

November 30, 2021

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VIA E-MAIL ([PLANNING@CLSANDY.OR.US](mailto:PLANNING@CLSANDY.OR.US)) AND UPS

Mayor Stan Pulliam  
City of Sandy City Council  
Sandy City Hall  
39250 Pioneer Blvd.  
Sandy, OR 97055

RE: Appeal of Sandy Planning Commission (the “Planning Commission”) Final Order in Type III Decision (the “Decision”) on November 30, 2021, City of Sandy File No. 21-014 SUB/TREE (the “Application”)

Dear Mayor Pulliam and City Council Members:

This office represents Roll Tide Properties Corp. (“Roll Tide;” the “Applicant”). This letter and its exhibit are Roll Tide’s appeal of the Decision.

## **1. Introduction.**

This letter addresses the requirements for the appeal of the Decision in Sandy Development Code (the “SDC”) 17.28.10 and 17.28.20. **Exhibit A** to this letter explains why the Decision is incorrect and must be reversed in order to properly apply only clear and objective provisions of the SDC, including the prohibition on the extension of Dubarko Road to a connection with U.S. Highway 26, a “highway with full access control,” which is an exemption in SDC 17.100.100.G.2 to the street connection requirement in SDC 17.100.100.F; the application of parkland dedication requirements in SDC 17.86.10 through a standardless and subjective procedure choosing between dedication and fee-in-lieu payments, a fact ignored by the Decision, in violation of ORS 197.307(4); the proper application of mandatory state law requirements that the City properly incorporate Comprehensive Plan provisions, including the Transportation System Plan (the “TSP”), under ORS 197.195(1) into the SDC in order to apply the Plan and TSP to limited land use decisions, a requirement in effect for thirty years but not yet satisfied by the City; and to properly apply only clear and objective standards, conditions and procedures to residential applications under ORS 197.307(4) and 227.175(2) in order to avoid the effect of discouraging needed housing through unreasonable cost or delay where no clear and objective approval process is available to the Applicant under ORS 197.307(6).

**2. Compliance with SDC 17.28.10.**

**A. SCD 17.28.10.A.** The Decision being appealed is Sandy File No. 21-014 SUB/TREE, the Deer Meadows Subdivision Application.

**B. SDC 17.28.10.B.** The Appeal is timely filed within twelve calendar days of the Notice of Decision. The Notice of Decision is dated November 18, 2021. Twelve calendar days from the Notice date is November 30, 2021. The Appeal is timely filed on November 30, 2021.

**3. Compliance with SDC 17.28.20.**

**A. SCD 17.28.20.A.1.** The Decision being appealed is Sandy File No. 21-014 SUB/TREE. The date of the Decision is November 18, 2021.

**B. SDC 17.28.20.A.2.** Roll Tide is the person seeking review. Roll Tide's interest is that of the Applicant. Roll Tide was a party to the initial proceedings.

**C. SDC 17.28.20.A.3.** The specific grounds for appeal are contained in the Applicant's oral and written testimony to the Planning Commission, this letter and **Exhibit A** to this letter.

**D. SDC 17.28.20.A.4.** The Applicant does not request *de novo* review. The factors for *de novo* review in SDC 17.28.20 are not clear and objective and selection of a *de novo* review violates the requirement of ORS 197.307(4)(a) that procedures be clear and objective.

**E. SDC 17.28.20.A.5.** The required filing fee is \$785.00 (City of Sandy Master Fee Schedule, July 1, 2021; "Planning Charges," Page 2, G. Appeal; Type II to Type IV, \$785.00 City Council Appeal"). The Applicant paid the full appeal fee in November 24, 2021 by credit card (**Exhibit C**, evidence of payment).

**F. SDC 17.28.20.A.6.** The name and mailing address of the entity being appealed is:

Roll Tide Properties Corp.  
P.O. Box 703  
Cornelius, OR 97113

**G.** The City's "Appeal" form is attached as **Exhibit D**.

**4. Other Issues.**

**A.** The Applicant does not waive ORS 197.522(3).

**B.** The Applicant does not waive final written argument under ORS 197.763(6)(e).

**C.** The Applicant objects to a *de novo* review by the City Council in the even the City Council elects to conduct a *de novo* review.

