. These uses are subject to the regulations in the Section because they may, but do not necessarily, result in significant adverse effects upon the environment, overburden public services, alter the character of the surrounding area or create nuisances. Conditional uses may be approved, approved with site-specific conditions designed to minimize or mitigate identified adverse impacts, or denied. ... This Section is carried out by the approval criteria listed herein.

Section 40.15.15.4.C New Conditional Use Approval Criteria:

In order to approve a PUD application, the Planning Commission shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. *The proposal satisfies the threshold requirements for a PUD application.*

The applicant proposes a conceptual Planned Unit Development approximately 80 acres in size. The project includes allocation of residential units and commercial and office square footages over seven identified parcels. The subject parcels are zoned Station Community-Sunset (SC-S), Urban High Density (R1), and Corridor Commercial (CC). The applicant meets thresholds 1.a. and 2.

1. *May be chosen by the applicant when one or more of the following thresholds apply:*
 - a. *The Planned Unit Development (PUD) may be applied to Commercial, Industrial, Multiple Use, and Residential properties that are 2 acres or greater in size within any City zoning district.*
2. *Is required prior to, or concurrent with, other development applications when development is proposed on land within the SC-S (Station Community-Sunset) zoning district. Sign Applications excepted.*

The applicant is proposing a Planned Unit Development (PUD) prior to filing applications for physical development, as permitted under threshold 2 of the Conditional Use-Planned Unit Development application. The PUD, as proposed, allocates square footages of commercial and office uses and well as number of residential dwelling units to all lots included in the PUD. Future development of the subject parcels will be required to demonstrate consistency with the Planned Unit Development approval in addition to the relevant land use application approval criteria in effect at that time. A key component of demonstrating consistency with the PUD approval will be the allocation of uses on the specific parcel including the associated transportation trips of those uses. Should the development proposed at any future phase

exceed the trip generation assumed in the PUD Traffic Impact Analysis (TIA), the PUD will need to be modified through the appropriate application. The subject PUD application is unique in that approval of the PUD will not authorize a specific development proposal. The PUD will authorize an allocation of uses and transportation trips based on those uses prior to land use applications for physical development. This approach will allow the applicant, the city, and the community to understand the overall impact of the ultimate build-out of the project on the transportation system as well as identify the required mitigation measures necessary to address the impacts on the transportation system.

Therefore, staff find the proposal meets the criterion for approval.

2. *All City application fees related to the application under consideration by the decision making authority have been submitted.*

The applicant paid the required fee associated with a Conditional Use (Planned Unit Development) application.

Therefore, staff find the proposal meets the criterion for approval.

3. *The proposal meets the Site Development Requirement for setbacks within the applicable zoning district for the perimeter of the parent parcel unless otherwise provided by Section 60.35.03.*

The applicant states that specific site design relative to setbacks for the parent parcel has not been completed at this time. Future land use applications will address setbacks and there is adequate land area available on the parcels to provide compliance with the setback standards.

The applicant does not propose any physical development with this PUD application. Future physical development will be required to meet the setback requirements of the applicable zone. All of the parcels have frontage on Barnes Road which is a Major Pedestrian Route (MPR) and as such are governed by the maximum setbacks of Section 60.05.15.6 of the Development Code (or the corresponding guideline) which encourage placing buildings near street frontages to promote a pedestrian environment. Parcel 1 is exempt from this maximum front yard setback as it is zoned Urban High Density (R1) a residential zoning designation. The minimum front yard setback in the R1 zone is 10 feet. As no physical development is proposed at this time, physical setbacks are not applicable to the current proposal. However future development of the site must comply with this requirement.

Therefore, staff find the criterion for approval is not applicable.

4. *The proposal complies with the applicable policies of the Comprehensive Plan.*

The following policies of the Beaverton Comprehensive Plan have been identified as being

applicable to this Conditional Use request.

Chapter 3 (Land Use Element)

3.8.1 *Station Community Development. Station Communities that develop in accordance with Community vision and consistent with the 2040 Regional Growth Concept Map.*

The applicant states that regarding properties zoned SC-S (parcels 7, 12, 17, Sunset Station, and Hillside), the newly adopted Metro 2040 Regional Growth Concept Map identifies the subject properties as being within the Station Community concept area. The Station Community land use designation discusses maximizing investment in light rail and applying the Station Community land use designation within one mile of light rail platforms. The applicant has proposed a dense multiple use development within the SC-S zone which includes the parcel adjacent to Sunset Transit Center. The proposed development mix for the Sunset Station parcel involves office, commercial, hotel and residential uses which will form a multiple use development around the transit center.

3.8.2 *Station Community Development. Develop Station communities with sufficient intensities to generate light rail ridership and around-the-clock activity.*

The applicant states that Section 3.8.2 emphasizes a higher level of intensity, design and massing within Station Communities. In accordance with these provisions, the existing application and allocated land uses and proposed densities and intensities the subject proposal provides for higher intensity development in the SC-S zone which are expected to increase light rail ridership and increase activity in the area.

3.10.1 *Corridor Development. An attractive mix of commercial and higher density residential uses along major roads throughout the City that invites pedestrian activity where appropriate.*

The applicant states that the properties zoned Corridor Commercial (CC) and Urban High Density (R1) are in compliance with the Corridor Land Use Designation. The applicant proposes a mix of commercial uses on the Town Square Two site in accordance with the CC zoning designation. The applicant proposes midrise apartment buildings on Parcel 1. These parcels are part of the larger Sunset Station & Barnes Road PUD which will serve the adjacent community. The applicant has provided a conceptual bike and pedestrian circulation plan that identifies pedestrian improvements in the vicinity of the project. Additionally at the time of Design Review for development of specific parcels, additional pedestrian amenities through the specific site will be evaluated in conformance with the Development Code standards and guidelines.

Chapter 5 (Public Facilities and Services Element)

Public facilities and services have been reviewed through the Facilities Review process and are documented in the Facilities Review section of this report (Attachment A).

Chapter 6 (Transportation Element)

6.2.1 *Goal: Transportation facilities designed and constructed in a manner to enhance Beaverton's livability and meet federal, state, regional, and local requirements.*

The applicant states that subject properties will rely on Sunset Transit Center, Barnes Road, Cedar Hills Boulevard, Valeria View Drive and Highways 217 and 26. Washington County controls Barnes Road and Cedar Hills Boulevard while ODOT maintains Highways 217 and 26. The City controls Valeria View Drive. TriMet controls and operates Sunset Transit Center. The applicant has prepared a Transportation Impact Analysis (TIA) for the development that addresses necessary mitigation and enhancement measures for safety and capacity in the vicinity of the PUD. ODOT, Washington County and the City of Beaverton have all actively reviewed the TIA and proposed mitigation measures. TriMet has submitted comments to City staff regarding the proposal and encouraging future communication as physical development is proposed by the property owner, particularly on the land surrounding the Sunset Transit Center.

6.2.2 *Goal: A balanced multimodal transportation system that provides mobility and accessibility for users.*

The applicant states that the subject properties are near four major public transportation facilities, the Sunset Transit Center, Barnes Road, Highway 26 and Highway 217. The Sunset Transit Center provides multiple bus connections, a park and ride facility and a pedestrian bridge over Highway 26. The proposed PUD will include the extension of public streets, pedestrian ways, and additional TriMet bus stops as necessary to create an enhanced and balanced multi-modal transportation system. The applicant has provided plans showing proposed future street connections through the development as well as a pedestrian and bicycle circulation plan showing the approximate locations of future bicycle and pedestrian connections to and through the sites.

6.2.3 *Goal: A safe transportation system.*

The applicant states that the City, County, State and TriMet have worked in cooperation to ensure a safe transportation system. This proposed PUD will not adversely affect the existing system but will add additional public streets, pedestrian ways and provide mitigation measures and infrastructure improvements to offset the increased traffic from the proposed future development of the site.

6.2.4 *Goal: An efficient transportation system that reduces the percentage of trips by single occupant vehicles, reduces the number and length of trips, limits congestion, and improves air quality.*

The application states that the future development proposals within this PUD will require that traffic impacts be assessed and that any identified traffic impacts not impose excess constraints upon the system. The applicant proposes a multiple use development with a

variety of residential, commercial, and office uses with dense multi-family housing which will provide opportunities for residents and visitors to access multiple places of business in one trip. The proposal also includes extensive mitigation measures for the transportation impacts expected to occur from the development assumed by the PUD application. The combination of uses and proposed pedestrian, vehicle, bicycle, and transit connections serve to reduce single occupancy vehicle trips to single destination points.

6.2.5 *Goal: Transportation facilities that serve and are accessible to all members of the community.*

The applicant states that the multi-modal facilities available at Sunset Station provide a high level of accessibility to the community. As no site specific development is proposed by the PUD, future development of the parcels located within the PUD will be required to provide improvements which are accessible to all members of the community, including compliance with ADA requirements.

6.2.6 *Goal: Transportation facilities that provide safe efficient movement of goods.*

6.2.7 *Goal: Implement the transportation plan by working cooperative with federal, State, regional, and local governments, the private sector, and residents.*

The applicant states that the City, County, Metro, TriMet and ODOT have worked cooperatively with the private sector to implement an existing safe and efficient transportation system in the project area. Additional transportation mitigation measures and improvements are identified in the applicant's TIA which will maintain the safe and efficient transportation system in the vicinity of the development.

Chapter 7 (Natural, Cultural, Historical, Scenic, Energy & Groundwater Resources Element)

7.3.1.1 *Goal: Conserve, protect, enhance or restore the functions and values of inventoried Significant Natural Resources.*

The applicant states that a Goal 5 Natural Resource Inventory was completed in July 1997 for the Peterkort owned properties. The report establishes natural resource boundaries which are located north of the sites subject to this PUD process. The majority of identified resource areas are located outside the PUD area in separate tracts.

7.3.2.1 *Goal: Promote a healthy environment and natural landscape in riparian corridors, and manage conflicting uses through education, and adoption and enforcement of regulations.*

The applicant states that ten riparian areas were assessed along Johnson Creek and its tributaries as part of the 1997 Goal 5 study. The study found that all of the riparian areas were of relatively high quality and lacked disturbance in the majority of the areas. When the subject areas were annexed to the City of Beaverton, the City accepted the

Washington County endorsed Goal 5 inventory which protects the identified riparian and natural areas. None of the riparian areas are located within the proposed PUD.

7.3.3.1 *Goal: Protect or enhance wetlands adopted as Significant Wetlands in the Local Wetland Inventory.*

The applicant states that six wetlands were delineated as part of the 1997 Goal 5 Inventory. There appear to be small pockets of wetlands located on Parcels 1 and 12 which will be accounted for during physical development of those parcels.

7.3.4.1 *Goal: Protect wildlife habitat in the city in association with protecting significant natural resources.*

The applicant states that the 1997 Goal 5 Inventory assessed ten habitat units, three of which were acknowledged as significant as they relate to City regulations. Future physical development of the parcels within the PUD area will review the protection of all significant natural resources as they relate to the proposed future development.

Chapter 8 (Environmental Quality & Safety Element)

8.4.1 *Goal: Create and protect a healthy acoustical environment within the City.*

The applicant states that no development is currently proposed. As such it is not possible to judge the acoustical impacts of future development. At the time of an application for physical development of the subject parcels, compliance with this goal may be necessary.

8.6.1 *Goal: Protect life and property from geological hazards associated with identified unstable steep slopes, erosion and deposition, and weak foundation soils.*

The applicant states that future physical development will be required to comply with all building and fire codes which will ensure protection of life and property.

In summary, staff concur with the applicant's responses to the policies identifies above and concludes that after reviewing all of the above policies, staff finds the proposal either already complies with the above Comprehensive Plan policies or will comply if the conditions of approval are met.

Therefore, staff find by meeting the Conditions of Approval, the proposal meets the criterion for approval.

5. *The size, dimensions, configuration, and topography of the site and natural and man-made features on the site can reasonably accommodate the proposal.*

The applicant states that the specific design relative to size, dimensions, configuration, and topography of the site and natural and man-made features on the site can reasonably

accommodate the proposal. Future land use applications will be submitted that will review the specific design of each parcel in relation to this criteria. Additionally, the applicant states that there is adequate land area available on the individual parcels to accommodate all natural and man-made features.

Staff concur with the applicant that given the large land area, approximately 80 acres, of the PUD, that natural features, such as steep slopes, can be considered in the design of the development which would allow the site to accommodate the proposed land uses.

Therefore, staff find the proposal meets the criterion for approval.

6. *The location, size, and functional characteristics of the proposal are such that it can be made reasonably compatible with and have minimal impact on livability and appropriate use and development of properties in the surrounding area of the subject site.*

The applicant states that given the size of the parcels and the relative seclusion from adjacent properties due to natural and man-made barriers such as highways, arterial streets, and Johnson Creek, the future development of the site will have minimal impact on the livability of properties in the surrounding area. Staff concur that the physical development can be reasonably screened and have minimum visual impact on the adjacent properties due to the isolated nature of the parcels.

The increases in vehicle trips and the associated transportation impacts have greater likelihood of impacting surrounding properties than the future uses themselves. The applicant has provided a Transportation Impact Analysis for the development which provides transportation forecasts through the year 2035 and an assessment of the impacts of the increased trips on the transportation system. The applicant has identified necessary transportation mitigation measures and infrastructure improvements in order to maintain or improve the functioning of the area transportation system. Staff has provided conditions of approval which identify the required transportation mitigation measure and improvements. At each stage of future site specific development, the applicant will be required to prepare a supplemental transportation analysis which evaluates the proposed physical development and which transportation improvements are required to mitigate the effects of the proposed development. Staff finds that by implementing the identified mitigation measures and infrastructure improvements consistent with the Conditions of Approval and the applicant's October 2013 TIA, the public transportation system can accommodate the development assumptions as proposed. Future physical development of the parcels within the PUD must be consistent with the October 2013 TIA or provide revised traffic analysis, including additional mitigations, if necessary.

Staff finds that the proposed development can be made reasonably compatible with the surrounding neighborhood by meeting the conditions of approval.

Therefore, staff find by meeting the Conditions of Approval, the proposal meets the criterion for approval.

7. *The width of the proposed lots or staggering of building setbacks within detached residential developments vary so as to break up the monotony of long blocks and provide for a variety of home shapes and sizes, while giving the perception of open spaces between homes.*

The applicant states that this level of design has not been completed for this conceptual PUD application. Staff, in review of the anticipated land uses, notes that no detached dwellings are proposed. Attached mid-rise apartments are assumed for the development. Given the required densities of the subject site, it would be difficult to accomplish a residential development that utilizes a detached residential product. However, should the applicant choose to proposed with a detached residential development in the future, lot staggering will be required in accordance with this criterion.

The applicant does not identify detached dwellings as part of the PUD proposal; therefore, the criterion does not apply.

Therefore, staff find the criterion for approval is not applicable.

8. *The lessening of the Site Development Requirements results in significant benefits to the enhancement of site, building, and structural design, preservation of natural features and the surrounding neighborhood as outlined in Section 60.35.15.*

The applicant states that there is no request to lessen the site development requirements at this time. Staff finds that as no physical development is proposed and no reductions to Site Development Standards have been requested that the criterion is not applicable at this time.

Therefore, staff find the criterion for approval is not applicable.

9. *The proposal provides improved open space that is accessible and usable by persons living nearby. Open space meets the following criteria unless otherwise determined by the Planning Commission through Section 60.35.15:*
 - a. *The dedicated land forms a single parcel of land except where the Planning Commission determines two (2) parcels or more would be in the public interest to complement the overall site design.*
 - b. *The shape of the open space is such that the length is not more than three (3) times the width the purpose of which is to provide usable space for a variety of activities except where the Planning Commission determines a greater proportioned length would be in the public interest and complement the overall site design.*
 - c. *The dedicated land(s) is located to reasonably serve all lots for the development, for which the dedication is required.*

The applicant states that the application does not include the level of detail at this time to

allocate open space but understands that consideration for open space standards will have to be included in future land use applications to meet the standards. As stated previously in this report, future development proposals will be required to demonstrate compliance with the PUD approval. Even though the PUD does not propose a specific development, this approval criterion is applicable and must be addressed at this time. Therefore, staff recommend a condition of approval for future development proposals to accommodate open space for those areas where residential development is constructed. That future open space area shall meet the specifications of width and length of the open space area and the accessibility of the open space area to the future residents of the PUD area. Open space areas may be located on individual lots where residential development is located or more centrally located open space areas may be created. The design and location of the open space area(s) will be subject to the Planning Commission's review of the future land use application(s) in accordance with the applicable standards of Chapter 60 of the Development Code.

Therefore, staff find by meeting the Conditions of Approval, the proposal meets the criterion for approval.

10. *If the application proposes to develop the PUD over multiple phases, the decision making authority may approve a time schedule of not more than five (5) years for the multiple development phases. If a phased PUD has been approved, development of the future phases of the PUD shall be filed within five (5) years of the date of decision of the PUD. Refer to Section 50.90.*

The applicant does not propose phased development for this planned unit development. Therefore staff find the criterion is not applicable.

Therefore, staff find the criterion for approval is not applicable.

11. *Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.*

The applicant has submitted this Conditional Use application for a new Planned Unit Development. As no physical development is proposed with this application, no other applications are required of the applicant at this stage of City review. However, to enact any of the authorizations of the PUD, future land use applications such as Design Review applications must be reviewed and approved by the City. The PUD approval will authorize allocations of land uses on specific parcels and will authorize the commensurate vehicle trips and mitigation measures for those land uses. In order to vest the authorizations of the PUD, the property owner will be required to construct a structural improvement consistent with the Development Code's definition of substantial construction within the valid time frame of the PUD.

In conjunction with future land use applications for physical development the applicant will be required to submit a supplemental transportation analysis which evaluates the proposed development phase to determine which of the mitigation measures, enumerated in the

conditions of approval, are warranted as a result of the proposed development phase. The supplemental transportation analysis shall also assess compliance of the proposed development phase with the October 2013 PUD TIA.

Therefore, staff find by meeting the Conditions of Approval, the proposal meets the criterion for approval.

Recommendation

Based on the facts and findings presented, staff recommend **APPROVAL** of **CU2013-0003 (Sunset Station & Barnes Road PUD)** subject to the applicable conditions identified in Attachment C.

Planned Unit Development Code Conformance Analysis

CODE STANDARD	CODE REQUIREMENT	PROJECT PROPOSAL	MEETS CODE?
Modification of Base Zoning Standards			
60.35.10.1 Permitted Uses	Compliance with permitted and conditional uses of the zoning district.	The development proposes a mix of attached dwellings, office, retail, hotel, restaurants, health club, theater and hotel uses. All uses, except the hotel are permitted in the zone in which they are proposed. Hotels are a conditional use in the SC-S zone and at the time physical development of a hotel is proposed a conditional use permit will be required.	Yes
60.35.10.2.A Density and Lot Dimensions	Density and scale shall relate to the surrounding neighborhood through massing and architectural compatibility.	The applicant proposes densities which fall between the minimum and maximum density, floor area ratio, and floor area intensities in the zones in which the parcels are located. Please see the Code Conformance Analysis tables in the Facilities Review portion of this report for detailed analysis of proposed densities and intensities. Massing and architectural compatibility will be evaluated with future proposals for physical development.	Yes
60.35.10.2.B Density Transfers	Density transfers allow an equal transfer of dwelling units from one portion of the site to another in certain areas.	The applicant is not proposing density transfers at this time.	N/A
60.35.10.2.C Single Family Residential Lot Sizes	Minimum lot size is 50% of the base zone, maximum lot size is 150% base zone. Lot dimensions shall not result in a lesser density than a conventionally designed subdivision.	The applicant does not propose single family detached residential with this PUD application.	N/A
60.35.10.2.D Lot Coverage	Lot coverage shall not exceed 60% for multi-family housing. Lot coverage may be increased 10% by meeting architectural requirements in the Development Bonus Section.		N/A
60.35.10.3.A Setbacks	Proposed lots abutting the perimeter of the property shall comply with the standard front and rear yard setbacks of the parent parcel. Side yards of the		N/A

	parent parcel, where abutting exiting development, must be a minimum of 15'.	The applicant does not propose physical development concurrently with this PUD application. Future applications within the PUD area will be evaluated for compliance with this standard.	
60.35.10.3.B Front Setbacks	Front setback standards for residential development.		N/A
60.35.10.3.C Rear Setbacks	Rear setbacks shall be the same as the base zone for the parent parcel, excepting alley accessed lots which may be reduced to 6'.		N/A
60.35.10.3.D Side Setbacks	Except for zero-lot line development side setbacks are a minimum of 4' on interior side yards and 10' on corner lots. Zero-lot line developments shall have one side yard setback of 10' and the other zero.		N/A
Open Space			
60.35.15.1 Open Space Percentage	A PUD shall provide a minimum of 20% of the subject site as open space.	The applicant does not propose physical development concurrently with this PUD application. Future applications within the PUD area will be evaluated for compliance with this standard. The applicant does acknowledge that approximately 16 acres of open space will be required for the entire PUD.	N/A
60.35.15.2 Open Space Composition	Up to 20% of the open space requirement may be dedicated to water quality facilities or environmentally sensitive areas.		N/A
60.35.15.3.A Open Space Standards	Visibility, accessibility, slopes, irrigation, and active area standards for required open space.		N/A
60.35.15.4.A-C Commons Area Square Footage	Commons areas shall have an area a minimum of- 150 sq. ft for units 500 sq. ft or less 250 sq. ft. for units 500-2000 sq. ft 350 sq. ft. for units 2000 sq. ft or greater.	The applicant does not propose physical development concurrently with this PUD application. Future applications within the PUD area will be evaluated for compliance with this standard. The applicant provides a table which shows the anticipated square footages of required open space per site with residential and the number of commons areas required per site for illustrative purposes.	N/A
60.35.15.4.D Commons Area Size	Commons areas shall be no smaller than the average lot size and a minimum width of 40 ft.	The applicant does not propose physical development concurrently with this PUD application. Future applications within the PUD area will be evaluated for compliance with this standard. Additionally this standard appears to apply to	N/A

		single family detached residential development not multi-family development which would not have an average lot size.	
60.35.15.4.E Commons Areas on Collector (or Greater) Streets	Commons areas abutting a collector or greater classified street must be separated from the street by a constructed barrier a minimum of 3 feet in height.	The applicant does not propose physical development concurrently with this PUD application. Future applications within the PUD area will be evaluated for compliance with this standard. Should future proposed commons space abut a collector or higher designated street minimum fencing or barriers shall be required.	N/A
60.35.15.4.F Number of Commons Areas	One Commons Area shall be provided for every 50 units in single family developments.	The applicant does not propose physical development concurrently with this PUD application. Future applications within the PUD area will be evaluated for compliance with this standard.	N/A
60.35.15.4.G Amenity	Commons Areas shall include 500 or greater points of amenity per the chart in section 60.35.15.4.G.	The applicant does not propose physical development concurrently with this PUD application. Future applications within the PUD area will be evaluated for compliance with this standard.	N/A
60.35.15.5 Maintenance and Ownership	Common Open Space shall be owned and maintained by a HOA or Public Agency. Open space shall be protected by CC&R's or deed restriction to prevent future development.	The applicant does not propose physical development concurrently with this PUD application. Future applications within the PUD area will be evaluated for compliance with this standard. Future development will be required to address the maintenance and ownership of required open space.	N/A
Building Architecture			
60.35.20 Purpose	Architectural standards are intended to promote innovative design. Cluster housing or grouping buildings to maximize open space is encouraged. These standards apply only to structures not subject to Design Review.	The applicant will be required to go through Design Review as no exempt uses (single family structures) are proposed.	N/A

Development Bonuses and Development Incentive Options			
60.35.30 Development Bonuses and Incentives	PUD offers the applicants additional standards which can be met as incentives to promote innovative approaches and can lead to reduced open space and reduced setbacks.	The applicant is not seeking development bonuses or incentives at this time.	N/A

CONDITIONS OF APPROVAL**CU2013-0003****A. Prior to Land Use Approval of each proposed physical development within the PUD area the applicant shall:**

1. Provide a supplemental transportation analysis to assess consistency with the approved October 2013 Sunset Station & Barnes Road PUD TIA and to identify which of the mitigation measures listed below in conditions 2 through 32 are triggered by the impacts of the proposed development phase. The identified improvements are anticipated to be constructed incrementally over multiple phases of development within the properties subject to this PUD approval.
2. **At the intersection of Cedar Hills Boulevard and the eastbound Highway 26.**
 - a. New traffic signal, including interconnection with the traffic signals on Cedar Hills Boulevard from Butner Road to Barnes Road.
 - b. On the northbound approach, widening Cedar Hills Boulevard to provide two through lanes and a northbound right-turn lane that extends from Butner Road to the intersection including construction of a pedestrian island at the southeast quadrant. Construct a northbound bike lane and a sidewalk on the east side of Cedar Hills Blvd. between Butner and US26 westbound off-ramp. Construct sidewalk behind bridge columns.
 - c. On the southbound approach widening Cedar Hills Boulevard to provide two through lanes and two left-turn lanes with a minimum storage length of 175 feet for each left-turn lane. Construct a southbound bike lane and a sidewalk on the west side of Cedar Hills Blvd. from the Highway 26 westbound onramp to Butner Road. Construct sidewalk behind bridge columns.
 - d. On Highway 26 eastbound off ramp approach, widening to provide an exclusive left-turn lane with a minimum storage length of 230 feet, a through/right-turn/left-turn lane and an exclusive right-turn lane with a minimum storage length of 230 feet.
3. **At the intersection of Cedar Hills Boulevard and Butner Road.**
 - a. On the northbound approach, convert the existing northbound right-turn lane to a through/right-turn lane. Extend the northbound bike lane from its current terminus to the Butner Road intersection, subject to availability of right-of-way.
 - b. On the eastbound approach, widening Butner Road to provide two left-turn lanes with a minimum storage length of 200 feet and a through/right-turn lane. Subject to availability of right-of-way construct eastbound and westbound bike lanes on each side of Butner Road.

- c. On the westbound approach, widening Butner Road to provide a through/left-turn lane and a right-turn lane with a minimum storage length of 175 feet, a bike lane, subject to availability of right-of-way.
 - d. Modification of the traffic signal to accommodate the widening. Replace signal controller per Washington County standard. Implement split phasing for east-west approaches.
- 4. At the intersection of Cedar Hills Boulevard and the westbound Highway 26.**
- a. On the northbound approach, widening Cedar Hills Boulevard to provide two through lanes, and a through/right turn lane to the Highway 26 westbound on ramp. Construct a northbound bike lane and an east sidewalk.
 - b. On the southbound approach, construct an off-street bi-directional multi-use bike/ped facility between Barnes Road and the future crossing of the Highway 26 westbound on-ramp along the frontage of the Town Square Two site (Tax Lot 1S1 03A 01700).
 - c. On the Highway 26 westbound off ramp approach, widening and island modification to provide a left turn lane, a shared left-right turn lane, and a right turn lane with a minimum storage length of 275 feet.
 - d. Modification of the traffic signal to accommodate the widening.
- 5. At the intersection of Cedar Hills Boulevard and Barnes Road.**
- a. For the northbound approach, widening Cedar Hills Boulevard to provide two through lanes, an exclusive right-turn lane that extends from Highway 26 westbound off ramp, two left turn lanes with a minimum storage of 445 feet, a bike lane and a sidewalk. Reconstruct the existing sign bridge. Construct two northbound receiving lanes extending to Celeste Lane.
 - b. For the southbound approach, widening Cedar Hills Boulevard to provide a through lane, a through/right-turn lane, and two left turn-lanes with a minimum storage length of 130 feet, a bike lane, and a sidewalk. The two southbound through lanes shall extend from Celeste Lane.
 - c. For the eastbound approach, widening of Barnes Road to provide two right-turn lanes with a minimum storage length of 350 feet, two through lanes, a left-turn lane with a minimum storage length of 185 feet, a bike lane, and a sidewalk.
 - d. For the westbound approach, widening Barnes Road to provide an exclusive right-turn lane with a minimum storage length of 350 feet, two through lanes, two left-turn lanes with a minimum storage of 345 feet for the inside lane and the outside lane continuous to the Town Square West access intersection, and a bike lane.
 - e. Modification of the traffic signal to accommodate the widening.
- 6. At the intersection of Barnes Road and site access roadway (116th Avenue).**
- a. New traffic signal, including interconnection with the traffic signal at Cedar Hills Boulevard and Barnes Road.

- b. For the eastbound approach, widening Barnes Road between 117th Avenue and 116th Avenue to provide a through lane, a through/right-turn lane, and a left turn lane with a minimum storage of 75 feet. Construct a bike lane and a sidewalk, subject to available right-of-way.
- c. For the westbound approach, widening Barnes Road to provide a through lane, a through/right turn-lane, two left-turn lanes with a minimum storage length of 200 feet and a bike lane. Extend a continuous westbound side-by-side left turn lane from 116th Avenue to 117th Avenue. Extend a second westbound receiving lane. Construct a bike lane and sidewalk from 116th Avenue to 117th Avenue, subject to available right-of-way.
- d. For the northbound approach construct a through/left-turn lane and a right turn-lane with a minimum storage length of 175 feet. Design traffic signal with a northbound right turn overlap signal phase.
- e. For the southbound approach, construct a through/right-turn lane, and a left-turn-lane with a minimum storage length of 75 feet.

7. At the intersection of Barnes Road and Town Square West/Parcel 7 access roadway.

- a. For the northbound approach maintain the existing double left turn lane configuration. Convert the existing right turn lane into a shared through/right-turn lane.
- b. For the southbound approach, construct a through/right-turn lane and a left turn-lane with a minimum storage length of 75 feet.
- c. For the eastbound approach, widening Barnes Road to provide two through lanes, a right-turn lane with a minimum storage length of 100 feet, a left-turn lane with a minimum storage of 100 feet and a bike lane.
- d. For the westbound approach, widening Barnes Road to provide two through lanes, a through/right turn-lane, a left-turn lane with a minimum storage length of 130 feet, a bike lane, and a sidewalk.
- e. Modification of the traffic signal to accommodate the widening.

8. At the intersection of Cedar Hills and Celeste Lane.

- a. For the northbound approach, widen Cedar Hills Boulevard to provide a left-turn lane with a minimum storage length of 100 feet, a through lane and a through/right-turn Lane. Extend the second northbound lane 300 feet beyond Celeste Lane before tapering back to match existing.
- b. For the southbound approach, widen Cedar Hills Boulevard to provide a left-turn lane with a minimum storage length of 100 feet, a through lane and a through right-turn lane. Provide a minimum of 200 feet approach lane length for the second through lane.

9. At the new Parcel 7 and Parcel 12 site access to Valeria View Drive.

- a. For the northbound approach, re-stripe Valeria View Drive to provide a left-turn lane with a minimum storage of 75 feet, a through/right-turn lane and a bike lane.

- b. For the southbound approach, re-stripe Valeria View Drive to provide a southbound left-turn lane with a minimum storage length of 50 feet.

10. At the intersection of Barnes Road and Highway 217.

- a. For the northbound approach widen Highway 217 off ramp to provide three through lanes with a storage length of 240 feet, two right turn lanes with a storage length of 240 feet. Install vehicle detection sensors to identify excessive northbound queue spillback and integrate to an advance warning sign for the OR 217/Barnes Road off-ramp to slow speeds approaching the ramp.
- b. Pay ODOT \$250,000 as a contribution towards a variable message sign/variable speed sign to be installed by ODOT on OR 217 northbound between SW Walker Road and the Barnes Road off-ramp.
- c. For the southbound approach, widening Barnes Road to provide a through lane, a through/right-turn lane (right turn signed for bus only), and two left-turn lanes with a minimum storage length of 400 feet for the inside left turn lane and the outside left turn lane continuous from Lois Lane, and a bike lane.
- d. For the westbound approach, widening Barnes Road to provide two right-turn lanes with the outside lane providing a minimum storage length of 160 feet and the inside right turn lane beginning at the Baltic Avenue intersection, a through lane extending from the Baltic Avenue intersection, two left-turn lanes extending from the Baltic intersection, and a bike lane.
- e. Signal modification to accommodate the widening and signaling the northbound right-turn movement.

11. At the intersection of Barnes Road and Baltic Avenue.

- a. For the northbound approach, widening Baltic Avenue to provide three lanes and a multi-use bike/pedestrian facility (behind the curb) from the US26 westbound off-ramp extending north to Barnes Road with the westerly a trap lane to westbound Barnes; the central lane as a through lane at Barnes, and the easterly lane a through/right-turn lane at Barnes Road. Construct a right turn lane with a minimum storage length of 360 feet and an inside second left turn lane with a minimum storage of 240 feet.
- b. For the southbound approach, widening of Baltic Road/St. Vincent Hospital access to provide a through lane, a through/right turn-lane with a minimum storage of 200 feet, a right-turn lane with a minimum storage length of 200 feet, a left turn lane with a minimum storage length of 200 feet, a bike lane, and a sidewalk.
- c. For the eastbound approach, widening Barnes Road to provide one through lane, a through/right-turn lane, a right turn lane with a minimum storage length of 250 feet, two left turn lanes with a minimum storage length of 150 feet and a bike lane.
- d. For the westbound approach, widening of Barnes Road to provide two through lanes, a through/right-turn lane, two left-turn lanes with a minimum storage length of 200 feet, a bike lane, and a sidewalk. Widen south bound

Baltic Avenue to provide two receiving lanes for a distance of 225 feet before tapering to match existing.

