

# City of Sandy

## Agenda

### City Council Meeting

**Meeting Location:** City Hall- Council Chambers, 39250  
Pioneer Blvd., Sandy, Oregon 97055

**Meeting Date:** Monday, May 20, 2019

**Meeting Time:** 6:00 PM



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<b>1. WORK SESSION 6PM</b>	
<b>2. ROLL CALL</b>	
<b>3. AGENDA</b>	
3.1. Agenda Review	
3.2. Police Department New Revenue Direction	3 - 4
Provide staff with direction on new revenue for the police department as approved by the Budget Committee.	
<a href="#">Police Department New Revenue Direction - Pdf</a>	
3.3. Arts Commission Work Plan Direction and Update	
<b>4. ADJOURN WORK SESSION</b>	
<b>5. REGULAR CITY COUNCIL MEETING 7PM</b>	
<b>6. PLEDGE OF ALLEGIANCE</b>	
<b>7. ROLL CALL</b>	
<b>8. CHANGES TO THE AGENDA</b>	
<b>9. PUBLIC COMMENT</b>	
<b>10. PRESENTATION</b>	
<b>11. CONSENT AGENDA</b>	
11.1. City Council Minutes	5 - 161
<a href="#">Work Session and Regular City Council - 18 Mar 2019 - Minutes - Pdf</a>	
<a href="#">Work Session and Regular City Council - 01 Apr 2019 - Minutes - Pdf</a>	
<a href="#">City Council Work Session - 09 Apr 2019 - Minutes - Pdf</a>	
<a href="#">Work Session, Urban Renewal Board and Regular City Council Meeting- 15 Apr 2019 - Minutes - Pdf</a>	
<b>12. NEW BUSINESS</b>	
12.1. Award Contract for 2019 Pavement Maintenance Program	162 - 166
Award Schedule A to Knife River Corporation and Schedule B to Intermountain Slurry	

Seal.

[Award Contract for 2019 Pavement Maintenance Program - Pdf](#)

- 12.2. Intergovernmental Agreement for Right-of-Way Services - US 26 Vista Loop to Ten Eyck Pedestrian Improvements 167 - 188

Authorize the City Manager to sign the IGA on behalf of the City.

[ODOT - City IGA for Right-of-Way Services - Pdf](#)

**13. REPORT FROM THE CITY MANAGER**

**14. COMMITTEE /COUNCIL REPORTS**

**15. STAFF UPDATES**

- 15.1. [Monthly Reports](#)

- 15.2. Budget Committee Draft Minutes 189 - 193

[Budget Committee Meeting - 29 Apr 2019 - Minutes - Pdf](#)

[Urban Renewal Agency Budget Committee and Budget Committee Meeting - 06 May 2019 - Minutes - Pdf](#)

**16. ADJOURN**

**17. EXECUTIVE SESSION**

ORS 192.660 (2) (d) to conduct deliberations with person designated by the governing body to carry on labor negotiations.





## Staff Report

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**Meeting Date:** May 20, 2019  
**From** Tyler Deems, Finance Director  
**SUBJECT:** Police Budget Funding

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### **Background:**

On May 6th the Budget Committee approved the proposed budget as amended, to include \$370,000 of additional revenue for the Police Department to fund two additional positions. This revenue, as approved by the committee, must come from an outside source, and not be at the expense of other departments or programs within the General Fund. The two positions include a Patrol Officer, to be hired on or after July 1, 2019, and a Lieutenant, to be hired on or after July 1, 2020. By hiring an additional patrol officer, Chief Roberts will be able to fill the traffic officer position, which will be focused primarily on traffic enforcement. The lieutenant will provide additional administrative support and oversight to the department overall. The total cost of the additional staff is estimated to be \$115,000 in FY 19-20, and \$255,000 in FY 20-21.

### **New Revenue Options**

Staff presented with options for addressing the funding issues with the police department at work sessions on [March 4th](#) and [April 9th](#). Options for new revenue such as a public safety fee or a right of way utility fee on the city utilities were among the options. Feedback from the Council included a fair and equitable approach, as well as minimizing the impact to utility customers as much as possible.

- **Public Safety Fee.** There are several options for structuring a public safety fee that would be added to monthly utility bills for city residents. The fee options include a flat fee (all customers pay the same fee), fee by customer class (different charges for residential, multi-family, and commercial/industrial customers), fee by meter size, or fee by customer class and the number of dwelling units for multi-family.
- **Right of Way Fee.** The right of way utility fee would generate additional general revenue that could be allocated to the police department. A 5% fee on the City's own utilities (Water, Wastewater, Stormwater, SandyNet) could generate as much as \$217,000 per year.
- **Local Option Levy.** The Council could refer the funding choice to the voters via a local option levy for Police Services that would increase property taxes for city residents. Local options levies are capped at 5 years but can be renewed. The next opportunity to place a measure on the ballot would be for the November 5, 2019 election which would mean filing the ballot title by mid-August. If the measure is successfully passed, the city would not receive the revenue until the following year.

**Public Safety Fee**

Based on the input provided by Council at the work sessions and the Budget Committee's recommendation, staff proposes a phased-in approach for implementing a public safety services fee, which would be based on the customer class and number of dwelling units. An example of how this fee will be structured is below:

FY 19-20	<b>Class</b>	<b>Units</b>	<b>Fee</b>	<b>Proj. Annual Revenue</b>
	Single Family	3,382	\$ 1.98	80,356
	Multi-Family*	700	\$ 1.98	16,632
	Comm/Indust	257	\$ 5.98	18,442
				\$ 115,431

FY 20-21	<b>Class</b>	<b>Units</b>	<b>Fee</b>	<b>Proj. Annual Revenue</b>
	Single Family	3,382	\$ 4.38	177,587
	Multi-Family*	700	\$ 4.38	36,757
	Comm/Indust	257	\$13.22	40,758
				\$ 255,102

Total Projected Revenue \$ 370,532

**Implementation**

To establish a fee by July, staff would return to Council with an ordinance as early June 3rd. The process would include holding a public hearing prior to adoption. Following the adoption of an ordinance, the Council would need to set the public safety fee charge via resolution. That could be done in tandem with the adoption of the other city fees and charges updates currently planned for June 17th.

**Recommendation:**

Provide staff with direction on new revenue for the police department as approved by the Budget Committee.

**Budgetary Impact:**

The new revenue would generate \$370,000 for the 2019-21 biennium that would be dedicated to the police department to fund the cost of a Patrol Officer and Lieutenant, to be hired on or after July 1, 2019 and July 1, 2020, respectively.



**MINUTES**  
**City Council Work Session Meeting**  
**Tuesday, April 9, 2019 City Hall- Council Chambers, 39250 Pioneer**  
**Blvd., Sandy, Oregon 97055 6:30 PM**

**COUNCIL PRESENT:** Carl Exner, Councilor, Jeremy Pietzold, Council President, John Hamblin, Councilor, Laurie Smallwood, Councilor, and Stan Pulliam, Mayor

**COUNCIL ABSENT:** Jan Lee, Councilor

**STAFF PRESENT:** Ernie Roberts, Police Chief and Tyler Deems, Finance Director

**MEDIA PRESENT:**

**1. Roll Call**

**2. New Business**

**2.1. Sandy Police Department Services and Funding**

Staff Report - 0129

Finance Director, Tyler Deems, and Police Chief, Ernie Roberts, delivered a staff report related to service levels and funding for the Police Department. Included in this discussion was the possible implementation of a public safety fee to assist in funding the cost to hire two individuals to fill open positions within the department.

Discussion among Council and staff occurred. Council's direction was to balance the proposed budget without adding any additional fees. Future discussions on the public safety fee are likely to occur, once the entire budget is presented to the Budget Committee.

**3. Adjourn**

**4. Executive Session**

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Mayor, Stan Pulliam

City Council Work Session  
April 9, 2019



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City Recorder, Karey Milne

Draft



**MINUTES**  
**City Council Meeting**  
**Monday, April 29, 2019 City Hall- Council Chambers, 39250**  
**Pioneer Blvd., Sandy, Oregon 97055 6:00 PM**

**COMMITTEE PRESENT:** Stan Pulliam, Mayor, Jeremy Pietzold, Council President, John Hamblin, Councilor, Laurie Smallwood, Councilor, Jan Lee, Councilor, Carl Exner, Councilor, Bethany Shultz, Councilor, and Kathleen Walker, Board Member, Frits van Gent, Amber Pritchard, Jeff Cary

**COMMITTEE ABSENT:** , Brian Singer, Valerie Wicklund

**STAFF PRESENT:** Karey Milne, Recorder Clerk, Jordan Wheeler, City Manager, Andi Howell, Transit Director, David Snider, Economic Development Manager , Ernie Roberts, Police Chief , Greg Brewster, Interim IT/SandyNet Director, Kelly O'Neill, Planning Director, Mike Walker, Public Works Director, Sarah McIntyre, Library Director, Tanya Richardson, Community Services Director, and Tyler Deems, Finance Director

**MEDIA PRESENT:**

**1. Pledge of Allegiance**

**2. Roll Call**

**3. Elections of Chair and Vice Chair**

**3.1.**

John Hamblin was nominated and elected the Chair of the Budget Committee.  
No Vice Chair was elected.