- D.** The only applicable clear and objective SDC standards and criteria are those in effect on the submittal date of the Application under ORS 227.178(3)(a).
- E.** The Applicant has extended the 120-day period in ORS 227.178(1) to February 1, 2022.
- F.** The Applicant is not waiving any needed housing arguments.
- G.** The Appeal addresses each basis for the Decision.

**5. Conclusion.**

The Applicant respectfully requests that the City Council reverse the Decision and approve the Application with only clear and objective conditions of approval.

Very truly yours,



Michael C. Robinson

MCR:jmhi

Enclosures: **Exhibit A** – Reasons for Appeal  
**Exhibit B** – Decision  
**Exhibit C** – Appeal Fee Receipt  
**Exhibit D** – Appeal Form

cc: Mr. Dave Vandehey (*via email*) (*w/enclosures*)  
Mr. Carey Sheldon (*via email*) (*w/enclosures*)  
Mr. Alex Reverman (*via email*) (*w/enclosures*)  
Mr. Ray Moore (*via email*) (*w/enclosures*)  
Mr. Tracy Moore (*via email*) (*w/enclosures*)  
Mr. Tyler Henderson (*via email*) (*w/enclosures*)  
Mr. Mike Ard (*via email*) (*w/enclosures*)  
Mr. Garrett Stephenson (*via email*) (*w/enclosures*)  
Ms. Erin Forbes (*via email*) (*w/enclosures*)  
Mr. David Doughman (*via email*) (*w/enclosures*)  
Mr. Kelly O'Neill, Jr. (*via email*) (*w/enclosures*)

**EXHIBIT A**

Notice of Appeal Statement; Reasons that )  
the City Council Must Reverse the Planning )  
Commission Decision and Approve the ) **STATEMENT OF SPECIFIC**  
Application with Clear and Objective ) **GROUNDNS FOR APPEAL AS**  
Conditions of Approval (Sandy File No. 21- ) **REQUIRED BY SANDY**  
014 SUB/TREE). ) **DEVELOPMENT CODE 17.28.20.A.3**

**1. Introduction.**

This firm represents Roll Tide Properties Corp., the Applicant in the above-referenced file. This Letter serves as the Applicant’s notice of appeal of the Sandy Planning Commission’s (the “Commission”) denial (the “Decision”) of the proposed Deer Meadows Subdivision, which is to be located at 40808 and 41010 Highway 26 and consists of 32 lots (the “Project”). The Applicant’s specific bases for appeal are set forth below. This appeal is timely submitted within 12 calendar days of the Commission’s Decision, which was rendered on November 18, 2021.

**2. Legal Framework.**

Before responding to the Commission’s specific reasons for denial, we provide the Council with an overview of the legal framework that is relevant in this case, which makes this appeal a bit different from those the Council may have considered before. As the Decision explains, in 2019 the Applicant proposed a comprehensive plan/zone amendment and related subdivision application, known as “Bull Run Terrace,” in which the Applicant proposed an extension of Dubarko Road to Highway 26. However, because that prior application included a Comprehensive Plan Amendment, the Applicant was required to address the goals and policies of the Comprehensive Plan, including the City’s Transportation System Plan (“TSP”).

The Planning Commission recommended approval of the Bull Run Terrace application but the Council later denied it. The Applicant then filed a new application for a subdivision, *without* a concurrent plan amendment or zone change. Unlike the Bull Run Terrace application, a subdivision by itself is considered a “limited land use decision” under Oregon law and is subject to two statutes that were not at issue in Bull Run Terrace. First, the Application is subject to the “Needed Housing Statutes” of ORS 197.307(4). In simple terms, these provide that any application for the development of housing is subject only to clear and objective criteria and procedures. Second, the Application is subject to ORS 197.195(1), which provides that the goals and policies of the Comprehensive Plan, including the TSP, do not apply to limited land use decisions unless they have been specifically incorporated into the Sandy Development Code (“SDC”).