- e. Reconstruct the ODOT sign bridge across Barnes Road.
- f. Modification of the traffic signal to accommodate the widening.

12. At the intersection of Barnes Road and St. Vincent Hospital Middle Access.

- a. For the eastbound approach, widening Barnes Road to provide a through lane, a through/right-turn lane a median designed to accommodate a future left-turn lane with a minimum storage length of 100 feet, and a bike lane.
- b. For the westbound approach, widening of Barnes Road to provide three through lanes (the outside lane to convert to a through/right-turn lane with Hospital Master Plan expansion) that extends from St. Vincent Hospital east access, a left turn lane with a minimum storage length of 100 feet, a bike lane, and a sidewalk.
- c. Modification of the traffic signal to accommodate the widening.

13. At the intersection of Barnes Road and St. Vincent Hospital East Access.

- a. For the eastbound approach, widening of Barnes Road to provide a through lane, a through/right-turn lane, and widen the median to accommodate a future second left-turn lane with a minimum storage length of 250 feet and a bike lane.
- b. For the westbound approach, widening of Barnes Road to re-align the through lane, through/right turn lane, and a bike lane with the three receiving lanes located west of the Hospital access. Reconstruct the displaced sidewalk.
- c. Modification of the traffic signal to accommodate the widening.

14. At the intersection of Barnes Road and Valeria View Drive.

- a. For the westbound approach, re-stripe Barnes Road to provide three through lanes, a left turn lane with a minimum storage length of 200 feet, a right turn-lane with a minimum storage length of 300 feet, and a bike lane. The new through lane shall extend from the new Parcel 12 (Tax Lot 1S1 02B 00500) access to the east.
- b. Modification of the traffic signal to accommodate the widening.

15. At the new Parcel 12 site access to Barnes Road.

- a. New traffic signal, including interconnection with the traffic signals on Barnes Road and Valeria View Drive and with the signal on Barnes Road and the Transit Center access.
- b. For the eastbound approach, re-stripe Barnes Road to provide two through lanes, a left turn lane with a minimum storage of 100 feet and a bike lane.
- c. For the southbound approach construct a right-turn lane and a left-turn lane with a minimum storage of 100 feet.

16. At the intersection of Barnes Road and Sunset Transit Center Drive.

- a. For the northbound approach, widening Sunset Transit Center Drive to provide a left-turn Lane and a shared left-turn/right-turn lane with a minimum storage length of 300 feet.
- b. Modification of the traffic signal to accommodate the widening including interconnection with the signals on the two new signalized accesses to the east and west.

17. At the Parcel 17 Holly Site and Sunset Station new full access to Barnes Road east of the Sunset Transit Center Drive.

- a. New Traffic Signal, including interconnection with the signals at Lois Lane to the east and the Sunset Transit Center Drive to the west.
- b. For the northbound approach, construction of a new site access with a left-turn lane with a minimum storage length of 125 feet, a through /right-turn lane and sidewalks.
- c. For the southbound approach, construction of a new site access with a left-turn lane with a minimum storage length of 100 feet, a through /right-turn lane and sidewalk.
- d. For the eastbound approach, widen Barnes Road to provide a through lane, a through/right-turn lane, a left turn lane with a minimum storage of 100 feet, a bike lane and sidewalk.
- e. For the westbound approach widen Barnes Road to provide two through lanes, a left-turn lane with a minimum storage length of 200 feet, a right-turn lane that extends from the new right-in/right-out access to the east, a bike lane and a sidewalk.

18. At the Parcel 17 Holly Site right-in/right-out new access to Barnes Road west of Lois Lane.

- a. Construction of a median barrier to restrict access to right-in/right-out.
- b. For the westbound approach, widen Barnes road to provide two through lanes, a through/right turn lane that extends from Lois Lane to the east and a bike lane and a sidewalk.

19. At the Sunset Station new right-in/right-out access to Barnes Road west of Lois Lane.

- a. Construction of a median barrier to restrict access to right-in/right-out.
- b. For the eastbound approach, widen Barnes Road to provide a right turn deceleration lane with 150 feet of storage, a bike lane, and a sidewalk..

20. At the Sunset Station new right-in/right-out access to Barnes Road east of Sunset Transit Center Drive.

- a. Construction of a median barrier to restrict access to right-in/right-out.

21. At the intersection of Barnes Road and Lois Lane.

- a. Construction of a northbound approach with a shared left/through lane, a right turn lane with a minimum storage length of 100 feet, and a receiving lane. Operate the right turn lane with overlap signal phasing.

- b. Re-stripe the existing southbound approach to provide a shared left/through lane and a right turn lane. Operate the right turn lane with overlap signal phasing.
 - c. For the eastbound approach, widen Barnes Road to provide two through lanes and a through/right-turn lane extending from the right-in/right-out access to the west, a left turn lane with a minimum storage length of 150 feet, a bike lane and a sidewalk.
 - d. For the westbound approach widen Barnes Road to provide two through lanes, a through/right-turn lane that extends to the intersection of Barnes Road and Highway 217 to the east, a left turn lane with a minimum storage length of 350 feet, a bike lane and sidewalk.
 - e. Modification of the traffic signal to accommodate the widening including interconnection to the signals to the east and to the west.
22. Provide half street improvements along the frontage on Barnes Road to five lane arterial standards with bike lanes and sidewalks along Parcel 1 (Tax Lot 1S1 03AB 00200), Town Square Two (Tax Lot 1S1 03A 01700), Parcel 7 (Tax Lot 1S1 03A 02200), Parcel 12/17 (Tax Lot 1S1 02B 00500), Sunset Station (Tax Lots 1S1 02CB 00100 & 1S1 02CA 00600), and Hillside (Tax Lot 1S1 03AD 00600).
23. Half street improvements along the frontage of Parcel 7 (Tax Lot 1S1 03A 02200) and Parcel 12 (Tax Lot 1S1 02B 00500) on Valeria View Drive to three lane collector standards including sidewalks.
24. Half street improvements along the frontage of Town Square Two (Tax Lot 1S1 03A 01700), Parcel 7 (Tax Lot 1S1 03A 02200), and Parcel 1 (Tax Lot 1S1 03AB 00200, between Celeste Lane and Barnes Road) on Cedar Hills Boulevard to a minimum of five lane arterial standards including sidewalks.
25. Interconnection of traffic signals along Barnes Road between Highway 217 and Leahy Road with a plan approved by the County Engineer.
26. Pay Washington County \$195,000 as a contribution toward the future construction of a traffic signal on 107th Avenue and Cornell Road. In lieu of paying the contribution towards the improvements, applicant at their own discretion may choose to construct the improvements as directed by the County Engineer.
27. Pay Washington County \$232,000 as a contribution toward the future improvements to the intersection of Cornell Road and 143rd Avenue. (Widen Cornell Road to 5 lanes and re-align 143rd Avenue)
28. Pay Washington County \$500,000 as a contribution toward the future construction of a bike/pedestrian pathway undercrossing at the westbound on-ramp to Highway 26. In lieu of paying the contribution towards the improvements, applicant at their own discretion may choose to construct the improvements as directed by ODOT and the County Engineer.

29. Pay Washington County \$232,900 as a contribution toward the future improvements to the intersection of Cornell Road and Cedar Hills Boulevard. (Widen Cornell Road to 5 lanes at the intersection). In lieu of paying the contribution towards the improvements, applicant at their own discretion may choose to construct the improvements as directed by the County Engineer.
30. Pay Washington County \$600,000 as a contribution toward the future improvements to the intersection of Barnes Road and Miller Road. (Widen Barnes Road to 5 lanes within 500 feet east and west of the intersection and modify Miller to provide a southbound left-turn lane, a through/left-turn lane, and a right turn lane). In lieu of paying the contribution towards the improvements, applicant at their own discretion may choose to construct the improvements as directed by the County Engineer.
31. Pay Washington County \$166,500 as a contribution toward the future improvements to the intersection of Cornell Road and Trail Street. (Widen Cornell Road to 5 lanes)
32. Pay Washington County \$600,000 as a contribution toward the future improvements to the intersection of Barnes Road and Leahy Road. (Widen Leahy Road to 5 lanes). In lieu of paying the contribution towards the improvements, applicant at their own discretion may choose to construct the improvements as directed by the County Engineer.
33. For condition 10.b and conditions 26 through 32 above which require roughly proportional share payments, the dollar amounts specified in the conditions apply if payments are made prior to July 1, 2015. On July 1, 2015 and on the first day of July of each succeeding year, the amount of the payment shall be adjusted and the adjusted payment requirement shall apply to any payment received by Washington County or the Oregon Department of Transportation after that date. The adjusted payment requirement shall be calculated by applying the percentage increase/decrease adopted each year by the Board of County Commissioners for adjustment in Transportation Development Tax in accordance with the Washington County Code.
34. For each of the above improvements, the design shall be in accordance with the design standards of the road authority having jurisdiction of the roadway and shall include illumination to the standards of the road authority having jurisdiction.
35. Dedicate right-of-way along the site frontages as needed to accommodate the improvements required by Conditions 2 through 32. Should a Land Division application precede an application for physical development on any given parcel, that Land Division application shall record a reservation or tract for the necessary future road dedication to accommodate the improvements required in Conditions 2 through 35 for that parcel. Dedication across the public street frontages of

individual parcels shall occur with the first phase of development within that parcel.

36. Revisions to striping, signing, signals and sign bridges as necessary to accommodate the capacity improvements required in Conditions 2 through 32.
37. Provide pedestrian connections throughout the PUD which connect parcels and transit opportunities in conformance with Section 60.55 of the Development Code, which may include, but are not limited to, grade separated crossings, multiple use paths, and/or enhanced transit facilities.

B. Prior to Site Development Permit Issuance of each proposed physical development within the PUD area the applicant shall:

38. Obtain the necessary approvals to begin on-site work from all governmental agencies and public utilities having jurisdiction over associated improvements and impacts.

C. General Conditions:

39. For any improvements required by Conditions of Approval 2 through 32 which have not been completed and accepted by the agency having jurisdiction by the date of issuance of the final certificate of occupancy due to circumstance beyond the applicants control the applicant shall provide financial guarantees to the City of Beaverton. Financial guarantees may be in the form of a letter of credit, performance bond, or other method approved by the City Attorney for the full estimated costs, as determined by the City Engineer and County Engineer, of the associated improvements remaining to be constructed.
40. At the time of development for each parcel, all overhead utilities within and along the parcel street frontage(s) shall be undergrounded in accordance with Development Code Chapter 60 requirements and to the standards within the City's Engineering Design Manual and Standard Drawings (Ordinance 4471). Site Development permit plans shall reflect utility undergrounding. (Site Development/JD)
41. Prior to the issuance of a certificate of occupancy for greater than 1,093,600 square footage of non-residential development for the entire SC-S area a minimum of 1,899 residential units in the SC-S zone must receive a certificate of occupancy. (Planning/JF)
42. In accordance with Section 50.90.1 of the Development Code, Planned Unit Development approval shall expire 2 years after the date of approval unless, prior to that time, a construction permit has been issued and substantial construction pursuant thereto has taken place, or an application for extension has been filed, pursuant to Section 50.93 of the Development Code, or authorized development

has otherwise commenced in accordance with Section 50.90.3.B of the Development Code. (Planning/JF)

43. Provide scalable plans that show the proposed lane configuration and required storage lengths can physically be constructed within current intersection spacing on Cedar Hills Boulevard between Butner Road and Barnes Road, on Barnes Road between 117th Avenue and Town Square West access and on Barnes Road between Lois Lane and St. Vincent Hospital middle access.
44. To accommodate the open space requirements of Section 60.35.15 of the Development code, at the time of development of residential uses, the applicant must provide the required open space in conformance with Section 60.35.15 of the Development Code. Future open space must meet the specified width, length, size, and accessibility requirements of Chapter 60. (Planning/JF)

MEMORANDUM

TO: City Council
FROM: Jana Fox, Current Planning Manager
DATE: July 3, 2019
SUBJECT: APP2019-0002 Appeal of Life Time Fitness Beaverton (DR2018-0128)

On the July 16, 2019 meeting the City Council will hear an appeal of the Planning Commission's decision for Life Time Fitness Beaverton. The appeal is specifically of the Design Review Three (DR2018-0128) application associated with this project. The entire Planning Commission record must be provided to the council for consideration, as the record is quite large it is being provided now, prior to the full staff analysis and findings being provided to allow additional time to review. Staff has provided in this memo background on the site and process as well as all materials received as part of this appeal and the entirety of the Planning Commission record. Next week you will receive from staff a full analysis in response to the appeal received.

SITE HISTORY:

The subject site is part of the Sunset Station and Barnes Road PUD (CU2013-0003) which was approved in 2013 and involved extensive transportation modeling and trip analysis based on a dense development framework. The entirety of the Sunset Station and Barnes Road PUD is intended to be a high density development with a mix of commercial and residential uses spread over approximately 90 acres located on the north and south sides of SW Barnes Road (see Exhibit APP4.3 herein for a vicinity map). While the PUD assumed a generic mix of uses in order to generate trip assumptions for the traffic analysis, the intention of the PUD is not to dictate the uses proposed on any specific site. Development can be proposed so long as it is consistent with the zoning district requirements and the trip assumptions of the overall PUD.

The conditions of approval for the PUD identify all of the transportation improvements that are required over the course of development of the entire PUD. As each phase of development is proposed a mini-Transportation Impact Analysis (TIA) must be completed to determine what improvements are required for the specific development being proposed. The applicant has performed the required traffic analysis to show compliance with the PUD assumptions and identify the required mitigation measures from the PUD condition list. The applicant has been conditioned to provide the following transportation-related improvements:

- Construction of an off-street bi-directional multi-use bike/pedestrian pathway along the site frontage between SW Barnes Road and the future undercrossing of the Highway 26 westbound on-ramp, consistent with sheet C100. (PUD condition 4.b)

- Construction of half street improvements along the site frontage on Cedar Hills Boulevard to a minimum of five lane arterial standards including sidewalks, but not including a bike lane (provided by the multi-use bike/pedestrian pathway), consistent with sheet C400.
- Construction of a traffic signal at the intersection of SW Barnes Road and SW 116th Avenue, including interconnection with the traffic signal at Cedar Hills Boulevard and Barnes Road. (PUD condition 6.a)
- For the eastbound approach to the intersection of SW Barnes Road and SW 116th Avenue, widen Barnes Road between 117th Avenue and 116th Avenue to provide a through lane, a through/right-turn lane, and a left turn lane with a minimum storage of 75 feet. Construction of a bike lane and a sidewalk, subject to available right-of-way. Construction of left-turn lane does not include striping. (PUD condition 6.b)
- For the westbound approach to the intersection of SW Barnes Road and SW 116th Avenue, widen Barnes Road to provide a through lane, a through/right turn-lane, two left-turn lanes with a minimum storage length of 200 feet and a bike lane. Extend a continuous westbound side-by-side left turn lane from 116th Avenue to 117th Avenue. Extend a second westbound receiving lane. Construct a bike lane and sidewalk from 116th Avenue to 117th Avenue, subject to available right-of-way. Construction of second left turn lane does not include striping or a signal head. (a portion of PUD condition 6.c)
- For the northbound approach to the intersection of SW Barnes Road and SW 116th Avenue, construct a through/left-turn lane and a right turn-lane with a minimum storage length of 175 feet. Design traffic signal with a northbound right turn overlap signal phase. (PUD condition 6.d)
- Construction of half street improvements along the site frontage on Barnes Road to five lane arterial standards with bike lanes and sidewalks. (PUD Condition 22)
- For the southbound approach to the intersection of SW Cedar Hills Boulevard and SW Barnes Road, widen Cedar Hills Boulevard to provide a through lane, a through/right-turn lane with a storage length of between 180, and a sidewalk extending the length of the through/right-turn lane. (a portion of PUD condition 5.b)
- For the eastbound approach to the intersection of SW Cedar Hills Boulevard and SW Barnes Road, widen Barnes Road to provide two right-turn lanes with a minimum storage length of 350 feet, two through lanes, a left-turn lane with a minimum storage length of 185 feet, a bike lane, and a sidewalk. (PUD condition 5.c)
- Modification of the traffic signal at the intersection of SW Barnes Road and SW Cedar Hills Boulevard to accommodate the above-described improvements to the intersection. (a portion of PUD condition 5.e)
- Widen the eastbound 2-lane approach from US 26 to SW Cedar Hills Boulevard to a 3-lane approach. The lane configurations should be: dedicated left-turn lane, shared, left/through/right-turn lane, and dedicated right-turn lane. The left and right-turn lanes should have a storage length of at least 300 feet. (PUD condition 2.d)
- Construction of an ODOT sign bridge across SW Cedar Hills Boulevard to accommodate the Cedar Hills Boulevard road widening at full build-out.

- Pay \$553,595 as a contribution toward the construction of a bike/pedestrian pathway undercrossing at the westbound on-ramp to Highway 26 or at the applicant's discretion construct improvements as directed by ODOT.
- At ODOT's discretion pay ODOT \$276,797.5 as a contribution toward a variable message sign/variable speed sign to be installed by ODOT on OR217 northbound.
- Pay \$76,388 as an additional contribution for construction of an at grade multiple-use pathway along a portion of SW Cedar Hills Boulevard, or construct the improvement.

BACKGROUND INFORMATION:

On May 15, 2019, the Planning Commission held a public hearing to consider the Life Time Fitness Beaverton proposal (case file nos ADJ2018-0006 / DR2018-0128 / LD2019-0008 / LO2018-0005 / SDM2018-0007 / TP2019-0009). The Planning Commission took public testimony and at the request of the applicant held the record open to allow additional written testimony according to the following schedule:

- Record open for additional testimony (14 days): Closes May 29, 2019 at 4:30pm
- Record open for rebuttal testimony only (7 days): Closes June 5, 2019 at 4:30pm
- Applicant Final Argument (abbreviated): Closes June 7, 2019 at 8:00am
- Staff Final Submittal/Amended Staff Report: Provided with Full Package June 7, 2019
- Planning Commission Deliberations: June 12, 2019

On June 12, 2019 the Commission heard final comments from staff, summarizing the information provided into the record during the open comment period, including changes to the applicant's proposal to remove the request for a Major Adjustment application for height and the resulting changes to the buildings to accommodate the reduced proposed height to the 60 feet maximum allowed in the Corridor Commercial (CC) zoning district, from the 80 feet previously proposed. The Commission after reviewing all materials entered into the record and conducting deliberations, voted to approve the Life Time Fitness Beaverton proposal (case file nos. DR2018-0128 / LD2019-0008 / LO2018-0005 / SDM2018-0007 / TP2019-0009).

The Land Use Orders were prepared and mailed on June 14, 2019 with the appeal period ending at 4:30pm on June 24, 2019. One timely appeal was filed by Mike Connors of Hathaway Larson, LLP, representing Randy Matthews of Beaverton Business Owners, LLC on June 24, 2019 prior to the 4:30pm deadline. Staff notes that only one appeal form and fee were filed though the applicant's materials reference multiple case files. In an email Mr. Connors clarified that the primary appeal was filed of the Design Review Three application (see Exhibit APP1.2). No additional appeals were filed, therefore only the Design Review Three is subject to appeal and may be considered by the Council. The Appellant's submittal is included as Exhibit APP1.1 to this memoranda.

Staff anticipates that additional materials will be filed, including items by Appellant, Applicant, and members of the public. Additional memoranda to the Council will be provided as necessary to respond to additional materials.

APPEAL OF A TYPE 3 DECISION REQUIREMENTS: (50.70.2 of the Beaverton Development Code):

50.70.2 Within Seven (7) calendar days after an appeal has been filed, the Director shall determine whether an appeal contains at least the following information:

A. The case file number designated by the City.

Staff Finding:

The appellant in their submittal letter, dated June 24, 2019 lists all five application numbers (DR2018-0128 / LD2019-0008 / LO2018-0005 / SDM2018-0007 / TP2018-0009). However the applicant only filed one form and fee related to the appeal which is contrary to the requirements which require a specific (singular) case number to be referenced. As such the appellant has one valid appeal filed for which they clarify in an email dated June 25, 2019 (Exhibit APP1.2) is the Design Review Three (DR2018-0128). As such all other land use applications (LD2019-0008 / LO2018-0005 / SDM2018-0007 / TP2018-0009) are considered final as no appeals were filed on these applications. Staff notes that the appellants submittal materials (Exhibit APP1.1) under Section E.g of the letter address issues related to the Tree Plan Two application (TP2018-0009), as no appeal was filed of the Tree Plan Two (TP2018-0009) this information should be disregarded as it is not relevant to the appeal of the Design Review Three (DR2018-0128). Staff finds that that applicant has filed one appeal of Design Review Three (DR2018-0128) within the specified appeal period provided in the June 14, 2019 notice of decision.

B. The name and signature of each appellant.

Staff Finding:

The appellant, Randy Matthews of Beaverton Business Owners, LLC, signed the appeal form as did Mike Connors of Hathaway Larson LLP. Staff finds that the name and signature of the appellant are provided.

C. Reference to the oral or written evidence provided to the decision making authority by the appellant that is contrary to the decision.

Staff Finding:

Exhibit 1.1 references the oral testimony provided on May 15, 2019, as well as written testimony provided on November 21, 2018 (Exhibit 2.1 of the Planning Commission Record), December 14, 2018 (Exhibit 2.2 of the Planning Commission Record), May 15, 2019 (Exhibit 2.33 of the Planning Commission Record), May 29, 2019 (Exhibit 2.126 of the Planning Commission Record, and June 5, 2019 (Exhibit 2.130 of the Planning Commission Record). All testimony listed above was provided by Mr. Connors on behalf of the client. Staff finds that the appellant's representative, Mr. Connors, has provided the testimony described above.

D. If multiple people sign and file a single appeal, the appeal shall include verifiable evidence that each appellant provided written testimony to the decision making authority and that the decision being appealed was contrary to such testimony. The appeal shall designate one person as the contact representative for all pre-appeal hearing contact with the City. All contact with the City regarding the appeal, including notice, shall be through this contact representative.

Staff Finding:

Only one party, Beaverton Business Owners, LLC is the appellant. Staff finds that this criterion is not applicable as the appeal is filed by one appellant.

E. The specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error.

Staff Finding:

The appellant outlines the alleged errors in their June 24, 2019 appeal letter. Response to these allegations of error are provided below. Staff finds that the applicant has provided specific approval findings being appealed and the reasons why they believe the findings are in error or face, law, or both.

F. The appeal fee, as established by resolution of the City Council.

Staff Finding:

Staff finds that the applicant has paid the required fee of \$2,134 for one appeal. The appeal fee was set by the City Council as part of the Planning Division fee schedule.

SUMMARY OF APPELLANT ASSERTIONS:

The appellant makes seven (7) assertions in their appeal letter (Exhibit APP1.1) which are listed below, in addition staff has provided reference to where in the Planning Commission record staff analysis of these topics is provided. Additional detailed staff responses to appellant assertions will be provided in a memo next week.

Assertion 1: The Planning Commission erred in concluding that Life Time's TIA is appropriate and does not underestimate the traffic impacts and required transportation mitigation measures.

Staff provides analysis related to this assertion on pages SR-7 through SR-9 and FR-2 through FR-8 of the Revised Staff Report, dated June 7, 2019, in response to the applicant's transportation impacts. Staff also notes that ODOT and the City of Beaverton's traffic engineers have each provided a letter stating that the TIA prepared by David Evans and Associates meets their agency requirements (See Exhibits APP4.1 and APP4.2).

Assertion 2: The Planning Commission erred in concluding that outdoor swimming pools are allowed under BDC 20.10.40.

Staff provides analysis related to this assertion on pages SR-11 through SR-13, in the Revised Staff Report, dated June 7, 2019, in relation to the applicability of BDC 20.10.40 to the outdoor swimming pool use.

Assertion 3: The Planning Commission erred in concluding that the parking structure building is not subject to the 35-foot height limit set forth in BDC 20.10.15, footnote 6 even though it is within 100 feet of residentially zoned property.

Staff provides analysis related to this assertion on page SR-7 in the Revised Staff Report, dated June 7, 2019 in relation to height limits set forth in BDC 20.10.15.

Assertion 4: The Planning Commission erred in concluding that the development proposal is consistent with the pedestrian orientation Design Guidelines set forth in BDC 60.05.35.6.

Staff provides analysis related to this assertion on pages DR-9 and DR-10 in the Revised Staff Report, dated June 7, 2019, in response to Design Guideline 60.05.35.6.

Assertion 5: The Planning Commission erred in concluding that the massive size and scale of the project is consistent with the Design Guidelines set forth in BDC 60.05.35.

Staff provides analysis related to this assertion on page DR-5 in response to Design Guideline 60.05.35.1.D and on page DR-11 in response to Design Guideline 60.05.35.7, found in the Revised Staff Report, dated June 7, 2019.

Assertion 6: The Planning Commission erred in concluding that Life Time is not required to contribute toward the 20% open space requirement under the Peterkort PUD approval.

Staff provides analysis related to this assertion on page SR-10 in response to testimony received as well as in response to Facilities Review Approval Criterion B on page FR-9, found in the Revised Staff Report, dated June 7, 2019.

Assertion 7: The Planning Commission erred in concluding that Life Time satisfied the tree removal criteria and adequately justified the removal a substantial number of trees on the Life Time and adjacent properties.

The Tree Plan Two (TP2018-0009) was not appealed, therefore the discussion on this item related to the Tree Plan Two is not applicable to this appeal of the Design Review Three application DR2018-0128. The decision for TP2018-0009 is final.

EXHIBITS:

Exhibit APP 1 – Appellant Materials:

- APP1.1 Appeal Submittal by Mike Connors, dated June 24, 2019
- APP1.2 Email between Mike Connors and Jana Fox, dated June 25, 2019 clarifying the application being appealed is the Design Review Three application.

Exhibit APP 2 – Applicant Materials:

None received to date.

Exhibit APP 3 – Public Comment:

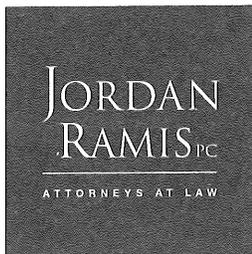
- APP 3.01 Email from Ava Palmquist, dated June 25, 2019
- APP 3.02 Email from Jenny Vail, dated June 25, 2019
- APP 3.03 Email from Scott Kveton, dated June 25, 2019
- APP 3.04 Email from Susan Kveton, dated June 25, 2019
- APP 3.05 Email from Michael Forney, dated June 26, 2019
- APP 3.06 Email from Missy Moss, dated June 26, 2019
- APP 3.07 Email from Ivan Karmel, dated June 27, 2019
- APP 3.08 Email from Jimmie Moglia, dated June 28, 2019
- APP 3.09 Email from Vicki Zeitner, dated June 28, 2019
- APP 3.10 Email from Pat Wieber, dated June 28, 2019
- APP 3.11 Email from Jill Brady, dated June 28, 2019
- APP 3.12 Email from Bethany Umbarger, dated June 28, 2019
- APP 3.13 Email from Gabriel Tierney, dated June 28, 2019
- APP 3.14 Email from Julia Fulmer, dated June 28, 2019
- APP 3.15 Email from Heather Klemm, dated June 28, 2019

- APP 3.16 Email from Robin Sherwin, dated June 28, 2019
- APP 3.17 Email from Christopher Lunt, dated June 28, 2019
- APP 3.18 Email from Victoria Cotrell, dated June 28, 2019
- APP 3.19 Email from Christopher Kulink, dated June 28, 2019
- APP 3.20 Email from Jay Freyensee, dated June 28, 2019
- APP 3.21 Email from Joanne Sterling, dated June 28, 2019
- APP 3.22 Email from Kyler Speich, dated June 28, 2019
- APP 3.23 Email from Lisa Feldman, dated June 28, 2019
- APP 3.24 Email from Chaz Brown, dated June 29, 2019
- APP 3.25 Email from Heather Davis, dated June 29, 2019
- APP 3.26 Email from Melissa Frederick, dated June 30, 2019
- APP 3.27 Email from Sylvia Barajas-Everson, dated June 30, 2019
- APP 3.28 Email from Kyler Speich, dated June 30, 2019

Exhibit APP 4 – Agency Comment:

- APP4.1 Letter from ODOT, received June 28, 2019.
- APP4.2 Memo from Jabra Khasho, City of Beaverton Transportation Engineer, dated July 2, 2019
- APP4.3 Sunset Station & Barnes Road PUD Map

Planning Commission Record w/ Cover Memo (Exhibit 2 to the Agenda Bill)



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RECEIVED

MAR 16 2020

City of Beaverton
Planning Services

March 13, 2020

Via E-mail: janaf@beavertonoregon.gov and US Mail

City of Beaverton
City Council
PO Box 4755
Beaverton, OR 97076-4755

Re: Life Time Fitness Director's Interpretation (DI2019-0003)

Dear Mayor and Beaverton City Council:

Thank you for inviting comments on this appeal. Our office represents J. Peterkort and Company, the owner of the remaining property in the Planned Unit Development at issue. We agree with the Planning Director's Interpretation and oppose this appeal.

The project opponent is an apparent business competitor of Life Time that prefers that the approved Planned Unit Development, including the parcel now owned by Life Time, remain vacant. As the owner of most of those properties, J. Peterkort and Company appreciates this opportunity to explain why the project opponent's arguments are incorrect, and to suggest findings for the City Council's decision that may assist in the successful completion of the Life Time project and the remainder of the Planned Unit Development.

The City Council, as the governing body of the City of Beaverton, has the authority to interpret the Beaverton Development Code. This interpretation authority is legally stronger than the authority of the Planning Director, because the governing body is legally presumed to understand the local code better than any other person or entity. A City Council interpretation will receive deference in the event of another appeal to LUBA. We agree that the Planning Director's Interpretation is correct in all respects, and urge the City Council to expressly adopt it as part of the decision on this appeal. We also request that the City Council use its interpretation authority to expressly rule on the meaning of the code language applicable to this appeal. Because City Council interpretations will receive deference if the opponent appeals the City Council's decision to LUBA, your interpretation will help the City Attorney to defend the case.

To that end, we recommend that the City Council expressly adopt findings of fact and interpretations of the key code provisions that are challenged in the appeal in order to clarify why the City Council concludes that the Planning Director's Interpretation is correct. The key code provisions confirm that the PUD properties are vested, including the Life Time property and project. They are (1) BDC 50.90.3.B.1 regarding the "change in use" that creates vesting for the PUD properties; (2) BDC 50.90.3.B.2 regarding "substantial construction" that creates vesting of the PUD; and (3) BDC 90 regarding the "principal use" for the PUD.

In addition, the opponent challenges the meaning of several prior City land use decisions, and we recommend the City Council make findings of fact and interpretations about those challenges. These issues include (1) the meaning and status of the Planning Commission's approval of the Sunset Surface Parking; (2) the nature and scope of the underlying PUD, including what uses are anticipated or required; and (3) the status of the Life Time land use approval. With these findings and interpretations, the City will be well-positioned to defend its final decision should the opponent continue to appeal the Life Time project and other developments in the PUD.

Proposed Findings and Interpretations.

BDC 50.90.3.B.1 regarding the "change in use" that creates vesting for the PUD properties;

BDC 50.90.3.B.1 confirms that vesting of the PUD occurs when "[t]he use of the subject property has changed as allowed by the approval[.]" The City Council considered the opponent's argument that this code section does not apply, and disagrees for the following reasons. It finds that this code section provides vesting when the "change in use" occurs. It notes that the Development Code does not define "change in use". The City Council finds the land use decision expressly authorized a change in use from vacant to surface parking, and therefore that this code subsection provides authority for vesting when the "change in use" occurs.

The City Council interprets the term "change in use" in the context of this project, where vacant land is being developed for a new use, to mean when construction consistent with approved land use and building permits begins on a previously vacant property.

The Planning Commission approved the Sunset Surface Parking project, which is a final land use decision that authorized the land use to change from vacant to surface parking. The City also issued a building permit for construction of the security structure. The City Council considered the evidence of the completed inspection report for the security building foundation dated October 23, 2019, and finds the construction on the site began on or before that date, which is before the deadline of November 6, 2019 for expiration of the PUD. It therefore concludes that because the use of the property changed from vacant to surface parking before the PUD expired, the PUD, including the Life Time project, is vested under BDC 50.90.3.B.1.

BDC 50.90.3.B.2 regarding "substantial construction" that creates vesting of the PUD

BDC 50.90.3.B.2 provides for vesting when "a construction permit has been issued and substantial construction pursuant thereto has taken place[.]" The City Council notes "substantial construction" is defined in the code as construction of foundation footings for a building where the principal use will occur. "Use, principal" is also defined, as: "[t]he main or primary purpose of which land or a structure is designed, arranged or intended or for which it is occupied or maintained."

The City Council considered the opponents arguments about why the security building cannot be classified as "substantial construction" and disagrees for the following reasons.