Motion by Councilor Pietzold, seconded by Jeff Cary.

**4. Presentation of the Budget Message and Budget Summary**

**4.1. [City of Sandy Proposed Budget](#)**

City Manger Jordan Wheeler delivered the budget message to the Budget Committee. Manager Wheeler also detailed the budget philosophy and approach, as well as budget constraints and difficulties that the city is facing for the upcoming biennium.

**5. Department Budget Presentations**

- 5.1. Department Directors presented their individual budgets to the Budget Committee. The Committee asked clarifying questions throughout the presentations, which Directors answered.

**6. Public Comment**

- 6.1. None.

**7. Budget Committee Deliberations**

- 7.1. Continued to next meeting, May 6, 2019.

**8. Adjourn**



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Mayor, Stan Pulliam



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City Recorder, Karey Milne

Draft



**MINUTES**  
**City Council Meeting**  
**Monday, May 6, 2019 City Hall- Council Chambers, 39250 Pioneer Blvd., Sandy, Oregon 97055 6:00 PM**

**COMMITTEE MEMBERS**

**PRESENT:**

Jeremy Pietzold, Council President, Laurie Smallwood, Councilor, John Hamblin, Councilor, Jan Lee, Councilor, Carl Exner, Councilor, Bethany Shultz, Councilor, Stan Pulliam, Mayor, and Kathleen Walker, Board Member Amber Prichard, Jeff Cary,

**COMMITTEE MEMBERS**

**ABSENT:**

Valerie Wicklund, Frits van Gent. Brian Singer

**STAFF PRESENT:**

Karey Milne, Recorder Clerk, Jordan Wheeler, City Manager, Tyler Deems, Finance Director, Sarah Richardson, Community Services, Mike Walker, Public Works Director, Kelly O'Neill, Planning Director, and Greg Brewster, Interim IT/SandyNet Director

**MEDIA PRESENT:**

**1. Roll Call**

**2. Continuation of Department Budget Presentations**

2.1. [Proposed Budget](#)

2.2.

Department Directors finished their individual budget presentations. The Committee asked clarifying questions, which Directors answered.

**3. Public Comment**

3.1.

None.

**4. Budget Committee Deliberations**

The Budget Committee discussed the proposed budget and possible changes.

\$4,000 of revenue was mistakenly left out of the budget. The Committee requested that this revenue be added to the Parks, Buildings, & Grounds budget.

Amber Pritchard, moved to fund the Lieutenant and Traffic officer in this biennium. Discussion occurred and the motion was amended to add Traffic Officer, July 1 2019, then Lieutenant July 1, 2020, to be able to identify and implement funding source(s).

The amended motion was seconded by Councilor Lee.

Councilor Pietzold noted that he would like to see the previous motion amended to reflect that the funding source be a new or outside funding source, and not impact other department's budgets.

Discussion occurred among the Committee.

Councilor Hamblin made a motion to add the Patrol Officer position effective July 1, 2019 and the Lieutenant position effective July 1, 2020 with new or outside funding. The motion was seconded by Councilor Lee.

Members in favor: Councilor Pietzold, Jeff Cary, Councilor Hamblin, Mayor Pulliam, Councilor Smallwood, Councilor Lee, Councilor Schultz, and Amber Pritchard.

Members opposed: Councilor Exner and Kathleen Walker.

The motion passed.

Councilor Smallwood made a motion to approve the proposed budget as amended. The motion was seconded by Councilor Lee.

The motion passed unanimously.

Councilor Schultz made a motion to approve the city's permanent tax rate. The motion was seconded by Councilor Exner.

The motion passed unanimously.

5. **Adjourn**
6. **Sandy Urban Renewal Agency & Budget Committee**
7. **Roll Call**
8. **Public Comment**
  - 8.1. None.
9. **Presentation of Sandy Urban Renewal Agency Budget**
  - 9.1. [Proposed Budget](#)



City Manager Jordan Wheeler provided the Budget Committee with an overview of the Sandy Urban Renewal Agency plan and proposed budget. Included in this overview was revenue information, and as well as specific project information.

**10. SURA & Budget Committee Deliberations**

Mayor Pulliam made a motion to approve the Sandy Urban Renewal Agency's budget as proposed. Councilor Pietzold seconded the motion.

Finance Director Tyler Deems read aloud a statement from Committee member Frits van Gent related to Urban Renewal. Paul Reed, Mt. Hood Athletic Club, offered some explanation in regards to pieces of the Mr. van Gent's statement.

Councilor Smallwood and Council Hamblin called for a vote.

Per Mr. van Gent's statement, he would not vote in favor of the budget at proposed.

The motion passed unanimously by all in attendance.

**11. Adjourn**



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Mayor, Stan Pulliam



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City Recorder, Karey Milne



**MINUTES**  
**City Council Meeting**  
**Monday, March 18, 2019 City Hall- Council Chambers, 39250**  
**Pioneer Blvd., Sandy, Oregon 97055 6:00 PM**

**COUNCIL PRESENT:** Jeremy Pietzold, Council President, Laurie Smallwood, Councilor, John Hamblin, Councilor, Jan Lee, Councilor, Carl Exner, Councilor, Bethany Shultz, Councilor, and Stan Pulliam, Mayor

**COUNCIL ABSENT:**

**STAFF PRESENT:** Karey Milne, Recorder Clerk, Jordan Wheeler, City Manager, Tyler Deems, Finance Director, Kelly O'Neill, Planning Director, and Andi Howell, Transit Director

**MEDIA PRESENT:**

**1. Work Session 6PM**

**2. ROLL CALL**

**3. Agenda**

3.1. Agenda Review

3.2. Tree Code Committee Direction/Forestry Code Update

Staff Report - 0119

Planning Director, Kelly O'Neill Jr., updated the council on the Ad Hoc Tree Committee. He reviewed the questions one by one the committee had for council in order to proceed in the right direction.

Council had discussion and questions for staff regarding each questions. Council gave direction and a timeline for the Ad Hoc Committee and staff to have an updated version of the code come back to them in September of this year.

3.3. Economic Development Ad Hoc Committee

Staff Report - 0122

Mayor Pulliam reviewed the definition of Ad Hoc Committee. He would like to get the Ad Hoc Committee started to establish what council would like to see from the Economic Development Committee, to establish its bylaws, rules, goals etc, so that committee can hit the ground running when it is formed.

**4. Adjourn Work Session**

**5. Regular Council Meeting 7PM**

**6. Pledge of Allegiance**

**7. Roll Call**

**8. Changes to the Agenda**

Move the Transit Master Plan Presentation up before the Public Comment

**9. Presentation**

9.1. Transit Master Plan Update - Presentation by Michelle Poyourow

Staff Report - 0116

Michelle Poyourow, gave her presentation on the upcoming Transit Master Plan, the time line, how it works, how they do their research and so on.

**10. Public Comment**

Please see attached Sign In Sheet for name and contact info.

Public Comment was open for items on, or not on the agenda. Residents and non residents spoke their concerns regarding the pool and the Sandy Community Campus.

- 10.1. [Sign In Sheet](#)  
[Sign In Sheet](#)  
[Written Letter 1](#)  
[Written Letter 1](#)  
[Written Letter 2](#)  
[Written Letter 2](#)  
[Written Letter 3](#)  
[Written Letter 4](#)  
[Written Letter 5](#)  
[Written Letter 6](#)  
[Written Letter 7](#)  
[Written Letter 7](#)

6 - 17

**11. Consent Agenda**

11.1. City Council Minutes

**12. NEW BUSINESS**

12.1. Sandy Community Campus Plan Discussion

Staff Report - 0123

Community Services Director, Tanya Richardson, Reviewed information and statistics since we re-opened the pool.

Council asked Director Richardson questions regarding the maintenance that is needed if the pool is kept open and costs involved, along with programming, where it is now, where it could be. Council discussed pros and cons, the budget constraints, how to cover the cost of operations of the pool. The discussed options on how to come up with funds to keep the pool operational. Council directed staff to put together what other funding sources would look like, public/private partnerships, a levy, a district etc., and bring back that information, not only just on the community campus but the pool by itself as well, can we revitalize and rehab the cedar ridge building and that cost vs building new.

Moved by Jan Lee, seconded by John Hamblin

*Motion to close the pool September 2, 2019 with council looking for funding source options and planning for the future.*

DEFEATED.

Moved by Carl Exner, seconded by Jeremy Pietzold

*Motion to close the pool May 31st, 2019 with council looking for funding source options and planning for the future.*

CARRIED.

**13. Adjourn**

**14. Urban Renewal Board Meeting**

**15. Roll Call**

Councilor Pietzold, Councilor Smallwood, Fire Chief Phil Schneider, Sandy Area Chamber of Commerce Director, Khrys Jones, Councilor Hamblin, Councilor Lee,

Councilor Exner, Councilor Shultz and Mayor Pulliam

**16. Urban Renewal Agency Board**

Open Urban Renewal Agency Board

**16.1. Tenant Improvement Grant Program and Paola's Pizza Barn**

Staff Report - 0118

Planning Director, Kelly O'Neill Jr reviewed the tenant improvement program and modifying that program to add improvement grants up to \$30,000 , and adding in fire suppression and other internal repairs or upgrades to the building helping to bring a building up to code. Staff is looking right now to update this program specifically to help Paola's Pizza Barn with adding a fire suppression system.

