

**FINDINGS OF FACT and FINAL ORDER  
TYPE III DECISION**

**DATE:** May 2, 2022

**FILE NO.:** 21-061 AP

**PROJECT NAME:** Deer Meadows Subdivision Appeal

**APPLICANT/OWNER:** Roll Tide Properties, Corp.

**PHYSICAL ADDRESS:** 40808 and 41010 Highway 26

**LEGAL DESCRIPTION:** T2 R5E Section 18CD, Tax Lots 900 and 1000

**FINDINGS OF FACT**

**GENERAL FINDINGS**

1. The applicant submitted initial application materials on March 31, 2021. The submission was inadequate and City staff provided the applicant an incompleteness letter on April 13, 2022. The applicant then submitted additional information on June 11, 2021, and June 17, 2021. In a letter dated June 11, 2021, the applicant agreed to toll the 120-day clock until July 27, 2021. The original 120-day clock deadline was November 24, 2021.
2. On September 27, 2021, the Planning Commission held a public hearing on the Deer Meadows Subdivision and decided to create an open record period prior to deliberating on the subdivision request at a special meeting scheduled for November 8, 2021. The first open record period closed on Monday, October 11 at 4 pm. During the first open record period, anyone could submit additional written information for the Planning Commission to consider. The second open record period closed on Monday, October 18 at 4 pm. During the second open record period, parties could only submit information that rebutted or responded to information that was submitted during the first open record period. The third open record period closed on Monday, October 25 at 4 pm. This third open record period was reserved solely for the applicant to submit their final written argument.
3. With the creation of the open record period the applicant agreed to extend the 120-day clock by an additional 42 days. The 120-day clock deadline was then extended to January 5, 2022.

4. On November 8, 2021, the Planning Commission denied the Deer Meadows subdivision proposal with a vote of 5:0. The final order (i.e., written decision) was signed by Chairman Crosby and issued on November 18, 2021.
5. On November 24, 2021, the applicant requested to extend the 120-day clock deadline by an additional 27 days to February 1, 2022, to allow the City Council to hear an appeal on January 18, 2022.
6. The applicant filed an appeal of the Planning Commission decision on November 30, 2021, within 12 days of the Planning Commission decision as required by Section 17.28.10.
7. The appeal hearing was originally scheduled for January 18, 2022, but after publication of the staff report on January 11, 2022, the applicant asked to move the hearing date. The City of Sandy granted this request and postponed the hearing to February 22, 2022. With postponement of the hearing, staff sent a revised neighborhood notice on January 12, 2022, and completed a revised legal notice in the Sandy Post for February 9, 2022.
8. At the hearing on February 22, 2022, the applicant asked for a continuance to April 18, 2022. The primary reason for the continuance request was so that the applicant could modify the proposal and then allow staff to modify the staff report for Council's review. The City Council granted the continuance to April 18, 2022.
9. The applicant submitted additional material on March 14, 2022. The staff report that was reviewed by the City Council at the hearing on April 18, 2022, was reflective of the modifications as submitted by the applicant.
10. The subject site is approximately 15.91 acres. The site is located at 40808 and 41010 Highway 26.
11. The parcel has a Comprehensive Plan Map designation of Village and a Zoning Map designation of R-1, Low Density Residential; R-2, Medium Density Residential; and C-3, Village Commercial.
12. With modifications received on March 14, 2022, the applicant, Roll Tide Properties Corp., requested approval for a 30-lot subdivision. The development proposal included two partial street extensions and the creation of two new streets. The applicant proposed 28 lots of Low Density Residential (R-1) that would contain single family homes or duplexes, one small lot (10,036 square feet) of Medium Density Residential (R-2) that would likely contain multi-family housing, and one large lot (7.35 acres) with a combination of Medium Density Residential (R-2) and Village Commercial (C-3) that would likely contain multi-family housing. The proposed 28 lots with R-1 zoning range in size from 5,500 square feet to 13,193 square feet. The applicant proposed to retain 48 existing trees and proposed to remove the remainder of the trees from the site.
13. The exact number of multifamily units was not determined at the time of the subdivision request as the applicant wanted to process the multi-family development in a subsequent

design review application. However, the applicant claims the number of multifamily dwelling units on the R-2 zoned land will be between 38 dwelling units and 66 dwelling units. The C-3 zoned land would likely contain a mix of commercial and residential development, and the exact number of multifamily dwelling units is unknown at this time.