**A. The City may apply only clear and objective standards, conditions, and procedures to the Application.**

ORS 197.307(4) provides that local governments may “adopt and apply only clear and objective standards, conditions, and procedures regulating the development of housing, including needed housing, and precludes governments from unreasonably increasing the cost of housing or causing unreasonable delay.” ORS 227.173(2) provides that “when an ordinance establishing approval standards is required under ORS 197.307 to provide only clear and objective standards, the standards must be clear and objective on the face of the ordinance.” (Emphasis added.) ORS 197.307(6) allows a local government to use a subjective review process only if it also allows a “clear and objective” review procedure as an alternative.

Land use regulations are not clear and objective if they impose “subjective, value-laden analyses that are designed to balance or mitigate impacts of the development on (1) the property to be developed or (2) the adjoining properties or community.”<sup>1</sup> And, regardless of whether a given regulation is “designed to balance or mitigate impacts,” it must also be *both* clear *and* objective.<sup>2</sup> More fundamentally, standards that are susceptible to multiple interpretations are not clear and objective.<sup>3</sup>

ORS 197.522(2) and ORS 197.522(4) require local governments to approve applications for housing that are consistent with applicable land use regulations or can be made consistent with those regulations through reasonable conditions of approval. Relatedly, ORS 197.522(3),<sup>4</sup> allows an applicant to amend its application or to propose reasonable conditions to make its application consistent with the comprehensive plan and applicable land use regulations. What this means is that, if the Applicant proposes a condition of approval that would satisfy a given approval criterion that the Application does not otherwise meet, the City has a legal obligation to impose the condition in lieu of denying the Application.

Many of the reasons set forth in the Decision do not stand up to Oregon’s needed housing statutes. Many standards in the SDC are not clear and objective on their face or even when interpreted, and as such, cannot be applied to the Application under Oregon’s needed housing rules. Further, the City does not offer a clear and objective approval process for subdivisions as required under ORS 197.307(6).

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<sup>1</sup> *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139, 158 (1998), *aff’d*, 158 Or App 1, 970 P2d 685, *rev den*, 328 Or 594 (1999).

<sup>2</sup> *Id.* at 155–56 (“Dictionary definitions of ‘clear’ and ‘objective’ suggest that the kinds of standards frequently found in land use regulations lack the certainty of application required to qualify as ‘clear’ or ‘objective.’”).

<sup>3</sup> *Parkview Terrace Development, LLC v. City of Grants Pass*, 70 Or LUBA 37, 52–53 (2014); *see also* *Walter v. City of Eugene*, 73 Or LUBA 356, 360–64 (2016) (citing a standard’s “multiple possible interpretations” as a basis to find it not clear and objective).

<sup>4</sup> “If an application is inconsistent with the comprehensive plan and applicable land use regulations, the local government, prior to making a final decision on the application, shall allow the applicant to offer an amendment or to propose conditions of approval that would make the application consistent with the plan and applicable regulations.”

**B. The Transportation System Plan and Parks Master Plan are not adequately incorporated into the land use regulations; therefore, the City cannot require an extension of Dubarko Road or parkland required by the Parks Master Plan.**

As explained above, a subdivision is a limited land use decision as defined by ORS 197.015(12). Under ORS 197.195(1), cities are required to incorporate all comprehensive plan standards applicable to limited land use decisions into their land use regulations. This requirement extends to standards set forth in the TSP, parks master plan, and other elements of a city's comprehensive plan as well.<sup>5</sup> The Oregon Land Use Board of Appeals ("LUBA") has explained that adequate incorporation of a standard turns on whether the relevant land use regulations "make clear what *specific policies or standards* in the TSP [or other identified plan] apply to a limited land use decision as approval criteria."<sup>6</sup> LUBA has also explained that "ORS 197.195(1) contemplates more than a broad injunction to comply with unspecified portions of the comprehensive plan [or other identified plan]."<sup>7</sup> Rather, "[i]n order to 'incorporate' a comprehensive plan [or other plan] standard into a local government's land use regulations within the meaning of ORS 197.195(1), the local government must *at least* amend its land use regulations to make clear what specific policies or other provisions of the comprehensive plan [or other plan] apply to a limited land use decision as approval criteria."<sup>8</sup>

The City of Sandy's approval criteria governing review of a tentative plat for a subdivision fail to adequately incorporate the Sandy Comprehensive Plan or TSP. Specifically, SDC 17.100.60(E)(3) requires a showing that the "proposed street pattern is connected and consistent with the Comprehensive Plan or official street plan for the City of Sandy." This is not sufficient to meet the incorporation requirements of ORS 197.195(1) because it merely refers generally to the Comprehensive Plan and the City's official street plan.<sup>9</sup> It does not "make clear what specific policies, action items, or performance standards contained in the TSP apply as approval criteria for a limited land use decision."<sup>10</sup> Therefore, the Application may not be denied for lack of an extension of Dubarko Road.