Council had a few questions for staff.

*Motion to modifying the tenant improvement grant guidelines and offering a tenant improvement grant up to \$30,000 to the owners/leasee of the Paola's Pizza Barn for the purpose of adding a fire suppression (sprinkler) system and stairs*

CARRIED.

**17. Adjourn Urban Renewal Agency Board**

**18. Re-Convvene Council Meeting**

**19. Report from the City Manager**

City Manager, Jordan Wheeler gave a brief update on a few items for council.

**20. Committee Reports/Council Reports**

Councilors gave some brief updates and reports.

**21. Staff updates**

21.1. [Monthly Reports](#)

**22. Adjourn**



City Council  
March 18, 2019

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Mayor, Stan Pulliam



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City Recorder, Karey Milne

Draft



**If you wish to speak please Sign In**  
 ( Si Usted Desea Hablar Por favor Inicie sesión )  
**You have 3 minutes to Speak**  
 (Tienes 3 Minutos para hablar)

City Council Meeting  
 (Reunión del Consejo De La Ciudad)

Meeting Date: March 18, 2019

**PLEASE PRINT**  
 (por favor imprimir)

Name / nombre	Address / dirección	City / ciudad
MARLYN LYONS	29370 SE CHURCH RD BORERS	LIVE IN BORERS AT SANDY
Sandra Walker	17920 SE Bluff	Sandy
San Anderson	4855 SE Main	Sandy
DOHIE GENSEBAUX	19185 WEBSTER AVE	Sandy
Emilia Bishop	38468 Cascadia Village Dr	Sandy
Dennis Ryan	38526 Hood St	Sandy
Grant Hayball	17714 Louree Drive	Sandy





# Sandy Pool

3/18/19

Hello. My name is Ruby Paulsen, a 9th grade student currently attending Sandy High School. I don't play many sports, that's all I have to say. I'm not into the whole cheerleading, basketball, baseball thing. But what I am interested in is these two sports: Water Polo and Swim team. I'll give you a bit of my history.

When I was 3 years old, I was introduced to water for the first time. It was the ocean and my parents were pretty nervous to put me in the water. But as soon as they did, I was a natural born swimmer. I was **OBSESSED** with water. I always wanted to be in it.

Now I was 9 years old. I had tried softball, basketball, and other sports but I never found interest in any of them. Until we got a flyer for Maverick Aquatics. I was so excited. A sport that involved water was my dream sport. First night I went to the Sandy Pool, I tried out for the team. There were 10 levels total, and I went to level 6 first night. I was in these levels for at least 1 year of my life.

Now I was 9½ and on the Mavericks Swim Team. I met the best coach a swimmer could ever ask for, met my current best friend, and met so many other amazing people.

I was on this team till I was 13, then something horrible happened.

My coach had a heart attack and had passed away. This really threw off the team. After a few weeks, I quit the team.

I regret that so much. Sandy Pool had taught me everything I know today and I was leaving it behind. I went to MACC to swim, and I'll say they have a good pool and team. But it was nothing compared to Sandy Pool and Team. I missed

it so much. That team was my family.  
Now 2 years went by and I was 14, getting ready for my first day of high school. It was very worrying. And one of those worries consisted of starting Water Polo. I didn't know anybody and was terrified. But when we had our first day of Water Polo at Sandy Pool, I met some of the best people I've ever met. Some of those people were people from the old Mavericks Team and we got back in contact. We had an amazing season and even went to Playoffs. Then swim team started with pretty much the whole Water polo team joining as well. I got to hang out with old and new friends and make great times in my races.

Pretty much what I'm trying to say is the Sandy Pool has been with me for 9 years of my life and everything I know about swimming comes from that pool. So, taking this pool away would mean taking away present and future generations chance to try this life changing sport and this amazing pool I like to call my second home.

Please do the right thing and keep the pool.

Ruby - Ruby Paulsen

Ruby Paulsen

Dear City Council and Mayor Plliam,  
my name is Parker Sharmar. I'm  
a 15 year old attending Sandy Highschool.  
During this past school year I played and  
thoroughly enjoyed both water polo and  
swim team. I also volunteered as a swim  
lesson 'instructor assistant' for the last  
2 summers. some parts of the school year.  
The pool has become sort of a second home  
to me not only because of how much  
time I've spent there, but also because  
of all the wonderful people I've  
met and become friends with at  
the pool. Water polo was the first sport  
in years that I actually enjoyed. For  
years I've stumbled through soccer and  
basketball never really having any fun. Then  
water polo changed everything. I was actually  
decent at a sport for once and the  
people on the team were a blast to  
hang out with. Water polo gave me new friends  
and a sport I actually enjoyed. When  
swim team rolled around I couldn't wait.  
Swimming was what I was best at in  
water polo, so I knew swim team would  
be great. Sure enough swim team was  
amazing. I swam the 500 yard freestyle  
(20 laps) and dropped about 20 seconds  
over the season. It was so much  
fun being with my water polo friends  
again, and making some more new friends.  
As for helping teach swim lessons it  
was a fantastic learning experience. Every



One time when I was little I had my birthday party at the sandy pool. All my friends were there and I had a great time. If the pool gets shut down it will prevent many little kids from having great times there just like me. The sandy pool is super fun and shouldn't get shut down for good.

Sincerely,  
Grace Blissee

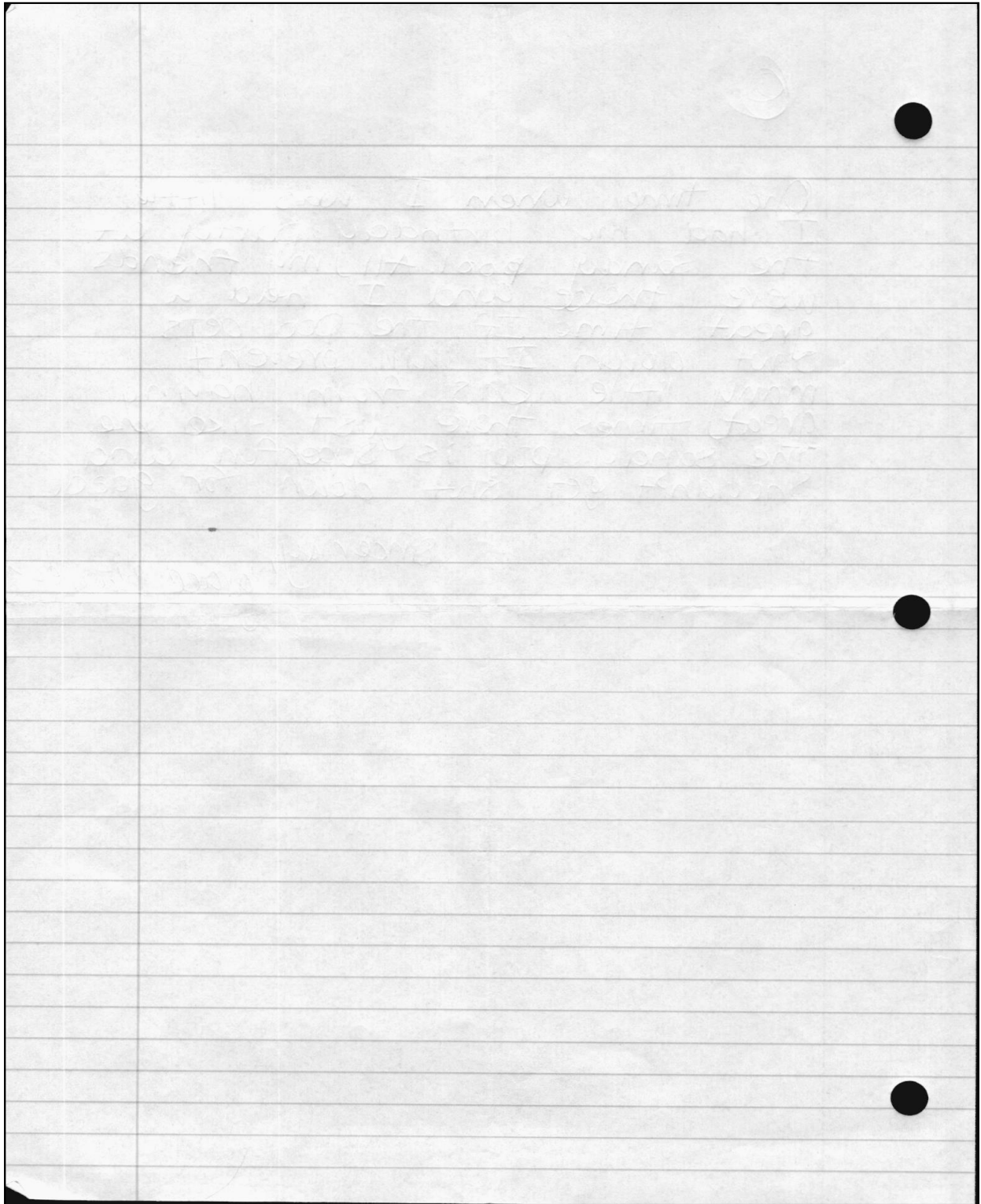
morning I'd go in and help teach the kids how to swim. It helped teach me time management skills, how to work with others, how to work with children, and overall general responsibility. Those are all life skills that I can take anywhere and that I planned on using when I started officially working at the pool. I was going to get my lifeguarding certification sometime next month but now that the pool's closing I'll probably never get to work there. I was planning on saving up for college or other post highschool plans by working at the pool. Now though I can't work at the pool and all those great memories of swim team and water polo will have to stay memories. So please, just please try to find a way to save the pool for me and everyone else in the community.