14. The City of Sandy provided the following notices for this appeal:
  - A. Notification of the appeal was mailed to affected property owners within 500 feet of the subject property on December 30, 2021.
  - B. A legal notice was published in the Sandy Post on January 5, 2022.
  
15. The City of Sandy provided the following notices with File No. 21-014 SUB/TREE:
  - A. A transmittal was sent to agencies asking for comment on August 2, 2021.
  - B. Notification of the proposed application was mailed to affected property owners within 300 feet of the subject property on August 10, 2021.
  - C. A supplemental notice regarding the Planning Commission meeting was mailed to affected property owners within 300 feet of the subject property on August 24, 2021.
  - D. A legal notice was published in the Sandy Post on September 15, 2021.

**BASIS FOR DENIAL 1: The application does not meet subdivision criteria 17.100.60(E)(1)**

16. Sandy Development Code (SDC) Section 17.100.60(E)(1) requires a subdivision to be “consistent with the density, setback, and dimensional standards of the base zoning district.” Each base zoning district (R-1, R-2, and C-3) requires residential development to comply with SDC Chapter 17.82 (Special Setbacks on Transit Streets).

First, the Preliminary Plat Map (Exhibit C, Sheet C2) details the setbacks for Lots 2 and 27-31 and shows the front setback facing the local street or public access lane, instead of the Transit Street as required by SDC Chapter 17.82. The modified subdivision plan (Exhibit JJJ) has modified Lots 27-31 to be numbered Lots 25-29, but Sheet C2 was not modified by the applicant so staff could make a different conclusion than was made in the staff report published for the hearing on February 22, 2022.

Second, Sheet C2 does not show the lots that abut Highway 26 face Highway 26 as required by SDC Chapter 17.82, nor does the plan set detail frontage improvements along Highway 26 as required by Chapter 17.86 (Parkland and Open Space).

Third, because the application does not propose extending Dubarko Road to connect with Highway 26, the lots that would otherwise abut Dubarko Road do not have the required frontage to Dubarko Road as required by Chapter 17.82.

Fourth, by not proposing Dubarko Road or parkland dedication, some of the proposed lots are in the required right-of-way for Dubarko Road and located across required parkland.

For these reasons, the application does not meet approval criteria 17.100.60 (E)(1).

**BASIS FOR DENIAL 2: The application does not meet subdivision criteria 17.100.60(E)(2)**

17. SDC Section 17.100.60(E)(2) requires a subdivision to be “consistent with the design standards” set forth in Chapter 17.100. For the following reasons, the application does not comply with Section 17.100.70 or Section 17.100.100. Accordingly, the application does not meet approval criteria 17.100.60 (E)(2).