The Decision also cites as a basis for denial the fact that the Application does not propose to dedicate parkland adjacent to Deer Point Park, as that park is designated on the 1997 Parks Master Plan. The Decision is incorrect in this regard because the Parks Master Plan is not applicable to the Application. This is because, as explained above, the Application is a limited land use decision, and not subject to comprehensive plans or their elements unless such provisions are expressly incorporated into a city's land use regulations. The Parks Master Plan is not incorporated into the Sandy Development Code, the City's land use regulations; nor does the

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<sup>5</sup> See *Oster v. City of Silverton*, LUBA No. 2018-103, at pp. 9-10 (Or LUBA May 7, 2019).

<sup>6</sup> *Id.* at p. 12.

<sup>7</sup> *Paterson v. City of Bend*, LUBA No. 2004-155, at p. 6 (Or. LUBA 2005).

<sup>8</sup> *Id.* at pp. 6-7.

<sup>9</sup> See *Oster* at 12.

<sup>10</sup> *Id.*

Decision assert that it is. Therefore, the Parks Master Plan may not be a basis for requiring dedication of parkland adjacent to Deer Point Park.

**C. The City cannot require dedication of parkland because the Development Code’s procedures for such requirement are not clear and objective.**

Contrary to the Decision, the regulatory scheme created for park dedication is not clear and objective, and therefore is not applicable under ORS 197.307(4). SDC 17.86.10 includes a requirement that all residential development dedicate a certain amount of parkland based on the formula in SDC 17.86.10.B. Alternatively, an applicant may pay a fee-in-lieu for required parkland under SDC 17.86.40. While the Commission found that the formula for parkland dedication is clear and objective, that is not all that ORS 197.307(4) requires. It also requires that local governments “... apply only clear and objective ... procedures regulating the development of housing,” and that the “standards, conditions and procedures” “may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.” (Emphasis added.)

The SDC is without any clear and objective guideposts as to whether a developer must provide a fee-in-lieu payment or parkland dedication, and neither decision can be made without consideration of the other option because SDC Chapter 17.86 provides for both. Thus, the decision maker must exercise discretion in deciding to require one or the other, and it is the required exercise of discretion that makes the parkland dedication requirement untenable under ORS 197.307(4).

**D. In order to require an extension of Dubarko Road and dedication of parkland, the City must demonstrate that those requirements have an essential nexus and are roughly proportional to the project’s impacts on those facilities.**

The Decision contends that the Applicant should be required to extend Dubarko Road to Highway 26 and to dedicate certain land as parkland to expand Deer Pointe Park. Such dedications are subject to the Takings Clause of the Fifth Amendment of the U.S. Constitution.

Requiring a landowner to convey its private property rights in exchange for development approval is an unconstitutional condition unless there is an “essential nexus” between the condition and the government interest. *Nollan v. California Coastal Com.*, 483 U.S. 825, 836-37 (1987). Additionally, to withstand a legal challenge, the condition must be “roughly proportional” to the expected impacts caused by the proposed development. *Dolan v. City of Tigard*, 512 U.S. 374, 391-395 (1994). The *Nollan* and *Dolan* takings analysis must be done on a case-by-case basis, and the City carries the burden of demonstrating in the first instance that any exaction has a nexus to and is roughly proportional to the nature and degree of the projected impacts of the project. The City is required to make an “individualized determination” and “some effort to quantify” evidence in the findings to support a conclusion of rough proportionality. *Dolan*, 512 U.S. at 391. The *Nollan/Dolan* analysis applies to requirements to

pay money or make public improvements in addition to requirements to dedicate property. *Koontz v. St. Johns River Water Management District*, 570 U.S. 595 (2013).