Sincerely,

Parker Sharman

City Council,

I have been associated with the pool since before I could remember. It's where I learned to not only swim, but face my fears and persevere. After swim America, I joined the Mavericks swim team and swam for 3 years for them. Swimming has been my main sport forever and to think I could never participate in another water polo game or swim meet devastates me. Everyone who cares about the pool is willing to do whatever it takes to keep the Sandy pool open. Swimming has been a huge part of my life and to take it away, for me, would be like losing a part of who I am. I have been looking forward to high school water sports and to think it could be over so soon disheartens me. Even if the pool is being closed to make it better, high school students like me would miss out on playing their sport during their high school years, and the current juniors wouldn't get to play the sport they've been perfecting during their senior year. To me and to many others, the pool is not just a pool. It's a community, a home, and a people. Instead of thinking of the pool as a burden, think of it as a home.





Please don't take down the pool. I have been going to that pool all my life. My best friend is on the swim team and taking it down would ruin practicing for everyone on the team in the present and future. It just needs a fix-up. Please keep the pool.

~Gracelyn Thompson



My name is Teresa Anderson my address is 23720 SE Van Curen Rd Eagle Creek 97022

I am unable to attend this meeting this evening due to obligations teaching swim lessons at our well loved Sandy Aquatic Center.

I became involved with the Blue Marlin Swim Team in 1984 at the age of 9. I swam year round through grade school, junior high and High school participating on Sandy Union High Schools swim team. I was with what I believe was an elite team at that time. This opportunity gave me so many positive influences throughout my life.

I have worked throughout the years in a number of local aquatic centers as well as privately owned facilities. Teaching aquatic classes has brought me joy and is a passion of mine.

Sandy Aquatic Center offers a variety of water activities: Water Aerobics shallow & deep, lap swim, recreational swimming, American Red Cross swim lessons, Pool rentals for parties and provides Sandy High School with a facility for their swim team and water polo team.

The Sandy Aquatic Center offers jobs to adults and teens as young as 15 years of age. They have an opportunity to learn important life skills such as responsibility, communication, team work, problem solving, leadership, time and money management, creativity, customer service, critical thinking, negotiation, decision making, conflict resolution, analytical skills, social skills, delegation and active listening skills.

Teen aquatic sports gives them opportunities to excel. Studies suggest participants are likely to do better academically, teaches them teamwork, physical health benefits, boosts self esteem and reduces stress. It also provides opportunities to receive College Scholarships.

Water based exercises brings a number of advantages in an environment that offers reduced weight bearing stress. Exercise in water gives your body more support than exercise on land. It has less impact on joints and bones than land based exercises. Water is 800 times denser than air so the benefit of the added resistance is felt. As a result swimming and water exercise is the best form of exercise and promotes good health.

5 specific benefits:

- Low Impact
- Improves heart health
- Lowers blood pressure
- Reduces joint pain
- Increases Bone Strength

There is also evidence that swimming helps adults with mental health, reduces stress and anxiety and improves quality of life.

In children there is evidence it helps them develop faster, improves strength, flexibility and coordination.

For some this is the only exercise they can participate in.

According to the Center of Disease Control & Prevention... "Annually in the United States unintentional drownings are about 10 deaths per day. 1 in 5 of those deaths are children under the age of 14. For every child that dies from drowning another 5 receive emergency department care for non fatal submersion injuries which can cause severe brain damage". American Red Cross released 54% of Americans CAN NOT SWIM!

WE HAVE TO PROVIDE AND MAKE THESE SERVICES AVAILABLE TO OUR COMMUNITY!  
THERE IS NO OTHER FACILITY IN OUR COMMUNITY AT THIS TIME TO TEACH THESE VITAL SKILLS!

We as a community have not been given any options to help this situation.

My questions are: 1- Can we as a community raise money to keep the pool open until the bond is out on the ballot November of 2020 or until construction? 2- If so how much money would need to be raised in order to fulfill financial obligations? 3- How much would need to be fronted by May 31st?

I do feel that if a Parks and Recreational District can be established, this could help build a facility we would all love for generations!

Thank you, Teresa Anderson



**MINUTES**  
**City Council Meeting**  
**Monday, April 15, 2019 City Hall- Council Chambers, 39250**  
**Pioneer Blvd., Sandy, Oregon 97055 6:00 PM**

**COUNCIL PRESENT:** Stan Pulliam, Mayor, Jeremy Pietzold, Council President, Laurie Smallwood, Councilor, Jan Lee, Councilor, Carl Exner, Councilor, and Bethany Shultz, Councilor

**COUNCIL ABSENT:** John Hamblin, Councilor

**STAFF PRESENT:** Karey Milne, Recorder Clerk, Jordan Wheeler, City Manager, Kelly O'Neill, Planning Director, James Cramer, Associate Planner, David Snider, Economic Development Manager, and Tyler Deems, Finance Director

**MEDIA PRESENT:**

**1. Work Session 6PM**

**1.1. ROLL CALL**

Present: Councilor Pietzold, Councilor Smallwood, Councilor Lee, Councilor Exner, Councilor Shultz, Mayor Pulliam, Fire Chief Phil Schnieder  
Excused Absence: Councilor Hamblin, Sandy Area Chamber of Commerce Director, Khrys Jones.

**1.2. Agenda Review - Regular Council Meeting**

**1.3. Sandy Urban Renewal Plan and Projects**

The Urban Renewal Agency Board and Staff had a discussion on how the Urban Renewal Funds work, how and why it was established and what projects have been done in the past with the funds.

**1.4. ADJOURN WORK SESSION**

**2. Regular City Council Meeting 7PM**

**3. Pledge of Allegiance**

**4. Roll Call**

**5. Changes to the Agenda**

**6. Public Comment**

None

**7. Consent Agenda**

7.1. Parks and Trails Advisory Board Appointment

Staff Report - 0133

Don Robertson, spoke a few words, he is very excited to be apart of the Parks and Trails Board.

7.2. Budget Committee Appointments

Staff Report - 0134

7.3. Award Contract for Revenue Ave. Transfer Pump Station Improvements

Staff Report - 0131

7.4. Motion to approve the consent agenda.

**8. Ordinances**

8.1. Ruthardt Properties Ordinance Modification

Staff Report - 0130

Mayor reviewed the quasi judicial hearing guidelines, opened the public hearing and called for any abstentions, any conflicts of interest.

Call for the Staff Report; Planning Director Kelly O'Neill Jr., Kyle Ruthardt submitted an application on behalf of Ruthardt Properties LLC for an ordinance modification to Ordinance No. 2015-03 (File No. 14-028 ZC) that was adopted by the Sandy City Council on June 15, 2015. The requested ordinance modification would remove the future commitment for the subject property tax lot 1120 (Lot 7, Block 1 of Sandy Industrial Park) to be rezoned to I-1 (Industrial Park zoning designation) when tax lot 1116 (Lots 2-5, Block 1 of Sandy Industrial Park) to the west is rezoned in accordance with Ordinance No. 2015-03. This ordinance modification would leave the existing zoning designation for tax lot 1120 (Lot 7, Block 1 of Sandy Industrial Park) as I-2 (Light Industrial). No site improvements are being requested with this land use application. He reviewed the history of Michael Maiden's property for council as well and what lots were all tied together. Mr Rughardt recently purchased a piece of Maiden's property for industrial use and not commercial use.

Council had questions for staff regarding the property and visibility from Hwy26.

Kyle Ruthard, 16659 S Holcomb Blvd, Oregon City, He gave some background to council as to when he purchased the property, he was not aware that when he purchased that Maiden's properties were tied to the change. He does know that some trees might need to be removed, he has no problem re-planting to replace the trees that will need to be removed.

Council asked Mr. Ruthard a few questions.

Staff recommends that City Council adopt Ordinance No. 2019-02 to modify Ordinance No. 2015-03.

8.2. Motion to close public hearing

8.3. Motion to Approve Ordinance 2019-02 by Title Only

Moved by Jeremy Pietzold, seconded by Laurie Smallwood

*Motion to approve the First Reading of Ordinance 2019-02 by Title Only*

CARRIED.

Moved by Carl Exner, seconded by Jan Lee

*Motion to approve the Second Reading of Ordinance 2019-02 by Title Only*

CARRIED.

**9. New Business**

9.1. Appeal to City Council

7 - 130

Staff Report - 0132

Mayor reviewed the quasi judicial hearing guidelines, opened the public hearing and called for any abstentions, any conflicts of interest.

Called for the Staff Report.