- A. SDC Section 17.100.70 requires a subdivision to comply with the street design standards in the City Transportation System Plan (TSP). The TSP in turn requires Dubarko Road to connect to Highway 26. Because the application does not connect Dubarko Road to Highway 26, the application does not meet the requirements of SDC Section 17.100.70.
- B. The application does not comply with the connectivity standards in SDC Section 17.100.100 (A). By not connecting Dubarko Road to Highway 26, the subdivision does not provide safe and convenient options for cars, bikes, and pedestrians; does not create a logical, recognizable pattern of circulation; and does not spread traffic over many streets so that key streets such as Langensand Road and Highway 211 are not overburdened.
- C. SDC Section 17.100.100 (E) requires the subdivision to provide a future street plan that promotes a logical, connected pattern of streets. Because the application does not connect Dubarko Road to Highway 26, it does not comply with Section 17.100.100(E).
- D. SDC Section 17.100.100 (F) requires streets in the subdivision to connect to other streets within the subdivision and existing streets outside the subdivision. Because the proposed subdivision does not include the continuation of Dubarko Road and proposes two cul-de-sacs and one dead-end public access lane, all of which do not provide connectivity to other streets within the development and to existing and planned streets outside the development, the application does not comply with Section 17.100.100(F).
- E. The application does not include any information on block lengths or information regarding single tier vs double tier blocks. Accordingly, there is not sufficient information on the record to determine the block length and access way requirements in SDC Section 17.100.120 are met. Accordingly, the application does not comply with SDC Section 17.100.120.

**BASIS FOR DENIAL 3: The application does not meet subdivision criteria 17.100.60(E)(3)**

18. SDC Section 17.100.60(E)(3) requires the proposed streets to be connected and consistent with the Comprehensive Plan or official street plan for the City of Sandy. The city’s street plan is shown in Chapter 3, Figure 5 of the TSP and requires Dubarko Road to be extended to and connect with Highway 26. The proposed street pattern therefore is not consistent with the Comprehensive Plan and the city’s standards, including connecting Dubarko Road to Highway 26.

19. The 2011 Sandy Transportation System Plan (TSP) was adopted by Ordinance 2011-12 as an addendum to the Comprehensive Plan. Exhibit A of Ordinance 2011-12 is the TSP. The TSP

is referenced by ordinance as ‘the transportation element of the City of Sandy Comprehensive Land Use Plan.’ The 2011 TSP includes the official street plan for the City of Sandy (Figure 5). Project M20 in the TSP is the connection of Dubarko Road to Highway 26.

20. On pages 9, 10, and 14 of the project narrative (Exhibit B) the applicant references the City’s TSP and states that the TSP identifies Dubarko Road as a minor arterial. On page 32 of the project narrative (Exhibit B) the applicant claims that subdivision approval criteria 17.100.60 (E)(3) is not clear and objective and therefore the subdivision does not need to meet the Comprehensive Plan or official street plan for the City of Sandy. The applicant also asserts that if the official street plan is in the TSP, it is not sufficiently incorporated into the development code for the purposes of limited land use decisions. However, in the narrative for Bull Run Terrace (File No. 19-050) for the same subject site the same applicant stated, *“As illustrated on the submitted Future Street Plan (Sheet C1), the proposed street system is consistent with the City’s Transportation System Plan and Comprehensive Plan.”* So, with the Bull Run Terrace land use application the applicant conceded that the street system had to be consistent with the City’s Transportation System Plan and Comprehensive Plan to meet criteria 17.100.60 (E)(3). The applicant’s inconsistent understanding of what is the official street plan (i.e., the City’s TSP) is illogical and conflicting even in the applicant’s project narrative. Additionally, in a previous TIS from Ard Engineering (dated September 28, 2020) on page 24 the applicant’s traffic engineer referenced the requirement for the Dubarko Road connection by stating, “it is the completion of the city’s planned connection of Dubarko Road to Highway 26.” Furthermore, the proposal is not consistent with OAR 660-012-0045, which requires that local governments implement their TSP. By not providing the connection of Dubarko Road to Highway 26 in the proposal the subdivision request does not meet approval criteria 17.100.60 (E)(3).

**BASIS FOR DENIAL 4: The application does not meet subdivision criteria 17.100.60(E)(4)**

21. SDC Section 17.100.60(E)(4) requires that traffic volumes shall not exceed average daily traffic (ADT) standards for local streets as detailed in Chapter 17.10, Definitions. The applicant’s project narrative (Exhibit B) and the applicant’s Traffic Impact Study (Exhibit E) do not evaluate ADT on local streets. The applicant’s project narrative on page 32 states, “As detailed in the submitted Traffic Study traffic volumes on local streets are not projected to exceed ADT standards. This criterion is met.” Staff cannot find an evaluation of ADT standards in the submitted TIS. Accordingly, there is not sufficient information in the record to determine that Section 17.100.60(E)(4) is met. Therefore, the application does not comply with Section 17.100.60 (E)(4).