The City Council finds that the Land Use Order for the Sunset Surface Parking expressly approved the surface parking as the principle use for this parcel of land, and the planned security building means that the parking lot development requires construction of one building within the meaning of BDC 50.90.3.B.2. The security building is the one building associated with the approved surface parking lot, and the City Council finds a construction permit was issued. Regarding “substantial construction” the City Council interprets this code section to mean that when there is only one building approved in a land use decision, that building constitutes “substantial construction”. It reviewed the code and sees no indication there is a minimum size requirement for buildings, and therefore rejects the opponent’s interpretation that there must be a larger building to vest the PUD. It finds that the inspection report confirms the footings were constructed prior to the expiration of the PUD.

The City Council reviewed the opponent’s argument that construction of the security building cannot vest other future buildings in the PUD. It concludes the opponent misinterprets this PUD and rejects the argument. The City Council adopts as its own the Planning Director’s Interpretation on pages DI-8-9 that subsequent applications for projects and buildings will have their own expiration date, and “will be approved subsequently through separate entitlement processes with unique expiration dates and vesting determinations.” It also finds the PUD did not propose any specific development, nor was it intended to. Rather, the PUD provided for the infrastructure to support a mix of land uses. The City Council concludes that the opponent misunderstands this PUD, and attempts to add new conditions to the PUD approval, which the City Council rejects.

BDC 90 regarding the “principal use” for the PUD.

The City Council agrees with the Planning Director’s Interpretation that the comment in the Planning Commission decision about the impermanence of the parking lot relates to the time period for implementing the parking use. The City Council finds that “Parking, As the Principal Use” is defined in BDC 90 to mean: “[a] facility providing for the temporary parking of automobiles and transportation vehicles which arrive and depart daily.” It finds that is the specific land use that was approved by the Planning Commission. It concludes the opponent’s assertion that the parking cannot be a principal use if it is not “permanent” would insert text into the code definition and the City Council rejects that assertion.

The opponent also argues that it is not possible for the security building to vest the entire PUD. The City Council finds that the PUD did not specify particular uses, or the scale of those uses. Rather, it focused on infrastructure and established a maximum trip generation. The City Council agrees with LUBA’s holding in case number 2019-079 that Life Time’s trip generation is consistent with the PUD approval. It finds that LUBA’s decision is substantial evidence that all traffic issues have been favorably resolved in favor of both the PUD and Life Time, and concludes that any further challenges regarding traffic issues are a collateral attack on final land use decisions that approved all aspects of the PUD, the Sunset Surface Parking and the Life Time project.

Meaning and Status of the Planning Commission's approval of the Sunset Surface Parking

The City Council reviewed the Land Use Order No. 2685 for the Sunset Surface Parking, and finds that it expressly approves surface parking as the principle use for this parcel of land. It finds that the land use approval expires on March 28, 2021 in accordance with Condition A.4. It finds that the planned security building means that the parking lot development requires construction. The City Council reviewed the building permit and inspection report and finds that construction of the security building commenced prior to March 28, 2021. It therefore concludes the Land Use Order No. 2685 is therefore enacted through establishment of the use as described in Condition A.4.

The opponent argues that the Planning Commission "concluded that the parking lot is not a principal use of the PUD[.]" The City Council reviewed the land use decision and does not find that the Planning Commission made that conclusion, but rather that this quotation from the opponent's argument mistakenly rephrases the decision. The actual text of the decision indicates the parking will not be a *permanent* principal use, and the parking will support future development phases and dense mixed use development. The City Council finds the PUD is intended to be a dense mix of land uses that will be mutually supportive in a complete community. It interprets "Use, Principal" to mean that surface parking, as shown on the site plan, will be the principal use for that area of the PUD. It also finds that the PUD will be comprised of several "Uses, Principal" that operate in concert together, including with common infrastructure and shared parking.

The City Council agrees that the surface parking use and other primary uses will be approved individually as the PUD is built out. It considered the argument that because the security building is such a small part of the expected mixed use development that it cannot vest the entire PUD for the future buildings. The City Council disagrees, because the nature of this PUD requires many different entitlements for many different buildings, and each entitlement will have its own time period for implementation as specified in each land use approval. Because the PUD did authorize specific development, there is not a specific deadline for subsequent buildings and uses to be established

The nature and scope of the underlying PUD, including what uses are anticipated or required.

The City Council analyzed the opponent's argument that if construction of the security building would vest the PUD, that would unlawfully convert the PUD from single-phase to a multiple phase. It considered the opponent's citation to BDC 40.15.15.4.C.11 regarding multiple phases. It notes the introductory phrase "[i]f the application proposes to develop the PUD over multiple phases" and finds this phrase contrasts with the purpose of the Peterkort PUD, which was to provide the infrastructure to support development of the properties within the PUD area. It finds the PUD did not authorize development of the mixed uses in phases, because it did not authorize specific development at all. It therefore concludes this code section does not apply to either the Life Time project, the Sunset Surface Parking, or the PUD approvals.

The status of the Life Time land use approval.

The City Council reviewed the Life Time land use approval, and the opponent's arguments about why that approval is no longer valid. It reviewed the recent LUBA decision in case number 2019-079 and concludes it is substantial evidence the approval remains in effect and satisfies all legal requirements. It rejects the argument for several reasons, which flow from the opponent's misinterpretation about how the PUD operates and how individual projects within the PUD, such as Life Time, obtain entitlements.

The City Council first affirms the PUD has not expired. Second, it finds that the Life Time land use approval remains in effect. Third, it finds that the opponents are attempting to collaterally attack that final land use decision, based on a potential change in circumstances which, in the opponent's view, invalidates the Life Time land use approval. The City Council reviewed the code and does not find support for this argument, and notes the opponent has not cited any provision of the code in support of its argument.

Conclusion

J. Peterkort and Company thanks the City for its steadfast implementation of the growing list of land use approvals for development of the Peterkort PUD. The Planning Director's Interpretation is correct. We urge the City Council to affirm it on appeal, and to make these express findings of fact and interpretations of the Beaverton Development Code in order to protect the Life Time project and PUD from another LUBA appeal.

Thank you for your consideration.

Sincerely,

JORDAN RAMIS PC



Timothy V. Ramis

cc: J. Peterkort and Company



Be
Community Development Department
Planning Division
12725 SW Millikan Way
Beaverton, OR 97006
General Information: (503) 526-2222 V/TDD
www.BeavertonOregon.gov

To: Interested Parties
From: City of Beaverton, Community Development Department
Date: February 5, 2020
Subject: **DI2019-0003 Life Time Fitness Director's Interpretation**

Please find attached the Notice of Decision for the Director's Interpretation concerning Life Time Fitness Director's Interpretation case file number DI2019-0003. Pursuant to Section 50.40.11.E of the Development Code, the decision for DI2019-0003 Life Time Fitness Director's Interpretation is final, unless appealed within twelve (12) calendar days following the date of the decision. The procedures for appeal of a Type 2 Decision are specified in Section 50.65 of the Development Code. The appeal shall include the following in order for it to be accepted by the Director:

- The case file number designated by the City.
- The name and signature of each appellant.
- Reference to the written evidence provided to the decision making authority by the appellant that is contrary to the decision.
- If multiple people sign and file a single appeal, the appeal shall include verifiable evidence that each appellant provided written testimony to the decision making authority and that the decision being appealed was contrary to such testimony. The appeal shall designate one person as the contact representative for all pre-appeal hearing contact with the City. All contact with the City regarding the appeal, including notice, shall be through this contact representative.
- The specific approval criteria, condition, or both being appealed, the reasons why a finding, condition, or both is in error as a matter of fact, law or both, and the evidence relied on to allege the error.
- The appeal fee of \$250.00, as established by resolution of the City Council.

The appeal closing date for DR2019-0003 is 4:30 p.m., February 18, 2020.

The complete case files including findings, conclusions, and conditions of approval, if any, are available for review. The case files may be reviewed at the Beaverton Planning Division, Community Development Department, 4th Floor, Beaverton Building/City Hall; 12725 SW Millikan Way between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. For more information about the case file, please contact Jana Fox, Current Planning Manager, at (503) 526-3710.



**NOTICE OF DECISION
DIRECTOR'S INTERPRETATION
LIFE TIME FITNESS**

DECISION DATE: February 4, 2020

TO: All Interested Parties

FROM: Cheryl Twete, Community Development Director

CASE FILE NO: **DI2019-003 Life Time Fitness Director's Interpretation**

LOCATION: Map: 1S103AB Tax Lot: 200
Map: 1S103A Tax Lots: 1700, 2200,
Map: 1S102B Tax Lot: 500
Map: 1S103AD Tax Lot: 600
Map: 1S102CB Tax Lot: 100
Map: 1S102CA Tax Lots: 500, 600

Generally within the vicinity of SW Barnes Road between Highway 217 and just west of Cedar Hills Boulevard. See map for details.

SUMMARY: The applicant, LTF Real Estate Company, Inc., requests the Director to interpret Beaverton Development Code ("Development Code") Section 50.90.3 as it relates to Life Time Fitness and the Sunset Station & Barnes Road PUD. The applicant seeks to know how the vested status of the Sunset Station & Barnes Road PUD affects the Life Time Fitness property and project. Additionally, the applicant requests the Director to explain how the property and project would be affected if the Sunset Station & Barnes Road PUD were not considered to be vested under Development Code Sections 50.90.3.B.1 and 2.

**APPLICANT /
PROPERTY OWNER:** LTF Real Estate Company, Inc.
2902 Corporate Place
Chanhassen, MN 55317

**APPLICANT'S
REPRESENTATIVE:** Dana Krawczuk
Stoel Rives LLP
760 SW 9th Ave, Suite 3000
Portland, OR 97205

APPLICABLE

Director's Interpretation - Development Code Section
40.25.15.1.C

CRITERIA:

AUTHORIZATION:

Cheryl Twete
Cheryl Twete
Community Development Director

Sunset Station & Barnes Road PUD Area Map



Application Dates

<u>Application</u>	<u>Submittal Date</u>	<u>Deemed Complete</u>	<u>120th Day*</u>	<u>365th Day**</u>
DI2019-0003	November 4, 2019	November 21, 2019	March 20, 2020	November 19, 2020

* Pursuant to ORS 227.178, the City will reach a final decision on an application within 120 calendar days from the date that the application was determined to be complete or deemed complete unless the applicant agrees to extend the 120 calendar day time line pursuant to subsection 9 or unless State law provides otherwise.

** Pursuant to ORS 227.178, the total of all extensions may not exceed 245 calendar days after the initial 120 calendar days. This is the latest date by which a final written decision on the proposal can be made.

Exhibit 1. Materials Submitted by the Public

- 1.1 Letter from Timothy V. Ramis, dated December 23, 2019
- 1.2 Email from K. Anne Conrad-Antoville, dated December 24, 2019
- 1.3 Letter from E. Michael Connors, dated December 26, 2019

Background Information

The Sunset Station & Barnes Road PUD (CU2013-0003) (referred to herein as “the PUD”) received approval on November 5, 2013. The PUD was approved with a two-year period prior to expiration per Section 50.90.1.B of the Development Code, which would have made the expiration date November 5, 2015. However, the applicant subsequently extended the decision twice, per Section 50.93.4 of the Development Code, case files EXT2015-0004 and EXT2017-0003. The final expiration date for the PUD after the two valid time extensions was to be November 5, 2019, unless per Section 50.90 “the approval [was] enacted either through construction or establishment of the use within the specified time period.”

As the PUD did not entitle any specific development proposals, subsequent land use entitlements and construction in reliance on those entitlements were required to meet the “enacted” provision of Section 50.90.1.

On March 28, 2019, the Sunset Surface Parking (CU2018-0023 / DR2018-0167) applications were approved by the City of Beaverton. The approved proposal included construction of a guard structure building, together with a commercial parking lot. Sunset Surface Parking was the first project approved under the PUD that involved construction of physical improvements to a site.

The Life Time Fitness Beaverton proposal (DR2018-0128 / LD2019-0008 / LO2018-0005 / SDM2018-0004 / TP2018-0009) (referred to herein as “Life Time”) was approved by the Planning Commission on June 14, 2019. The Life Time Design Review application (DR2018-0128) was subsequently appealed to the City Council (APP2019-0002). The City Council denied the appeal and upheld the Planning Commission’s approval of Life Time on August 13, 2019. The City Council’s decision is considered the final local decision on the Life Time applications. The City Council’s decision was subsequently appealed to the Oregon Land Use Board of Appeals (LUBA), casefile LUBA 2019-0079. The appeal process is ongoing at LUBA.

Public Comment

Three pieces of public testimony, listed below, were received on this proposal.

Support for the Applicant:

Exhibit 1.1 is a letter from Timothy Ramis, an attorney who represents J. Peterkort and Company, the applicant for the PUD as well as for the Sunset Surface Parking project. J. Peterkort and Company continue to own all land within the PUD area with the exception of the one property owned by Life Time Fitness. Mr. Ramis concurs with the analysis provided by the applicant and emphasizes that the Director’s Interpretation would apply to all projects approved under the PUD for the same reasons it applies to the Life Time project. Mr. Ramis also discusses that the sites were previously vacant and the construction of the security building will house the security headquarters for the entire PUD and will serve to combat issues of theft and vandalism. The guard structure is the first step of initial development for the site.

Environmental Concerns:

Exhibit 1.2 is a letter from Kristin Conrad-Antoville and Anthony Antoville, who state that an extension should not be granted because material circumstances have changed,

particularly related to natural resources. Specific concerns addressed relate to proximity to Johnson Creek, protecting water quality, destabilization and landslides, geological assessments, and not requiring compliance with Washington County's Significant Natural Resource program. The community members also ask how the City will protect natural resources.

Opponent's Contention the PUD Has Expired:

Exhibit 1.3 is a letter from Michael Connors of Hathaway Larson LLP, who represents Beaverton Business Owners, LLC, a Delaware limited liability company ("BBO"). BBO makes three assertions in relation to the claim that the guard structure does not vest the PUD: (1) the surface parking lot and guard structure are not a principal use of the PUD; (2) the guard structure is too small to vest the PUD, and (3) finding that the project is vested by the guard structure would convert the PUD into a phased PUD.

Response to Environmental Concerns (Exhibit 1.2)

In response to the environmental concerns expressed in Exhibit 1.2, the Director notes that this is not a request for a time extension application of the PUD, but a request for confirmation that the PUD has vested. In response to concerns about the protection of natural resources, the Director notes that areas along Johnson Creek are not part of the PUD; however, they have undergone a Goal 5 resources assessment that has been adopted by the City of Beaverton. The areas which are identified as natural resources in that study are protected by the City's natural resource protection standards, which generally exceed the standards currently in place within unincorporated Washington County. Compliance with applicable natural resource standards, as well as geotechnical analysis, is required with all development applications where natural resources or geotechnical hazards are present.

Response to Vesting Questions (Exhibit 1.3)

The Director's interpretation below addresses the issues of vesting and applicable standards raised by BBO.

**ANALYSIS AND FINDINGS
DIRECTOR'S INTERPRETATION
DI2019-0003**

Section 40.25.15.1.C. of the Development Code identifies the approval criteria for evaluating and rendering a decision on all Director's Interpretation applications.

The approval criteria are as follows:

1. The proposal satisfies the threshold requirements for a Director's Interpretation application.

The applicant requests that the Director interpret Beaverton Development Code Sections 50.90.3.B.1 and 2 as they apply to the Life Time Fitness development and the Sunset Station & Barnes Road PUD vesting. This request meets Threshold 1 for a Director's Interpretation:

- 1. A request that the Director interpret the Development Code in writing.*

Therefore, the Director finds that the proposal meets the criterion for approval.

2. All City application fees related to the application under consideration by the decision-making authority have been submitted.

The fee for a Director's Interpretation application has been paid.

Therefore, the Director finds that the proposal meets the criterion for approval.

3. That the interpretation is consistent with the City's Comprehensive Plan and other provisions within this Code.

The applicant has requested that the Director interpret the Development Code to address (1) vesting based on substantial construction, (2) vesting based on change of use, and (3) if the Director finds the vesting tests have not been met, the effect on the Life Time approval. These requests, together with relevant code provisions, are addressed individually.

Relevant Development Code Sections:

The sections of the Development Code that are relevant to the discussion are below:

Section 50.90. Expiration of a Decision.

- 1. Except as otherwise specifically provided in a specific decision or in this Code, a final decision made pursuant to this Chapter shall expire automatically on the following schedule unless the approval is enacted either through construction or establishment of use within the specified time period.*

.....
B. Two (2) years from the effective date of decision:

.....

Conditional Use (Section 40.15.15.4)

3. *A decision shall expire according to Section 50.90.1. unless one of the following occurs prior to the date of expiration:*

- A. An application for an extension is filed pursuant to Section 50.93.; or*
- B. The development authorized by the decision has commenced as defined herein.*

- 1. The use of the subject property has changed as allowed by the approval;*
- 2. In the case of development requiring construction, a construction permit has been issued and substantial construction pursuant thereto has taken place; or...*

Section 50.93. Extension of a Decision.

1. An application to extend the expiration date of a decision made pursuant to the Development Code may be filed only before the decision expires as provided in Section 50.90 or before the decision expires as provided in the appropriate subsection of the specific application contained in Chapter 40 (Applications).

....

- 3. A land use decision may be extended no more than two (2) times.*
- 4. Extension of a land use decision for an application . . . may be granted for a period of time not to exceed two (2) years.*

Chapter 90: Definitions.

Substantial Construction. *Providing there are buildings on the site, the completion of construction of footings for the building where the principal use will take place shall constitute substantial construction . . .*

1. *Vesting Based on Commencement of Development:*

The applicant requests that the City interpret the Development Code, Section 50.90.3.B.2, to affirm that the PUD has vested because development has commenced.

The PUD received approval on November 5, 2013. The PUD had a two-year period prior to expiration per Section 50.90.1.B of the Development Code, which would have made the original expiration date November 5, 2015. The applicant subsequently extended the decision twice, as permitted by Section 50.93.4 of the Development Code, case files EXT2015-0004 and EXT2017-0003. The final expiration date for the PUD after the two valid time extensions was November 5, 2019, unless per Section 50.90.1, "the approval is enacted [vested] either through construction or establishment of the use within the specified time period."

Because the PUD did not entitle any specific development proposals, subsequent land use applications and construction in reliance on those entitlements were required to meet the "enacted" provision of Section 50.90. The PUD staff report (page 6) describes what is necessary to vest the PUD:

"Moreover, an approval of the PUD will establish the range of necessary mitigation measures to the transportation system in the area. In order to act

on the entitlements granted by this PUD on the specific parcels, the property owner will be required to submit appropriate land use applications in the future which demonstrate how the proposed development will meet the Development Code in effect at the time of application submittal and the conditions of CU 2013-0003. The development of the Sunset Station and Barnes Road PUD will be at least a two-step land use application review process. CU 2013-0003 is the first step. If CU 2013-0003 is approved, once a subsequent development approval is granted, and substantial construction as defined in Chapter 90 of the Development Code has taken place, the PUD and associated transportation trips will be vested for the full build out of the PUD area.”

It is clear from this description that any physical development of the PUD area would have to be authorized by a subsequent land use decision, since no physical development was entitled with the PUD. The development would be required to meet Development Code criteria in effect at the time of the land use application and to show compliance with the PUD conditions.

On March 28, 2019, the first applications under the PUD, Sunset Surface Parking (CU2018-0023 / DR2018-0167), that involved physical construction were approved. These approvals were not appealed. They involved the construction of a building, a guard structure, in addition to a surface parking lot. Under the definition of Substantial Construction found in Chapter 90 of the Development Code, for a land use application involving a building, substantial construction is considered to have taken place once construction of the footings is complete for the building where the principal use is located. Since there is only one building on the site, and since this provision applies when construction of any building is involved, the guard structure is considered the building for which the footings must be constructed in order to vest approval.

The Sunset Surface Parking decision included a condition of approval to DR2018-0167, Condition 30, which allowed the issuance of the foundation-only permit for the building to be issued prior to issuance of the full site development permit. A foundation-only permit is necessary to construct and inspect footings for a building.

The building permit (BP2019-2788) was issued for the foundation-only construction of the guard structure on October 10, 2019. An inspection of the constructed foundation, including footings, per BP2019-2788 resulted in approval on October 23, 2019. The inspection and approval of the foundation meets the criterion in the Substantial Construction definition of Chapter 90 of the Development Code which states, *“the completion of construction of footings for the building where the principal use will take place shall constitute substantial construction.”* This approval means the Sunset Surface Parking application is considered vested and will not expire.

The Sunset Surface Parking project is the first application approved under the PUD to vest. Vesting of the Sunset Surface Parking approval vests the entire PUD as of October 23, 2019, prior to the November 5, 2019 expiration date. The vesting of the PUD is relevant to all applications approved under the PUD, including the Life Time approvals.

The vesting of the PUD does not automatically extend vested status to all subsequent applications approved under the PUD. Each individual approval is subject to its own expiration date, which can be extended upon application as allowed by the Development

Code. These applications, most of which have not yet been filed, did not vest concurrently with the PUD, They will be approved subsequently through separate entitlement processes with unique expiration dates and vesting determinations.

2. Vesting Based on Change in Use

The applicant asserts the commencement of construction of the surface parking lot constitutes a change of use sufficient to vest the PUD. Because the Director finds, in applying the applicant's first vesting test, that the PUD has vested, it is not necessary for the Director to address the applicant's second vesting assertion.

3. If the PUD has expired, Life Time's project is not impacted by the expiration:

The applicant requests that the City determine that if the Director finds that the PUD did expire on November 5, 2019, the Life Time Fitness approvals are not impacted by the expiration of the PUD.

The applicant asserts that understanding the nature of the Sunset Station and Barnes Road PUD is important to this discussion and references page 1 of the Appeal of Life Time Fitness Beaverton (APP 2019-002) City Council Memorandum, dated July 3, 2019:

"The subject site is part of the PUD which was approved in 2013 and involved extensive transportation modeling and trip analysis based on a dense development framework. The entirety of the Sunset Station and Barnes Road PUD is intended to be a high density development with a mix of commercial and residential uses spread over approximately 90 acres located on the north and south sides of SW Barnes Road [reference to map deleted]. While the PUD assumed a generic mix of uses in order to generate trip assumptions for the traffic analysis, the intention of the PUD is not to dictate the uses proposed on any specific site. Development can be proposed so long as it is consistent with the zoning district requirements and the trip assumptions of the overall PUD.

"The conditions of approval for the PUD identify all of the transportation improvements that are required over the course of development of the entire PUD. As each phase of development is proposed, a "mini-Transportation Impact Analysis" (TIA) must be completed to determine what improvements are required for the specific development being proposed. The applicant has performed the required traffic analysis to show compliance with the PUD assumptions and identify the required mitigation measures from the PUD condition list."

The PUD established factual assumptions for trip generation and mitigation measures for subsequent development within the boundaries of the PUD. After Life Time's applications were filed on September 5, 2018 and final local approval occurred on August 13, 2019, the PUD became effective. The Planning Commission and City Council (on appeal) relied upon and applied the transportation-related requirements of the PUD first to the Sunset Surface Parking application and then to the Life Time Fitness applications.

The applicant asserts that if the PUD had expired, the trip assumptions and mitigation measures included in the PUD approval would no longer be in effect with respect to the areas of the PUD not already separately approved for development. Any new applicant for development within the geographic area of the expired PUD would no

longer be able to take advantage of the trips that could have vested during the period PUD approval was effective, and would not be subject to the conditions of approval of the expired PUD related to traffic mitigation. That said, the expiration of the PUD would have no bearing on the approval of the Life Time project. Determining otherwise would be a collateral attack on a final land use approval.

The applicant provides an illustrative example using a common circumstance of multiple projects within an area receiving land use entitlements that must take into account the assumed in-process trips of other previously approved development, even if that development has not been constructed. The applicant's example is as follows (page 7-8 of the applicant's narrative response):

"A hypothetical analogous example is instructive. A discretionary land use application for development X assumes that an adjacent development that had been previously approved but not yet built (development Y) would generate Z amount of traffic impact as background traffic for development X. If, following the approval of development X, the adjacent development Y's entitlements expire before development Y is built and the Z trips never actually impact the transportation system, that change in factual circumstances has no impact on the approved development X decision. Development X is not somehow relieved from its transportation obligations and development X's land use approval is not modified or undermined. There was simply a change in the facts post-approval. Going forward, new development applications, including a new application for the property where development Y had been approved, would not need to assume the Z trips as background traffic"

The Director concurs with the applicant's assessment in the example of developments X and Y. A change in facts post-approval does not nullify or invalidate the approval of development X. Future applications for development in the area will have to address a different set of facts, which will be reflected in the findings on the applications. To invalidate a decision due to a post-approval change in facts would lead to the invalidation of a significant number of land use decisions, as it is impossible to predict which land use entitlements will ultimately be constructed and in what order. The Life Time applications were approved on terms established by the valid approval of the Sunset Station and Barnes Road PUD. The expiration of that PUD following approval of the Life Time applications would not invalidate the approval.

Change in Facts

The applicant makes an additional argument based on LUBA case law, particularly *Hoffman v. City of Lake Oswego*, LUBA No. 90-067 Or LUBA 64 (1990) and the related case *Westlake HOA v. City of Lake Oswego*, 25 Or LUBA 145 (1993). This argument raises the question whether post-approval changes to facts can invalidate a land use approval. According to the applicant:

"The issue presented here is similar to that in *Hoffman v. City of Lake Oswego*, LUBA No. 90-067, 20 Or LUBA 64 (1990). In *Hoffman*, the city approved a multiphase PUD and, at the time of the initial approval, determined that school facilities and the transportation system were adequate to accommodate the development as conditioned. Years later, when the sixth phase of development was under review by the city, an opponent argued that the facts had changed

since the original PUD approval and that school facilities and the transportation system were no longer adequate. LUBA rejected these arguments and held that as long as a subsequent phase is consistent with the overall approval, “there is no requirement that the factual predicates underlying the original [PUD] approval be reexamined when the anticipated phases are approved.” *Id.* At 71-72. In a subsequent opinion that addressed the extension of the same PUD at issue in *Hoffman*, LUBA elaborated on its initial holding by explaining that so long as the original PUD approval remained valid, a subsequent implementing land use application need only be consistent with the PUD and the applicant need not “address changes in factual circumstances that might have prevented [PUD] approval in the first place. In other words, during the time in which the [PUD] is in effect, the [PUD] rather than comprehensive plan standards that were applied in approving the [PUD], governs [a subsequent implementing] approval.” *Westlake HOA v City of Lake Oswego*, 25 Or LUBA 145 (1993).”

“Applying *Hoffman* and *Westlake* to this PUD and Approval, the only relevance to the PUD’s effectiveness has on Life Time’s Approval was whether the PUD was valid during the review of Life Time’s Project. Life Time’s Project was applied for and approved while the PUD was effective. Life Time’s Project demonstrated compliance with all of the standards and criteria that were effective at the time the applica[tions] were submitted, including the factual predicates in the Sunset Station and Barnes Road PUD. As an independent land use decision, the effectiveness of Life Time’s Project approval stands on its own, regardless of whether the PUD subsequently expires or is vested. Once approved, the vesting status of Life Time’s Approval depends only upon whether substantial construction occurs within the term of that approval.”

In reviewing the applicant’s arguments related to vesting of the PUD, the Director considers the scope and purpose of the original approval. The PUD did not propose any specific physical development. The PUD posited a mix of reasonable uses for the site in order to analyze the potential transportation impacts from reasonable development of the parcels within the PUD boundary. The PUD neither requires nor anticipates that the uses identified for the purpose of the TIA in the original PUD approval will be the specific final uses of the parcels. The resulting TIA from the mix of use assumptions sets forth the transportation framework and trips that are set aside for the eventual development within the PUD area. The PUD approval does not relieve any future development applications from compliance with any other applicable regulatory provisions of the Development Code. The PUD approval established trip assumptions and mitigation measures with which future development within the area must comply.

The existence of the PUD did not make the Life Time proposal possible. Even without the PUD, the same proposal could successfully have been made under the same approval criteria. Since the PUD is not actually necessary for the application for, or potential approval of, the Life Time Fitness proposal, the expiration of the PUD would not disqualify the proposal for approval or render it non-compliant with the Development Code. Therefore an expiration of the PUD would not be sufficient to cause the expiration of the Life Time Fitness approvals.

The Director concurs with the applicant that if the Sunset Station and Barnes Road PUD were to expire, it would constitute a change in post-approval facts and would not invalidate any subsequent land use approvals made to the Sunset Station and Barnes Road PUD, such as the Life Time application. Each subsequent decision, while relying on the PUD during review, will have its own approval and expiration timeframe which is not dependent upon the vesting of the PUD.

BBO's Vesting Arguments.

BBO first argues that the guard structure is not a principal use of the PUD. BBO contends that Condition 42 of the PUD requires that the PUD expire unless "a construction permit has been issued and substantial construction thereto has taken place." This is followed by a portion of the definition for "substantial construction" from Chapter 90 of the Development Code, which states, "providing there are buildings on the site, the completion of construction of footings where the principal use will take place shall constitute substantial construction." BBO argues that the Planning Commission in its decision on the Sunset Surface Parking proposal found that the parking lot was not a principal use of the site, citing a section of the Land Use Order for CU2018-0023 approving the Sunset Surface Parking Conditional Use application. BBO relies on the following language from the approval:

"The Commission discussed their concern that the proposed surface parking lot as a principal use of the site and whether that was consistent with the Comprehensive Plan Policies 3.6.1 (Support pedestrian-oriented mixed use areas) and 3.6.4 (Station Communities), including policies related to providing vertically mixed uses, limiting auto-oriented uses, and promoting walkable areas. The applicant explained how understanding the total parking demand at the station site was integral to right-sizing the parking for future development phases, including dense mixed use development. The Commission found that with a condition of approval to ensure that the conditional use was intended [to] help facilitate full buildout of the site and not a permanent principal use of the site, that the proposal met the Comprehensive Plan policies." [Emphasis added by BBO.]

This section of the land use order relates to an expiration of the Sunset Surface Parking approval if no further development occurs on the site. The Planning Commission did not want surface parking lots not supported by additional development to become a permanent use of the site over time. The word '*permanent*' is key to understanding the finding made and the condition put in place by the Planning Commission. The use being permitted on the site is listed in the Development Code as "Parking as a Principal Use", a recognition that the proposal includes parking as the principal use of the site. In this case there are no additional uses on the site to be considered the principal use. The Planning Commission was not determining that the use was not a principal use but was ensuring that the use was not a *permanent* use of the site unless supported by other uses in the future. BBO's interpretation is not consistent with either the Development Code or the Planning Commission's determination.

In determining whether vesting has occurred, it is important to refer directly to the definition of Substantial Construction, which is located in Chapter 90 of the Development Code and provided below:

“Substantial Construction. *Providing there are buildings on the site, the completion of construction of footings for the building where the principal use will take place shall constitute substantial construction. . . .”*

This part of the definition states “providing there are buildings on the site [emphasis added].” The Sunset Surface Parking site was described in the staff report. Public notice was provided for the parcel on which the parking lot was proposed to be constructed and that part of the Sunset Transit Center where vehicular and pedestrian connections would be constructed. The proposed site did not include the entire Sunset Station and Barnes Road PUD. BBO does not contest that the construction of the foundation of the guard structure vested the Sunset Surface Parking land use approval. The focus of BBO’s assertions is on the question of whether that approval was sufficient to vest the entire PUD. For this discussion, an excerpted portion of text from the PUD staff report and the full language of Condition 42 of the PUD are relevant:

CU2013-0003 Staff Report, page 6:

“In order to act on the entitlements granted by this PUD on the specific parcels, the property owner will be required to submit appropriate land use applications in the future which demonstrate how the proposed development will meet the Development Code in effect at the time of application submittal and the conditions of CU 2013-0003. The development of the Sunset Station and Barnes Road PUD will be at least a two-step land use application review process. CU 2013-0003 is the first step. If CU 2013-0003 is approved, once a subsequent development approval is granted, and substantial construction as defined in Chapter 90 of the Development Code has taken place, the PUD and associated transportation trips will be vested for the full build out of the PUD area.”

Land Use Order No. 2337, Condition 42:

42. “In accordance with Section 50.90.1 of the Development Code, Planned Unit Development approval shall expire 2 years after the date of approval unless, prior to that time, a construction permit has been issued and substantial construction pursuant thereto has taken place, or an application for extension has been filed, pursuant to Section 50.93 of the Development Code, or authorized development has otherwise commenced in accordance with Section 50.90.3.B of the Development Code. (Planning/JF)”

The staff findings on page 6 of the CU2013-0003 staff report clearly state that subsequent development approvals will be required and that any subsequent development approval granted will vest the PUD and associated transportation trips by meeting the threshold of Substantial Construction, as defined in Chapter 90 of the Development Code. Condition 42 reiterates the findings on page 6 of the staff report as a condition of approval. As the guard structure itself vests the Sunset Surface Parking approval, which is a “subsequent development approval” pursuant to the PUD, the vesting of the Sunset Surface Parking approval will vest the entire PUD, as explained in the CU2013-0003 Staff Report.