City Attorney, David Doughman, informed council what public hearing in "de-novo" is, and explained our current code and how it is written, and for council to make a motion to consider the "de-novo" public hearing.

Associate Planner, James Cramer, submitted some new letters than came in from the public, that did not make it into the packet. He reviewed the variance requests that went to the Planning Commission. He reviewed the development standards for that specific neighborhood for this type of structure.

Council had questions for staff and the city attorney regarding the structure and setbacks and permits.

Called for proponent testimony; Robert Mottice, 18050 Rachel Drive, Sandy OR, he is asking for a variance for rear and side setbacks, he reviewed the old structure and why he was upgrading the current structure. He handed out a packet to council.

Council had a few questions for Mr. Mottice.

Called for opponent testimony; Kathleen Walker, 15920 Bluff Road, Sandy OR, cautioned council on approving this variance.

Called for rebuttal; Mr. Mottice, let council know again why he was asking for the setbacks as they are requested.

Staff recommends the City Council approve the applicant's appeal for the reasons described above.

Moved by Jan Lee, seconded by Carl Exner

*Motion to move to a "de-novo" public hearing.*

CARRIED.

Moved by Laurie Smallwood, seconded by Carl Exner

*Motion to Close the Public Hearing*

CARRIED.

Moved by Bethany Shultz, seconded by Laurie Smallwood

*Motion to approve the applicant's appeal, File No. 18-051 VAR RV Storage Setback Variance with the following conditions;*

*1. Prior to building permit approval, the City shall contact NW Natural Gas, Portland General Electric, Wave Broadband and SandyNet and provide a two-week comment period for agencies to respond with any conflicts associated with the proposed structure's encroachment into the recorded PUE. 2. The property shall install siding beginning at six feet above grade extending upwards to the proposed structure's north elevation roof line for the full length of the north façade. 3. The applicant shall use a minimum 1-Hour fire-rated wall for the area of the structure located within 3 feet of the north property line as well as verify the distance between the north façade and property line and adjust the eave according to ORSC standards prior to approval of a building permit. 4. All siding and/or trim used on the accessory structure shall match the property's primary structure (single-family dwelling) in material and color.*

CARRIED.

[Exhibit Handed Out](#)  
[Exhibit Handed Out](#)  
[Exhibit Handed Out](#)  
[Exhibit Handed Out](#)  
[Exhibit Handed Out](#)  
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[Exhibit Handed Out](#)  
[Exhibit Handed Out](#)  
[Exhibit Handed Out](#)  
[19-007 AP RV Storage Setback Variance Final Order SIGNED with EXHIBITS](#)

**10. Report from the City Manager**

City Manager, Jordan Wheeler, update on the development of the budget. Gave a quick update on the Waste Water Treatment Plant.

**11. Committee /Council Reports**

Councilors gave their Committee and Council Reports.

**12. Staff updates**

12.1. [Monthly Reports](#)

