



Be  
Community Development Department  
Planning Division  
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Beaverton, OR 97006  
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**To:** Interested Parties  
**From:** City of Beaverton, Community Development Department  
**Date:** February 5, 2020  
**Subject:** **DI2019-0003 Life Time Fitness Director's Interpretation**

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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, 4<sup>th</sup> 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 9<sup>th</sup> Ave, Suite 3000  
Portland, OR 97205

APPLICABLE

Director's Interpretation - Development Code Section  
40.25.15.1.C

CRITERIA:

AUTHORIZATION:

  
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>120<sup>th</sup> Day*</u>	<u>365<sup>th</sup> 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. Applicant Materials**

- 1.1 Materials Submitted by Applicant

### **Exhibit 2 Materials Submitted by the Public**

- 2.1 Letter from Timothy V. Ramis, dated December 23, 2019
- 2.2 Email from K. Anne Conrad-Antoville, dated December 24, 2019
- 2.3 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.

Received  
Planning Division  
11-21-19



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](http://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 criterions 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](mailto: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.



CITY OF BEAVERTON  
 Community Development Department  
 Planning Division  
 4755 SW Griffith Drive / PO Box 4755  
 Beaverton, OR, 97076  
 Tel: (503) 526-2420 Fax: (503) 526-3720  
 www.beavertonoregon.gov

**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.

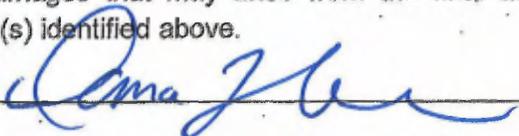
Please respond to the following:

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 PUD<sup>1</sup> 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.

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<sup>1</sup> *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.

December 23, 2019

Via E-mail: [janaf@beavertonoregon.gov](mailto: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

**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 2.3**

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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[mike@hathawaylarson.com](mailto:mike@hathawaylarson.com)  
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**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.”<sup>1</sup> *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

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<sup>1</sup> 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

<b>Zoning</b>	Urban High Density (R1), Corridor Commercial (CC), and Station Community-Sunset (SC-S)	
<b>Current Development</b>	Vacant	
<b>Site Size &amp; Location</b>	79.4 Acres	
<b>NAC</b>	Central Beaverton	
<b>Surrounding Uses</b>	<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

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<b><u>Attachment A:</u> Facts and Findings for EXT2017-0003 Sunset Station &amp; Barnes Road PUD Second Time Extension.</b>	5-7
<b><u>Attachment B:</u> Conditions of Approval</b>	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)

SPACE RESERVED FOR WASHINGTON CO. RECORDERS USE

**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 (116<sup>th</sup> 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 117<sup>th</sup> Avenue and 116<sup>th</sup> 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 116<sup>th</sup> Avenue to 117<sup>th</sup> Avenue. Extend a second westbound receiving lane. Construct a bike lane and sidewalk from 116<sup>th</sup> Avenue to 117<sup>th</sup> 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:

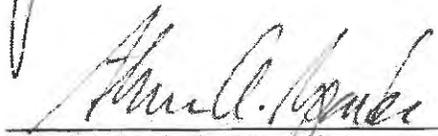
**AYES:** Doukas, Maks, Klene, Nye, Winter, and Overhage.  
**NAYS:** None.  
**ABSTAIN:** None.  
**ABSENT:** Stephens.

Dated this 5<sup>th</sup> 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 28<sup>th</sup> 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 CITY COUNCIL OF  
THE CITY OF BEAVERTON, OREGON**

IN THE MATTER OF AN APPEAL OF THE PLANNING )	ORDER NO. 2720
COMMISSION'S DECISION TO APPROVE DR2018- )	APP2019-0002 APPEAL OF LIFE TIME FITNESS
0128 LIFE TIME FITNESS BEAVERTON ON TAX LOT )	BEAVERTON ON TAX LOT 1700 ON WASHINGTON
1700 ON WASHINGTON COUNTY ASSESSOR'S MAP )	COUNTY ASSESSOR'S MAP 1S103A (DR2018-0128)
1S103A. )	
)	
)	
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The matter came before the City Council on July 16, 2019 on appeal of the June 14, 2019 Planning Commission decision to approve the applicant's Design Review Three application (DR2018-0128). The appellant asked the Council to reverse the Planning Commission's decision and deny DR2018-0128 Life Time Fitness Beaverton. The specific proposal is presented in Exhibits to Agenda Bill 19199, dated July 2, 2019. The applicant proposes construction of a 140,000 square foot athletic facility, 45,000 square foot office, outdoor pool area, structured and surface parking, and associated site improvements.

The subject site is located north of Highway 26, west of SW Cedar Hills Boulevard, and south of SW Barnes Road. It comprises Tax Lot 1700 on Washington County Assessor's Map 1S103A. Limited street and utility work are proposed off-site on 165 SW Cedar Hills Boulevard (Washington County Assessor's Map 1S103AB, Tax Lot 200) and 1525 SW Choban Lan (Washington County Assessor's Map 1S103BA, Tax Lots 1300, 1400 and 2300). The primary

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 provided 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 116<sup>th</sup> 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 116<sup>th</sup> 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 116<sup>th</sup> 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 Finaled 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 1<sup>st</sup> 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.

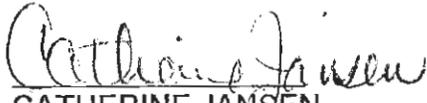
**ABSENT:** None.

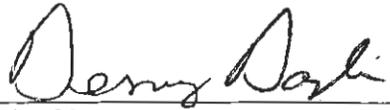
Dated this 13th day of August, 2019.

CITY COUNCIL  
FOR BEAVERTON, OREGON

ATTEST

APPROVED:

  
CATHERINE JANSEN  
City Recorder

  
DENNY DOYLE  
Mayor