**BASIS FOR DENIAL 5: The application does not meet subdivision criteria 17.100.60(E)(5)**

22. Section 17.100.60(E)(5) requires that adequate public facilities are available or can be provided to serve the proposed subdivision. City water, sanitary sewer, and stormwater are available or will be constructed by the applicant to serve the subdivision. However, the proposal does not meet approval criteria 17.100.60 (E)(5) as explained in A through C, below:

- A. Dubarko Road. The application does not propose the continuation of Dubarko Road to connect with Highway 26. This is inconsistent with the 2011 TSP and will create a safety concern by increasing trips to other streets in Sandy that are not designed to accommodate additional traffic without the connection of Dubarko Road to Highway 26. As stated by the City of Sandy Transportation Engineer (Exhibit P), the Deer Meadows subdivision application should be denied based on the inadequacy of the TIS and because the applicant does not propose the connection of Dubarko Road to Highway 26. By not providing the Dubarko Road connection to Highway 26 the subdivision fails to incorporate a key project from the 2011 TSP and therefore fails to provide adequate public facilities for transportation. Furthermore, the proposal is not consistent with OAR 660-012-0045, which requires that local governments implement their TSP.
- B. Parkland Dedication. Pursuant to 17.86.10 of the Development Code, new residential subdivisions “shall be required to provide parkland to serve existing and future residents of those developments.” The proposal includes dedication of 1.08 acres of parkland which is 0.15 more acres than the code require. However, directly west of the subject property is undeveloped land owned by the City of Sandy that has long been reserved for the eventual development of Deer Pointe Park. The 1997 Parks Master Plan designated Deer Pointe Park as a community park, and the Location and Development Polices section of the Plan states that community parks should be 20 acres or more. The Deer Meadows subdivision proposes only 0.12 acres (5,292 square feet) of parkland dedication abutting Deer Pointe Park, therefore the proposed parkland dedication related to the Deer Meadows subdivision is inconsistent with the 1997 Parks Master Plan. Staff recognizes that outside of the City of Sandy purchasing land, there are practical and legal impediments to requiring an applicant to dedicate enough acreage to accommodate a 20-acre community park. Staff finds that a neighborhood park would be a more reasonable solution. Based on the 1997 Parks Master Plan, a neighborhood park is two to seven acres. The existing land the City owns for Deer Point Park is 1.40 acres. However, only 0.12 acres (5,292 square feet) of the proposed parkland dedication abuts Deer Pointe Park, which means the proposal would only expand Deer Pointe Park to 1.52 acres which does not satisfy the 1997 Parks Master Plan.
- C. Highway 26 frontage improvements. As explained by the Public Works Director (Exhibit R) the site plan does not depict frontage improvements (curbs, sidewalks, street lighting, street trees, storm drainage, etc.) on the Highway 26 frontage of the site. Frontage improvements along Highway 26 are required by Section 17.84.50(F)(1) and Section 17.84.30(A). Section 17.84.50(F)(1) states, “Where a development site abuts an existing public street not improved to City standards, the abutting street shall be improved to City standards along the full frontage of the property concurrent with development.” Because the application does not include frontage improvements along the Highway 26 frontage, it does not comply with SDC 17.84.30(A) and as such does not provide adequate public transportation facilities as required by SDC 17.100.60(E)(5).