There is no demonstration in the record that the requirements for the Dubarko Road extension and parkland dedication have a nexus to any governmental interest other than the City's general policies showing the street extension and parkland dedications. However, such policies do not constitute the required nexus; rather, a local government must show that "the proposed project's impacts, either alone or in combination with other construction, are ones that 'substantially impede' the interest identified by the government." *Hill v. City of Portland*, 293 Or App 283, 290-291 (2018).

During the proceedings before the Commission, City staff made no attempt to identify the essential nexus between the impact of the Project on the City's park system and the dedication requirement, and no attempt to explain how the requirement is roughly proportional to the project's impacts. Instead, the Decision cites the City's parkland dedication formula as a basis for the dedication requirement. However, relying on a broadly-applicable dedication formula is insufficient because such a determination must be *individualized*. *Dolan*, 512 U.S. at 391. What is more, simply imposing the same level of exaction on all housing projects does not prove there actually is a nexus between that housing and the parks dedication requirement itself. *Hill*, 293 Or. App. at 290-291.

Finally, there is nothing in the record or the Staff Report even approaching a showing that the Dubarko Road extension and parkland dedication are "roughly proportional" to the impacts of the proposed subdivision.

**E. SDC 17.100.100.G.2 prohibits the City from require an extension of Dubarko Road through the site.**

SDC 17.100.100 governs street requirements for subdivisions. SDC 17.100.100.G provides exemptions from otherwise-applicable street requirements. Subsection G.2 provides:

***"Standards for street connections do not apply to freeways and other highways with full access control."***

As explained in ODOT's September 1, 2021 letter (which is listed as Exhibit N to the Staff Report), Highway 26 is access controlled. Therefore, the City unambiguously lacks the authority to require a connection of Dubarko Road to Highway 26.

**3. Response to Specific Findings for Denial.**

The following responds to the specific findings for denial in the Decision.



**A. SDC 17.100.60 (E)(1)**

The Decision's finding that the Application fails to satisfy SDC 17.100.60(E)(1) is incorrect for the following reasons.

- ***17.100.60.E.1. "The proposed subdivision is consistent with the density, setback and dimensional standards of the base zoning district, unless modified by a Planned Development approval."***

- This criterion is not clear and objective as required by ORS 197.307(4) because the phrase "consistent with" is not clear and objective.
- The Decision is incorrect that the Application fails to meet frontage and orientation requirements along Dubarko Road for the simple reason that the Application does not *propose* an extension of Dubarko Road. There is no logic in the conclusion that such setbacks and frontages to Dubarko Road could be required without the road itself having been proposed; as a practical matter, it would be impossible for the Applicant to meet such a requirement. In this regard the Decision does not make sense; one cannot plausibly argue that a plan does not meet setback requirements adjacent to a new road that is not proposed. As explained above, the City may not require an extension of Dubarko Road; therefore, the City cannot deny the Application because the proposed lots do not have a sufficient amount of frontage or orientation to a road that does not and will not exist.
- SDC Chapter 82 requirement that homes "face a transit street" is not applicable because, as noted above, the City's Transportation System Plan and Pedestrian Mater Plans are not incorporated into the City's Land Use Regulations. ORS 197.195.
- Pursuant to ORS 197.522(3), if the transit street orientation requirement in SDC 17.82.20.A did apply, it could be met with the following condition:

***"All residential structures on lots abutting Highway 26, Dubarko Road, and Street B shall have their primary entrances oriented to Highway 26, Dubarko Road, or Street B. If a lot abuts two or more of these streets the residential structure shall be oriented to the highest classification of street."***

This condition was proposed in paragraph 34 of the Staff Report to the Commission. Under ORS 197.522(3), the City is required to impose this condition in lieu of denial because it would ensure satisfaction the frontage orientation requirement.

- The Decision is also incorrect that some of the proposed lots are located in the required right-of-way for Dubarko Road and located across required parkland.