**13. Adjourn**



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Mayor, Stan Pulliam

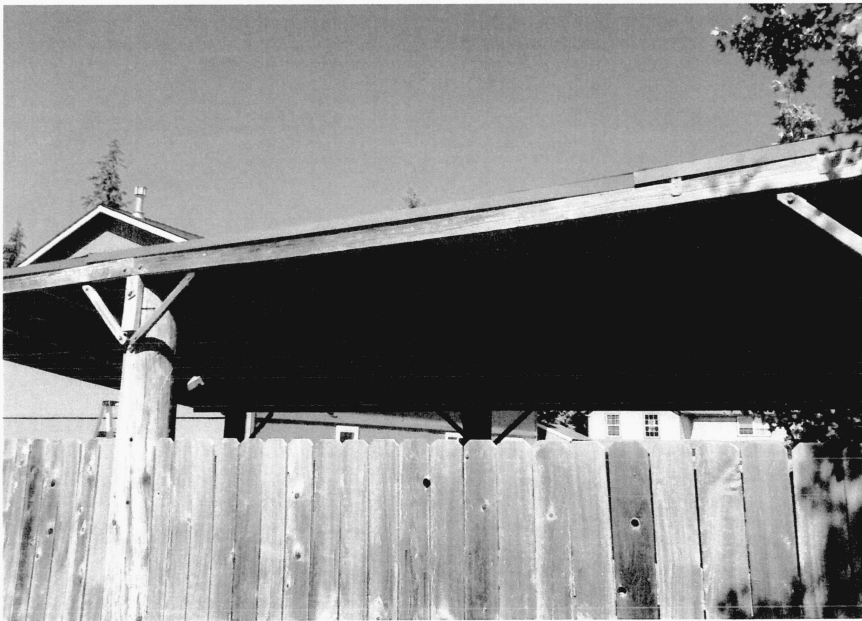


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City Recorder, Karey Milne

Draft



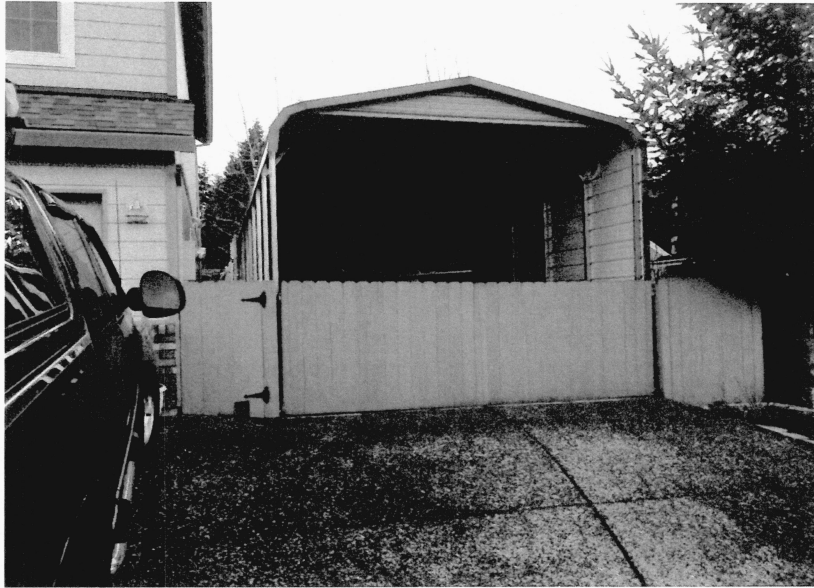


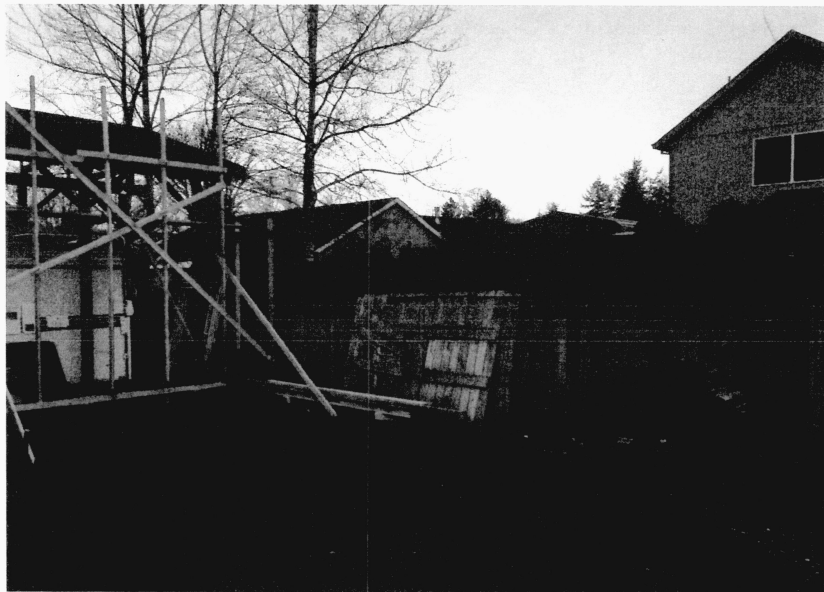








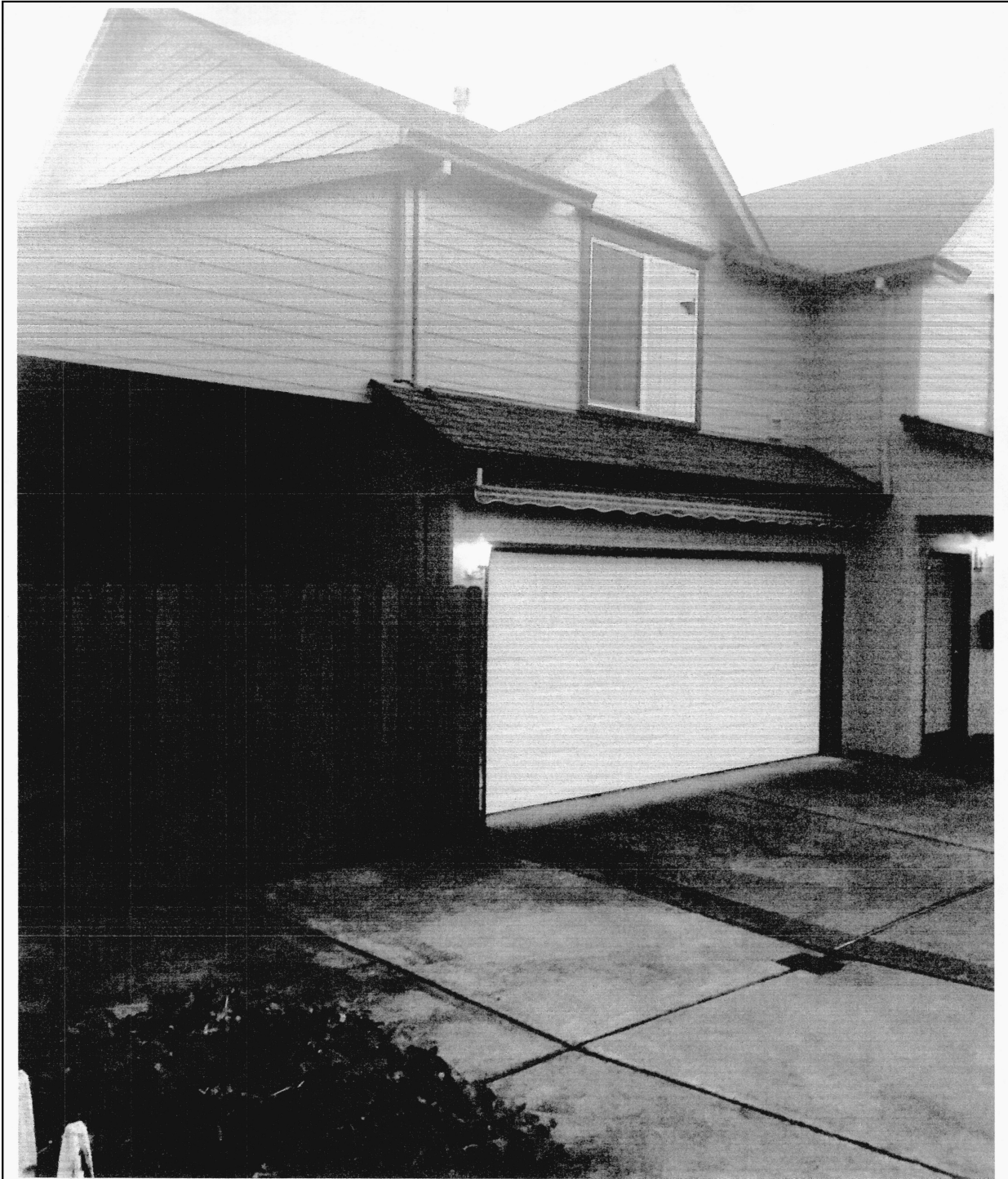


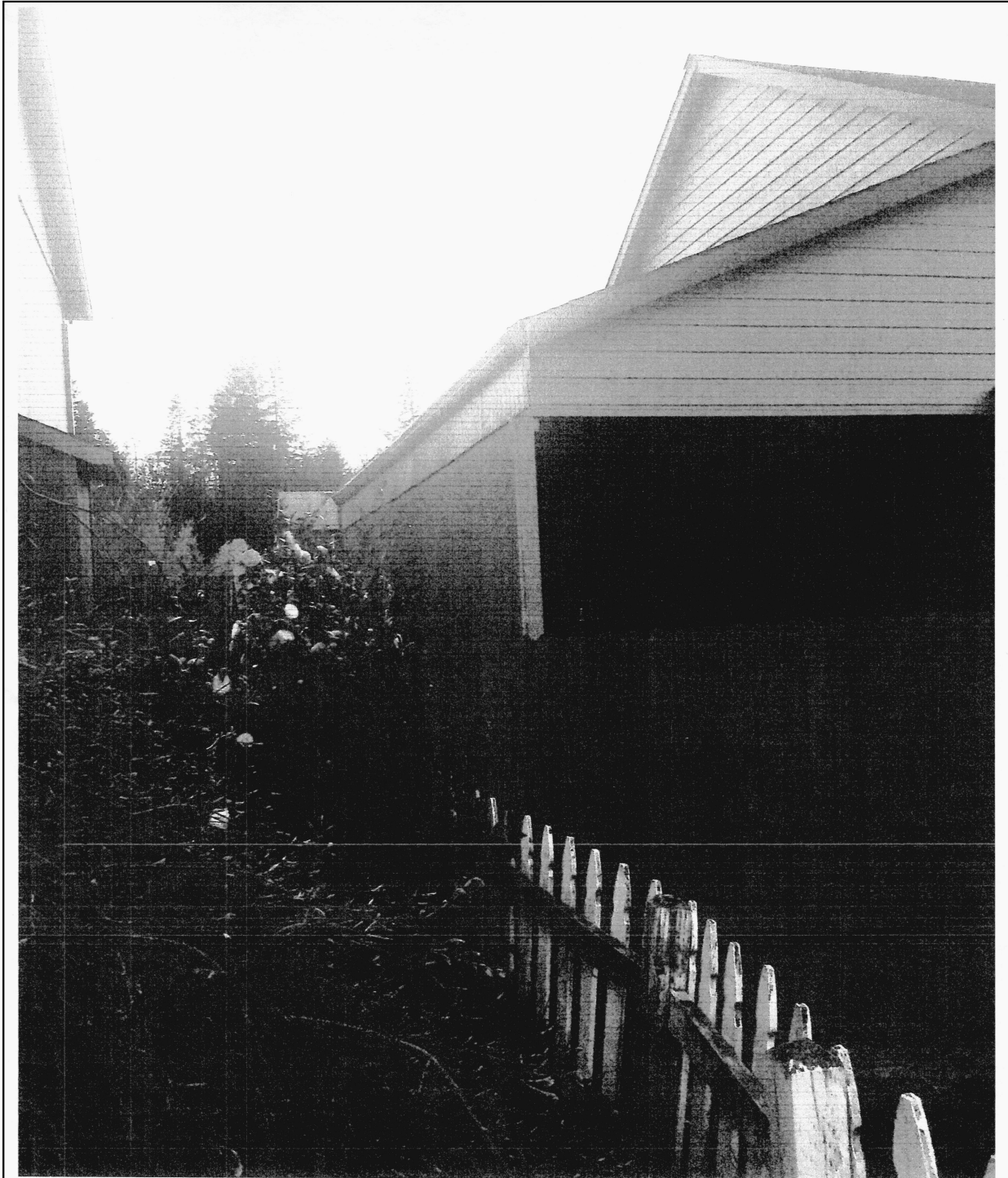












COMMENT SHEET for File No. 19-007 AP:

City of Sandy Planning Commission,

Our position still stands, we do not agree that this appeal should be approved.

Mr. Mottice is the Deputy Fire Marshal for the city of Gresham. He knew that he would need a permit to build, but chose not to. In our minds this means he was trying to get away with something he knew was wrong.

Also, If this appeal is approved it would set a precedence of large out buildings that would not be welcomed in the neighborhood.

Guimar Dellaere

Your Name

503-201-5298

Phone Number

Thank you

18176 Rachael Drive, Sandy OR 97055

Address

APPLICABLE CRITERIA: Sandy Development Code: 17.12 Procedures for Decision Making; 17.18 Processing Applications; 17.22 Notices, Appeals; and 17.38 Medium Density Residential (R-2).

RECEIVED

APR 04 2019

CITY OF SANDY

RECEIVED

APR 12 2019

CITY OF SANDY

COMMENT SHEET for File No. 19-007 AP:

We have no problem with the building of RV storage. Please let them build it. Thank you.

Jesse: Kristhine Canham

Your Name

503-863-6799

Phone Number

18033 Rachael Dr. Sandy, OR 97055

Address

**APPLICABLE CRITERIA:** Sandy Development Code: 17.12 Procedures for Decision Making; 17.18 Processing Applications; 17.22 Notices; 17.28 Appeals; and 17.38 Medium Density Residential (R-2).

**To:**  
Sandy City Council  
% City Hall Council Chambers

**From:**  
Allison and Adam Holms  
Property Owners at  
18014 Rachael Drive  
Sandy, OR 97055

**Date:** April 15, 2019

**To whom it may concern regarding:**  
RV storage setback on the property location at 18050 Rachael Drive, Sandy OR.

We, the homeowners at 18014 Rachael drive, the residence immediately adjacent to the structure, bare no opposition to construction and completion of the RV structure constructed by Mr. Robert Mottice. Mr. Robert Mottice has approached my husband and myself, prior to construction, to ask if we had any objection before starting the project. We appreciated his willingness to communicate with his neighbors and Mr. Mottice has courteous about respecting noise levels and ensuring no debris remained on our side of the fence line. We respectfully request for an exception to the setback rule and allow Mr. Mottice to leave the structure where it stands and to be able to complete the project.

I am unable to attend the meeting in person, due to recent surgery, but welcome any questions or concerns. Our contact information is below.