BBO’s second assertion in support of its contention that the guard structure cannot vest the PUD is that the guard structure is too small in proportion to the anticipated future

development of the entire PUD to vest the PUD, and that vesting the PUD notwithstanding would render the concept of expiration dates meaningless.

There is no size threshold in the Development Code definition for Substantial Construction, and no size test for development described in the original PUD approval. The fact that a small structure can result in vesting an entire PUD does not render the PUD expiration date meaningless. In this PUD, possible development applications can range from small to large. Whether the Substantial Construction test is met depends on the relationship between the work performed and the specific project approved – in this case, the Sunset Surface Parking project. While the guard structure is indeed not a large structure, it is the first building approved within the area of the PUD that had a foundation completed. Completion of footings for the guard structure is the substantial construction (measured against parking lot project itself, which included the guard structure) that vested the application for the Sunset Surface Parking Lot. Once vested, the Sunset Surface Parking Lot project acted to vest the entire PUD.

BBO's third assertion is that if the City determines that the PUD is vested by the construction of the guard structure, it will have improperly converted the single-phase PUD into a phased development approval. The original approval, as described above in the excerpt from page 6 of the PUD staff report and PUD Condition 42, clearly anticipated subsequent specific development proposals. To contend otherwise would be to collaterally attack the approval. The fact that at least some of the contemplated approvals have occurred is consistent with the original intent of the approval. The application of the vesting standard in connection with the Sunset Surface Parking project is consistent with the condition of approval and staff report for the PUD. It does not constitute a change to the PUD approval.

BBO also challenges the applicant's second vesting assertion regarding whether the commencement of construction of the surface parking lot consists of a change of use sufficient to vest the PUD. However, as explained above, the City has determined that the applicant meets the first test for vesting presented. The construction of the footings for the guard structure prior to the expiration of the PUD is sufficient to vest the project to which the guard structure relates and, through that project, the entire PUD. Because the City finds that the applicant meets the first test for vesting, the applicant's second argument is moot.

The Life Time Project did not expire when the PUD upon which it relied expired.

BBO makes three assertions related to its claim that if the PUD expired, so did the approval for Life Time: (1) should the PUD expire, Life Time's reliance on it for trip assumptions and mitigation measures is not merely a change in factual assumptions; (2) the applicant misapplied the *Hoffman* and *Westlake* cases as they related to unexpired PUDs; and (3) had the vested rights doctrine in *Clackamas County v Holmes* been properly applied, it would have precluded approval of Life Time's application. Each of these assertions is addressed below.

BBO first asserts is that the applicant's claim that the expiration of the PUD would constitute a change to facts post-approval is incorrect, because the transportation assumptions and mitigation measures that were specifically relied upon in the Life Time approval to show compliance with transportation requirements were dependent upon the PUD approval. In assessing this argument, it is important to understand the unusually focused scope of the PUD approval.

Unlike many PUDs, the Sunset Station and Barnes Road PUD application didn't seek any of the special development opportunities available through the PUD process, such as increased height allowances, reduced setbacks, exceptions to required floor area ratios (FAR) or other development benefits. The PUD was instead to provide a consistent framework for determining transportation improvements related to future development in the PUD itself and in the surrounding area. This was to be accomplished through two main mechanisms: identifying a total number of PUD-wide trips related to anticipated uses and background trips at the time the PUD was approved (in-process trips), and specific mitigation measures that would be required for development across the PUD. This framework was then to be applied to subsequent land use approvals pursuant to the PUD through the mini-Transportation Impact Analysis discussed above, to determine how many of the trips generated by a specific proposed development would be deducted from the total of anticipated PUD in-process trips and to identify which of the PUD-identified mitigation measures would be appropriate for the proposed development.

The analysis for development within the PUD utilizes the same trip generation assumptions and requirements as all other TIAs completed within the City. Proposals for development of non-PUD sites in the area will include the PUD in-process trips in TIAs to evaluate impacts and mitigation.

Recognizing in-process trips in the PUD context is no different from recognizing in-process trips approved outside the PUD context. In both cases, in-process trips must be considered at the time of a subsequent application for development. Arguing that existing in-process PUD trips were improperly relied upon for the Life Time approval is analogous to arguing that if another development within the same transportation system were approved prior to Life Time and then expired, the Life Time approval would be invalidated. Following this logic, each development would have to be constructed in the order it was approved; if any development were not completed as approved, all projects subsequently approved would automatically expire because the trip assumptions used in their TIAs would be invalid. Needless to say, this is inconsistent with established methodologies for conducting transportation impact analysis.

The second assertion by BBO is that the *Hoffman* and *Westlake* cases were improperly applied in Life Time's narrative because in those cases the PUD had not expired. The premise of this argument is that a final land use decision of approval must be terminated abruptly when the PUD approval upon which it was based expires. However, the Development Code, Section 50.90, states specific periods after which particular land use decisions expire. In the case of Design Review Three (Section 40.20.15.2), that period is two years from the effective date of the decision – in this case, August 13, 2019. Therefore, unless further extended, the expiration date is August 13, 2021. Nothing in the Development Code makes the expiration date contingent upon an underlying approval.

The Sunset Station and Barnes Road PUD was to provide a consistent framework for determining transportation improvements for future development in the PUD itself and in the surrounding area by identifying in-process trips and mitigations for the PUD overall. That purpose and the framework outlined was effectively incorporated by reference in the Design Review Three approval. It would not disappear from the Design Review Three approval even if the PUD approval did expire.

As previously discussed, no special benefits or exceptions to zoning regulations were granted by the PUD. The Life Time land use approval relies only on application of Development Code regulations in place at the time of application. The PUD operated to allocate in-process trips to the Life Time TIA, and provided a pre-identified list of mitigations that Life Time was conditioned to construct in proportion to the specific trips associated with the proposed development. Invalidating the decision based on changes to in-process trip assumptions in the PUD would set an unsustainable precedent for all future development projects which rely on in-process trips in their transportation analyses.

BBO's third assertion is that *Clackamas County v. Holmes*, 265 Or 193, 508 P2d 190 (1973), is relevant to Life Time's application. BBO is incorrect, because *Holmes* is not on point. It addresses whether a partially developed project vested as a nonconforming use prior to a change in the zoning ordinance. It does not discuss a PUD approval or the application of standards stated in a PUD approval when or if the approval expires.

The PUD approval in this case – *particularly* this case – is not comparable in any respect to a zoning ordinance. It does not contain development standards. It does not modify any Development Code standards. As quoted above, page 6 of the staff report for the PUD clearly requires compliance with the Development Code regulations in effect at the time of future application submittal, in addition to compliance with the PUD conditions of approval. All the PUD approval does is regulate transportation impacts.

Summary

The Director, on the applicant's first request to determine vesting status of the Sunset Station and Barnes Road PUD (CU2013-0003), finds that the Sunset Station and Barnes Road PUD (CU2013-0003) has vested through substantial construction of the guard structure associated with the Sunset Surface Parking (CU2018-0023 / DR2018-0167) approval. The Director finds that should the Sunset Station and Barnes Road PUD be deemed to have expired, land use approvals subsequent to the PUD decision, such as the Life Time applications, do not expire solely because the PUD expires, as they received valid land use approvals and have their own schedule for expiration and vesting. Expiration of the Sunset Station and Barnes Road PUD would be considered a post-approval change to facts, and would not require the invalidation of the Life Time Fitness Beaverton approvals. The Director finds that the above interpretation is consistent with the Development Code.

Therefore, the Director finds that the proposal meets the criterion for approval.

- 4. When interpreting that a use not identified in the Development Code is a permitted, a conditional, or prohibited use, that use must be substantially similar to a use currently identified in the subject zoning district or elsewhere in the Development Code.**

The Director's Interpretation is not requesting that a use not identified in the Development Code be determined to be substantially similar to another use identified in the Development Code. The Director's Interpretation is related to process questions related to Washington County Interim zoning.

Therefore, the Director finds that the approval criterion is not applicable.

5. The proposal contains all applicable submittal requirements as specified in Section 50.25.1 of the Development Code.

All applicable submittal requirements for the Director's Interpretation application have been submitted. The application was deemed complete by the city on November 21, 2019.

Therefore, the Director finds that the proposal meets the criterion for approval.

6. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

The necessary documents related to the Director's Interpretation have been submitted.

Therefore, the Director finds that the proposal meets the criterion for approval.

CONCLUSION

The Director, on the applicant's first request to determine vesting status of the Sunset Station and Barnes Road PUD (CU2013-0003), finds that the Sunset Station and Barnes Road PUD (CU2013-0003) has vested through substantial construction of the guard structure associated with the Sunset Surface Parking (CU2018-0023 / DR2018-0167) approval. The Director finds that should the Sunset Station and Barnes Road PUD be deemed to have expired, land use approvals subsequent to the PUD decision, such as the Life Time applications, do not expire solely because the PUD expires, as they received valid land use approvals and have their own schedule for expiration and vesting. Expiration of the Sunset Station and Barnes Road PUD would be considered a post-approval change to facts, and would not require the invalidation of the Life Time Fitness Beaverton approvals. The Director finds that the above interpretation is consistent with the Development Code.



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EXHIBIT 1.1

December 23, 2019

Via E-mail: janaf@beavertonoregon.gov and US Mail

Jana Fox
City of Beaverton
Community Development
Planning division
12725 SW Millikan Way
Beaverton, OR 97005

Dear Jana:

Thank you for assisting LifeTime with their request for an interpretation to facilitate the completion of their development at 1S103AB (tax lot 200), 1S103A (tax lots 1700, 2200), 1S102B (tax lot 500), 1S103AD (tax lot 600), 1S102CB (tax lot 100) and 1S102CA (tax lots 500, 600). We represent J. Peterkort and Company, the owner of the property that LifeTime will [be purchasing or leasing], and also owns the remainder of the land in the PUD.

Lifetime's review of the relevant history of the Peterkort PUD is accurate and correct in all respects, and we recommend that the City adopt the interpretation they propose. We also write to emphasize that Lifetime's analysis of their particular site also applies with equal force to the remainder of the Peterkort PUD for the same reasons.

The subject properties were previously vacant. Development has commenced with the construction of the centralized security building, Building Permit No. BP2019-2788 which will house the security headquarters for the entire PUD. Unfortunately, theft and vandalism remain a challenge for construction sites, and therefore the Peterkort PUD is constructing the security infrastructure as the initial step in the development. This includes the centralized security building and a variety of other security equipment and facilities throughout the PUD area. Because the security building, staffing and equipment is designed to provide coverage for the entire PUD, the vesting right that accrues from its construction encompasses the whole of the approved PUD.

Sincerely,

JORDAN RAMIS PC

Timothy V. Ramis

cc: J. Peterkort and Company

49966-71502 4845-0317-0223.1

From: K. Anne Conrad-Antoville <anne.conrad.antoville@gmail.com>
Sent: Monday, December 23, 2019 7:42 PM
To: Jana Fox; K. Anne Conrad-Antoville
Subject: Life Time Fitness Directors Interpretation D12019-003 - Comments

Attn: Jana Fox, Beaverton Planning Division
PO Box 4755, Beaverton OR 97076

RE: Life Time Fitness Directors Interpretation D12019-003

December 24, 2019

Please consider the following regarding Life Time Fitness Directors Interpretation D12019-003.

The extension should not be granted because material circumstances have changed.

1. This proposal is on lots adjacent to Johnson Creek. Tree removal and initial road cutting activities have destabilized the geographic area south and adjacent to Johnson Creek, causing a landslide and requiring the City of Beaverton to construct a mitigation to keep a significant drainage open under Cedar Hills Boulevard near the intersection of Cedar Hills Boulevard and Barnes Road in order to prevent flooding risk to the Deveraux Glen Apartment complex.
 - A. How is the project planning to protect water quality of Johnson Creek for Tualitin Hills Water District?
 - B. How is the project planning to prevent further destabilization and landslides into Johnson Creek?
 - C. Has the project provided comprehensive geologic assessments of the project area to determine suitability for development without risk to water quality or risk of landslides?
2. This proposal is located in lost with significant natural resources including Johnson Creek and nesting habitat for bald eagles, blue herons and great egrets as well as numerous species of native birds.
 - A. If the portal receives an extension, it will bypass the Washington County Significant Natural Resources Program , this program is currently closing Review and Assessment
 - B. How will the city of Beaverton protect the significant natural resources potentially affected by this development proposal including Johnson Creek and nesting habitat?
 - C. What mitigations will be required by the City of Beaverton to protect the significant natural resources on these sites?

Thank you for your consideration.

Kristin Conrad-Antoville and Anthony Antoville
10934 SW Celeste Lane, #405
Beaverton, OR 97225

Kristin Anne Conrad-Antoville
Cell (971) 303-1673



HATHAWAY LARSON

Koback · Connors · Heth

EXHIBIT 1.3

December 26, 2019

VIA EMAIL

Jana Fox, Current Planning Manager
City of Beaverton
Community Development Department
12725 SW Millikan Way, 4th Floor
Beaverton, OR 97005

Re: Life Time Fitness Director's Interpretation Application
Application Case File No. D2019-0003

Dear Jana:

This firm represents Beaverton Business Owners, LLC ("Beaverton Business Owners") with respect to the above-referenced Director's Interpretation Application filed by Life Time Fitness ("Life Time") on November 21, 2019 ("the Application"). We are submitting this letter as Beaverton Business Owners' comments on the Application.

Life Time makes three claims to which the Beaverton Business Owners respond to in this letter: (1) the Sunset Station and Barnes Road PUD ("PUD") vested under BDC 50.90.3.B.2 because the construction of the parking lot guard shack foundation constitutes substantial construction of the PUD; (2) the PUD vested under BDC 50.90.3.B.1 based on a change in use associated with the Sunset Surface Parking Lot project; and (3) even if the PUD expired, Life Time's project is not impacted by the expiration of the PUD. As explained below, Beaverton Business Owners disagrees with all of Life Time's claims. The PUD expired because the parking lot guard shack foundation cannot vest the PUD and there has been no change in use in the PUD prior to the expiration date. Life Time's project approval is invalid because it relied on and was contingent upon the now expired PUD.

E. Michael Connors
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Portland, OR 97209
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(503) 303-3111 direct
(503) 303-3101 main

1. The construction of the foundation of the parking lot guard shack does not constitute “substantial construction” of the PUD and cannot be used as a basis for vesting the PUD.

Pursuant to condition of approval no. 42 of the PUD approval, the PUD shall expire on the expiration date (November 5, 2019) unless "a construction permit has been issued and substantial construction pursuant thereto has taken place * * *." (Emphasis added). See attached Order No. 2337, CU2013-0003, Order Approving Sunset Station & Barnes Road PUD (“PUD Approval”), p. 16. "Substantial construction" is defined as "Providing there are buildings on the site, the completion of construction of footings for the building where the principal use will take place shall constitute substantial construction." CDC Chapter 90. (Emphasis added). Therefore, the PUD can only vest if the building footings for a principal use in the PUD have been completed.

Life Time claims that the construction of the guard shack foundation associated with the Sunset Surface Parking Lot project is sufficient to vest the entire PUD pursuant to BDC 50.90.3.B.2. Beaverton Business Owners submitted a letter to the City, dated November 11, 2019, a copy of which is attached, addressing this same argument. As we explained in our November 11, 2019 letter, there are several reasons why the construction of the guard shack foundation does not vest the PUD.

The parking lot guard shack cannot vest the PUD Approval because the surface parking lot and guard shack are not a principal use of the PUD. Based on the plain language definition of “substantial construction,” the PUD Approval can only be vested if a building associated with a “principal use” is substantially constructed. As part of the findings for the Sunset Surface Parking Lot project, the planning commission concluded that the parking lot was not a principal use of the site and would only be a temporary use of the site, and specifically relied on this finding in order to avoid conflicts with Comprehensive Plan Policies 3.6.1 (Support pedestrian-oriented mixed use areas) and 3.6.4 (Station Communities):

The Commission discussed their concern that the proposed surface parking lot as a principal use of the site and whether that was consistent with the Comprehensive Plan Policies 3.6.1 (Support pedestrian-oriented mixed use areas) and 3.6.4 (Station Communities), including policies related to providing vertically mixed uses, limiting auto-oriented uses, and promoting walkable areas. The applicant explained how understanding the total parking demand at the station site was integral to right-sizing the parking for future development phases, including dense mixed use development. The Commission found that with a condition of approval to ensure that the conditional use was intended help facilitate full buildout of the site and not a permanent principal use of the site, that the proposal met the Comprehensive Plan policies. See attached Planning Commission Order No. 2685, CU2018-0023 Order Approving Sunset Surface Parking, New Conditional Use (“Parking Lot Approval”), p.2.

Since the planning commission concluded that the parking lot is not a principal use of the PUD and specifically relied on that conclusion to approve the Sunset Surface Parking Lot project, the guard shack foundation cannot vest the PUD.

The construction of a tiny guard shack foundation cannot by itself vest the entire PUD. The PUD Approval covers an approximate 80-acre area and approved the development of over 1,250,000 square feet of commercial space, hotels consisting of 500 rooms and 2,175 residential units. As the planning commission recognized, the surface parking lot and guard shack were not even proposed or contemplated as one of the PUD uses. The foundation for a mere 200 square foot guard shack for a use that was not even contemplated by the PUD Approval cannot possibly vest a PUD development of this size and scale. If the City were to allow the entire PUD to vest based solely on the construction of a guard shack foundation, it would establish a terrible precedent that will allow future developers to easily avoid the expiration of their approvals by pouring the foundation for a small ancillary structure on their property. If a guard shack foundation can vest a PUD of this size, a foundation for similar small ancillary structure would be sufficient to vest *any* development. Allowing a massive development proposal to vest based on the construction of a tiny incidental shack foundation that was not even contemplated as part of the original PUD proposal would render the entire concept of having expiration dates meaningless.

The City cannot deem the entire PUD as having been vested by the mere construction of a guard shack foundation because it would improperly convert the single-phase PUD to a phased development approval. There are two types of PUDs under the City code - a single phase PUD and a multiple phase PUD. BDC 40.15.15.4.C.11 and 40.15.15.4.F. A single-phase PUD expires in two years and a multiple phase PUD expires in five years. BDC 50.90.1.A and 50.90.1.B. The PUD was approved as a single-phase PUD. The City would be effectively converting the PUD to multiple phase PUD if it were to allow the entire PUD to vest based solely on the construction of a guard shack foundation without any development plans or proposals for the remainder of the PUD.

For the reasons stated above, the construction of the surface parking lot guard shack foundation cannot by itself vest the PUD.

2. The partial construction of the surface parking lot does not constitute a change in use for purposes of vesting the PUD.

In the alternative, Life Time asserts that the PUD vested based on a change in use on the property associated with the Sunset Surface Parking Lot. BDC 50.90.3.B.1 provides that an approval can vest if “The use of the subject property has changed as allowed by the approval.” However, BDC 50.90.3.B.2 provides that a development requiring construction only vests if substantial construction has occurred: “In the case of development requiring construction, a construction permit has been issued and substantial construction pursuant thereto has taken place.” Therefore, Life Time can only rely on BDC 50.90.3.B.1 if the PUD development did not require construction. Life Time’s argument fails because the PUD does involve development requiring construction and the partial construction of the parking lot is wholly insufficient to establish a change in use.

Life Time cannot rely on BDC 50.90.3.B.1 because the PUD clearly involves construction and is subject to BDC 50.90.3.B.2. As Life Time acknowledges, BDC 50.90.3.B.1 is intended to apply only when the approval proposal is limited to the use of the property and does not involve construction of improvements. The PUD clearly involves construction based on the plain language of the PUD approval. Condition of approval no. 42 of the PUD approval expressly states that it can only be vested if substantial construction occurs by the expiration date: “In accordance with

Section 50.90.1 of the Development Code, Planned Unit Development approval shall expire 2 years after the date of approval unless, prior to that time, a construction permit has been issued and substantial construction pursuant thereto has taken place * * *.” (Emphasis added). PUD Approval, p.16. Condition of approval no. 1 for the 2017 extension of the PUD confirms that the PUD involves construction: “All construction shall be carried out in accordance with the plans submitted and approved with CU2013-0003.” See attached Notice of Director’s Decision for EXT2017-0003 Sunset Station & Barnes Road PUD Second Time Extension (“2107 PUD Extension”), p.8. Life Time’s assertion that the PUD does not involve development requiring construction is inconsistent with the plain language of the PUD Approval and 2017 PUD Extension.

Even if Life Time could rely on BDC 50.90.3.B.1, the partial construction of the surface parking lot is not a change in use. Life Time admits that the construction of the parking lot had not been finished as of the filing of the Application (November 21, 2019): “Construction of the Sunset Surface Parking Approval is underway and ongoing.” Application Narrative, p.2. If the parking lot was still being constructed on the expiration date for the PUD, it clearly was not in use at that time. Life Time conflates “construction” with “use” by claiming that “the use of the property changed from vacant once construction of the parking facility commenced.” Application Narrative, p.6. The commencement of construction is not the same as the commencement of a use. That is evident from the different standards in BDC 50.90.3.B.1 and BDC 50.90.3.B.2, which would not be necessary if the commencement of construction was the same as the commencement of a use. Life Time’s argument completely ignores the difference between construction and use of the property. Mere commencement of construction of the parking lot is not enough to constitute a change in use under BDC 50.90.3.B.1.

3. The Life Time Project expired when the PUD it relied on expired.

Life Time alleges that even if the PUD expired, Life Time’s project is not impacted. Life Time bases its argument on the fact that the PUD was still valid and effective at the time Life Time’s project was approved and therefore it does not matter if or when the PUD expires. Although Life Time specifically relied on the PUD trip assumptions and mitigation measures to obtain approval of its project and Life Time acknowledges that the expiration of a PUD development “would no longer be able to rely upon the trips vested by the PUD,” Life Time claims this is a mere “change in factual assumptions” that has no bearing on Life Time’s project. Application Narrative, p.7. Life Time relies heavily on *Hoffman v. City of Lake Oswego*, 20 Or LUBA 64 (1990) and *Westlake HOA v. City of Lake Oswego*, 25 Or LUBA 145 (1993) to support its assertion that this is a mere “change in factual assumptions” with no bearing on Life Time’s project. There are several problems with Life Time’s argument.

The expiration of the PUD is not a change in factual circumstances because Life Time’s project specifically relied on and was contingent upon the PUD for purposes of demonstrating compliance with the transportation requirements. The PUD approval required all development proposals within the PUD to submit a supplemental traffic impact analysis (“TIA”) to demonstrate compliance with the PUD transportation assumption and mitigation measures, as opposed to the traditional approach of submitting a standard TIA. Condition of approval no 1 required subsequent development applicants to: “Provide a supplemental transportation analysis to assess consistency

with the approved October 2013 Sunset Station & Barnes Road PUD TIA and to identify which of the mitigation measures listed below in conditions 2 through 32 are triggered by the impacts of the proposed development phase.” PUD Approval, pp.5-6. The City Council’s decision approving the Life Time project reiterated this direct relationship between the PUD and individual development within the PUD:

The Sunset Station and Barnes Road PUD identifies the full scope of transportation improvements required for development of the PUD. The Sunset Station and Barnes Road PUD further requires an applicant for development within the PUD to provide a supplemental TIA to determine which transportation improvements are required for the proposed development. See attached City Council’s Order No. 2720 App2019-002 Appeal of Life Time Fitness Beaverton on Tax Lot 1700 on Washington County Assessor’s Map 1S103A (DR2018-0128) (“Life Time Project Approval”), pp.3-4

Therefore, Life Time’s compliance with the transportation standards and requirements relied on and is contingent on the PUD. If the PUD expired and Life Time can no longer rely on the PUD transportation assumption and mitigation measures for its project, Life Time’s approval is invalidated as well.

Life Time’s reliance on *Hoffman* and *Westlake* is erroneous as those cases involve completely different circumstances that did not include the expiration of the underlying PUD approval. In *Hoffman*, the petitioner argued that the sixth phase of the PUD could not be approved because the factual or evidentiary circumstances regarding the adequacy of school services had changed since the original PUD was approved and therefore the sixth phase of the PUD was subject to different standards. *Hoffman*, 20 Or LUBA at 71. LUBA rejected that argument on the grounds that the original PUD and the standards it adopted may not be reconsidered simply because there have been changes in the factual circumstances since the PUD was originally approved. *Id.* at 71-72. LUBA made it clear, however, that its conclusion was based on the assumption that the original PUD is still valid and the sixth phase of the PUD was timely: “Under the procedures adopted by the city, as long as a PUD phase is consistent with the [original PUD] and remains on the approved time schedule, there is no requirement that the factual predicates underlying the original [PUD] approval be reexamined when the anticipated phases are approved.” *Id.* at 72. (Emphasis added). This case is different because the original PUD has expired.

In *Westlake*, which involved the same PUD as *Hoffman*, LUBA reiterated its conclusion that changes in factual circumstances need not be considered provided the underlying PUD is still valid. LUBA explained: “so long as [the PUD] approval remains valid, an applicant may submit a final development plan, consistent with the [PUD], without having to address changes in factual circumstances that might have prevented [PUD] approval in the first place.”¹ *Westlake*, Slip Op. p.3. Neither *Hoffman* nor *Westlake* are applicable because the underlying PUDs were still valid and the issue before LUBA was whether or not changes in factual or evidentiary circumstances must be considered as part of the PUD phased development. In this case, the question is whether

¹ It is important to note that Life Time left out the critical “so long as [the PUD] approval remains valid” when it quoted this portion of LUBA’s decision. Application Narrative, p.8.

the expiration of the PUD approval affects a development proposal in the PUD that specifically relied on and is contingent upon the PUD.

Since the Life Time project relied on and is contingent upon the PUD, Life Time must demonstrate that it has a vested right to continue the project development notwithstanding the expiration of the PUD. The vested rights test is addressed in *Clackamas County v. Holmes*, 265 Or 193, 508 P2d 190 (1973). In *Holmes*, the property owner had only partially constructed a processing plant when the County adopt a zoning ordinance that prohibited such a use. The court rejected the property owner's argument that the processing plant was a nonconforming use because the construction was not complete and therefore the use had not commenced, and instead concluded that the property owner was required to establish that it had a "vested right" to complete the construction. The court articulate how to determine if a vested right exists:

[I]n order for a landowner to have acquired a vested right to proceed with the construction, the commencement of the construction must have been substantial, or substantial costs toward completion of the job must have been incurred. *Id.* at 197.

The court went on to explain that to determine if a vested right exists the courts apply a "ratio test" that compares the expenditures incurred prior to the change that made the development nonconforming to the total cost of the project. *Id.* at 197-98. Although the court did not adopt a definitive ratio that satisfies the test, the court determined that a ratio of 1 to 14 in that case was sufficient. *Id.* at 199.

The court in *Holmes* also stated that the expenditure ratio should not be the only factor considered, rather courts should also consider the good faith of the landowner, whether or not the landowner had notice of any proposed zoning or zoning amendments prior to starting improvements, whether or not the expenditures were related to the completed project or could apply to various other uses. *Id.* at 198. Moreover, the actions taken by the landowner "should rise beyond mere contemplated use or preparation". *Id.* at 199 (citing *Washington County v. Stark*, 10 Or App 384, 499 P2d 1337 (1972)). See also *Union Oil Co. of California v. Board of County Com'rs of Clackamas County*, 81 Or App 1, 5, 724 P2d 341 (1986) (holding that of the \$128,678 spent in connection with the property, "only \$5,778 of petitioner's expenditures could be included in the 'substantial expenditure' calculation, because the remaining amounts were not 'directly related to use of the property as a service station,' the purpose of the approved project); *Pohrman v. Klamath County Com'rs*, 25 Or App 613, 616, 550 P2d 1236 (1976) ("[P]laintiff had the property surveyed and had septic tank test holes dug. These activities cost about \$14,000. No [subdivision] lots were sold; no homes were constructed. . . there was evidence for the Board to find that plaintiff's acts were preparatory. . .").

Applying the vested rights analysis in this case, it is clear that Life Time cannot establish a vested right to complete its project. Life Time has not commenced any construction activity and therefore it clearly cannot satisfy the expenditure ratio test. To the extent Life Time expended money on this project, it was all preparatory work pursuing the permits for the project which do not count for purposes of the expenditure ratio test. Life Time knew when it was pursuing its land use approval that the PUD was scheduled to expire on

November 5, 2019 and could not be extended any further. It pursued this project understanding that there was a risk the PUD would expire before Life Time could even commence construction of its project. Therefore, Life Time cannot demonstrate that it has a vested right to commence and complete the construction of its project.

Conclusion

Both the PUD and Life Time project approval have expired. The mere construction of a foundation for a small guard shack associated with a temporary parking lot use that was not contemplated by the PUD cannot possibly vest a PUD of this size, scope and intensity. The partial construction of the parking lot does not constitute a change in use. Since the Life Time project relied on and is contingent upon the PUD, Life Time must demonstrate that it has a vested right to continue the project development notwithstanding the expiration of the PUD. Life Time cannot establish a vested right because it has not commenced any construction activity and it knew there was a risk the PUD would expire when it was seeking land use approval for the project. Therefore, the City should declare both the PUD and the Life Time project approval invalid.

Very truly yours,

HATHAWAY LARSON LLP



E. Michael Connors

Enclosures
cc: Client



NOTICE OF DIRECTOR'S DECISION

DATE: December 14, 2017

TO: All Interested Parties

FROM: Jana Fox, Associate Planner

PROPOSAL: EXT2017-0003 Sunset Station & Barnes Road PUD Second Time Extension

LOCATION: Generally North and South of Barnes Road from West of Cedar Hills Boulevard to Highway 217.
Washington County Tax Assessors Map 1S103AB Tax Lot 200, Map 1S103A0 Tax Lots, 1700 and 2200, Map 1S102B0 Tax Lot 500, Map 1S102CB Tax Lot 100, Map 1S102CA Tax Lots, 500 and 600, and Map 1S103AD Tax Lot 600.

SUMMARY: The applicant is seeking a second time extension for a previously approved Conditional Use-PUD application (file # CU2013-0003) that authorized an approximately 80 acre PUD, including residential and commercial uses. No physical development was approved with the PUD. No changes to the originally approved proposal are included with this time extension application. If approved, this time extension request will extend the expiration date of the prior approvals to November 5, 2019.

All critical facilities required for this development were evaluated during the review of the original applications. All conditions of approval still apply.

PROPERTY OWNER: J. Peterkort & Company, L.P
Lois D. Ditmars
9755 SW Barnes Road, Suite 690
Portland, OR 97225

APPLICANT'S REPRESENTATIVE: James P. Draudt, P.C
9755 SW Barnes Road, Suite 695
Portland, OR 97225

RECOMMENDATIONS: **APPROVAL** of EXT2017-0003 Sunset Station & Barnes Road PUD Second Time Extension, subject to conditions identified at the end of this report.

BACKGROUND FACTS

Key Application Dates

<u>Application</u>	<u>Submittal Date</u>	<u>Deemed Complete</u>	<u>Final Written Decision Date</u>	<u>240-Day*</u>
EXT2017-0003	October 26, 2017	November 14, 2017	March 14, 2018	July 12, 2018

* Pursuant to Section 50.25.9 of the Development Code this is the latest date, with a continuance, by which a final written decision on the proposal can be made.

Existing Conditions Table

Zoning	Urban High Density (R1), Corridor Commercial (CC), and Station Community-Sunset (SC-S)	
Current Development	Vacant	
Site Size & Location	79.4 Acres	
NAC	Central Beaverton	
Surrounding Uses	<u>Zoning:</u> North: Urban High Density (R1) & Washington County TO:R40-80 & TO:R80-120 South: Highway 26 East: Washington County R-5 & Washington County TO:BUS West: Station Community-High Density Residential (SC-HDR) & Washington County TO:RC & TO:BUS	<u>Uses:</u> North: Natural Resource Areas South: Highway 26 East: Detached Housing & Commercial Office West: Vacant & Commercial

DESCRIPTION OF APPLICATION AND TABLE OF CONTENTS

	<u>PAGE No.</u>
<u>Attachment A:</u> Facts and Findings for EXT2017-0003 Sunset Station & Barnes Road PUD Second Time Extension.	5-7
<u>Attachment B:</u> Conditions of Approval	8

Exhibits

Exhibit 1 - Public Comment

None Received

Exhibit 2 – Staff Exhibits

- Exhibit 2.1 CU2013-0003 Land Use Order
- Exhibit 2.2 EXT2015-0004 Land Use Decision
- Exhibit 2.3 APP2015-0003 Land Use Order

**ANALYSIS AND FINDINGS FOR
EXTENSION OF TIME FOR PREVIOUSLY APPROVED APPLICATIONS**

Section 50.93 Extension of a Decision

1. *An application to extend the expiration date of a decision made pursuant to this Code may be filed only before the decision expires as provided in Section 50.90 or before the decision expires as provided in the appropriate subsection of the specific application contained in Chapter 40 (Applications).*

Facts and Findings

The expiration date of CU2013-0003 is November 5, 2017. The applications for extension were filed on October 26, 2017.

Therefore, staff finds that this requirement is met.