As discussed above, the Application does not propose an extension of Dubarko Road or the dedication of parkland. Without such an extension or dedication proposed, there is no right-of-way or parkland on or across which the proposed lots can be located. Indeed, no lots are proposed to be located on any right-of-way or parkland, and as such, the conclusion that the Application improperly proposes lots to be located on or across such is illogical. As explained above, the City may not require an extension of Dubarko Road nor a dedication of parkland; therefore, the City cannot deny the Application because some of the proposed lots are in the required right-of-way for Dubarko Road or across required parkland.

**B. SDC 17.100.60 (E)(3)**

The Decision's finding that the Application fails to satisfy SDC 17.100.60(E)(3) is incorrect for the following reasons.

- ***17.100.60.E.3. "The proposed street pattern is connected and consistent with the Comprehensive Plan or official street plan for the City of Sandy."***
  - As explained above, this criterion is not applicable because the City's Comprehensive Plan and Transportation System Plan have not been incorporated into the City's land use regulations as required by ORS 197.195.
  - The statement made in Paragraph 14 of the Decision ("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. Project M20 in the TSP is the connection of Dubarko Road to Highway 26.") is not evidence that the Comprehensive Plan and TSP have been properly incorporated into the City's land use regulations as contemplated by ORS 197.195 and as further explained by *Oster* and *Paterson*. To be properly incorporated, the City's land use regulations (i.e. the Sandy Development Code) must make clear which specific sections of the Comprehensive Plan and TSP apply to the relevant approval criteria. General references to those Plans such as those made by the SDC are not sufficient. Mere adoption of the Plan by ordinance is also not enough. Further, the only mention of the "official street plan" in the SDC is a general reference to it in SDC 17.100.60.E.3, which does not specify where the official street plan is found or what portions of it are relevant to the approval criteria.

Moreover, Ordinance 2011-12 is not in the Planning Department record for this Application and as such, it cannot be a basis for the Commission's Decision.

- Even if applicable, this criterion is not clear and objective as required by ORS 197.307(4) because the phrase “consistent with” is not clear and objective.
- As explained above, the City has not demonstrated the required essential nexus and rough proportionality required by *Nollan* and *Dolan*.
- The fact that a Dubarko Road extension was proposed in the prior Bull Run Terrace application is irrelevant, Likewise, Ard Engineering’s September 28, 2020 reference to “the requirement for the Dubarko Road connection,” made as part of the prior Bull Run Terrace application, is also irrelevant . That was a different proposal and different type of application, and the City denied it. There is no legal obligation in state or local law that requires a new application for a given property to include the same elements as a prior denied application.
- The Applicant is not required to extend Dubarko Road under SDC 17.100.100.G.2 because Highway 26 is access controlled by ODOT.
- OAR 660-012-0045 does not apply to the proposed development. The Decision cites to OAR 660-012-0045 as a basis for denial. This is improper for at least two reasons. For one, this administrative rule is not an approval criterion and as such cannot be the basis for denial of the Application. Moreover, it establishes obligations for a local government’s plan and land use regulations; it does not apply directly to review of subdivision application. Even if it did, it establishes obligations that the *City* must meet, not the Applicant. As such, it cannot be used as a basis to deny the Application.

**C. Parkland Dedication Requirements in SDC 17.86.**

As explained in detail above, the City cannot require dedication of 0.96 acres to add to Deer Pointe Park for the following reasons:

- The City’s Parks and Trail Master Plan is not incorporated into the City’s land use regulations as required by ORS 197.195, and is therefore inapplicable to the Application.
- The process by which the City can require parkland dedication as opposed to a fee-in-lieu is not clear and objective; therefore, the parkland dedication requirement cannot apply under ORS 197.307(4).
- Staff has made no attempt to demonstrate an essential nexus or rough proportionality of the parkland dedication requirement, as required by *Nollan* and *Dolan*.

**4. Conclusion.**

For the above reasons, the City Council cannot require a dedication of parkland adjacent to Deer Pointe Park and may not require an extension of Dubarko Road. The City Council must approve the Application because the Decision's stated bases for denial are not permissible under applicable law.