**BASIS FOR DENIAL 6: The application does not meet subdivision criteria 17.100.60(E)(6)**

23. SDC Section 17.100.60(E)(6) requires all proposed improvements to meet City standards. A detailed review of proposed improvements is contained throughout the staff report and record for File No. 21-014 SUB/TREE and File No. 21-061 AP. Some of the required improvements could be satisfied with conditions of approval, but several of the required improvements can only be satisfied by a substantial modification to the subdivision proposal. As described in these findings, the subdivision lacks the following substantial improvements that are required by the related city standards: 1) Dubarko Road connecting to Highway 26; 2) Highway 26 frontage improvements; and 3) Parkland dedication. The proposal does not meet approval criteria 17.100.60 (E)(6).

**BASIS FOR DENIAL 7: The application does not meet the parkland dedication requirements in Chapter 17.86**

24. The applicant proposed 1.08 acres (47,186 square feet) of parkland dedication with the revised plat (Exhibit JJJ) in two separate tracts. Section 17.86.10 contains a clear and objective formula for determining the amount of land required to be dedicated. The formula is acres = proposed units x (persons/unit) x 0.0043. For the 28 single family homes, acres =  $28 \times 3 \times 0.0043 = 0.36$  acres. For the maximum development of 66 multifamily units, acres =  $66 \times 2 \times 0.0043 = 0.57$  acres. Combined, this totals 0.93 acres.

25. The parks dedication requirement is based on the impact from the number of people anticipated to live in the units in the subdivision. Under ORS 197.758(3), a duplex can be constructed on each lot that is intended for a single-family dwelling, and includes two dwelling units, each of which can be occupied by a family (or a number of unrelated persons). Accordingly, each unit of a duplex is treated the same as a separate single-family dwelling for purposes of calculating the amount of land dedicated under Section 17.86.10. However, the application does not include information on the number of duplexes that will be constructed, therefore the city assumes each lot will contain a duplex. In addition, the application does not include information on the number of multifamily units that will be proposed on the land zoned as C-3. Therefore, the calculations related to parkland dedication are speculative as they are based on unverifiable assumptions. As such, there is not sufficient evidence in the record to conclude the parkland dedications meet the requirement in SDC Section 17.86.10.

**BASIS FOR DENIAL 8: The proposal does not meet the requirement for houses to front on the parkland**

26. Section 17.86.20 has a requirement that all homes must front on the parkland. The purpose of having homes front the parkland is to provide eyes on the park and increase safety for park users. The revised plat (Exhibit JJJ) appears to meet this requirement, at least for Deer Pointe Park and Tract A, as Lots 16 – 24 have lot frontages that faces Street A and therefore Deer Pointe Park. However, it is not apparent nor was it detailed by the applicant that the proposed parkland in Tract C would meet this requirement. Lots 12, 13, 22, 23, and 30 abut proposed parkland but do not front Tract C and therefore do not meet SDC Section 17.86.20.

**BASIS FOR DENIAL 9: The proposal was not clear on whether the applicant intended to meet the code requirements regarding parkland preparation prior to dedication**

27. SDC Section 17.86.30 lists the requirements of the developer prior to acceptance of required parkland dedications. The applicant's letter (Exhibit GGG) states: "As noted with submittal of the original Bull Run Terrace application, the applicant continues to extend their offer to assist the city with constructing park improvements in exchange for SDC credits with the current applicant. This arrangement should prove to be the most cost effective way for the city to complete park improvements on both the existing unimproved Deer Pointe Park and the proposed Deer Meadows Park." While staff appreciates and agrees with this statement, it is somewhat misleading as Section 17.86.30 (A)(1) requires the developer to clear, fill, and/or grade all land to the satisfaction of the City. Grading and filling on proposed Tract C will be difficult with tree retention as proposed on the parkland. The application does not include a Phase I Environmental Site Assessment and does not explain how they would meet the clear, fill, and grading requirements prior to land dedication. Accordingly, there is not sufficient information in the record to conclude that Section 17.86.30 is met.

**DECISION:** For the reasons stated above, the City Council **denies** the Deer Meadows subdivision application and upholds the Planning Commission decision.



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Stan Pulliam  
Mayor