2. *The following land use decisions are not subject to extensions of time: Director's Interpretation (Section 40.25), Home Occupation (Section 40.40), Loading Determination (Section 40.50), Parking Requirement Determination (Section 40.55.15.1), Shared Parking (Section 40.54.15.2), Use of Excess Parking (Section 40.54.15.3), Sign (Section 40.60), Solar Access (Section 40.65), Temporary Mobile Sales (Section 40.80.15.1), Temporary Non-Mobile Sales (Section 40.80.15.2), and all Zoning Map Amendment (Section 40.97) applications.*

Facts and Findings

This is an extension for a Conditional Use-Planned Unit Development application, which is not listed in Section 50.93.2 as an application not subject to extensions of time.

Therefore, staff finds that this requirement is met.

3. *A land use decision may be extended no more than two (2) times.*

Facts and Findings

This is the second request to extend the expiration date for this application.

Therefore, staff finds that this requirement is met.

4. *Extension of a land use decision for an application not listed in Section 50.93.2 may be granted for a period of time not to exceed two (2) years, will be subject to a Type 2 review procedure, and must be found to be consistent with the approval criteria listed in Section 50.93.6.*

Facts and Findings

This is the second application for a time extension and has been processed according to the procedure for a Type 2 application, as specified in Chapter 50 of the City of Beaverton Development Code.

Therefore, staff finds that this requirement is met.

5. *Extension requests shall provide mailed public notice to those parties identified in Section 50.40.2. In addition, the notice shall be mailed to the parties of record contained in the initial land use decision and any prior extension of time decision.*

Facts and Findings

Public notice for this time extension was mailed to: the applicant/property owner, Central Beaverton NAC Chair, all property owners within a three hundred foot radius (in accordance with Section 50.40.2), and all parties of record from the initial land use decision as well as the first time extension (EXT2015-0004).

Therefore, staff finds that this requirement is met.

6. *In order to approve an extension of time application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied.*
 - A. *It is not practicable to commence development within the time allowed for reasons beyond the reasonable control of the applicant.*
 - B. *There has been no change in circumstances or the applicable regulations or Statutes likely to necessitate modification of the decision or conditions of approval since the effective date of the decision for which the extension is sought.*
 - C. *The previously approved land use decision is not being notified in design, use, or conditions of approval.*

Facts and Findings

According to the applicant, "establishing a development plan must take into account impacts on traffic and significant offsite improvements as required by the conditions of approval." Additionally the applicant states they have been working on development planning for sites targeted as initial development sites, and having discussions with potential development partners. Given the extent of the work necessary for a project of this size it has been impracticable to commence development within the original approval period. Staff concurs that the complexity of the planning for projects of this scale makes it difficult to develop and receive land use entitlements for the master plan area within the time provided by the PUD approval, and make it not practicable to commence development within the time allowed by the approval of CU 2013-0003. In 2016 the applicant received approval for a three (3) lot partition of Lot 1, the R1 zoned property in

order to help facilitate future development of the site. As the partition did not involve any physical improvements the partition did not vest the PUD approval, however it does show progress toward commencing development.

Staff also finds that no significant changes have occurred to the applicable regulations that would result in the modification of the decision or the conditions of approval. The properties continue to be zoned Station Community-Sunset (SC-S), Urban High Density (R1), and Corridor Commercial (CC) and this request to extend the expiration date of the original approvals contains no proposals to make any changes to the approved plans. No other regulations have come into effect by the City's partner agencies such as Clean Water Services which would necessitate a new review of the previously approved PUD.

The applicant does not propose any changes or modifications to the previously approved Planned Unit Development, or conditions of approval.

Therefore staff finds that the approval criteria are met.

SUMMARY OF FINDINGS: For the reasons identified above, staff finds that the request for Extension of a Decision approval is supported within the approval criteria findings, noted above, for Chapter 50, Section 50.93 of the Development Code.

Staff has provided findings, and recommended conditions of approval to meet the necessary technical requirements identified in Section 40.03 of the Development Code. Based on the facts and findings presented, the Director concludes that the proposal, **EXT2017-0003 Sunset Station & Barnes Road PUD Second Time Extension** meets the requirements.

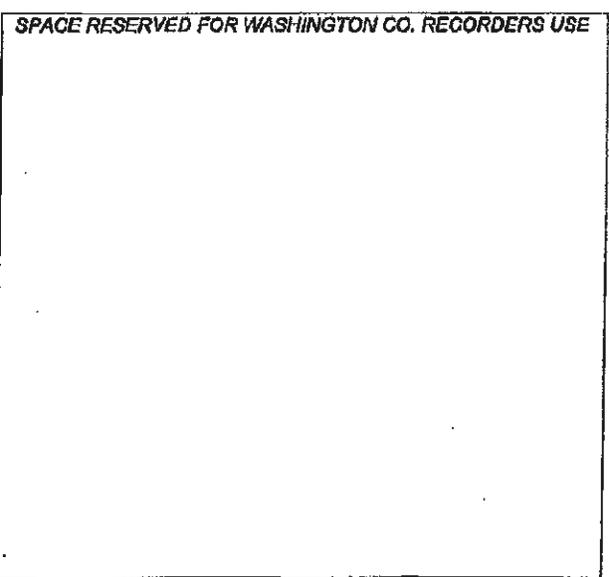
RECOMMENDATION

Based on the facts and findings presented, staff recommends **APPROVAL** of **EXT2017-0003 Sunset Station & Barnes Road PUD Second Time Extension** subject to the conditions identified in Attachment B.

CONDITIONS OF APPROVAL FOR EXT2017-0003

1. All construction shall be carried out in accordance with the plans submitted and approved with CU2013-0003. All conditions of approval from the original approval for the Sunset Station & Barnes Road PUD application remain in force and must be complied with before building permits, site development permits, or building occupancy permits, as applicable, can be obtained. No changes to the previously approved plans are permitted by this approval. Any changes to the approved plans will require new land use approval. (Planning Div/ JF)

2. This approval will expire November 5, 2019. (Planning Div/ JF)



**BEFORE THE PLANNING COMMISSION
FOR
THE CITY OF BEAVERTON, OREGON**

After recording return to:
City of Beaverton, City Recorder:
4755 SW Griffith Drive
P.O. Box 4755
Beaverton, OR 97076

IN THE MATTER OF A REQUEST FOR APPROVAL OF) ORDER NO. 2337
NEW CONDITIONAL USE APPROVAL TO INCLUDE) CU2013-0003 ORDER APPROVING
ALLOCATION OF RESIDENTIAL UNITS AND) SUNSET STATION & BARNES ROAD PUD
COMMERCIAL/OFFICE SQUARE FOOTAGES FOR) CONDITIONAL USE
THE EIGHT IDENTIFIED PARCELS (SUNSET STATION)
& BARNES ROAD PUD. J. PETERKORT & COMPANY,)
APPLICANT.

The matter came before the Planning Commission on October 30, 2013, on a request for approval of a New Conditional Use application to include allocation of residential units and commercial/office square footages for the eight identified parcels. No new development or physical improvements are proposed in conjunction with this Planned Unit Development. The project location is generally North and South of Barnes Road from West of Cedar Hills Boulevard to Highway 217, and is specifically identified on Washington County Tax Assessors Map 1S103AB Tax Lot 1200, Map 1S103A0 Tax Lots, 1700 and 2200, Map 1S102B0 Tax Lot 500, Map 1S102CB Tax Lot 100, Map 1S102CA Tax Lots 600 and 500, and Map 1S103AB Tax Lot 600.

Pursuant to Ordinance 2050 (Development Code) Section 50.45 the Planning Commission conducted a public hearing and considered testimony and exhibits on the subject proposal.

During the course of the hearing, the Commission expressed their concerns over the following issues:

- The current safety issues at the unsignalized intersection of the Eastbound off ramp of Highway 26 and Cedar Hills Boulevard and the desire to see the stop light put in with the earliest phase of development in order to mitigate for the intersection safety deficiencies. The City Transportation Engineer stated that development on the western sites would be likely to require the stop light as one of the first improvements.
- Pedestrian safety at the existing and proposed intersections crossing Barnes Road. The applicant's representatives testified that the applicant would be providing 5-lane crossings where possible to facilitate shorter crossings and that these design issues would be reviewed with future development proposals.

The Commission found that the responses to their concerns were acceptable and did not require additional conditions.

Public testimony was received by the Commission which generally included the following concerns:

- The proposal fails to provide safe and convenient access for area residents to the Sunset transit station and future uses on Barnes Road. A request was made that the Commission condition the applicant to provide a pedestrian overcrossing of Barnes Road from the north side of the street to the south to serve the transit center. Staff responded that such a condition was not merited at

this time because no specific impact is being created with this application. In the review of future development proposals, it may be determined that such a condition is relevant and proportional to a specific impact.

- The proposal would provide a street connection to Brookside Drive to the north of the proposed development and that a condition is required to prevent such connection. Staff responded that such a condition was not merited at this time because the Washington County Comprehensive Plan currently has a prohibition on connecting Brookside Drive to through vehicle traffic. Any future development of the subject parcels will be evaluated with the Plans and Codes in effect at that time, and any connection would be subject to those policies and regulations.
- The impact to wildlife that exists in the area today and the possibility for wildlife corridors. The staff responded that the current application does not include specific development so evaluating wildlife impacts are premature. However, future development proposals will look at factors such as Low Impact Design and Design Review standards which may benefit or reduce impact to wildlife.
- The impact of incremental transportation improvements to the roads in the study area and the affect on local residents. Staff responded that the City could only require mitigation be provided for impacts when those impacts were created. The full build-out of

the transportation improvements may take years but the majority of the transportation improvements will likely occur with the initial stages of the future development given the conclusions of the Transportation Impact Analysis.

- The impact of other development that is approved for the area or could be approved for the area in the case of underdeveloped or vacant parcels. The applicant and staff responded that the submitted Transportation Impact Analysis (TIA) included the trips generated by approved development including, but not limited to, the St. Vincent's development and the Touchmark Heights development on Barnes Road. The TIA also assumed the development of vacant or underdevelopment parcels such as the Choban properties.

The Commission found that the responses to the issues raised by the public were acceptable as findings and did not require additional conditions.

An item raised by the applicant at the hearing was the fact that the J. Peterkort Company had recently purchased a property within the SC-S zone that was located between two properties owned by the J. Peterkort Co. This parcel was previously owned by Peterkort Homestead. The applicant wished to note that this parcel would be made as a part of the Planned Unit Development application. Staff responded that including this parcel at the hearing would be acceptable since inclusion of the parcel would not modify public noticing requirements and that the submitted TIA included the parcel for future

development assumptions. The Planning Commission accepted the amendment to the Planned Unit Development application.

In deliberations the Commission expressed concern over the length of pedestrian crossings and encouraged the applicant to work on solutions to make the crossings easier. Commissioners also stated that wildlife would be addressed at the time of development review. The Commission found that the applicant provide a complete and thorough application which satisfactorily addressed all of the approval criteria.

The Commission, after holding the public hearing and considering all oral and written testimony, adopts the Staff Report dated October 23, 2013, as amended, and the findings contained therein, as applicable to the approval criteria contained in Sections 40.03 and 40.15.15.4.C of the Development Code. The Commission further adopts, as relevant to the subject approval criteria, the Supplemental Staff Memorandums dated October 28, 29 and 30, 2013 and the supplemental findings contained in this land use order.

Therefore, **IT IS HEREBY ORDERED** that **CU2013-0003** is **APPROVED**, based on the testimony, reports and exhibits, and evidence presented during the public hearings on the matter and based on the facts, findings, and conclusions found in the Staff Report dated October 30, 2013, Supplemental Staff Memorandums dated October 28, 29 and 30, 2013, subject to the conditions of approval as follows:

A. Prior to Land Use Approval of each proposed physical development within the PUD area the applicant shall:

1. Provide a supplemental transportation analysis to assess consistency with the approved October 2013 Sunset Station & Barnes Road PUD TIA and

to identify which of the mitigation measures listed below in conditions 2 through 32 are triggered by the impacts of the proposed development phase. The identified improvements are anticipated to be constructed incrementally over multiple phases of development within the properties subject to this PUD approval.

2. **At the intersection of Cedar Hills Boulevard and the eastbound Highway 26.**
 - a. New traffic signal, including interconnection with the traffic signals on Cedar Hills Boulevard from Butner Road to Barnes Road.
 - b. On the northbound approach, widening Cedar Hills Boulevard to provide two through lanes and a northbound right-turn lane that extends from Butner Road to the intersection including construction of a pedestrian island at the southeast quadrant. Construct a northbound bike lane and a sidewalk on the east side of Cedar Hills Blvd. between Butner and US26 westbound off-ramp. Construct sidewalk behind bridge columns.
 - c. On the southbound approach widening Cedar Hills Boulevard to provide two through lanes and two left-turn lanes with a minimum storage length of 175 feet for each left-turn lane. Construct a southbound bike lane and a sidewalk on the west side of Cedar Hills Blvd. from the Highway 26 westbound onramp to Butner Road. Construct sidewalk behind bridge columns.
 - d. On Highway 26 eastbound off ramp approach, widening to provide an exclusive left-turn lane with a minimum storage length of 230 feet, a through/right-turn/left-turn lane and an exclusive right-turn lane with a minimum storage length of 230 feet.
3. **At the intersection of Cedar Hills Boulevard and Butner Road.**
 - a. On the northbound approach, convert the existing northbound right-turn lane to a through/right-turn lane. Extend the northbound bike lane from its current terminus to the Butner Road intersection, subject to availability of right-of-way.
 - b. On the eastbound approach, widening Butner Road to provide two left-turn lanes with a minimum storage length of 200 feet and a through/right-turn lane. Subject to availability of right-of-way construct eastbound and westbound bike lanes on each side of Butner Road.
 - c. On the westbound approach, widening Butner Road to provide

a through/left-turn lane and a right-turn lane with a minimum storage length of 175 feet, and a bike lane, subject to availability of right-of-way.

- d. Modification of the traffic signal to accommodate the widening. Replace signal controller per Washington County standard. Implement split phasing for east-west approaches.

4. At the intersection of Cedar Hills Boulevard and the westbound Highway 26.

- a. On the northbound approach, widening Cedar Hills Boulevard to provide two through lanes, and a through/right turn lane to the Highway 26 westbound on ramp. Construct a northbound bike lane and an east sidewalk.
- b. On the southbound approach, construct an off-street bi-directional multi-use bike/ped facility between Barnes Road and the future crossing of the Highway 26 westbound on-ramp along the frontage of the Town Square Two site (Tax Lot 1S1 03A 01700).
- c. On the Highway 26 westbound off ramp approach, widening and island modification to provide a left turn lane, a shared left-right turn lane, and a right turn lane with a minimum storage length of 275 feet.
- d. Modification of the traffic signal to accommodate the widening.

5. At the intersection of Cedar Hills Boulevard and Barnes Road.

- a. For the northbound approach, widening Cedar Hills Boulevard to provide two through lanes, an exclusive right-turn lane that extends from Highway 26 westbound off ramp, two left turn lanes with a minimum storage of 445 feet, a bike lane and a sidewalk. Reconstruct the existing sign bridge. Construct two northbound receiving lanes extending to Celeste Lane.
- b. For the southbound approach, widening Cedar Hills Boulevard to provide a through lane, a through/right-turn lane, and two left turn-lanes with a minimum storage length of 130 feet, a bike lane, and a sidewalk. The two southbound through lanes shall extend from Celeste Lane.
- c. For the eastbound approach, widening of Barnes Road to provide two right-turn lanes with a minimum storage length of 350 feet, two through lanes, a left-turn lane with a minimum storage length of 185 feet, a bike lane, and a sidewalk.

- d. For the westbound approach, widening Barnes Road to provide an exclusive right-turn lane with a minimum storage length of 350 feet, two through lanes, two left-turn lanes with a minimum storage of 345 feet for the inside lane and the outside lane continuous to the Town Square West access intersection, and a bike lane.
 - e. Modification of the traffic signal to accommodate the widening.
- 6. At the intersection of Barnes Road and site access roadway (116th Avenue).**
- a. New traffic signal, including interconnection with the traffic signal at Cedar Hills Boulevard and Barnes Road.
 - b. For the eastbound approach, widening Barnes Road between 117th Avenue and 116th Avenue to provide a through lane, a through/right-turn lane, and a left turn lane with a minimum storage of 75 feet. Construct a bike lane and a sidewalk, subject to available right-of-way.
 - c. For the westbound approach, widening Barnes Road to provide a through lane, a through/right turn-lane, two left-turn lanes with a minimum storage length of 200 feet and a bike lane. Extend a continuous westbound side-by-side left turn lane from 116th Avenue to 117th Avenue. Extend a second westbound receiving lane. Construct a bike lane and sidewalk from 116th Avenue to 117th Avenue, subject to available right-of-way.
 - d. For the northbound approach construct a through/left-turn lane and a right turn-lane with a minimum storage length of 175 feet. Design traffic signal with a northbound right turn overlap signal phase.
 - e. For the southbound approach, construct a through/right-turn lane, and a left-turn-lane with a minimum storage length of 75 feet.
- 7. At the intersection of Barnes Road and Town Square West/Parcel 7 access roadway.**
- a. For the northbound approach maintain the existing double left turn lane configuration. Convert the existing right turn lane into a shared through/right-turn lane.
 - b. For the southbound approach, construct a through/right-turn lane and a left turn-lane with a minimum storage length of 75 feet.

- c. For the eastbound approach, widening Barnes Road to provide two through lanes, a right-turn lane with a minimum storage length of 100 feet, a left-turn lane with a minimum storage of 100 feet and a bike lane.
 - d. For the westbound approach, widening Barnes Road to provide two through lanes, a through/right turn-lane, a left-turn lane with a minimum storage length of 130 feet, a bike lane, and a sidewalk.
 - e. Modification of the traffic signal to accommodate the widening.
- 8. At the intersection of Cedar Hills and Celeste Lane.**
- a. For the northbound approach, widen Cedar Hills Boulevard to provide a left-turn lane with a minimum storage length of 100 feet, a through lane and a through/right-turn Lane. Extend the second northbound lane 300 feet beyond Celeste Lane before tapering back to match existing.
 - b. For the southbound approach, widen Cedar Hills Boulevard to provide a left-turn lane with a minimum storage length of 100 feet, a through lane and a through right-turn lane. Provide a minimum of 200 feet approach lane length for the second through lane.
- 9. At the new Parcel 7 and Parcel 12 site access to Valeria View Drive.**
- a. For the northbound approach, re-stripe Valeria View Drive to provide a left-turn lane with a minimum storage of 75 feet, a through/right-turn lane and a bike lane.
 - b. For the southbound approach, re-stripe Valeria View Drive to provide a southbound left-turn lane with a minimum storage length of 50 feet.
- 10. At the intersection of Barnes Road and Highway 217.**
- a. For the northbound approach widen Highway 217 off ramp to provide three through lanes with a storage length of 240 feet, two right turn lanes with a storage length of 240 feet. Install vehicle detection sensors to identify excessive northbound queue spillback and integrate to an advance warning sign for the OR 217/Barnes Road off-ramp to slow speeds approaching the ramp.
 - b. Pay ODOT \$250,000 as a contribution towards a variable message sign/variable speed sign to be installed by ODOT on OR 217 northbound between SW Walker Road and the Barnes Road off-ramp.

- c. For the southbound approach, widening Barnes Road to provide a through lane, a through/right-turn lane (right turn signed for bus only), and two left-turn lanes with a minimum storage length of 400 feet for the inside left turn lane and the outside left turn lane continuous from Lois Lane, and a bike lane.
- d. For the westbound approach, widening Barnes Road to provide two right-turn lanes with the outside lane providing a minimum storage length of 160 feet and the inside right turn lane beginning at the Baltic Avenue intersection, a through lane extending from the Baltic Avenue intersection, two left-turn lanes extending from the Baltic intersection, and a bike lane.
- e. Signal modification to accommodate the widening and signaling the northbound right-turn movement.

11. At the Intersection of Barnes Road and Baltic Avenue.

- a. For the northbound approach, widening Baltic Avenue to provide three lanes and a multi-use bike/pedestrian facility (behind the curb) from the US26 westbound off-ramp extending north to Barnes Road with the westerly a trap lane to westbound Barnes; the central lane as a through lane at Barnes, and the easterly lane a through/right-turn lane at Barnes Road. Construct a right turn lane with a minimum storage length of 360 feet and an inside second left turn lane with a minimum storage of 240 feet.
- b. For the southbound approach, widening of Baltic Road/St. Vincent Hospital access to provide a through lane, a through/right turn-lane with a minimum storage of 200 feet, a right-turn lane with a minimum storage length of 200 feet, a left turn lane with a minimum storage length of 200 feet, a bike lane, and a sidewalk.
- c. For the eastbound approach, widening Barnes Road to provide one through lane, a through/right-turn lane, a right turn lane with a minimum storage length of 250 feet, two left turn lanes with a minimum storage length of 150 feet and a bike lane.
- d. For the westbound approach, widening of Barnes Road to provide two through lanes, a through/right-turn lane, two left-turn lanes with a minimum storage length of 200 feet, a bike lane, and a sidewalk. Widen south bound Baltic Avenue to provide two receiving lanes for a distance of 225 feet before tapering to match existing.

- e. Reconstruct the ODOT sign bridge across Barnes Road.
- f. Modification of the traffic signal to accommodate the widening.

12. At the intersection of Barnes Road and St. Vincent Hospital Middle Access.

- a. For the eastbound approach, widening Barnes Road to provide a through lane, a through/right-turn lane a median designed to accommodate a future left-turn lane with a minimum storage length of 100 feet, and a bike lane.
- b. For the westbound approach, widening of Barnes Road to provide two through lanes that extend from the St. Vincent Hospital east access, one through lane (the outside lane to convert to a through/right-turn lane with Hospital Master Plan expansion) with a minimum storage length of 250 feet, a left turn lane with a minimum storage length of 100 feet, a bike lane, and a sidewalk.
- c. Modification of the traffic signal to accommodate the widening.

13. At the intersection of Barnes Road and St. Vincent Hospital East Access.

- a. For the eastbound approach, widening of Barnes Road to provide a through lane, a through/right-turn lane, and widen the median to accommodate a future inside second left-turn lane with a minimum storage length of 200 feet and an outside left-turn lane with a minimum storage length of 250 feet, and a bike lane.
- b. For the westbound approach, widening of Barnes Road to re-align the through lane, through/right turn lane, and a bike lane with the three receiving lanes located west of the Hospital access. Reconstruct the displaced sidewalk.
- c. Modification of the traffic signal to accommodate the widening.

14. At the Intersection of Barnes Road and Valeria View Drive.

- a. For the westbound approach, re-stripe Barnes Road to provide three through lanes, a left turn lane with a minimum storage length of 200 feet, a right turn-lane with a minimum storage length of 300 feet, and a bike lane. The new through lane shall extend from the new Parcel 12 (Tax Lot 1S1 02B 00500) access to the east.
- b. Modification of the traffic signal to accommodate the widening.

15. At the new Parcel 12 site access to Barnes Road.

- a. New traffic signal, including interconnection with the traffic signals on Barnes Road and Valeria View Drive and with the signal on Barnes Road and the Transit Center access.
- b. For the eastbound approach, re-stripe Barnes Road to provide two through lanes, a left turn lane with a minimum storage of 100 feet and a bike lane.
- c. For the southbound approach construct a right-turn lane and a left-turn lane with a minimum storage of 100 feet.

16. At the intersection of Barnes Road and Sunset Transit Center Drive.

- a. For the northbound approach, widening Sunset Transit Center Drive to provide a left-turn Lane and a shared left-turn/right-turn lane with a minimum storage length of 300 feet.
- b. Modification of the traffic signal to accommodate the widening including interconnection with the signals on the two new signalized accesses to the east and west.

17. At the Parcel 17 Holly Site and Sunset Station new full access to Barnes Road east of the Sunset Transit Center Drive.

- a. New Traffic Signal, including interconnection with the signals at Lois Lane to the east and the Sunset Transit Center Drive to the west.
- b. For the northbound approach, construction of a new site access with a left-turn lane with a minimum storage length of 125 feet, a through /right-turn lane and sidewalks.
- c. For the southbound approach, construction of a new site access with a left-turn lane with a minimum storage length of 100 feet, a through /right-turn lane and sidewalk.
- d. For the eastbound approach, widen Barnes Road to provide a through lane, a through/right-turn lane, a left turn lane with a minimum storage of 100 feet, a bike lane and sidewalk.
- e. For the westbound approach widen Barnes Road to provide two through lanes, a left-turn lane with a minimum storage length of 200 feet, a right-turn lane that extends from the new right-in/right-out access to the east, a bike lane and a sidewalk.

18. At the Parcel 17 Holly Site right-in/right-out new access to Barnes Road west of Lois Lane.

- a. Construction of a median barrier to restrict access to right-in/right-out.
- b. For the westbound approach, widen Barnes road to provide two through lanes, a through/right turn lane that extends from Lois Lane to the east and a bike lane and a sidewalk.

19. At the Sunset Station new right-in/right-out access to Barnes Road west of Lois Lane.

- a. Construction of a median barrier to restrict access to right-in/right-out.

20. At the Sunset Station new right-in/right-out access to Barnes Road east of Sunset Transit Center Drive.

- a. Construction of a median barrier to restrict access to right-in/right-out.
- b. For the eastbound approach, widen Barnes Road to provide a right turn deceleration lane with 150 feet of storage, a bike lane, and a sidewalk.

21. At the Intersection of Barnes Road and Lois Lane.

- a. Construction of a northbound approach with a shared left/through lane, a right turn lane with a minimum storage length of 100 feet, and a receiving lane. Operate the right turn lane with overlap signal phasing.
- b. Re-stripe the existing southbound approach to provide a shared left/through lane and a right turn lane. Operate the right turn lane with overlap signal phasing.
- c. For the eastbound approach, widen Barnes Road to provide two through lanes and a through/right-turn lane extending from the right-in/right-out access to the west, a left turn lane with a minimum storage length of 150 feet, a bike lane and a sidewalk.
- d. For the westbound approach widen Barnes Road to provide two through lanes, a through/right-turn lane that extends to the intersection of Barnes Road and Highway 217 to the east, a left turn lane with a minimum storage length of 350 feet, a bike lane and sidewalk.
- e. Modification of the traffic signal to accommodate the widening including interconnection to the signals to the east and to the west.

22. Provide half street improvements along the frontage on Barnes Road to five lane arterial standards with bike lanes and sidewalks along Parcel 1 (Tax Lot 1S1 03AB 00200), Town Square Two (Tax Lot 1S1 03A 01700), Parcel 7 (Tax Lot 1S1 03A 02200), Parcel 12/17 (Tax Lot 1S1 02B 00500), Sunset Station (Tax Lots 1S1 02CB 00100, 1S1 02CA 00500 & 1S1 02CA 00600), and Hillside (Tax Lot 1S1 03AD 00600).
23. Half street improvements along the frontage of Parcel 7 (Tax Lot 1S1 03A 02200) and Parcel 12 (Tax Lot 1S1 02B 00500) on Valeria View Drive to three lane collector standards including sidewalks.
24. Half street improvements along the frontage of Town Square Two (Tax Lot 1S1 03A 01700), Parcel 7 (Tax Lot 1S1 03A 02200), and Parcel 1 (Tax Lot 1S1 03AB 00200, between Celeste Lane and Barnes Road) on Cedar Hills Boulevard to a minimum of five lane arterial standards including sidewalks.
25. Interconnection of traffic signals along Barnes Road between Highway 217 and Leahy Road with a plan approved by the County Engineer.
26. Pay Washington County \$195,000 as a contribution toward the future construction of a traffic signal on 107th Avenue and Cornell Road. In lieu of paying the contribution towards the improvements, applicant at their own discretion may choose to construct the improvements as directed by the County Engineer.
27. Pay Washington County \$232,000 as a contribution toward the future improvements to the intersection of Cornell Road and 143rd Avenue. (Widen Cornell Road to 5 lanes and re-align 143rd Avenue)
28. Pay Washington County \$500,000 as a contribution toward the future construction of a bike/pedestrian pathway undercrossing at the westbound on-ramp to Highway 26. In lieu of paying the contribution towards the improvements, applicant at their own discretion may choose to construct the improvements as directed by ODOT and the County Engineer.
29. Pay Washington County \$232,900 as a contribution toward the future improvements to the intersection of Cornell Road and Cedar Hills Boulevard. (Widen Cornell Road to 5 lanes at the intersection). In lieu of paying the contribution towards the improvements, applicant at their own discretion may choose to construct the improvements as directed by the County Engineer.
30. Pay Washington County \$600,000 as a contribution toward the future improvements to the intersection of Barnes Road and Miller Road. (Widen Barnes Road to 5 lanes within 500 feet east and west of the intersection and modify Miller to provide a southbound left-turn lane, a through/left-turn lane, and a right turn lane). In lieu of paying the contribution towards the improvements, applicant at their own discretion may choose to construct the

Improvements as directed by the County Engineer.

31. Pay Washington County \$166,500 as a contribution toward the future improvements to the intersection of Cornell Road and Trail Street. (Widen Cornell Road to 5 lanes)
32. Pay Washington County \$800,000 as a contribution toward the future improvements to the intersection of Barnes Road and Leahy Road. (Widen Leahy Road to 5 lanes). In lieu of paying the contribution towards the improvements, applicant at their own discretion may choose to construct the improvements as directed by the County Engineer.
33. For condition 10.b and conditions 26 through 32 above which require roughly proportional share payments, the dollar amounts specified in the conditions apply if payments are made prior to July 1, 2015. On July 1, 2015 and on the first day of July of each succeeding year, the amount of the payment shall be adjusted and the adjusted payment requirement shall apply to any payment received by Washington County or the Oregon Department of Transportation after that date. The adjusted payment requirement shall be calculated by applying the percentage increase/decrease adopted each year by the Board of County Commissioners for adjustment in Transportation Development Tax in accordance with the Washington County Code.
34. For each of the above improvements, the design shall be in accordance with the design standards of the road authority having jurisdiction of the roadway and shall include illumination to the standards of the road authority having jurisdiction.
35. Dedicate right-of-way along the site frontages as needed to accommodate the improvements required by Conditions 2 through 32. Should a Land Division application precede an application for physical development on any given parcel, that Land Division application shall record a reservation or tract for the necessary future road dedication to accommodate the improvements required in Conditions 2 through 35 for that parcel. Dedication across the public street frontages of individual parcels shall occur with the first phase of development within that parcel.
36. Revisions to striping, signing, signals and sign bridges as necessary to accommodate the capacity improvements required in Conditions 2 through 32.
37. Provide pedestrian connections throughout the PUD which connect parcels and transit opportunities in conformance with Section 60.55 of the Development Code, which may include, but are not limited to, grade separated crossings, multiple use paths, and/or enhanced transit facilities.

B. Prior to Site Development Permit Issuance of each proposed physical development within the PUD area the applicant shall:

38. Obtain the necessary approvals to begin on-site work from all governmental agencies and public utilities having jurisdiction over associated improvements and impacts.

C. General Conditions:

39. For any improvements required by Conditions of Approval 2 through 32 which have not been completed and accepted by the agency having jurisdiction by the date of issuance of the final certificate of occupancy due to circumstance beyond the applicants control the applicant shall provide financial guarantees to the City of Beaverton. Financial guarantees may be in the form of a letter of credit, performance bond, or other method approved by the City Attorney for the full estimated costs, as determined by the City Engineer and County Engineer, of the associated improvements remaining to be constructed.
40. At the time of development for each parcel, all overhead utilities within and along the parcel street frontage(s) shall be undergrounded in accordance with Development Code Chapter 60 requirements and to the standards within the City's Engineering Design Manual and Standard Drawings (Ordinance 4471). Site Development permit plans shall reflect utility undergrounding. (Site Development/JD)
41. Prior to the issuance of a certificate of occupancy for greater than 1,093,600 square footage of non-residential development for the entire SC-S area a minimum of 1,899 residential units in the SC-S zone must receive a certificate of occupancy. (Planning/JF)
42. In accordance with Section 50.90.1 of the Development Code, Planned Unit Development approval shall expire 2 years after the date of approval unless, prior to that time, a construction permit has been issued and substantial construction pursuant thereto has taken place, or an application for extension has been filed, pursuant to Section 50.93 of the Development Code, or authorized development has otherwise commenced in accordance with Section 50.90.3.B of the Development Code. (Planning/JF)
43. To accommodate the open space requirements of Section 60.35.15 of the Development code, at the time of development of residential uses, the applicant must provide the required open space in conformance with Section 60.35.15 of the Development Code. Future open space must meet the specified width, length, size, and accessibility requirements of Chapter 60. (Planning/JF)

Motion **CARRIED**, by the following vote:

AYES: Doukas, Maks, Klene, Nye, Winter, and Overhage.
NAYS: None.
ABSTAIN: None.
ABSENT: Stephens.

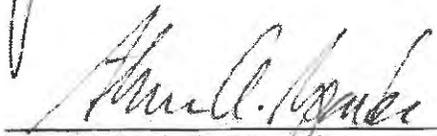
Dated this 5th day of November, 2013.

To appeal the decision of the Planning Commission, as articulated in Land Use Order No. 2337 an appeal must be filed on an Appeal form provided by the Director at the City of Beaverton's Community and Economic Development Department's office by no later than 5:00 p.m. on Friday, November 5 2013.