MCR:jmhi

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

**DATE:** November 18, 2021

**FILE NO.:** 21-014 SUB/TREE

**PROJECT NAME:** Deer Meadows Subdivision

**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. These findings are based on the applicant's submittals and other evidence and testimony presented to the Planning Commission. In a letter dated June 11, the applicant agreed to toll the 120-day clock until July 27, 2021. The original 120-day clock 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 existing 120-day clock is January 5, 2022.
4. The subject site is approximately 15.91 acres. The site is located at 40808 and 41010 Highway 26.

5. 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.
6. The applicant, Roll Tide Properties Corp., seeks approval for a 32-lot subdivision at 40808 and 41010 Highway 26. The development proposal included two partial street extensions and the creation of two new streets. The applicant proposed 30 lots of Low Density Residential (R-1) that would contain single family homes or duplexes, one small lot (9,023 square feet) of Medium Density Residential (R-2), and one large lot (7.35 acres) with a combination of Medium Density Residential (R-2) and Village Commercial (C-3). The proposed 30 lots with R-1 zoning range in size from 5,500 square feet to 32,189 square feet. The applicant proposed to retain 48 existing trees and proposed to remove the remainder of the trees from the site.
7. 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 claimed the number of multifamily dwelling units on the R-2 zoned land would have been between 38 dwelling units and 66 dwelling units. The C-3 zoned land would have likely contained a mix of commercial and residential development.
8. Due to the interest in the previous proposal at the subject site, the Development Services Director elevated this application to a Type III decision to be heard and considered by the Planning Commission.
9. Throughout the project narrative (Exhibit B) the applicant failed to submit required information. Instead, on 14 occasions in the narrative the applicant stated that the development code is subjective (i.e., not clear and objective) and because the subdivision is a housing application the alleged subjective development code language is not applicable. Staff explained at the Planning Commission meetings that they did not agree with the applicant's interpretation of what constitutes and does not constitute subjectivity.
10. The applicant previously proposed a development at the site that was denied by the City Council (File No. 19-050 CPA/ZC/SUB/SAP/TREE Bull Run Terrace). This application was substantively different from that prior proposal. The applicant did not propose a Comprehensive Plan amendment or Zone Change amendment. The applicant chose not to expand Deer Pointe Park or connect Dubarko Road to Highway 26. The existing parks master plan details the Deer Pointe neighborhood to have a Community Park. The existing transportation system plan classifies Dubarko Road as a minor arterial and shows it connecting to Highway 26.
11. The City of Sandy provided the following notices:
  - 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)**

12. Section 17.100.60(E)(1) requires subdivisions to be consistent with the density, setback, and dimensional standards of the base zoning district, unless modified by a Planned Development approval. Each base zoning district requires that residential development comply with Chapter 17.82. First, the Preliminary Plat Map (Exhibit C, Sheet C2) details setbacks for Lots 2, and 27-31 showing the front setback facing the local street or public access lane, instead of the Transit Street as required by Chapter 17.82. Second, Sheet C2 does not identify that lots abutting Highway 26 shall face Highway 26 as required by Chapter 17.82, nor does the plan set detail frontage improvements along Highway 26 as required by Chapter 17.86. Third, by not proposing the extension of 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 also located across required parkland. Therefore, this proposal 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)(3)**

13. Section 17.100.60(E)(3) requires the proposed street pattern to be connected and consistent with the Comprehensive Plan or official street plan for the City of Sandy. The proposed street pattern is not consistent with the Comprehensive Plan and the city's standards, including connecting Dubarko Road to Highway 26.
14. 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. Project M20 in the TSP is the connection of Dubarko Road to Highway 26.
15. 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 3: The application does not meet the parkland dedication requirements in Chapter 17.86**

16. The applicant did not propose any parkland dedication as required by Chapter 17.86 of the Sandy Development Code. 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 Parks and Trails Advisory Board (Board) met on August 11, 2021. The Board recommended that conditions of approval were included that required dedication of land for expansion of Deer Pointe Park. The 1997 Parks Master Plan designated Deer Pointe Park as a community park, and in the Location and Development Polices section of the Plan states that community parks should be 20 acres or more. Because the Deer Meadows subdivision did not propose parkland dedication abutting Deer Pointe Park, the proposed subdivision is inconsistent with the 1997 Parks Master Plan.
  