Respectfully Signed



Allison Holms  
(805)601-3234  
[AllisonHolms@gmail.com](mailto:AllisonHolms@gmail.com)



Adam Holms  
(805)698-3539  
[AdamHolms805@gmail.com](mailto:AdamHolms805@gmail.com)

RECEIVED

MAR 29 2019

CITY OF SANDY

COMMENT SHEET for File No. 19-007 AP:

2nd Comment its too High,  
Too close to property line, its wood  
that creates a fire hazard, I vote  
absolutely not! it also blocks view

Bill & Barbara Linn  
Your Name

503 826 9639  
Phone Number

18071 SE Green Av Sandy, OR 97055  
Address

**APPLICABLE CRITERIA:** Sandy Development Code: 17.12 Procedures for Decision Making; 17.18 Processing Applications; 17.22 Notices; 17.28 Appeals; and 17.38 Medium Density Residential (R-2).

**FINDINGS OF FACT and FINAL ORDER  
APPEAL OF TYPE III LAND USE DECISION**

DATE: 22<sup>nd</sup> Day of April, 20 19

FILE NO. 19-007 AP

PROJECT NAME: RV Storage Setback Variance

OWNER/APPLICANT: Robert Mottice

LEGAL DESCRIPTION: 24E14DC, tax lot 12200

DECISION: Approved by the City Council

The above-referenced proposal was reviewed as a “de novo”, Type III Appeal. The applicant submitted an appeal of the Planning Commission’s January 28, 2019 decision to deny the request to reduce the property’s side (north) yard setback to 2 feet (19 inches to roofline) and rear (east) setback to 3 feet 5 inches (14 inches to roofline) when Subsection 17.38.30 requires a minimum side yard setback of 5 feet and minimum rear setback of 15 feet.

**EXHIBITS:**

**Applicant’s submittals with appeal request**

- A. Notice of Intent to Appeal Form
- B. Applicant’s Narrative

**Staff Analysis**

- C. Finding of Fact (19-007 AP)

**Documents from original design review hearing**

- D. Findings of Fact (18-0051 VAR, complete Planning Commission packet)
- E. Final Order (18-051 VAR)

**Public Comments submitted in response to appeal notice**

- F. Bill and Barbara Linn
- G. Tom Newell
- H. Guimar DeVaere
- I. Jesse and Kristine Canham
- J. Allison and Adam Holms

**Additional Documents Submitted by Staff**

- K. Applicant’s Submitted Height Dimensions
- L. Height of Building Definition



**Additional Documents Submitted by Applicant**

**M. Applicant's Photos**

**FINDINGS OF FACT**

**General**

1. On February 22, 2019 the subject property's owner, Robert Mottice, submitted an application to appeal the Planning Commission's January 28, 2019 decision to deny the request to reduce the property's side (north) yard setback to 2 feet (19 inches to roofline) and rear (east) setback to 3 feet 5 inches (14 inches to roofline) when Subsection 17.38.30 requires a minimum side yard setback of 5 feet and minimum rear setback of 15 feet. This adjustment request would modify the setback to bring the partially constructed carport into compliance and allow the applicant to finish construction on the RV carport.
2. These findings supplement and are in addition to the following documentation:
  - o Staff Report 19-007 AP dated April 15, 2019 (Exhibit C)
  - o Staff Report 18-0051 VAR dated January 28, 2019 (Exhibit D)
  - o Final Order 18-051 VAR (Exhibit E)

Where there is a conflict between these findings and the staff reports, these findings shall control.

3. These findings are based on the applicant's submitted materials. These items are identified in Exhibits A, B, K and M. Additionally, the documentation the applicant originally submitted for design review (18-051 VAR) can be found within Exhibit D.
4. The subject site consists of one parcel with a total area of approximately 0.12 acres. The subject property is located within the Nicolas Glen No. 3 subdivision recorded January 12, 2000. The property includes a 1,338 square foot, two-story single-family residential dwelling with an attached two-car garage (not included in the overall square footage).
5. The parcel has a Comprehensive Plan Designation of Medium Density Residential and a Zoning Map designation of R-2, Medium Density Residential.
6. Specifically, the applicant's submission included the following three Special Variance requests:

**Variance A:** To finish construction of an accessory structure 2 feet (19 inches to roofline) from an interior side (north) yard property line when Subsection 17.38.30 requires a minimum interior side yard setback of 5 feet in the R-2 zone district.

**Variance B:** To finish construction of an accessory structure 3 feet 5 inches (14 inches to roofline) from a rear (east) yard property line when Subsection 17.38.30 requires a minimum rear yard setback of 15 feet in the R-2 zone district.

Variance C: To allow the final height of the structure to exceed the maximum 16-foot height limitation Subsection 17.74.10(B)(6) requires for residential detached accessory structures.

7. Upon further review it was determined the height of the existing structure did not exceed the height limitation of Subsection 17.74.10(B)(6) therefore the requested Variance C was not required.
8. Notification of this appeal was mailed to property owners within 500 feet of the subject property and to affected agencies on March 18, 2019. A legal notice regarding this appeal was published in the Sandy Post on Wednesday, April 3, 2019.
9. On April 15, 2019 the City Council held a public hearing to review the application. At this hearing the City Council rendered a unanimous vote to hear the requested appeal case as a “de novo hearing.” A “de novo hearing” is a hearing by the review body (in this case City Council) as if the action had not been previously heard and as if no decision had been rendered, except that all testimony, evidence and other material from the record of the previous consideration shall be included in the record of the review.
10. At the April 15, 2019 hearing, City Council made a motion to approve the requested side and rear yard setbacks with conditions as detailed in the decision section of this final order. The motion received a unanimous vote therefore the motion carried, and the setback requests (Variances A and B) were **approved**.

17.30 – Zone Districts

11. The subject property is located within the Medium Density Residential (R-2) zone district and within the Nicolas Glen Subdivision. This development consists of 165 platted lots of which 164 have been developed into single-family residential dwellings and one duplex dwelling.

17.38 – Medium Density Residential

12. The applicant proposes to incorporate a detached carport to be used for RV storage as an accessory use to the primary single-family residential dwelling. The proposed accessory use does not affect the existing primary use or density of the property as detailed in Chapter 17.30 of this report.
13. Subsection 17.38.10(B)(2) identifies accessory structures, detached or attached as an accessory use permitted outright within the R-2 zone district.
14. The proposed accessory structure does not meet the side or rear yard setback requirements of the R-2 zone district (Subsection 17.38.30). The applicant has requested the three special variances identified in Item No. 6 above which are further detailed within Finding Nos. 23-37 below.

17.74 – Accessory Development Additional Provisions and Procedures

15. Subsection 17.10.30 defines an accessory structure (detached) as, “*a structure that is clearly incidental to and subordinate to the main use of property and located on the same lot as the main use; freestanding and structurally separated from the main use.*”

16. The applicant expressed the intention of the proposed detached accessory structure is for RV storage. The proposed use of the structure is subordinate to and commonly associated with the primary use (single-family residential dwelling) of the property. Additionally, the proposed structure is located on the same lot of record as the primary use and is incidental in design to the primary structure.
17. A detached accessory structure shall be separated from the primary structure by at least six (6) feet (Subsection 17.40.10). After conducting a site visit at the subject property and reviewing the submitted photos, staff confirms that, once completed, the proposed structure will exceed 6 feet in distance from the primary structure and therefore meets the definition of a detached accessory structure.
18. The proposed accessory structure covers 392 square feet of area; therefore the structure is not permitted to be within any required setback of the R-2 zone district. As a result, the proposed accessory structure is required to have a minimum side (east) yard setback of 5 feet (same standard as the R-2 zone district 17.38.30) and a minimum rear (east) yard setback of 15 feet (same standard as the R-2 zone district 17.38.30). The applicant has requested two special variances from the required setback standards, one for the interior side yard setback and one for the rear yard setback which are further detailed within Finding Nos. 25-35 below.
19. The proposed accessory structure is located on the same lot of record as the associated primary structure and will be constructed behind the front plane/facade of the primary structure.
20. The property is not a corner lot, therefore there is no access from a secondary street side yard.
21. As observed in the submitted photos and plans, as well as described in the applicant's originally submitted narrative (Exhibit D), the roof line has been designed with a single pitched roof in order to direct stormwater runoff south onto the applicant's property as opposed to adjacent properties. Additionally, the applicant proposes to install a gutter on the south roof line to mediate water run off on the site.
22. The overall height of the proposed accessory structure will be 15 feet 1.25 inches (181.25 inches), and therefore will not exceed the 16-foot height limitation of Subsection 17.74.10(B)(6) meaning that requested Variance C is not required as further detailed in Finding Nos. 36-38 below.

17.66 – Adjustments and Variances

23. The applicant requests two Type III Special Variances to the side and rear yard setback requirements of Subsection 17.38.30. In order for a variance to be approved, the applicant must meet all criteria of Section 17.66.70.
24. As presented within Exhibits C and D, the intent of setbacks for structures is to provide development predictability based on zone districts for property owners and citizens. While required setbacks result in the separation of primary structures to preserve open space they

also provide means for a property owner to access and maintain a structure on their property. Additionally, in many cases setbacks provide the ability for public utilities to access a property through a recorded public utility easement and create a buffer for fire separation.