ATTEST:



JANA FOX
Associate Planner



STEVEN A. SPARKS, AICP
Planning Division Manager

PLANNING COMMISSION
FOR BEAVERTON, OREGON

APPROVED:



KIM OVERHAGE
Chair

**BEFORE THE PLANNING
COMMISSION FOR
THE CITY OF BEAVERTON,
OREGON**

**After recording return to:
City of Beaverton, City Recorder:
12725 SW Millikan Way
P.O. Box 4755
Beaverton, OR 97076**

IN THE MATTER OF A REQUEST FOR APPROVAL) ORDER NO. 2685
OF A CONDITONAL USE FOR PARKING AS A) CU2018-0023 ORDER APPROVING
PRINCIPAL USE IN THE SC-S ZONING DISTRICT) SUNSET SURFACE PARKING, NEW
(SUNSET SURFACE PARKING) J. PETERKORT) CONDITIONAL USE.
COMPANY, APPLICANT.)

The matter came before the Planning Commission on March 13, 2019, on a request for a New Conditional Use application for Parking as the Principal Use in the Station Community-Sunset (SC-S) zoning district. The site is generally located adjacent to the Sunset Transit Center, south of SW Barnes Road, west of the Highway 217 off-ramp, north of Highway 26, and east of the Sunset Station access road. Tax Lots 100 and 200 on Washington County Tax Assessor's Map 1S102CB.

Pursuant to Ordinance 2050 (Development Code) Section 50.45, the Planning Commission conducted a public hearing and considered testimony and exhibits on the subject proposal.

The Commission discussed their concern that the proposed surface parking lot as a principal use of the site and whether that was consistent with the Comprehensive Plan Policies 3.6.1 (Support pedestrian-oriented mixed use

areas) and 3.6.4 (Station Communities), including policies related to providing vertically mixed uses, limiting auto-oriented uses, and promoting walkable areas. The applicant explained how understanding the total parking demand at the station site was integral to right-sizing the parking for future development phases, including dense mixed use development. The Commission found that with a condition of approval to ensure that the conditional use was intended help facilitate full buildout of the site and not a permanent principal use of the site, that the proposal met the Comprehensive Plan policies. The Commission agreed to the following condition of approval which identified expirations dates for the Conditional Use approval:

1. *CU2018-0023 (Sunset Surface Parking) shall expire:*
 - a. *If CU2013-0003 (Sunset Station & Barnes Road PUD) expires.*
 - b. *5 years after issuance of a certificate of occupancy unless there is an active land use entitlement for a minimum of 80,000 square feet of non-residential floor area or 200 dwelling units on the station site.*
 - c. *10 years after issuance of a certificate of occupancy.*

The Commission, after holding the public hearing and considering all oral and written testimony, adopts the Staff Report dated March 6, 2019, supplemental memoranda dated March 12, 2019 and March 13, 2019, supplemental findings provided in this land use order, and the findings contained therein, as applicable to the approval criteria contained in Sections 40.03 and 40.15.15.3.C of the Development Code.

Therefore, **IT IS HEREBY ORDERED** that **CU2018-0023** is **APPROVED**, based on the testimony, reports and exhibits, and evidence

presented during the public hearing on the matter and based on the facts, findings, and conclusions found in the Staff Report, dated March 6, 2019, supplemental memoranda dated March 12, 2019 and March 13, 2019, and this land use order, subject to the conditions of approval as follows:

1. CU2018-0023 (Sunset Surface Parking) shall expire:
 - a. If CU2013-0003 (Sunset Station & Barnes Road PUD) expires.
 - b. 5 years after issuance of a certificate of occupancy unless there is an active land use entitlement for a minimum of 80,000 square feet of non-residential floor area or 200 dwelling units on the station site.
 - c. 10 years after issuance of a certificate of occupancy.
- A. **Prior to any site work commencing and issuance of the site development permit, the applicant shall:**
 2. Ensure that the Design Review Three (DR2018-0167) application has been approved and is consistent with the submitted plans. (Planning/JF)
 3. The Conditional Use permit shall run with the land and shall continue to be valid upon a change in ownership of the site, unless the use ceases for a period of one year or greater, at which time the Conditional Use permit shall be considered expired. (Planning/JF)
 4. Final decision shall expire automatically two (2) years from the effective date of decision unless the approval is enacted either through establishment of the use within the two (2) year time period. (Planning/JF)

Motion **CARRIED**, by the following vote:

AYES: Lawler, Uba, Brucker, Nye, Winter.
NAYS: Matar, Overhage.
ABSTAIN: None.
ABSENT: None.

Dated this 28th day of March, 2019.

To appeal the decision of the Planning Commission, as articulated in Land Use Order No. 2685 an appeal must be filed on an Appeal form provided by the Director at the City of Beaverton Community Development Department's office by no later than 4:30 p.m. on April 8, 2019.

PLANNING COMMISSION
FOR BEAVERTON, OREGON

ATTEST:

APPROVED:



JANA FOX
Current Planning Manager



JENNIFER NYE
Chair



CARMIN RUIZ
Recording Secretary

site is zoned Corridor Commercial (CC) and is located within the Sunset Station and Barnes Road Planned Unit Development (PUD) (CU2013-0003).

Pursuant to Ordinance 2050 (Development Code) Sections 50.70 and 50.85 through 50.88, the City Council conducted a public hearing and considered testimony and exhibits on the subject proposal. The appeal hearing was “de novo,” meaning that the Council could consider evidence and arguments not already raised at the Planning Commission Hearing.

The appeal made seven assertions of error. The first six assertions of error concern the Planning Commission’s decision on the following Design Review Approval Criteria and Design Guidelines: BDC 40.03.1.A and B (Critical and essential facilities and services related to proposed development); BDC 20.10.40 (Other CC zoning requirements); BDC 20.10.15.6 (Maximum building height in CC zoning district); BDC 60.05.35.6 (Building location and orientation in Commercial and Multiple Use zones); BDC 60.05.53.1.D (Building articulation and variety) and 60.05.35.7 (Building scale along Major Pedestrian Routes); and BDC 60.35.15.1 (Open space for a Planned Unit Development). The above-listed Approval Criteria and Design Guidelines were found by the Planning Commission to be met by the proposal. In addition to the Design Review Approval Criteria, the appellant’s seventh assertion of error concerns the Planning Commission’s decision to approve the applicant’s Tree Plan Two (TP2018-0009). The appellant did not appeal the Tree Plan Two, and the appellant’s discussion of the Tree Plan Two is not applicable to the appeal of the Design Review Three application. Nonetheless, in an abundance of caution, the

Council made findings in the alternative on the Planning Commission's approval of the Tree Plan Two.

For all approval criteria, we adopt as our own findings the Revised Staff Report dated June 7, 2019, and Staff's memoranda dated July 3, 2019, July 9, 2019, July 15, 2019, and July 16, 2019. In addition, with respect to the issues that were discussed at the public hearing, the Council adopts the following supplemental findings in support of the final action.

Appellant's First Assertion: Traffic Impact Analysis (TIA)

The appellant in its written and oral testimony contended that the applicant's TIA is inadequate and underestimates traffic impacts and required transportation mitigation measures. The Council finds that the applicant's TIA meets all applicable standards and that the applicant satisfied the conditions of approval of the Sunset Station and Barnes Road PUD by providing a supplemental TIA and identifying transportation improvements that are required to mitigate the traffic impacts of the proposed development.

BDC 40.03.1 requires an applicant for development to demonstrate that "[a]ll critical facilities and services related to the development have, or can be improved to have, adequate capacity to serve the proposed development at the time of its completion," BDC 40.03.1.A, and that "[e]ssential facilities and services are available, or can be made available, with adequate capacity to serve the development prior to occupancy," BDC 40.03.1.B. Chapter 90 of the Development Code defines "critical facilities" to include transportation and defines "essential facilities" to include on-site pedestrian and bicycle facilities in the public right-of-way. The Sunset Station and Barnes Road PUD identifies the

full scope of transportation improvements required for development of the PUD. The Sunset Station and Barnes Road PUD further requires an applicant for development within the PUD to provide a supplemental TIA to determine which transportation improvements are required for the proposed development.

The Council considered all oral and written testimony submitted by the appellant concerning the TIA and required transportation improvements, including memoranda from Kittelson & Associates, Inc. (Kittelson) dated May 14, 2019 and June 5, 2019. As well, the Council considered all oral and written testimony submitted by the applicant concerning the TIA and required transportation improvements, including: the TIA prepared by David Evans and Associates, Inc. (DEA); Addenda 1 through 6 to the TIA; and memoranda from DEA dated May 29, 2019 and July 8, 2019. The Council also considered public testimony concerning traffic conditions in the area of and resulting from the development. Finally, the Council considered written testimony from the Oregon Department of Transportation (ODOT) and oral and written testimony from the City Transportation Engineer, Jabra Khasho.

The Council adopts and incorporates by reference the findings in pages 1 through 3 of Staff's memorandum dated July 9, 2019 concerning appellant's first assertion. In addition, the Council adopts the following supplemental findings concerning the TIA and required transportation improvements.

Memorandum from Kittelson dated July 16, 2019

At the Council hearing, the appellant introduced a memorandum from Kittelson, dated July 16, 2019, which contained traffic data collected at the VillaSport facility located at the northeast corner of SW Murray Boulevard and

SW Jenkins Road. The memorandum reported traffic counts collected on Thursday, July 11, 2019, between the hours of 7:00-9:00 AM and 4:00-6:00 PM. Based on those counts, the memorandum concluded that VillaSport exhibited peak hour trip generation rates of 3.47 (AM) and 4.87 (PM) on July 11, 2019. The memorandum concluded that the applicant inappropriately relied on a 2007 traffic study prepared by TRC Engineers, Inc., titled *Life Time Fitness Centers: Traffic & Parking Design Characteristics*, based on the following reasons: (1) the data collected at VillaSport on July 11, 2019 shows higher trip generation rates than the rates in the 2007 traffic study; (2) the Institute of Transportation Engineers (ITE) *Trip Generation Handbook* and the Development Code require the applicant to complete a new traffic study; and (3) potential errors in the 2007 traffic study and the size of the proposed development require the applicant to complete a new traffic study. The appellant in its oral testimony argued that the July 16, 2019 memorandum and data cited therein are additional evidence that the applicant's TIA is inadequate and that the applicant should be required to prepare a new traffic study. The appellant further testified that the applicant's TIA underestimates traffic impacts from the proposed development and, as a result improperly distributes required transportation improvements to subsequent developments within the Sunset Station and Barnes Road PUD. At the public hearing, the Council considered the memorandum and oral testimony from the appellant, testimony from the applicant, and testimony from the City Transportation Engineer regarding the Kittelson memorandum dated July 16, 2019.

The Council finds that the Kittelson memorandum dated July 16, 2019 and the appellant's testimony at the hearing concerning that memorandum do not demonstrate that the applicant's use of the 2007 traffic study was inappropriate or that the City Transportation Engineer and Planning Commission erred in determining that use of the 2007 traffic study was justified. BDC

60.55.20.4.D.3.a provides: "Trip generation estimates shall be based on ITE's Trip Generation (latest published edition). The City Engineer may approve different trip generation rates when trip generation rates are not available in ITE's Trip Generation or different rates are justified." Stated another way, BDC 60.55.20.4.D.3.a requires the use of ITE trip generation rates unless the City Engineer, in his or her discretion, approves different trip generation rates. The City Engineer may approve the use of non-ITE trip generation rates if ITE trip generation rates are not available or if "different rates are justified." The City Engineer includes the "City Engineer of the City of Beaverton or the City Engineer's designee." BDC Ch. 90.

The City Transportation Engineer determined that use of the trip generation rates from the 2007 traffic study are justified because the 2007 traffic study is based on evaluation of multiple, comparable facilities owned by the applicant, and because the trip generation rates from the 2007 traffic study are higher (and therefore more conservative) than ITE trip generation rates for Health/Fitness Clubs.

The Council finds that the traffic data collected at VillaSport on July 11, 2019 does not cause the City Transportation Engineer's determination that the applicant's use of trip generation rates from the 2007 traffic study are justified to

be in error. The City Transportation Engineer testified that ITE trip generation rates are based on averages of traffic data collected over time. The 2007 traffic study is likewise based on data collected at five different facilities over multiple days, all of which is averaged to determine a trip generation rate. Although the trip generation rates determined by Kittelson for VillaSport on July 11, 2019 are higher than the rates from the 2007 traffic study, the Kittelson rates are based on data collected at a single location on a single day. As a result, it is possible that the trip generation rates determined by Kittelson do not represent average traffic conditions at the VillaSport location. Because the VillaSport data represents only one day of traffic at one location, it does not demonstrate that the 2007 traffic study is unreliable or that the 2007 traffic study underrepresents trip generation from the proposed development.

The Council also finds that neither the Development Code nor the *ITE Trip Generation Handbook* require the applicant to complete a new traffic study. The appellant argues that Chapter 9 of the *ITE Trip Generation Handbook*, which provides guidance for collecting and using local trip generation data, requires the applicant to collect current, local trip generation data. In support of this argument, the appellant cites BDC 60.55.20.4.D, which states that a TIA “report shall include complete documentation of trip generation calculations including Institute of Transportation Engineers (ITE) Trip Generation (latest published edition) use code(s) or an alternative basis of trip generation and the rationale for using the alternative.” The ITE assigns trip generation rates to land use categories, which are identified by codes. For example, the land use category Health/Fitness Club is assigned the code 492. Thus, BDC 60.55.20.4.D requires

an applicant to calculate trip generation for a specific use using either (1) ITE rates assigned by land use code or (2) “an alternative basis of trip generation.” Pursuant to BDC 60.55.20.4.D.3.a, the City Engineer may approve use of an alternative basis of trip generation only if the ITE trip generation rates are not available or if “different rates are justified.” The Development Code does not specify an acceptable form or source for “an alternative basis of trip generation,” and, contrary to the appellant’s arguments, the Development Code does not require that an alternative basis of trip generation be based on contemporaneous traffic data. Neither does the Development Code state that the only acceptable alternative basis of trip generation is traffic data collected in accordance with Chapter 9 of the ITE *Trip Generation Handbook*. Instead, the Development Code requires that an alternative basis of trip generation be approved by the City Engineer and that the TIA provide “the rationale for using the alternative.” BDC 60.55.20.4.D. Here, the applicant used an alternative basis of trip generation, the 2007 traffic study, to determine trip generation rates for the athletic facility portion of the proposed development. The City Transportation Engineer determined that the use of the 2007 traffic study was justified. The TIA and Addendum 2 to the TIA provide the applicant’s rationale for use of the 2007 traffic study. Although not required by the Development Code, Addendum 6 to the TIA also provides the applicant’s rationale for use of the ITE rates to calculate trip generation for the office portion of the development. The approval of the City Transportation Engineer and the rationale provide by the applicant satisfy the requirements in the Development Code for use of an alternative basis of trip generation.

The Council also finds that the size of the facilities in the 2007 traffic study do not cause the applicant's use of the 2007 traffic study to be inappropriate. The athletic facilities evaluated in the 2007 traffic study range in size from 101,000 to 115,000 square feet. By contrast, the proposed athletic facility is 140,000 square feet. The difference in size between the facilities in the 2007 traffic study and the proposed athletic facility does not cause the 2007 traffic study to underestimate trip generation for the proposed athletic facility because estimated trip generation is calculated based on a ratio that applies per 1,000 square feet of a facility's size. Therefore, estimated trip generation is proportional to a facility's square footage. In addition, the applicant presented evidence that facility memberships are not necessarily proportional to facility size because Diamond-level facilities, such as the development proposed in Beaverton, are intended to have a smaller number of memberships at a higher price point. For those reasons, the difference in size between the proposed facility and the facilities in the 2007 traffic study does not cause applicant's use of the 2007 traffic study to be inappropriate or unjustified.

Finally, the potential calculation errors in the 2007 traffic study identified in the Kittelson memorandum dated July 16, 2019 do not cause the applicant's use of the trip generation rates from the 2007 traffic study to be inappropriate. The applicant's traffic consultant responded to the asserted calculation errors in memoranda from DEA dated May 29, 2019 and July 8, 2019. The City Transportation Engineer reviewed the comments from Kittelson and the responses from DEA. Having reviewed both the comments and responses, the City Transportation Engineer endorsed the applicant's use of the 2007 traffic

study. Likewise, on June 28, 2019, ODOT submitted written testimony stating that the methodology and data in the TIA meets applicable State standards and is consistent with standard industry practices. The Council finds that the applicant's use of the 2007 traffic study was justified and appropriate.

The appellant also contended in written and oral testimony that the applicant did not mitigate for the full traffic impacts from the proposed development. The applicant is proposing, and is required, to construct a large number of traffic mitigation measures to increase capacity and safety in the area and provide relief to existing congested traffic systems. The applicant has conducted a TIA in accordance with the City of Beaverton, Washington County, and ODOT standards and has proposed traffic mitigation measures accordingly. To the extent that the appellant argues that further mitigations are required, such mitigations are not proportional to the traffic impacts of the applicant's development.

Memorandum from DEA dated July 16, 2019

Prior to the Council hearing, the applicant submitted a memorandum from DEA dated July 16, 2019 concerning signal timing modification at the intersection of US 26/Highway 217/SW Barnes Road. The memorandum included as an attachment an email from ODOT stating that the signal timing modification proposed in the applicant's TIA can mitigate anticipated traffic impacts from the applicant's development without exceeding ODOT's target v/c ratio. ODOT intends to evaluate the need for signal timing modification at the US 26/Highway 217/SW Barnes Road intersection after the completion of the proposed development and to initiate signal timing modification if so required. It is

therefore feasible to mitigate anticipated traffic impacts of the development at the intersection of US 26/Highway 217/SW Barnes Road through signal timing modification and, if required, such modification will be initiated by ODOT.

Appellant's Second Assertion: BDC 20.10.40

The appellant in its written and oral testimony contended that outdoor swimming pools are prohibited by BDC 20.10.40. The Council finds that BDC 20.10.40 does not prohibit the applicant's outdoor pools.

The Council adopts and incorporates by reference the findings in pages 3 through 6 of Staff's memorandum dated July 9, 2019 concerning appellant's second assertion. In addition, the Council adopts the following supplemental findings concerning the application and interpretation of BDC 20.10.40.

A potential conflict exists between BDC 20.10.40, which requires that activities in the CC zoning district be "wholly within an enclosed structure," and BDC 20.10.20(23), which allows Recreational Facilities, including outdoor uses such as golf course and outdoor swimming pools, in the CC zoning district. The definition of "Recreational Facilities" includes some uses that may be conducted indoors or outdoors. For certain indoor/outdoor uses, the definition of "Recreational Facilities" specifies that the use is limited to indoors or outdoors (e.g., "indoor soccer fields"). For other indoor/outdoor uses, the definition does *not* specify whether use is limited to indoors or outdoors (e.g., "swimming clubs or pools"). Where the definition of "Recreational Facilities" includes a use that may be conducted indoors or outdoors, and the definition does not specify whether the use is limited to either indoors or outdoors, then the definition includes *both* the indoor and outdoor use.

Because it is unclear how BDC 20.10.40 applies to outdoor Recreational Facilities that are allowed in the CC zoning district, the Council considered the intent of BDC 20.10.40. The Council agrees with Staff that the intent and purpose of the “enclosed structure” requirement is to restrict outdoor storage and sales activities, and that the requirement does not apply to outdoor uses that are allowed in the CC zoning district. Evidence of the purpose of BDC 20.10.40 is found in the legislative history of the “enclosed structure” requirement and in other provisions of the Development Code. Likewise, Planning Commissioner Overhage, who was on the Planning Commission at the time the “enclosed structure” requirement was applied to the CC zoning district, agreed with Staff at the Planning Commission’s public hearing on June 12, 2019 that the intent of the requirement was to prohibit outdoor sales and storage.

Further, even if BDC 20.10.40 applied to outdoor Recreational Facilities, such as outdoor swimming pools, the applicant’s outdoor swimming pools would be permitted under BDC 20.10.40, because they are “wholly within an enclosed structure.” The Development Code provides two definitions of “structure.” The appellant argued that the definition of “structure” that should be applied to BDC 20.10.40 is: “[a] walled and roofed building including a gas or liquid storage tank that is principally above ground.” The applicant argued that the definition of “structure” that should be applied to BDC 20.10.40 is: “[a]nything which is constructed, erected or built and located on or under the ground, or attached to something fixed to the ground.” The Council agrees with Staff and the applicant that the definition of “structure” that applies to BDC 20.10.40 is “[a]nything which is constructed, erected or built and located on or under the ground, or attached to

something fixed to the ground,” because this was the only definition of “structure” that was defined in the Development Code at the time of adoption of the “enclosed structure” requirement. The definition of “structure” recommended by the appellant had not been adopted into the Development Code at the time the “enclosed structure” provision was adopted. Based on the definition of “structure” recommended by the applicant and by Staff, the applicant’s outdoor swimming pools are “wholly within an enclosed structure.”

Appellant’s Third Assertion: BDC 20.10.15, footnote 6

The appellant in its written and oral testimony contended that the 35-foot height limit set forth in BDC 20.10.15, footnote 6 applies to the applicant’s parking structure/office building. The Council finds that the 35-foot height limit does not apply to the applicant’s parking structure/office building, because the phrase “residentially zoned property” in BDC 20.10.15, footnote 6 does not include public right-of-way, and the applicant’s parking structure is greater than 100 feet from the nearest residentially zoned property.

The Council adopts and incorporates by reference the findings in pages 6 through 7 of Staff’s memorandum dated July 9, 2019 concerning appellant’s third assertion. In addition, the Council adopts the following supplemental findings concerning the application of BDC 20.10.15, footnote 6.

BDC 20.10.15, footnote 6 is intended to prevent buildings that are out of scale with nearby residential properties. This is accomplished by establishing a 100-foot buffer around residentially-zoned properties in which buildings may not exceed 35 feet in height. Because BDC 20.10.15, footnote 6 is focused on protecting residentially-zoned properties, the size of the required buffer does not

change due to the presence or width of a public right-of-way. Thus, the 100-foot buffer should be measured from the residential property line.

The appellant argues that the Planning Commission's application of the 100-foot buffer in BDC 20.10.15, footnote 6 is incorrect, because Staff's application renders BDC 10.35.1 meaningless. BDC 10.35.1 states: "When bordering a public right-of-way, all zoning district boundaries shall extend to the centerline of the right-of-way" BDC 10.35.1 applies to "zoning district boundaries," whereas BDC 20.10.15, footnote 6 applies to "residentially zoned properties." The purpose of BDC 10.35.1 is administrative and is to avoid the creation of gaps or holes in the zoning map.

Appellant's Fourth Assertion: BDC 60.05.35.6

The appellant in its written and oral testimony contended that the development proposal is inconsistent with the pedestrian orientation Design Guidelines in BDC 60.05.35.6. The Council finds that the development complies with the Design Guidelines in BDC 60.05.35.6.

The Council adopts and incorporates by reference the findings in pages 7 through 8 of Staff's memorandum dated July 9, 2019 concerning appellant's fourth assertion, and the findings in pages DR-9 through DR-10 of the Revised Staff Report dated June 7, 2019 in response to BDC 60.05.35.6. In addition, the Council adopts the following supplemental findings concerning the pedestrian orientation Design Guidelines in BDC 60.05.35.6.

The development satisfies the pedestrian-oriented Design Guidelines by locating a primary entrance at the intersection of SW Cedar Hills Boulevard and SW Barnes Road and by emphasizing that entrance with architectural details and

a large pedestrian plaza. In addition, the development satisfies the Design Guidelines by locating both buildings close to public streets and intersections, and by making the entrance to the athletic facility building easily accessible from SW Cedar Hills Boulevard and SW Barnes Road via multiple pedestrian connections, including a pedestrian promenade with overhead lighting.

The appellant contends that the Planning Commission erred by granting an exception to the pedestrian orientation Design Guidelines to accommodate the placement of the applicant's outdoor pools. The Design Guidelines state that "property size, shape and topographical conditions should also be considered" when determining the appropriate orientation and location of buildings and entrances. BDC 60.05.35.6.A and B. The Planning Commission properly considered the triangular shape of the subject site and the fact that the site is bordered by a high-speed on-ramp to Highway 26 when applying the Design Guidelines. No exception to the pedestrian orientation Design Guidelines is required or was granted.

Appellant's Fifth Assertion: BDC 60.05.35.1.D and 60.05.35.7

The appellant in its written and oral testimony contended that the proposed development is too large and that the size and scale of the development cause the development to be inconsistent with the Design Guidelines in BDC 60.05.35.1.D and 60.05.35.7. The Council finds that the development meets all applicable size standards and complies with the Design Guidelines in BDC 60.05.35.1.D and 60.05.35.7.

The Council adopts and incorporates by reference the findings in page 8 of Staff's memorandum dated July 9, 2019 concerning appellant's fifth assertion,

and the findings beginning on page DR-5 of the Revised Staff Report dated June 7, 2019 in response to BDC 60.05.35.1.D and 60.05.35.7. In addition, the Council adopts the following supplemental findings concerning the Design Guidelines in BDC 60.05.35.1.D and 60.05.35.7.

BDC 60.05.35.1 is directed at “Building articulation and variety.” BDC 60.05.35.1.D provides, in relevant part, “Buildings should promote and enhance a comfortable pedestrian scale and orientation.” The applicant’s buildings satisfy BDC 60.05.35.1.D by providing visual interest through the use of glazing, different materials, and accented architectural features. As well, the applicant provides a comfortable pedestrian scale by providing canopies, trellises, and clear and direct pedestrian connections.

BDC 60.05.35.7 is directed at “Building scale along Major Pedestrian Routes.” BDC 60.05.35.7.A discourages low-height, single-story buildings along Major Pedestrian Routes. The applicant’s buildings are not single-story, and therefore are consistent with BDC 60.05.35.7.A. BDC 60.05.035.7.B states that building heights at street edge should be no higher than 60 feet and “should help form a sense of enclosure, but should not create an undifferentiated high wall out of scale with pedestrians.” The heights of the applicant’s buildings do not exceed 60 feet. The office and parking garage building is located at the public street, thereby creating a sense of enclosure. Neither of the buildings have undifferentiated high walls; instead, the building walls are differentiated by glazing, architectural details, and use of different materials. In addition, amenities such trellises, canopies, planter benches, water features and other frontage improvements maintain pedestrian scale.

Appellant's Sixth Assertion: Open Space

The appellant in its written and oral testimony contended that the applicant is required to contribute toward the 20 percent open space requirement under the Sunset Station and Barnes Road PUD. The Council finds, first, that the applicant is not required to contribute to the open space requirement because the development is not a residential use, and, second, that it is feasible for the open space requirement to be met by the remaining undeveloped properties in the PUD.

The Council adopts and incorporates by reference the findings in page 9 of Staff's memorandum dated July 9, 2019 concerning appellant's sixth assertion. In addition, the Council adopts the following supplemental findings concerning the open space requirement.

BDC 60.35.15 requires a PUD to provide open space of an area equal to at least 20 percent of the subject site. The open space requirement applies to the whole PUD, rather than to individual parcels. This allows flexibility to cluster development to create open space and protect natural resources. The Sunset Station and Barnes Road PUD requires that open space be provided at the time of development of residential uses. Requiring open space to be provided at the time of residential development allows open space to be created on individual lots where residential development is located or in a centrally located area accessible to community residents. The applicant's development proposal is not residential, and therefore the applicant is not required to provide open space.

Although the applicant is not required to provide open space, the applicant demonstrated that it is feasible for the open space requirement to be met by the

remaining properties in the Sunset Station and Barnes Road PUD, all of which are zoned Residential or Multiple Use.

Finally, the applicant's pedestrian plaza and the pedestrian areas to the north and east of the applicant's buildings provide pedestrian open space benefits.

Appellant's Seventh Assertion: Tree Plan Two

The appellant in its written and oral testimony contended that the Planning Commission erred in concluding that the applicant satisfied the tree removal criteria and that the applicant adequately justified the removal of trees on the subject site and adjacent properties. The Council finds that the appellant did not appeal the Planning Commission's approval of the Tree Plan Two application (TP2018-0009) and, therefore, the approval of the Tree Plan Two is final. In the alternative, even if the appellant had appealed the Tree Plan Two, the Council finds that the applicant properly filed a Tree Plan Two and demonstrated compliance with the criteria in BDC 40.90.15.2.C.4.

June 24, 2019 was the deadline to appeal the Planning Commission's Land Use Orders approving the applicant's five applications (DR2018-0128 / LD2019-0008 / LO2018-0005 / SDM 2018-0007 / TP2018-0009). On June 24, 2019, the appellant submitted a single appeal form listing all five application numbers and submitted a single appeal fee. Following the appellant's submission, on the same day, Staff left a voicemail for and sent an email to the appellant seeking clarification regarding which application was intended to be appealed and allowing the appellant an additional day to submit additional form(s) and fee(s) if the appellant desired to appeal more than one application.

The same evening, on June 24, 2019, the appellant sent an email to Staff which stated that “the main decision we are appealing is the Design Review” but that the appellant listed all applications on a single appeal form because the appellant understood the applications to be consolidated. The following morning, on June 25, 2019, Staff sent an email to the appellant restating that a separate appeal form and fee was required for each application. Staff reiterated that the appellant may submit an additional form(s) and fee(s) if the appellant desired to appeal other application(s) in addition to the Design Review Three application (DR2018-0128). The appellant did not submit any additional appeal form or fee.

The Council adopts and incorporates by reference the findings in pages 1 through 4 of Staff’s memorandum dated July 15, 2019 concerning the scope of the appellant’s appeal and finds that the appellant filed an appeal of the applicant’s Design Review Three application (DR2018-0128) and did not appeal the applicant’s Tree Plan Two application (TP2018-0009). Therefore, the City Council does not have review authority with respect to the Tree Plan Two decision by the Planning Commission.

Finally, and in the alternative, the Council finds that the applicant met the threshold requirements for filing a Tree Plan Two and demonstrated compliance the criteria in BDC 40.90.15.2.C.4, and therefore the Planning Commission did not err in approving the applicant’s Tree Plan Two application. The Council adopts and incorporates by reference the updated findings in pages 4 through 5 of Staff’s memorandum dated July 15, 2019 concerning approval criteria of the Tree Plan Two application. In addition, the Council adopts the following supplemental findings regarding the applicant’s Tree Plan Two.

The appellant contended that the applicant failed to demonstrate that the trees proposed to be removed constitute not more than 75 percent of the total diameter at breast height (DBH) of non-exempt surveyed trees found on the project site within significant natural resource areas (SNRA). The applicant proposes to remove five (five) trees from the SNRA on Tax Lot 200 on Washington County Assessor's Map 1S103AB. The memorandum from DEA dated July 12, 2019, and Exhibit A to that memorandum, show that the removal of five (5) trees represents less than three (3) percent of the total DBH within the SNRA on Tax Lot 200, which is less than the 75 percent threshold. Therefore, the applicant's tree removal proposal meets the threshold requirements for a Tree Plan Two.

The appellant also contended that the applicant did not satisfy BDC 40.90.15.2.C.4, which requires an applicant to demonstrate that, "[i]f applicable, removal of any tree is necessary to accommodate physical development where no reasonable alternative exists." The applicant proposes to remove trees to accommodate the physical development of the primary property, which includes the parking garage and athletic facility buildings, outdoor pool area, stormwater area, surface parking and other frontage improvements. In addition, the applicant proposes to remove trees from adjacent parcels to facilitate utility provision and right-of-way improvements, which are necessary to serve the proposed development, as well as future development. Due to the scope of the development proposal and the applicant's effort to preserve large native trees on the property, no reasonable alternative exists to avoid removal of the trees.

Other Issues

Certain public comments stated that notice was inadequate. The Council finds that notice was properly given and that public participation before the Planning Commission and before the Council was robust. As such, no prejudice to substantial rights occurred.

Certain public comments were not directed at approval criteria. Issues raised in public comment and not addressed in findings are irrelevant to approval criteria.

The Council, after holding the public hearing and considering all oral and written testimony, affirms the Planning Commission approval on appeal and approves DR2018-0128, Life Time Fitness Beaverton. The Council adopts by reference the Agenda Bill (number 19199) and Exhibits of July 2, 2019, Supplemental Memoranda from staff dated July 9, July 15, 2019, and July 16, 2019 with associated exhibits, testimony submitted orally and in writing at the public hearing on July 16, 2019, and the supplemental findings contained therein as evidence and findings demonstrating that the applicant meets the approval criteria for Design Review Three (DR2018-0128) approval.