17. Section 17.86.10 contains a clear and objective formula for determining the amount of land required to be dedicated. The formula is  $\text{acres} = \text{proposed units} \times (\text{persons/unit}) \times 0.0043$ . For the 30 single family homes,  $\text{acres} = 30 \times 3 \times 0.0043 = 0.39$  acres. For the maximum development of 66 multifamily units,  $\text{acres} = 66 \times 2 \times 0.0043 = 0.57$  acres. Combined, this totals 0.96 acres. The dedication of 0.96 acres was required to meet the clear and objective criteria in Chapter 17.86. NOTE: The number of dwelling units on the subject site does not account for the additional land required to be dedicated for Dubarko Road to connect to Highway 26 or the parkland dedication, therefore the calculations related to parkland dedication are based on unreliable assumptions.

**DECISION:** For the reasons stated above, the Planning Commission **denies** the Deer Meadows subdivision application.



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Jerry Crosby  
Planning Commission Chair



## **RIGHT OF APPEAL**

A decision on a land use proposal or permit may be appealed to the City Council by an affected party by filing an appeal with the Director within twelve (12) calendar days of notice of the decision. Any person interested in filing an appeal should contact the city to obtain the form, "*Notice of Appeal*," and Chapter 17.28 of the Sandy Development Code regulating appeals. All applications for an appeal shall indicate the nature of the interpretation that is being appealed and the matter at issue will be a determination of the appropriateness of the interpretation of the requirements of the Code.

An application for an appeal shall contain:

1. An identification of the decision sought to be reviewed, including the date of the decision;
2. A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings;
3. The specific grounds relied upon for review;
4. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Chapter 17.28.50; and,
5. Payment of required filing fees.

**From:** [noreply@openedgepay.com](mailto:noreply@openedgepay.com)  
**To:** [Hicks, Jane M.](#)  
**Subject:** City of Sandy-Sandy  
**Date:** Tuesday, November 23, 2021 10:50:47 AM

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Batch # 000097 Trans ID 00000000961 Order ID 1637693293755 Trans  
Type Purchase Date/Time 2021-11-23 10:50:09 Card Type Visa Card  
Number XXXXXXXXXXXX4414 Entry Method MANUAL Approval Code 00279D  
Total Amount USD\$785.00 Approved - Thank You

X\_\_\_\_\_ Cardholder Signature Buyer  
agrees to pay total amount above according to cardholder's agreement  
with issuer. Please do not reply to this message. Replies to this  
message are routed to an unmonitored mailbox.



Name of Appellant:		Phone Number:	
Email:		Address:	
Map & Tax Lot #:	T:	R:	Section: Tax Lot(s)

**BASIS FOR STANDING APPEAL (please check all that apply)**

Submitted written evidence during the initial review <input type="checkbox"/>
Testified orally at the hearing <input type="checkbox"/>
Participated through?

**Grounds for the Appeal:** Attach separate page(s) stating the ground for the appeal. The appeal must be based upon issues raised during the decision-making process or hearing. You must identify the issue with sufficient information so that the reviewing body understands under what the criteria within the Sandy Development Code, the Comprehensive Plan, or Statewide Land Use Goals you are appealing.

**Relevant Code Sections:** Attach separate page(s) listing the relevant code sections, which relate to the appeal application.

**Please note:**

\* If the notice fails to confirm to the above requirements or is not actually received by the City (delivered to the City Manager, Development Services Director, City Recorder or their staff) within the timelines specified, the appeal is void and shall be dismissed.

\* An appeal stays an approval until resolution of the appeal.

Staff Use Only

Appeal Filed within 12 calendar days of Written Decision: Yes <input type="checkbox"/> No <input type="checkbox"/>			
Application complete: Yes <input type="checkbox"/> No <input type="checkbox"/>			
Scheduled for review before the: Planning Commission <input type="checkbox"/> City Council <input type="checkbox"/>			
File No.:	Date of Decision:	Date Notice of Decision Mailed:	
Appeal Fee:	Date Appeal Filed:	Date Set for Hearing:	

Development Services Department, 39250 Pioneer Blvd, Sandy, OR 97055, 503.489.2160