Therefore, **IT IS HEREBY ORDERED** that **APP2019-0002** is **DENIED** and the Planning Commission's **APPROVAL** of **DR2018-0128** is **AFFIRMED**, based on the testimony and evidence presented during the public hearing and the supplemental materials provided prior to the hearing and the findings contained herein. DR2018-0128 is subject to the following conditions of approval:

- A. Prior to Issuance of Site Development Permits, the applicant shall:**
1. Ensure that the Replat One (LD2019-0008), Loading Determination (LO2018-0005), Sidewalk Design Modification (SDM2018-0007), and

Tree Plan Two (TP2018-0009) applications have been approved and are consistent with the submitted plans. (Planning / JF)

2. Submit the required plans, application form, fee, and other items needed for a complete site development permit application per the applicable review checklist. (Site Development Div./JJD/NP)
3. Contract with a professional engineer to design and monitor the construction for any work governed by Beaverton Municipal Code 9.05.020, current standards in place per the City Engineering Design Manual and Standard Drawings, Beaverton Development Code (Ordinance 2050, 4010 +rev.), the current standards in place per the Clean Water Services District, Design and Construction Standards, and the City Standard Agreement to Construct and Retain Design Professionals in Oregon. (Site Development Div./JJD/NP)
4. Submit a completed and executed City Standard Agreement to Construct Improvements and Retain Design Professional(s) Registered in Oregon. After the site development permit is issued, the City Engineer and the Planning Director must approve all revisions utilizing the process set out in the Beaverton Development Code, and the City Engineering Design Manual; however, any required land use action shall be final prior to City staff approval of the engineering plan revision and work commencing as revised. (Site Development Div./JJD/NP)
5. Provide assurances that the ownership of the subject project will guarantee improvements and work per the detailed cost estimate format and breakdown in the site development permit application. The security approval by the City consists of a review by the City Attorney for form and the City Engineer for amount, equivalent to 100 percent or more of estimated construction costs. (Site Development Div./JJD/NP)
6. Submit any required easements under the City of Beaverton's authority, executed and ready for recording, to the City after approval by the City Engineer for legal description of the area encumbered and City Attorney as to form. Submit copies of other recorded easements for the project as needed from property ownerships within the City of Beaverton (Site Development Div./JJD/NP)
7. Submit to the City a copy of issued permits or other approvals needed from Washington County for work within, and/or construction access to areas within County-permitting authority. (Site Development Div./JJD/NP)
8. Submit to the City a copy of issued permits or other approvals needed from ODOT for work within, and/or construction access to areas within ODOT-permitting authority, except, however, if the applicant elects to construct the improvements described in condition 54.c.ii the permits or

other approvals needed from ODOT for that work may be issued following issuance of the Site Development Permit. (Site Development Div./JJD/NP)

9. Submit a copy of issued permits or other approvals needed from the Tualatin Valley Water District for public water system construction. (Site Development Div./JJD/NP)
10. Submit a completed 1200-C Permit (DEQ/CWS/City Erosion Control Joint Permit) application to the City. The applicant shall use the standard plan format per requirements for sites 5 acres or larger adopted by DEQ and Clean Water Services. (Site Development Div./JJD/NP)
11. Submit a copy of Service Provider Letter Amendment from CWS for the off-site storm sewer improvements as shown on site plans. (Site Development Div./JJD/NP)
12. Submit a copy of issued permits or other approvals as needed from the State of Oregon Division of State Lands and the United States Army Corps of Engineers for work within or affecting a jurisdictional wetland. (Site Development Div./JJD/NP)
13. Obtain the Tualatin Valley Fire and Rescue District Fire Marshal's approval of the site development plans as part of the City's plan review process. (Site Development Div./JJD/NP)
14. Obtain the Clean Water Services District Stormwater Connection Permit as a part of the City's plan review process. (Site Development Div./JJD/NP)
15. Provide final construction plans and a final drainage report demonstrating compliance with City surface water management requirements and maintenance access per Section 530, of City Resolution 4542 and with CWS Resolution and Order 2017-05. This also includes design of the off-site storm sewer. (Site Development Div./JJD/NP)
16. The applicant shall provide an arborist's evaluation of the proposed work near the protected trees. The evaluation shall examine any anticipated impacts to the trees as a result of the proposed construction and finished condition, including but not limited to hydrologic changes, compaction effects, and root disturbance. Any recommended mitigation measures or construction methods to reduce or eliminate adverse effects on the trees shall be incorporated into the construction documents and shown on the approved site development permit plans. In lieu of such an arborist's evaluation, written documentation that a licensed landscape architect is satisfied with the proposed work must be submitted to the

City prior to issuance of the site development permit. (Site Development Div./JJD/NP)

17. Provide plans that delineate all areas on the site that are inundated during a 100-year storm event, including the safe overflow conveyance from proposed constructed storm water management facilities. On all plan sheets that show grading and elevations, the 100 year inundation level shall be identified. (Site Development Div./JJD/NP)
18. Provide plans showing that encroachments in the public right of way or public easements shall be a non-structural attachment or in other words not integral (removable without damage) to the building structure. If a revocable right of way encroachment permit is desired by the owner or required by a financial institution or insurance company, the City Attorney will need to be consulted to prepare a specific document for this situation. (Site Development Div./JJD/NP)
19. Obtain the City Building Official's courtesy review of the proposed private site utility plans per OAR 918-780-0040. (Site Development Div./JJD/NP)
20. Provide construction plans that show how each lot will be independently served by public utility systems as required by the City Engineer and City Building Official. Any extra-capacity water, sanitary, and storm water facility improvements, as defined and determined by the City Utilities Engineer, shall be eligible for system development charge credits to be assigned to lots. All site sewer (storm and sanitary) plumbing that serves more than one lot, or crosses onto another lot, shall be considered a public system and shall be constructed to the requirements of the City Engineer. Sheet flow of surface water from one lot's paved area to another lot's paved area shall not be considered a direct plumbing service. (Site Development Div./JJD/NP)
21. Submit a design for all retaining walls greater than four feet in height, designed by a civil engineer or structural engineer for the expected soil and ground water conditions. (Site Development Div./JJD/NP)
22. Submit a grading plan that meets provisions of Beaverton Code 9.05.110 and 9.05.115. No grading can occur within 10 feet of a property line or half the height of the vertical embankment created, whichever is greater. This applies to all exterior property boundaries of the proposed project. The proposed grading plan shall also have a minimum building pad elevation that is at least one foot higher than the maximum possible high-water elevation (emergency overflow) of the SWM facility. Additionally, a minimum finish floor elevation that is at least three feet higher than the maximum possible high-water elevation shall be established for each new building lot and documented on the plans. (Site Development Div./JJD/NP)

23. Submit to the City a certified impervious surface determination of the proposed project prepared by the applicant's engineer, architect, or surveyor. The certification shall consist of an analysis and calculations determining the square footage of all impervious surfaces on the site. In addition, specific types of impervious area totals, in square feet, shall be given for roofs, equipment pads, parking lots and driveways, sidewalk and pedestrian areas, and any gravel or pervious pavement surfaces. Calculations shall also indicate the square footage of pre-existing impervious surfaces, modified existing impervious, the new impervious surface area created, and total final impervious surface area on the entire site after completion. (Site Development Div./JJD/NP)
24. Pay storm water system development charges for overall system conveyance for the net new private impervious area proposed. (Site Development Div./JJD/NP)
25. Submit an owner-executed, notarized, City/CWS standard private stormwater facilities maintenance agreement, with maintenance plan and all standard exhibits, ready for recording with Washington County Records. (Site Development Div./JJD/NP)
26. Provide plans for street lights Option C unless otherwise approved by the City Operations and Maintenance Director. (Site Development Div./JJD/NP)
27. Provide plans for the placement of underground utility lines along street frontages, and for affected services to existing lots. If existing utility poles along existing street frontages must be moved to accommodate the proposed improvements, the affected lines must be either undergrounded or a fee in lieu of undergrounding must be paid per Section 60.65 of the Development Code. (Site Development Div./JJD/NP)
28. Provide plans showing a City standard commercial driveway apron at the intersection of any private or common driveway and a City public street. (Site Development Div./JJD/NP)
29. Provide a plan showing the necessary transportation mitigation improvements identified in the Traffic Impact Analysis dated February 2019, prepared by David Evans and Associates, Inc., including:
 - a. Construction of an off-street bi-directional multi-use bike/pedestrian pathway along the site frontage between SW Barnes Road and the future undercrossing of the Highway 26 westbound on-ramp, consistent with sheet C100. Minimum clear width of the trail shall be 10 feet.

- b. Construction of half street improvements along the site frontage on Cedar Hills Boulevard to a minimum of five lane arterial standards including sidewalks, but not including a bike lane, consistent with sheet C400.
- c. Construction of a traffic signal at the intersection of SW Barnes Road and SW 116th Avenue, including interconnection with the traffic signal at Cedar Hills Boulevard and Barnes Road.
- d. For the eastbound approach to the intersection of SW Barnes Road and SW 116th Avenue, widen Barnes Road between 117th Avenue and 116th Avenue to provide a through lane, a through/right-turn lane, and a left turn lane with a minimum storage of 75 feet. Construction of a bike lane and a sidewalk, subject to available right-of-way. Construction of left-turn lane does not include striping.
- e. For the westbound approach to the intersection of SW Barnes Road and SW 116th Avenue, widen Barnes Road to provide a through lane, a through/right turn-lane, two left-turn lanes with a minimum storage length of 200 feet and a bike lane. Extend a continuous westbound side-by-side left turn lane from 116th Avenue to 117th Avenue. Extend a second westbound receiving lane. Construct a bike lane and sidewalk from 116th Avenue to 117th Avenue, subject to available right-of-way. Construction of second left turn lane does not include striping or a signal head.
- f. For the northbound approach to the intersection of SW Barnes Road and SW 116th Avenue, construct a through/left-turn lane and a right turn-lane with a minimum storage length of 175 feet. Design traffic signal with a northbound right turn overlap signal phase.
- g. Construction of half street improvements along the site frontage on Barnes Road to five lane arterial standards with bike lanes and sidewalks.
- h. For the southbound approach to the intersection of SW Cedar Hills Boulevard and SW Barnes Road, widen Cedar Hills Boulevard to provide a through lane, a through/right-turn lane with a storage length of between 180 and 200 feet, and a sidewalk extending the length of the through/right-turn lane.
- i. For the eastbound approach to the intersection of SW Cedar Hills Boulevard and SW Barnes Road, widen Barnes Road to provide two right-turn lanes with a minimum storage length of 350 feet, two through lanes, a left-turn lane with a minimum storage length of 185 feet, a bike lane, and a sidewalk.

- j. Modification of the traffic signal at the intersection of SW Barnes Road and SW Cedar Hills Boulevard to accommodate the improvements described in Conditions 28(h) and 28(i).
30. Provide a conceptual plan (30% design level) showing the feasibility of a multi-use trail along SW Cedar Hills Boulevard extending from the proposed sidewalk improvements shown on C100 to the undercrossing with a minimum clear width of 10 feet. This is conditioned only if the full undercrossing is not being constructed by the applicant. (Planning / JF)
 31. Provide a signage and barrier plan for the multi-use trail along the SW Cedar Hills Boulevard site frontage until the Highway 26 westbound on-ramp undercrossing is completed. The plan shall be approved by the City Engineer and include provisions for the removal of the signage and barrier(s) when the pedestrian and bike connections are made to the south to SW Butner Road. (Planning / JF & Transportation / JK)
 32. Provide a plan showing that pedestrian access is maintained from SW Cedar Hills Boulevard into the site at a minimum paved width of five (5) feet. Vehicular access at the internal pedestrian access from SW Cedar Hills Boulevard shall be emergency vehicle only. (Planning / JF)
 33. Provide one additional pedestrian connection within the north surface parking lot connecting the northwest parking area to the internal pedestrian circulation system. (Planning / JF)
 34. Provide a lighting plan showing conformance with the City's Technical Lighting Standards. (Planning / JF)
 35. Provide a plan showing the construction of the ODOT sign bridge to accommodate the full future build-out of SW Cedar Hills Boulevard. (Planning / JF)
 36. The following shall be recorded with Washington County (Contact Survey Division: 503-846-7932): (Washington County / NV)
 - a. Dedication of additional right-of-way to meet a minimum of 51 feet from the centerline of SW Barnes Road from Sta. 45+36.22 to Sta. 46+67.29 along the site's frontage including additional right-of-way and easements that are required for a signal, turn lanes and associated equipment at the new public street (SW 116th Avenue) connection to SW Barnes Road.
 - b. Dedication of additional right-of-way to meet a minimum of 73 feet from the centerline of SW Barnes Road from Sta. 48+40.52 to Sta. 51+57.92 including adequate corner radius and easements needed for signal modifications at the intersection of SW Cedar Hills Boulevard.

37. Submit to Washington County Public Assurance Staff (503-846-3843):
(Washington County/NV)
- a. Completed "Design Option" form, Geotech/Pavement Report, and Engineer's Checklist (Appendix "E" of the County Road Standards).
 - b. \$60,000.00 Administration Deposit.
 - c. A copy of the City's Notice of Decision and the County's Letter dated April 4, 2019.
 - d. Provide evidence that the documents under 36. a. and b. have been recorded.
 - e. Preliminary certification of adequate sight distance for the access point to SW Barnes Road, in accordance with County Code, prepared and stamped by a registered professional engineer, as well as:
 - i. A detailed list of improvements necessary to produce adequate intersection sight distance at the proposed new public street access.
 - f. Engineering plans to County standards for construction of the following public improvements:
 - i. Half-street improvement to County standards along the site's SW Barnes Road frontage. The half-street improvement shall include additional pavement to meet County minimum lane widths and required lane configuration (dual EB right-turn lanes and two through lanes at SW Cedar Hills Boulevard and a WB a left-turn lane at SW 116th Ave.), 7 foot buffered bike lanes, curb and gutter, 10 foot sidewalks with tree wells and continuous illumination to County standards.
 - ii. Signal modifications, (including signal interconnect conduit from SW Barnes Road/SW Cedar Hills Boulevard to the westbound US 26 ramp terminal intersection) for a shared southbound through /right-turn lane to SW Barnes Road /SW Cedar Hills Boulevard and a second eastbound right-turn lane at SW Barnes Road/SW Cedar Hills Boulevard to County standards.
 - iii. Construct a new traffic signal and associated equipment at the intersection of SW Barnes Road and SW 116th Avenue, including one (1) WB left-turn lane with a

minimum storage of 275 feet and a closed future WB left-turn lane with required minimum storage on SW Barnes Road. Signal interconnect conduit shall be installed along the site's SW Barnes Road frontage.

- iv. Construct a shared southbound through/right-turn lane with a minimum storage of 180 feet at the intersection of SW Cedar Hills Boulevard and SW Barnes Road.
- v. Construct a second eastbound right-turn lane at the intersection of SW Barnes Road and SW Cedar Hill Boulevard.
- vi. Construct curb, gutter, bike lane and additional pavement on the north side of SW Barnes Road from the intersection of SW Cedar Hills Boulevard to the new intersection of SW 116th Avenue. Grade and alignment shall be approved by the County Engineer.

38. Obtain a Washington County Facility Permit upon completion of the following:

- a. Engineering Division approval of plans and a financial assurance for the construction of the public improvements listed in conditions 37.f.

39. Provide a revised landscaping plan showing that a minimum of 50% of the total number of species proposed to be planted on site are native species, cultivars of native species, and/or adapted plant species. The plan shall be stamped by a certified landscape architect. (Planning / JF)

40. Provide a plan showing: (TVF&R / DN)

- a. **FIRE APPARATUS ACCESS ROAD DISTANCE FROM BUILDING AND TURNAROUNDS:** Access roads shall be within 150 feet of all portions of the exterior wall of the first story of the building as measured by an approved route around the exterior of the building or facility. An approved turnaround is required if the remaining distance to an approved intersecting roadway, as measured along the fire apparatus access road, is greater than 150 feet. (OFC 503.1.1)
- b. **DEAD END ROADS:** Dead end fire apparatus access roads in excess of 150 feet in length shall be provided with an approved turnaround. (OFC 503.2.5 & D103.1)
- c. **ADDITIONAL ACCESS ROADS – COMMERCIAL/INDUSTRIAL:** Buildings exceeding 30 feet in height or three stories in height shall have at least two separate means of fire apparatus access. Buildings or facilities having a gross building area of more than 62,000 square

feet shall have at least two approved separate means of fire apparatus access. Exception: Projects having a gross building area of up to 124,000 square feet that have a single approved fire apparatus access road when all buildings are equipped throughout with approved automatic sprinkler systems. (OFC D104)

- d. **AERIAL FIRE APPARATUS ROADS:** Buildings with a vertical distance between the grade plane and the highest roof surface that exceeds 30 feet in height shall be provided with a fire apparatus access road constructed for use by aerial apparatus with an unobstructed driving surface width of not less than 26 feet. For the purposes of this section, the highest roof surface shall be determined by measurement to the eave of a pitched roof, the intersection of the roof to the exterior wall, or the top of the parapet walls, whichever is greater. Any portion of the building may be used for this measurement, provided that it is accessible to firefighters and is capable of supporting ground ladder placement. (OFC D105.1, D105.2)
- e. **AERIAL APPARATUS OPERATIONS:** At least one of the required aerial access routes shall be located within a minimum of 15 feet and a maximum of 30 feet from the building, and shall be positioned parallel to one entire side of the building. The side of the building on which the aerial access road is positioned shall be approved by the fire code official. Overhead utility and power lines shall not be located over the aerial access road or between the aerial access road and the building. (D105.3, D105.4)
- f. **MULTIPLE ACCESS ROADS SEPARATION:** Where two access roads are required, they shall be placed a distance apart equal to not less than one half of the length of the maximum overall diagonal dimension of the area to be served (as identified by the Fire Code Official), measured in a straight line between accesses. (OFC D104.3) Exception: Buildings equipped throughout with an approved automatic fire sprinkler system (the approval of this alternate method of construction shall be accomplished in accordance with the provisions of ORS 455.610(5)).
- g. **FIRE APPARATUS ACCESS ROAD WIDTH AND VERTICAL CLEARANCE:** Fire apparatus access roads shall have an unobstructed driving surface width of not less than 20 feet (26 feet adjacent to fire hydrants (OFC D103.1)) and an unobstructed vertical clearance of not less than 13 feet 6 inches. The fire district will approve access roads of 12 feet for up to three dwelling units and accessory buildings. (OFC 503.2.1 & D103.1)
- h. **NO PARKING SIGNS:** Where fire apparatus roadways are not of sufficient width to accommodate parked vehicles and 20 feet of

unobstructed driving surface, "No Parking" signs shall be installed on one or both sides of the roadway and in turnarounds as needed. Signs shall read "NO PARKING - FIRE LANE" and shall be installed with a clear space above grade level of 7 feet. Signs shall be 12 inches wide by 18 inches high and shall have red letters on a white reflective background. (OFC D103.6)

- i. **NO PARKING:** Parking on emergency access roads shall be as follows (OFC D103.6.1-2):
 - 1. 20-26 feet road width – no parking on either side of roadway (signage to indicate the no parking)
 - 2. 26-32 feet road width – parking is allowed on one side (signage to indicate the no parking side)
 - 3. Greater than 32 feet road width – parking is not restricted

- i. **PAINTED CURBS:** Where required, fire apparatus access roadway curbs shall be painted red (or as approved) and marked "NO PARKING FIRE LANE" at 25 foot intervals. Lettering shall have a stroke of not less than one inch wide by six inches high. Lettering shall be white on red background (or as approved). (OFC 503.3)

- j. **FIRE APPARATUS ACCESS ROADS WITH FIRE HYDRANTS:** Where a fire hydrant is located on a fire apparatus access road, the minimum road width shall be 26 feet and shall extend 20 feet before and after the point of the hydrant. (OFC D103.1)

- k. **SURFACE AND LOAD CAPACITIES:** Fire apparatus access roads shall be of an all-weather surface that is easily distinguishable from the surrounding area and is capable of supporting not less than 12,500 pounds point load (wheel load) and 75,000 pounds live load (gross vehicle weight). Documentation from a registered engineer that the final construction is in accordance with approved plans or the requirements of the Fire Code may be requested. (OFC 503.2.3)

- l. **TURNING RADIUS:** The inside turning radius and outside turning radius shall be not less than 28 feet and 48 feet respectively, measured from the same center point. (OFC 503.2.4 & D103.3)

- m. **ACCESS ROAD GRADE:** Fire apparatus access roadway grades shall not exceed 12%. When fire sprinklers* are installed, a maximum grade of 15% will be allowed.
 - i. 0-12% Allowed
 - ii. 12-15% Automatic fire sprinkler system* required
 - iii. 15-18% Consideration on a case by case basis with submission of written Alternate Methods and Materials request and automatic fire sprinkler system.*
 - iv. 18% and greater Not allowed

- n. **ANGLE OF APPROACH/GRADE FOR TURNAROUNDS:** Turnarounds shall be as flat as possible and have a maximum of 5% grade with the exception of crowning for water run-off. (OFC 503.2.7 & D103.2)
- o. **ANGLE OF APPROACH/GRADE FOR INTERSECTIONS:** Intersections shall be level (maximum 5%) with the exception of crowning for water run-off. (OFC 503.2.7 & D103.2)
- p. **AERIAL APPARATUS OPERATING GRADES:** Portions of aerial apparatus roads that will be used for aerial operations shall be as flat as possible. Front to rear and side to side maximum slope shall not exceed 10%.
- q. **ACCESS DURING CONSTRUCTION:** Approved fire apparatus access roadways shall be installed and operational prior to any combustible construction or storage of combustible materials on the site. Temporary address signage shall also be provided during construction. (OFC 3309 and 3310.1)
- r. **COMMERCIAL BUILDINGS – REQUIRED FIRE FLOW:** The minimum fire flow and flow duration for buildings other than one- and two-family dwellings shall be determined in accordance with residual pressure (OFC Appendix B Table B105.2). The required fire flow for a building shall not exceed the available GPM in the water delivery system at 20 psi.
 - i. **Note:** Appendix B, Section B106, Limiting Fire-Flow is also enforced, save and except for the following:
 - 1. In areas where the water system is already developed, the maximum needed fire flow shall be either 3,000 GPM or the available flow in the system at 20 psi, whichever is greater.
 - 2. In new developed areas, the maximum needed fire flow shall be 3,000 GPM at 20 psi.
 - 3. Tualatin Valley Fire & Rescue does not adopt Occupancy Hazards Modifiers in section B105.4-B105.4.1
- s. **FIRE FLOW WATER AVAILABILITY:** Applicants shall provide documentation of a fire hydrant flow test or flow test modeling of water availability from the local water purveyor if the project includes a new structure or increase in the floor area of an existing structure. Tests shall be conducted from a fire hydrant within 400 feet for commercial projects, or 600 feet for residential development. Flow tests will be accepted if they were performed within 5 years as long as no adverse modifications have been made to the supply system.

Water availability information may not be required to be submitted for every project. (OFC Appendix B)

- t. **WATER SUPPLY DURING CONSTRUCTION:** Approved firefighting water supplies shall be installed and operational prior to any combustible construction or storage of combustible materials on the site. (OFC 3312.1)
- u. **FIRE HYDRANTS – COMMERCIAL BUILDINGS:** Where a portion of the building is more than 400 feet from a hydrant on a fire apparatus access road, as measured in an approved route around the exterior of the building, on-site fire hydrants and mains shall be provided. (OFC 507.5.1)
- v. This distance may be increased to 600 feet for buildings equipped throughout with an approved automatic sprinkler system.
- w. The number and distribution of fire hydrants required for commercial structure(s) is based on Table C105.1, following any fire-flow reductions allowed by section B105.3.1. Additional fire hydrants may be required due to spacing and/or section 507.5 of the Oregon Fire Code.
- x. **FIRE HYDRANT NUMBER AND DISTRIBUTION:** The minimum number and distribution of fire hydrants available to a building shall not be less than that listed in (OFC Table C105.1)
- y. **FIRE HYDRANT(S) PLACEMENT:** (OFC C104)
 - i. Existing hydrants in the area may be used to meet the required number of hydrants as approved. Hydrants that are up to 600 feet away from the nearest point of a subject building that is protected with fire sprinklers may contribute to the required number of hydrants. (OFC 507.5.1)
 - ii. Hydrants that are separated from the subject building by railroad tracks shall not contribute to the required number of hydrants unless approved by the fire code official.
 - iii. Hydrants that are separated from the subject building by divided highways or freeways shall not contribute to the required number of hydrants. Heavily traveled collector streets may be considered when approved by the fire code official.
 - iv. Hydrants that are accessible only by a bridge shall be acceptable to contribute to the required number of hydrants only if approved by the fire code official.

- z. FIRE HYDRANT DISTANCE FROM AN ACCESS ROAD: Fire hydrants shall be located not more than 15 feet from an approved fire apparatus access roadway unless approved by the fire code official. (OFC C102.1)
- aa. FIRE DEPARTMENT CONNECTIONS: A fire hydrant shall be located within 100 feet of a fire department connection (FDC) or as approved. Fire hydrants and FDC's shall be located on the same side of the fire apparatus access roadway or drive aisle. (OFC 912 & NFPA 13)
 - i. Fire department connections (FDCs) shall normally be located remotely and outside of the fall-line of the building when required. FDCs may be mounted on the building they serve, when approved.
 - ii. FDCs shall be plumbed on the system side of the check valve when sprinklers are served by underground lines also serving private fire hydrants (as diagramed below).

B. Prior to Building Permit Issuance, the applicant shall:

- 41. Submit a complete site development permit application and obtain the issuance of site development permit from the Site Development Division. (Site Development Div./JJD/NP)
- 42. Make provisions for installation of all mandated erosion control measures to achieve City inspector approval at least 24 hours prior to call for foundation footing form inspection from the Building Division. (Site Development Div./JJD/NP)
- 43. Have submitted the paper copies of the draft final plat needed for City review and to the County Surveyor to begin processing. (Site Development Div./JJD/NP)
- 44. Provide a plan showing the areas identified as having a pedestrian trellis over pedestrian walkways have provide a solid canopy to provide weather protection those areas. (Planning / JF)
- 45. Provide a plan showing: (TVF&R / DN)
 - a. KNOX BOX: A Knox Box for building access is required for this building. Please contact the Fire Marshal's Office for an order form and instructions regarding installation and placement. (OFC 506.1)
 - b. UTILITY IDENTIFICATION: Rooms containing controls to fire suppression and detection equipment shall be identified as "Fire Control Room." Signage shall have letters with a minimum of 4

inches high with a minimum stroke width of 1/2 inch, and be plainly legible, and contrast with its background. (OFC 509.1)

- c. **EMERGENCY RESPONDER RADIO COVERAGE:** In new buildings where the design reduces the level of radio coverage for public safety communications systems below minimum performance levels, a distributed antenna system, signal booster, or other method approved by TVF&R and Washington County Consolidated Communications Agency shall be provided. (OSSC 915.1, OFC 510.1, and Appendix F)

C. Prior to Final Occupancy, the applicant shall:

- 46. Have substantially completed the site development improvements as determined by the City Engineer. (Site Development Div./JJD/NP)
- 47. Have the landscaping completely installed or provide for erosion control measures around any disturbed or exposed areas per Clean Water Services standards. (Site Development Div./JJD/NP)
- 48. Have placed underground all affected, applicable existing overhead utilities and any new utility service lines within the project and along any existing street frontage as determined at permit issuance. (Site Development Div./JJD/NP)
- 49. Install or replace, to City specifications; all sidewalks which are missing, damaged, deteriorated, or removed by construction. (Site Development Div./JJD/NP)
- 50. Have obtained a Source Control Sewage Permit from the Clean Water Services District (CWS) and submit a copy to the City Building Official if an Industrial Sewage permit is required, as determined by CWS. (Site Development Div./JJD/NP)
- 51. Have recorded the final plat in County records and submitted a recorded copy to the City. (Site Development Div./JJD/NP)
- 52. Ensure all site improvements, including grading and landscaping are completed in accordance with plans marked "Exhibit A", except as modified by the decision making authority in conditions of approval. (On file at City Hall). (Planning/JF)
- 53. Ensure all construction is completed in accordance with the Materials and Finishes form and Materials Board, both marked "Exhibit B", except as modified by the decision making authority in conditions of approval. (On file at City Hall). (Planning/JF)

54. Ensure construction of all buildings, walls, fences and other structures are completed in accordance with the elevations and plans marked "Exhibit C", except as modified by the decision making authority in conditions of approval. (On file at City Hall). (Planning/JF)
55. Obtain a Final Washington County Facility Permit, subject to completion of the following: (Washington County/NV)
- a. The road improvements required in condition 37.f. above shall be completed and accepted by Washington County.
 - b. Submit a Final Sight Distance Certification for the public street connection to SW Barnes Road.
 - c. Pay to Washington County the pro rata share of the cost to mitigate the traffic impacts noted in Sunset Station & Barnes PUD (CU2013-0003) as required per the City's Notice of Decision. Including:
 - i. Pay Washington County \$553,595 as a contribution toward the future construction of a bike/pedestrian pathway undercrossing at the westbound on-ramp to Highway 26. In lieu of paying the contribution towards the improvements, applicant at their own discretion may choose to construct the improvements as directed by ODOT and the County Engineer, in which case the improvements directed by ODOT must be substantially complete and accepted prior to City issuance of the Final Occupancy Permit. Per Condition of Approval 33 of the Sunset Station and Barnes Road PUD the monetary contribution amount shall be adjusted on July 1st of each year. (Planning / JF & Transportation / JK)
 - ii. At ODOT's discretion, pay ODOT \$276,797.50 as a contribution towards a variable message sign/variable speed sign to be installed by ODOT on OR 217 northbound between SW Walker Rd and the Barnes Road off-ramp.
 - iii. Pay Washington County \$76,388 as an additional contribution for construction of the at grade multi-use path along SW Cedar Hills Boulevard between the internal pedestrian connection and the pedestrian undercrossing. The applicant may also elect to construct the improvement instead of paying the fee in lieu, in which case the improvements must be substantially completed and accepted by ODOT prior to City issuance of a Final Occupancy Permit. (Planning / JF)

D. Prior to release of performance security, the applicant shall:

56. Have completed the site development improvements as determined by the City Engineer and met all outstanding conditions of approval as determined by the City Engineer and Planning Director. Additionally, the applicant and professional(s) of record shall have met all obligations under the City Standard Agreement to Construct Improvements and Retain Design Professional Registered in Oregon, as determined by the City Engineer. (Site Development Div./JJD/NP)
57. Submit any required on-site easements not already dedicated on the plat, executed and ready for recording, to the City after approval by the City Engineer for area encumbered and City Attorney as to form. (Site Development Div./JJD/NP)
58. Provide an additional performance security for 100 percent of the cost of plants, planting materials, and any maintenance labor (including irrigation) necessary to achieve establishment of the vegetation as shown on the approved plan within the storm water management facility as determined by the City Engineer. If the plants are not well established (as determined by the City Engineer and City Operations Director) within a period of two years from the date of substantial completion, a plan shall be submitted by the engineer of record and landscape architect (or wetland biologist) that documents any needed remediation. The remediation plan shall be completely implemented and deemed satisfactory by the City Public Works Director prior to release of the security. (Site Development Div./JJD/NP)

Motion **CARRIED**, by the following vote:

AYES: San Soucie, Fagin, Arnold, Beaty, Mitchell.

NAYS: None.

ABSTAIN: None.

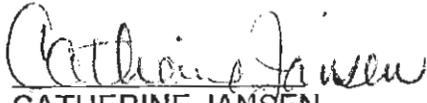
ABSENT: None.

Dated this 13th day of August, 2019.

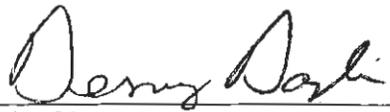
CITY COUNCIL
FOR BEAVERTON, OREGON

ATTEST

APPROVED:



CATHERINE JANSEN
City Recorder



DENNY DOYLE
Mayor



COMMUNITY DEVELOPMENT DEPARTMENT
TRANSMITTAL FORM

Please complete this form when submitting documents to the Planning (land use), Site Development, or Building divisions for review. Please list all documents you are submitting at this time.

TO: Planning Division
DIVISION: Planning - PlanningPlanSubmit@beavertonOregon.gov - (503) 526-2420
FROM: Dana L. Krawczuk
COMPANY: Stoel Rives LLP
PHONE: 503-294-9218
EMAIL: dana.krawczuk@stoel.com
PROJECT:
(Permit/Case Number, if Assigned)
 Vacant - No Address (Tax Lots 1700, 1300, 1400 & 2300)
(Site Address)
 Life Time DI Application -- Tax Lots 1700, 1300, 1400 & 2300
(Project name or subdivision name and lot number)

DATE RECEIVED:

**Received
Planning Division
11-21-19**

By: _____

I AM THE PROPERTY OWNER OR I AM AUTHORIZED BY THE PROPERTY OWNER TO ACT AS AN AGENT ON THEIR BEHALF FOR THE PROPOSED PROJECT OR WORK AFFILIATED WITH THE ATTACHED PERMIT APPLICATION.

ATTACHED ARE THE FOLLOWING DOCUMENTS (NOT FOR INDIVIDUAL PLAN REVIEW COMMENT RESPONSES):

Item #:	Description: <small>(examples: application, plans, revision, deferred submittal, calculations, specifications, affidavits)</small>
1	Director's Interpretation Application Form
2	Pre-Application - Hold Harmless Agreement Form
3	Life Time's Director's Interpretation Application Narrative
4	
5	
6	
7	
8	
9	
10	
11	
12	

REMARKS: _____

FOR OFFICE USE ONLY			
Routed to Reviewer(s):		Date:	
Application #:	Application Materials Saved to Network: <input type="checkbox"/> Yes <input type="checkbox"/> No		
Applicant Contacted: <input type="checkbox"/> Yes <input type="checkbox"/> No	Date:		
Routed to Permit Technician:	Date:	Fees Due: <input type="checkbox"/> Yes <input type="checkbox"/> No	Initials:
Fee Descriptions and Amounts Due:			

Received
Planning Division
11-21-19

Beaverton
O R E G O N

CITY OF BEAVERTON
Community Development
Department
Planning Division
12725 SW Millikan Way
PO Box 4755
Beaverton, OR. 97076
Tel: (503) 526-2420
Fax: (503) 526-2550
www.BeavertonOregon.gov

OFFICE USE ONLY

FILE #: _____
FILE NAME: _____
TYPE: _____ RECEIVED BY: _____
FEE PAID: _____ CHECK/CASH: _____
SUBMITTED: _____ LWI DESIG: _____
LAND USE DESIG: _____ NAC: _____

DIRECTORS INTERPRETATION APPLICATION

APPLICANT: Use mailing address for meeting notification.

Check box if Primary Contact

COMPANY: LTF Real Estate Company, Inc.

ADDRESS: 2902 Corporate Place

(CITY, STATE, ZIP) Chanhassen, MN 55317

PHONE: 952-401-2477 FAX: _____ E-MAIL: MEaton@lt.life

SIGNATURE: Megan Eaton CONTACT: Megan Eaton

(Original Signature Required)

APPLICANT'S REPRESENTATIVE:

Check box if Primary Contact

COMPANY: Dana L. Krawczuk

ADDRESS: Stoel Rives LLP, 760 SW 9th Ave., Suite 3000

(CITY, STATE, ZIP) Portland, OR 97205

PHONE: 503-294-9218 FAX: 503-220-2480 E-MAIL: dana.krawczuk@stoel.com

SIGNATURE: Dana Krawczuk CONTACT: Dana Krawczuk

(Original Signature Required)

PROPERTY OWNER(S): Attach separate sheet if needed.

Check box if Primary Contact

COMPANY: LTF Real Estate Company, Inc.

ADDRESS: 2902 Corporate Place

(CITY, STATE, ZIP) Chanhassen, MN 55317

PHONE: 952-401-2477 FAX: _____ E-MAIL: MEaton@lt.life

SIGNATURE: Megan Eaton CONTACT: Megan Eaton

Note: A land use application must be signed by the property owner(s) or by someone authorized by the property owner(s) to act as an agent on their behalf. If someone is signing as the agent of the property owner(s), that person must submit a written statement signed by the property owner(s), authorizing the person to sign the application.

PROPERTY INFORMATION (REQUIRED)

SITE ADDRESS: Vacant - No Address

AREA TO BE DEVELOPED (s.f.): approx. 9.136 ac

ASSESSOR'S MAP & TAX LOT # LOT SIZE ZONING DISTRICT
T1S R1W Sec 3A Tax Lot 1701 9.136 ac. CC

EXISTING USE OF SITE: Vacant

T1S R1W Sec 3BA R1

PROPOSED DEVELOPMENT ACTION: _____

Tax Lot 1300, 1400 & 2300

PRE-APPLICATION DATE: Waived

DIRECTORS INTERPRETATION SUBMITTAL CHECKLIST

WRITTEN STATEMENT REQUIREMENTS

- A. APPLICATION FORM.** Provide **one (1) completed** application form with original signature(s).
▪ *Have you submitted for a permit from another division?*
- B. CHECKLIST.** Provide **one (1) completed** copy of this four page checklist.
- C. WRITTEN STATEMENT.** Submit **three (3) copies** of a detailed description of the proposed project including, but not limited to, the changes to the site, structure, landscaping, parking, and land use. In the written statement, please:
- Identify the section of the Development Code for which the applicant requests an interpretation.
 - Describe the requested interpretation of the section of the Development Code.
 - Provide a description of the reason for the interpretation request including but not limited to how the section to be interpreted currently applies, how it would apply under the requested interpretation, any previously identified differences in interpretation between the applicant and the staff
 - Provide individual findings specifically addressing how and why the proposal satisfies each of the criteria in Section 40.25.15.1.C.1-6 of the City's *Development Code* (ORD 2050), attached.

- D. FEES,** as established by the City Council. Make checks payable to the City of Beaverton.

N/A **E. SITE ANALYSIS INFORMATION (Required only if site specific):**

- | | |
|-----------------------------------------------------------------------|------------------------------------------------------------------|
| <input type="checkbox"/> Proposed parking modification: _____ sq. ft. | <input type="checkbox"/> Existing building height: _____ ft. |
| Proposed number of parking spaces: _____ | Proposed building height: _____ ft. |
| Proposed use: _____ | Existing building area: _____ sq. ft. |
| Parking requirement: _____ | Proposed building modification: _____ sq. ft. |
| <input type="checkbox"/> Existing parking area: _____ sq. ft. | <input type="checkbox"/> Existing landscaped area: _____ sq. ft. |
| Existing number of parking spaces: _____ | Percentage of site: _____ % |
| | Proposed landscape modification: _____ sq. ft. |
| | Percentage of site: _____ |

- N/A* **F. CLEAN WATER SERVICES (CWS) DOCUMENTATION.** Pursuant to Section 50.25.1.F of the City's *Development Code* requires that all development proposals provide written documentation from Clean Water Services (formerly Unified Sewerage Agency) stating that water quality will not be adversely affected by the subject proposal. Therefore, the City recommends that you contact CWS in order to obtain the required documentation. For more information, please contact Lindsey Obermiller, Environmental Plan Reviewer, at (503) 681-3653 or ObermillerL@CleanWaterServices.org

- N/A* **G. PRE-APPLICATION CONFERENCE NOTES. (REQUIRED FOR TYPE 2, 3, & 4 APPLICATIONS ONLY)** Provide a copy of the pre-application conference summary as required by the City's *Development Code* Section 50.25.1.E. The Pre-Application Conference must be held within the one (1) year prior to the submission date of the proposed project application. *see Pre-Application Hold Harmless*

- N/A* **H. OTHER REQUIREMENTS.** Provide documentation showing that the project proposed is permitted *Form* by, or satisfies the requirements of, other agencies and/or jurisdictions OR submit a schedule that details the forecasted submission and approval timelines for permits/applications to the respective agencies and/or jurisdictions.

PLANS & GRAPHIC REQUIREMENTS

All plans, except architectural elevations, shall be presented at a minimum of 1" = 20' engineering scale and on a maximum sheet size of 24" x 36". Architectural elevations may be presented at an architectural scale. **A total of three (3) copies of each plan shall be submitted, unless otherwise noted. All plans shall be folded to fit a legal size file jacket.**

Each of the following plans and drawings shall be submitted on **separate sheets**. If the size of the project requires the use of match line sets, each set of match line sets must include a sheet (at a scale to fit a 24" x 36" sheet) depicting the entire site, including match lines, as a cover sheet.

Include all of the following information:

N/A

A. EXISTING CONDITIONS PLAN (Required only if application is site specific):

- 1. North arrow, scale and date of plan.
- 2. Vicinity map.
- 3. The entire lot(s), including area and property lines dimensioned.
- 4. Points of existing access, interior streets, driveways, and parking areas.
- 5. Location of all existing buildings and structures, including refuse storage locations, pedestrian/bike paths, swimming pools, tennis courts, tot lots, and lighting.
- 6. Existing right-of-way and improvements.
- 7. Dimension from centerline to edge of existing right-of-way.
- 8. Existing topographical information, showing 2 ft. contours.
- 9. Surrounding development and conditions within 100 ft. of the property such as zoning, land uses, buildings, driveways, and trees.
- 10. Location of existing public and private utilities, easements, and 100-year floodplain.
- 11. Location, quantities, size (diameter breast height), genus and species of Significant Trees and Groves, Historic Trees, Trees within a Significant Natural Resource Area, Landscape Trees, Street Trees, and Community Trees, as applicable.
- 12. Sensitive areas, as defined by Clean Water Services (CWS) standards.
- 13. Wetland boundaries, upland wooded area boundaries, riparian area boundaries, rock outcroppings, and streams. *Wetlands must be professionally delineated.*

N/A

B. DIMENSIONED SITE PLAN (Required only if application is site specific):

- 1. North arrow, scale and date of plan.
- 2. The entire lot(s), including area, property lines dimensioned and labeled "front," "side," and "rear."
- 3. Points of access, interior streets, driveways, and parking areas.
- 4. Location of buildings and structures, including refuse storage locations, pedestrian/bike paths, swimming pools, tennis courts, and tot lots.
- 5. Proposed right-of-way, dedications and improvements.
- 6. Dimension from centerline to edge of proposed right-of-way.
- 7. Dimensions of all improvements, including setbacks, parking spaces, driveways, and distance between buildings.
- 8. Location of storm water quality/detention facilities.
- 9. Boundaries of development phases, if applicable.
- 10. Location, quantities, size (diameter breast height), genus and species of Significant Trees and Groves, Historic Trees, Trees within a Significant Natural Resource Area, Landscape Trees, Street Trees, and Community Trees, as applicable.
- 11. Sensitive areas, as defined by CWS standards.
- 12. Wetland boundaries, upland wooded area boundaries, riparian area boundaries, rock outcroppings, and streams. *Wetlands must be professionally delineated.*

N/A

C. LANDSCAPE PLAN (Required only if site specific):

- 1. North arrow, scale and date of plan.
- 2. The entire lot(s).
- 3. Points of access, interior streets, driveways, and parking areas.
- 4. Location of buildings and structures, including refuse storage locations, pedestrian/bike paths, swimming pools, tennis courts, and tot lots.
- 5. Proposed right-of-way, dedications and improvements.
- 6. Boundaries of development phases, if applicable.
- 7. Location, quantities, size (diameter breast height), genus and species of Significant Trees and Groves, Historic Trees, Trees within a Significant Natural Resource Area, Landscape Trees, Street Trees, and Community Trees, as applicable.
- 8. Sensitive areas, as defined by the CWS standards.
- 9. Wetland boundaries, upland wooded area boundaries, riparian area boundaries, rock outcroppings, and streams. *Wetlands must be professionally delineated.*
- 11. The location and design of landscaped areas for variance, indicating all plant materials, including genus, species, quantity, plant sizes, and spacing.
- 12. List of plant materials, including genus, species, common name, size, quantity, spacing and method of planting.
- 13. Other pertinent landscape features, including walls, retaining walls, berms, fences, and fountains.
- 14. Proposed location of light poles, bollards and other exterior illumination.
- 15. A note on the plan indicating that an irrigation system will be installed to maintain the landscape materials.

N/A

D. ARCHITECTURAL ELEVATIONS: Provide, *if relevant to interpretation request*, drawings that depict the character of the proposed building(s) and structure(s) (these include buildings, retaining walls, refuse storage facilities, play structures, fences and the like). These drawing should include dimensions of the building(s) and structure(s) and indicate the materials, colors, and textures proposed for the structures.

N/A

E. MATERIALS BOARD: Provide, *if relevant to interpretation request*, one (1) 8½"x11" or one (1) 8½"x14" Materials Board that includes examples of all building materials, colors, and textures of exterior surfaces for building(s) and structure(s). *Materials Boards provided at a size other than what is indicated above will not be accepted.*

N/A

F DESCRIPTION OF MATERIALS AND FINISHES FORM: Provide, *if relevant to interpretation request*, one (1) completed copy of the Materials and Finishes Form with the application submittal.

Note: Complete sets of plans reduced to 8 ½"x11" (11"x17" are not acceptable) will be required at the time the application is deemed complete.

I have provided all the items required by this four (4) page submittal checklist. I understand that any missing information, omissions or both may result in the application being deemed incomplete, which may lengthen the time required to process the application.

Dana L. Krawczuk

Print Name

503-294-9218

Telephone Number



Signature

11-4-19

Date

DIRECTORS INTERPRETATION SUBMITTAL CHECKLIST

PURSUANT TO SECTION 50.25.1.B OF THE DEVELOPMENT CODE, A WRITTEN STATEMENT ADDRESSING THE APPROVAL CRITERIA FOR AN APPLICATION MUST BE SUBMITTED IN ORDER FOR AN APPLICATION TO BE DEEMED COMPLETE. STATEMENTS SUCH AS "NOT APPLICABLE" OR "THE PROPOSAL WILL COMPLY WITH APPLICABLE DEVELOPMENT REGULATIONS" ARE NOT SATISFACTORY. THE WRITTEN STATEMENT MUST ADDRESS EACH CRITERION AND MUST SPECIFY IN DETAIL HOW EACH WILL BE COMPLIED WITH.

An applicant for a Director's Interpretation shall address compliance with all of the following Approval Criteria as specified in 40.25.15.1.C.1-6 of the Development Code:

- 1. The proposal satisfies the threshold requirements for a Director's Interpretation application.
- 2. All City application fees related to the application under consideration by the decision making authority have been submitted.
- 3. That the interpretation is consistent with the City's Comprehensive Plan and other provisions within this Code.
- 4. When interpreting that a use not identified in the Development Code is a permitted, a conditional or prohibited use, that use must be substantially similar to a use currently identified in the subject zoning district or elsewhere in the Development Code.
- 5. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1 of the Development Code.
- 6. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.



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PRE-APPLICATION- HOLD HARMLESS AGREEMENT FORM

Applicable only to Type 2 Applications

Pursuant to section 50.20.1 of the Beaverton Development Code, a Pre-Application Conference is **required** for all proposals which require Type 2, Type 3 or Type 4 applications. A Pre-Application Conference is optional for Type 1 applications. The purpose of the pre-application conference is to acquaint the City and outside agencies and service providers with the potential application, and to acquaint the applicant the requirements of the Development Code, the Comprehensive Plan, and other relevant criteria and procedures for submitting a complete land use application.

By signing this form, the applicant has elected to not hold a Pre-Application Conference with the City staff. By making such choice, the applicant understands that the City staff will not provide a detailed list of application submittal requirements before the applicant files a land use application with the City. The applicant accepts responsibility for submitting a complete application and holds the City harmless for identifying additional application submittal requirements during the completeness review of the submitted land use application.

Please note: There is an option to forgo the Pre-Application Conference only if the proposal is subject to a Type 2 application. If your proposal requires Type 3 or has the **potential** for Type 3 application, the Pre-Application Conference is required and this option is not available. The only exception for a Type 3 as a required application, subject to approval of the Director, is in the instance where a Type 3 application is identified as a required application after completeness.

Please respond to the following:

1. Below, please check the appropriate application(s) filed or to be filed with the City:

- | | |
|---------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| <input type="checkbox"/> Adjustment (Minor-Type 2) | <input type="checkbox"/> Home Occupation (Type 2) |
| <input type="checkbox"/> Conditional Use (<i>Admin</i> or <i>Minor</i> Modification) | <input type="checkbox"/> Land Division (Partition or Subdivision) |
| <input type="checkbox"/> Design Review (Type 2) | <input type="checkbox"/> Loading Determination |
| <input checked="" type="checkbox"/> Director's Interpretation | <input type="checkbox"/> Parking Determination |
| <input type="checkbox"/> Flexible Setback (Type 2) | <input type="checkbox"/> Tree Plan (Type 2) |
| <input type="checkbox"/> Other Application Type _____ | |

2. Below, please sign and date in response the following statement:

I, Dana L. Krawczuk (PRINT NAME), as applicant or legal representative of the applicant applying for: a Director's Interpretation Application (APPLICATION DESCRIPTION), Hereby announce my intention to forgo the Pre-Application requirement identified by the City of Beaverton Development Code. By signing this form, I voluntarily assume all risks, liabilities and damages and shall further hold harmless the City of Beaverton against any and all risks, liabilities and/ or damages that may arise from the final action(s) issued by the City in response to the application(s) identified above.

Signed by: Date: 11-4-19

**LIFE TIME'S
DIRECTOR'S INTERPRETATION APPLICATION NARRATIVE**

I. SUMMARY INFORMATION

Applicant/
Property Owner: Megan Eaton
LTF Real Estate Company, Inc. ("Life Time" or "Applicant")
2902 Corporate Place
Chanhassen, MN 55317
952-401-2477
MEaton@lt.life

Applicant's
Representative: Dana Krawczuk
Stoel Rives LLP
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204
(503) 294-9218
dana.krawczuk@stoel.com

Site Location: North of Highway 26, west of SW Cedar Hills Boulevard and South of SW Barnes Road

Legal Description: Tax Lot 1700 on Washington County Assessor's Map 1S103A. Limited street and utility work off-site on 1525 SW Choban Lane (Washington County Assessor's Map 1S103BA, Tax Lots 1300, 1400 and 2300) (the "Property")

Site Size: Approximately 9.136 acres

Neighborhood: Central Beaverton NAC

Zoning: Corridor Commercial (CC)

Case Type: Director's Interpretation

Procedure: Type II

Proposal: Request for alternative interpretations that as applied to the Property, either the Sunset Station and Barnes Road PUD vested prior to the November 5, 2019 expiration date, or that if the PUD expires it has no impact on the approved Life Time Project.

II. INTRODUCTION AND SUMMARY OF REQUESTED INTRPRETATIONS

The City has concluded that the Sunset Station and Barnes Road PUD vested prior to the November 5, 2019 expiration date. This Director's Interpretation relates to the vested status of the Sunset Station and Barnes Road PUD, as applied to the Property and Life Time's Project.

The Code provides for alternative means for demonstrating that development authorized by the Sunset Station and Barnes Road PUD has commenced, thereby vesting that decision so that it does not expire on November 5, 2019. As applicable here, the change in use from vacant property to construction of a parking facility on October 10, 2019 as well as the substantial construction of the parking facility's guard structure on October 23, 2019 both qualify as alternative basis for confirming that development that vests the PUD has commenced. BDC 50.90.3B.1 and 2.

If, in the alternative, the PUD expires on November 5, 2019, that expiration has no impact on Life Time's Approval. The PUD includes factual predicates related to trip generation and traffic mitigation which were relied upon and applied to Life Time's Applications, which was appropriate because Life Time's Applications were submitted and approved prior to November 5, 2019. A change in factual circumstances upon which Life Time's Approval was based, such as the expiration of the PUD, does not undermine or otherwise have any impact on Life Time's Approval.

III. BACKGROUND: PIROR APPROVALS

Life Time received approval for a new recreation facility, co-working office use, structured and surface parking and associated on- and off-site improvements ("Life Time's Project," the "Project" or "Life Time's Approval") on August 13, 2019. APP 2019-0002/DR2018-0128, LD2019-0008, LO2018-0005, SDM2018-0004 and TP2018-0009. Life Time's Project's land use applications were submitted on September 5, 2018 and April 3, 2019 (collectively, "Life Time's Applications"). The design review element of the Project, APP 2019-0002/DR2018-0128 has been appealed to the Oregon Land Use Board of Appeals. LUBA 2019-079.

Life Time's Project is located within the Sunset Station and Barnes Road Planned Unit Development, which was approved by the City as CU2013-0003/ORD 2337 on November 5, 2013 (the "PUD" or "Sunset Station and Barnes Road PUD"). The Sunset Station and Barnes Road PUD assumed a range of authorized uses and densities upon which trip generation assumptions were based and transportation improvements that are required over the course of development of the entire PUD were identified and conditioned. No development was approved by the PUD. The term of the PUD has been extended twice (EXT2015-0004 and EXT2017-0003), and as extended the PUD will expire on November 5, 2019 unless development authorized by the PUD has commenced and vests the approval.

Property within the Sunset Station and Barnes Road PUD owned by the J. Peterkort Company received a conditional use and design review type three approval to construct a parking facility that includes a surface parking lot, guard structure, and associated site improvements through CU2018-0023/DR2018-0167 on March 13, 2019 (the "Sunset Surface Parking Approval"). It was not appealed and became final on April 9, 2019.

Construction on the Sunset Surface Parking Approval is underway and ongoing. The guard structure's foundation permit was issued on October 10, 2019 pursuant to permit number

BP2019-2788. The guard structure's foundation, which includes the structure's footings, has been completed, as evidenced by the City's approval of the foundation inspection on October 23, 2019.

IV. COMPLIANCE WITH DIRECTOR'S INTERPRETATION APPROVAL CRITERIA (BDC 40.25.15.C)

The requested interpretations meet the approval criteria for Director's Interpretation, as demonstrated below.

40.25.15. Application.

There is a single Director's Interpretation application which is subject to the following requirements.

1. Director's Interpretation.

A. Threshold. An application for Director's Interpretation shall be required when one or more of the following thresholds apply:

1. A request that the Director interpret the Development Code in writing.

** * **

C. Approval Criteria. In order to approve a Director's Interpretation application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. The proposal satisfies the threshold requirements [in BDC 40.25.15.1.A] for a Director's Interpretation application.

Response: This application is a written request that the Director interpret the Code, in satisfaction of BDC 40.25.15.A.1.

2. All City application fees related to the application under consideration by the decision making authority have been submitted.

Response: This application is accompanied by the required application fees.

3. That the interpretation is consistent with the City's Comprehensive Plan and other provisions within the Development Code. [ORD 4584; June 2012]

Response: The requested interpretations are consistent with the Beaverton Development Code ("BDC" or "Code") provisions in Section 50.90.3 and BDC Chapter 90 and the Sunset Station and Barnes Road PUD, as detailed below.

Development authorized by the PUD has commenced, so the Sunset Station and Barnes Road PUD will not expire on November 5, 2019. The PUD has vested because prior to November 5, 2019 commencement of development occurred by (A) completing the guard structure's footings qualifies as substantial construction which vests the PUD pursuant to BDC 50.90.3.B.2; and (B) in the alternative, the change in use from vacant property vests the PUD pursuant to BDC 50.90.3.B.1. In the alternative, even if the Sunset Station and Barnes Road PUD expires on November 5, 2019, Life Time's Project is not impacted by the expiration.

1. The Sunset Station and Barnes Road PUD has Vested Pursuant to BDC 50.90.30.B because Development Authorized by the PUD has Commenced.

A. PUD Vesting Based upon Substantial Construction. BDC 50.09.3.B.2.

The Code describes when a land use decision such as the PUD expires, and what is required to vest the approval through the commencement of development. BDC Section 50.90 provides:

“3. A decision shall expire according to Section 50.90.1. unless one of the following occurs prior to the date of expiration: . . .

“B. The development authorized by the decision has commenced as defined herein.

“1. The use of the subject property has changed as allowed by the approval;

“2. In the case of development requiring construction, a construction permit has been issued and substantial construction pursuant thereto has taken place; or

“3. In the case of development authorized to be done in phases, each phase must be commenced within the time specified in the approval, or within two (2) years of completion of the prior phase if no time is specified.”

(Emphasis added)

Chapter 90 of the Code defines “substantial construction,” which is an element of vesting pursuant to 50.90.3.B.2, as follows:

“Providing there are buildings on the site, the completion of construction of footings for the building where the principal use will take place shall constitute substantial construction. In the case of a land division, substantial construction shall be deemed to have taken place when vehicular access and utility provision to the resulting lots or parcels is achieved through the grading, coring and rocking of the proposed streets along with installation of pipes and utility structures.”

(Emphasis added)

The October 23, 2013 staff report for the Sunset Station and Barnes Road PUD (CU2013-0003/ORD 2337) explains:

“[A]n approval of the PUD will establish the range of necessary mitigation measures to the transportation system in the area. In order to act on the entitlements granted by thus [sic] PUD on the specific parcels, the property owner will be required to submit appropriate land use application in the future which demonstrate how the proposed development will meet the Development Code in effect at the time of the application submittal and the conditions of CU 2013-0003. . . . If CU 2013-0003 is approved, once a subsequent development approval is granted, and substantial construction as defined in Chapter 90 of the Development Code has taken place, the PUD and associated transportation trips will be vested for the full build out of the PUD area.”

(Emphasis added)

In other words, staff explained that all property within the PUD, regardless of its development status, will be vested in the PUD’s assumed trip generation and transportation mitigation measures upon substantial construction on any parcel within the PUD. The City reiterated this interpretation of the PUD and BDC in its November 4, 2019 letter.

The applicant in the Sunset Surface Parking Approval intended to vest the PUD pursuant to BDC 50.90.3.B.2 through substantial construction of the guard structure element of the surface parking facility. The City agreed with and facilitated this vesting strategy by carefully crafting condition of approval (“COA”) 30 of the Sunset Surface Parking Approval. Typically, building permits, including a foundation permit, can be issued only following site development permit issuance. However, in COA 30 the City modified that typical permitting sequence and allowed for a foundation only permit, the critical permit required in order to complete footings and therefore vest the PUD, to be issued prior to site development permit issuance. Specifically, Sunset Surface Parking Approval COA 30 provides:

“B. Prior to building permit issuance for a building, the applicant shall: . . .

“30. Submit a complete site development application and obtain the issuance of site development permit from the Site Development Division. A foundation only permit for the guard structure may be issued prior to full Site Development Permit issuance if the City’s review is complete and subject only to outside only to outside agency permit issuance required for full Site Development Permit issuance. Not additional permits may be issued prior to full Site Development Permit issuance. (Site Development Div/JJD)”

(Emphasis added)

The guard structure’s foundation permit was issued on October 10, 2019 pursuant to permit number BP2019-2788. The guard structure’s foundation, which includes the structure’s footings, has been completed, as evidenced by the City’s approval of the foundation inspection on October 23, 2019. Completing the guard structure’s footings satisfies the Code’s definition of substantial

construction, and that substantial construction occurred prior to the PUD’s expiration on November 5, 2019. Accordingly, the Sunset Station and Barnes Road PUD vested on October 23, 2019 pursuant to BDC 50.90.3.B.2. The City so concluded in its November 4, 2019 letter. Through this application, Life Time specifically requests that the Director interpret the Code so that the PUD vesting applies to Life Time’s Property.

B. In the Alternative, PUD Vesting Based upon Change in Use. BDC 50.09.3.B.1.

BDC 50.90.3.B provides alternative ways for demonstrating that development authorized by a decision has commenced and therefore does not expire. The October 23, 2013 Sunset Station and Barnes PUD staff report and November 4, 2019 City letter analyzed BDC 50.90.3.B.2, which provides that development commences upon substantial construction, as detailed above. However, the PUD can also vest pursuant to BDC 50.90.3.B.1.

The order approving the PUD explains that the request is “to include allocation of residential units and commercial/office square footages for the eight identified parcels. No new development or physical improvements are proposed in conjunction with this Planned Unit Development.” Order 2337, page 1, emphasis added. Because no development was authorized by the PUD approval, construction is not required by the PUD approval and BDC 50.90.3.B.1 is a means for vesting. Specifically,

“3. A decision shall expire according to Section 50.90.1. unless one of the following occurs prior to the date of expiration:

...

“B. The development authorized by the decision has commenced as defined herein.

“1. The use of the subject property has changed as allowed by the approval;”

(emphasis added)

At the time of the Sunset Station and Barnes PUD was approved, all of the property within the PUD was described as “vacant.” PUD October 23, 2013 staff report, page 4. BDC 10.15.1 requires that no change in use of a property may be commenced unless it is in conformity with the regulations of the Code. As applied here, the Sunset Surface Parking approval allows the use to change to a parking facility, and determined that use was allowed by the PUD. The use of property changed from vacant once construction of the parking facility commenced on October 10, 2019 in accordance with the Sunset Surface Parking Approval and issued foundation permit number BP2019-2788. Based upon this change of use prior to November 5, 2019, the Sunset Station and Barnes Road PUD vested pursuant to BDC 50.90.3.B.1 on October 10, 2019. Through this application, Life Time specifically requests that the Director interpret the Code so that the PUD vesting applies to Life Time’s Property.

2. In the Alternative, if the PUD Expires on November 5, 2019, Life Time's Project is Not Impacted by the Expiration.

In the alternative, even if the Sunset Station and Barnes Road PUD expires on November 5, 2019, Life Time's Project is not impacted by the expiration. To analyze the potential consequences of the PUD expiring on Life Time's Project, the nature of the PUD must be understood. As explained on page 1 of the Project's July 3, 2019 staff report:

“The subject site is part of the Sunset Station and Barnes Road PUD (CU2013-0003) which was approved in 2013 and involved extensive transportation modeling and trip analysis based on a dense development framework. The entirety of the Sunset Station and Barnes Road PUD is intended to be a high density development with a mix of commercial and residential uses spread over approximately 90-acres located on the north and south sides of SW Barnes Road [reference to map deleted]. While the PUD assumed a generic mix of uses in order to generate trip assumptions for the traffic analysis, the intention of the PUD is not to dictate the uses proposed on any specific site. Development can be proposed so long as it is consistent with the zoning district requirements and the trip assumptions for the overall PUD.

“The conditions of approval for the PUD identify all of the transportation improvements that are required over the course of development of the entire PUD. As each phase of development is proposed a mini-Transportation Impact Analysis (TIA) must be completed to determine what improvements are required for the specific development being proposed. The applicant has performed the required traffic analysis to show compliance with the PUD assumptions and identified the required mitigation measures from the PUD condition list....”

(Emphasis added)

The Sunset Station and Barnes Road PUD established factual assumptions for trip generation and mitigation measures for subsequent development within the PUD. At the time Life Time's Applications were filed and at the time the Project was approved, the PUD was effective. In approving Life Time's Project, the City appropriately relied upon and applied the transportation-related factual predicates in the PUD to Life Time's Applications.

If the PUD expires and the trip assumptions and mitigation measures are no longer vested, then that is a change in circumstances for the land within the PUD. Meaning, an application for development within the geographic area of the (for the sake of argument) expired-PUD would no longer be able to rely upon the trips vested by the PUD, but those subsequent applications would also not be subject to the PUD's COAs related to traffic mitigation. However, the change in factual assumptions related to an expired PUD have no bearing on the approved Life Time Project. Determining otherwise would be a collateral attack.

A hypothetical analogous example is instructive. A discretionary land use application for development X assumes that an adjacent development that had been previously approved but not yet built (development Y) would generate Z amount of traffic impact as background traffic for

development X. If, following the approval of development X, the adjacent development Y's entitlements expire before development Y is built and the Z trips never actually impact the transportation system, that change in factual circumstances has no impact on the approved development X decision. Development X is not somehow relieved from its transportation obligations and development X's land use approval is not modified or undermined. There was simply a change in facts post-approval. Going forward, new development applications, including a new application on the property where development Y had been approved, would not need to assume the Z trips as background traffic.

The issue presented here is similar to that in *Hoffman v. City of Lake Oswego*, LUBA No. 90-067, 20 Or LUBA 64 (1990). In *Hoffman*, the city approved a multiphase PUD¹ and at the time of the initial approval determined that school facilities and the transportation system were adequate to accommodate the development as conditioned. Years later when the sixth phase of development was under review by the city, an opponent argued that the facts had changed since the original PUD approval and that school facilities and the transportation system were no longer adequate. LUBA rejected these arguments and held that as long as a subsequent phase is consistent with the overall approval, "there is no requirement that the factual predicates underlying the original [PUD] approval be reexamined when the anticipated phases are approved." *Id.* at 71-72. In a subsequent opinion that addressed the extension of the same PUD at issue in *Hoffman*, LUBA elaborated on its initial holding by explaining that so long as the original PUD approval remained valid, a subsequent implementing land use application need only be consistent with the PUD and the applicant need not "address changes in factual circumstances that might have prevented [PUD] approval in the first place. In other words, during the time in which the [PUD] is in effect, the [PUD] rather than the comprehensive plan standards that were applied in approving the [PUD], governs [a subsequent implementing] approval." *Westlake HOA v. City of Lake Oswego*, 25 Or LUBA 145 (1993).

Applying *Hoffman* and *Westlake* to this PUD and Approval, the only relevance the PUD's effectiveness has on Life Time's Approval was whether the PUD was valid during the review of Life Time's Project. Life Time's Project was applied for and approved while the PUD was effective. Life Time's Project demonstrated compliance with all of the standards and criteria that were effective at the time the applications were submitted, including the factual predicates in the Sunset Station and Barnes Road PUD. As an independent land use decision, the effectiveness of Life Time's Project approval stands on its own, regardless of whether the PUD subsequently expires or is vested. Once approved, the vesting status of Life Time's Approval depends only upon whether substantial construction occurs within the term of that approval.

¹ *Hoffman* and *Westlake* refer somewhat interchangeably between the terms PUD and ODPS. For consistency, this application refers to the initial application at issue in those decisions as the PUD.

4. When interpreting that a use not identified in the Development Code is a Permitted, Conditional, or Prohibited Use, that use must be substantially similar to a use currently identified in the subject zoning district or elsewhere in the Development Code. [ORD 4584; June 2012]

Response: This criterion is not applicable because the interpretation does not request a similar use determination.

5. The proposal contains all applicable application submittal requirements as specified in Section 50.25.1. of the Development Code.

Response: This application is accompanied by all applicable application submittal requirements, including: (A) an original application form signed by the Applicant/Property Owner; (B) a written narrative that addresses the applicable approval criteria; (E) a pre-application conference waiver and hold harmless agreement; (G) the applicable fee. The Director's Interpretation request relates to previously approved applications, so the submittal requirements in Section 50.25.1 (D) and (F) are not applicable.

6. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

Response: Permits needed to complete the construction of the approved Project include items such as a site development permit and building permit. These permits will be submitted in the property sequence, as described in the conditions of approval of Life Time's Approval.