Variance A – interior side (north) yard setback

25. The applicant requested to finish construction of an accessory structure 2 feet (19 inches to roofline) from an interior side (north) yard property line when a 5-foot setback is required.
26. The proposed accessory structure is on private property and will not be detrimental to the public welfare. While the location of the proposed structure is in close proximity to the shared north property line it was observed that there are no structures on the adjacent property to the north in close proximity to the shared property line. The design of the proposed structure is open on all four sides; however, the applicant expressed their intention on installing T1-11 siding for the upper eight feet of the north elevation and to be painted to match the existing primary structure (house) on the site. Additionally, this siding will wrap around to the eastside of the structure to help blend the structure into the neighborhood. With the exception of minimal exterior maintenance, it is reasonable to infer that the adjacent property owner to the north would not likely be negatively affected by any future maintenance of the proposed structure.
27. With the exception of minimal exterior maintenance, staff believes it is reasonable to infer that the adjacent property owner to the east would not likely be negatively affected by any future maintenance of the proposed structure. In addition, the property owner to the north of the subject property submitted a letter in support of the proposed structure (Exhibit J).
28. Oregon Residential Specialty Code (ORSC) R302.1 identifies that garage walls or residential building walls less than 3 feet from a property line are required to comply with TABLE R302. The structure is proposed to be 2 feet (19 inches to roofline) from the property line, therefore, if approved, the building **shall have a minimum of 1-Hour fire-rated construction**. Additionally, if the walls are less than 2 feet from the property line, then the maximum roof eave projections (including gutters) cannot exceed 4 inches. **The applicant shall verify the distance between the north façade and property line and adjust the eave according to ORSC standards prior to approval of a building permit.**
29. The property is located in the Nicolas Glen No. 3 subdivision recorded January 12, 2000. The plat identifies the subject property having a five-foot public utility easement (PUE) on the front, side and rear yard property lines. This would indicate that the proposed structure would encroach 3 feet into this PUE as identified on the plat. NW Natural Gas, Portland General Electric, Wave Broadband and SandyNet were notified of the proposal, but the City did not receive comments in favor or against the proposed accessory structure location.
30. At the April 15, 2019 City Council Hearing staff recommended approval of the requested variance with the following conditions:
- Prior to building permit approval, the City shall contact NW Natural Gas, Portland General Electric, Wave Broadband and SandyNet and provide a two-week comment

period for agencies to respond with any conflicts associated with the proposed structure's encroachment into the recorded PUE.

- The applicant shall install siding beginning at six feet above grade extending upwards to the proposed structure's roof line for the full length of both the north and east façades.
- The applicant shall use a minimum 1-Hour fire-rated wall for the area of the structure located within 3 feet of the north property line as well as verify the distance between the north façade and property line and adjust the eave according to ORSC standards prior to approval of a building permit.
- All siding and/or trim used on the accessory structure shall match the property's primary structure (single-family dwelling) in material and color.

Variance B – rear (east) yard setback

31. The applicant requested to finish construction of an accessory structure 3 feet 5 inches (14 inches to roofline) from a rear (east) yard property line when a 15-foot setback is required.
32. The proposed structure is on private property and will not be detrimental to the public welfare. While the location of the proposed structure is in close proximity to the shared east property line it was observed that there are no structures on the adjacent property to the east in close proximity to the shared property line. The design of the proposed structure is open on all four sides with the exception of the top eight feet of the north façade. The applicant has expressed their intention on installing T1-11 siding for the upper eight feet of the north elevation to be painted to match the existing primary structure (house) on the site. Additionally, this siding will wrap around to the eastside of the structure to help blend the structure into the neighborhood. The applicant has identified an existing tree located on the adjacent property to the east that blocks off-site views of the proposed structure. However, seasonal changes and the loss of leaves on the identified tree will lead to increased visibility of the proposed structure. **To decrease the visibility of the contents within the proposed structure staff recommended the applicant install siding on the east elevation to match siding proposed on the remainder of the proposed structure.**
33. With the exception of minimal exterior maintenance, staff believes it is reasonable to infer that the adjacent property owner to the east would not likely be negatively affected by any future maintenance of the proposed structure. In addition, the property owner to the east of the subject property submitted a letter in support of the proposed structure prior to the January 28, 2019 Planning Commission hearing (Exhibit D, pages 33-34).
34. The property is located in the Nicolas Glen No. 3 subdivision recorded January 12, 2000. The plat identifies the subject property having a five-foot public utility easement (PUE) on the front, side and rear yard property lines. This would indicate that the proposed structure would encroach 2 feet 7 inches into this PUE as identified on the plat. NW Natural Gas, Portland General Electric, Wave Broadband and SandyNet were notified of the proposal, but the City did not receive comments in favor or against the proposed accessory structure location.
35. At the April 15, 2019 City Council Hearing staff recommended approval of the requested variance with the following conditions:

- Prior to building permit approval, the City shall contact NW Natural Gas, Portland General Electric, Wave Broadband and SandyNet and provide a two-week comment period for agencies to respond with any conflicts associated with the proposed structure's encroachment into the recorded PUE.
- The applicant shall install siding beginning at six feet above grade extending upwards to the proposed structure's roof line for the full length of both the north and east façades.
- The applicant shall use a minimum 1-Hour fire-rated wall for the area of the structure located within 3 feet of the north property line as well as verify the distance between the north façade and property line and adjust the eave according to ORSC standards prior to approval of a building permit.
- All siding and/or trim used on the accessory structure shall match the property's primary structure (single-family dwelling) in material and color.

Variance C -residential detached accessory structure height

36. The applicant requested to finish construction of a detached accessory structure with a height that exceeds the maximum 16-foot height limitation.
37. The overall height of the proposed accessory structure will be 15 feet 1.25 inches (181.25 inches).
38. Upon further review it was determined the height of the existing structure did not exceed the height limitations of Subsection 17.74.10(B)(6) therefore the requested Variance C was not required.

17.98 – Parking, Loading, & Access Requirements

39. The proposed carport is located in the rear portion of the subject property and therefore will require off-street improvements to comply with the standards and regulations of this chapter. As observed by staff and represented in the applicant's submitted photographs the subject property currently has improved surfacing (pavement) between the right-of-way and proposed carport.

**DECISION**

On April 15, 2019 the City Council held a public hearing to review the application. At this hearing the City Council rendered a unanimous vote to hear the requested appeal case "de novo." A "de novo hearing" is a hearing by the review body (in this case City Council) as if the action had not been previously heard and as if no decision had been rendered, except that all testimony, evidence and other material from the record of the previous consideration shall be included in the record of the review.

At this hearing, City Council made a motion to approve the requested side and rear yard setbacks with the following conditions:

- Prior to building permit approval, the City shall contact NW Natural Gas, Portland General Electric, Wave Broadband and SandyNet and provide a two-week comment period for agencies to respond with any conflicts associated with the proposed structure's encroachment into the recorded PUE.

- The applicant shall install siding beginning at six feet above grade extending upwards to the proposed structure's roof line for the full length of both the north and east façades.
- The applicant shall use a minimum 1-Hour fire-rated wall for the area of the structure located within 3 feet of the north property line as well as verify the distance between the north façade and property line and adjust the eave according to ORSC standards prior to approval of a building permit.
- All siding and/or trim used on the accessory structure shall match the property's primary structure (single-family dwelling) in material and color.

The motion received a unanimous vote therefore the motion carried, and the setback requests (Variances A and B) were **approved**.



Stan Pulliam  
Mayor



Date

**RIGHT OF APPEAL**

A decision of the City Council may be appealed to the Land Use Board of Appeals (LUBA) or to the legal authority governing land use regulations and issues by an affected party by filing an appeal in accordance with applicable statutes.

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.

Exhibit A



NOTICE OF INTENT TO APPEAL  
(Please print or type the information below)

File No. <u>(18-051) 19-007 App</u>	Date of Decision: <u>2-12-19</u>
Date Notice of Decision Mailed:	Date Appeal Filed:
Appeal Filed within 12 calendar days of Written Decision: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Application Complete: <input type="checkbox"/> Yes <input type="checkbox"/> No	Appeal Fee: \$ _____ Receipt No. _____
Scheduled for review before the <input type="checkbox"/> Planning Commission <input checked="" type="checkbox"/> City Council	
Date Set for Appeal Hearing:	

Name of Appellant: Robert D Mottice Phone Number 503-724-9208

Address: 18050 Rachael Dr.  
(city/state/zip)

Legal Description of Property under Appeal: T2S R 24E Section 14 00 TL 12200

Basis for Standing to Appeal:

- Submitted written evidence during the initial review
- Testified orally at the hearing
- Participated through \_\_\_\_\_

**Grounds for the Appeal:** Attach separate page(s) stating the grounds 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 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 conform to the above requirements or is not actually received by the city (delivered to the city manager, planning 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.

THE 1400 12-19



## Exhibit B

February 19, 2019

Notice of Intent to Appeal

File 18-051 Type III Special Variance for side and rear setbacks for an accessory structure at 18050 Rachael Drive

The variance came before the Planning commission on January 28, 2019

First, the accessory structure (RV Storage) is of legal height and staff is in support of the variance as presented by the applicant Robert Mottice with four conditions as presented for the planning commission and in the staff report. The variance was for the north side and east rear setbacks for the accessory structure.

The issues that were raised at the planning commission hearing kept coming back to the height, size and the process, the bulk of the hearing revolved around these items when the hearing was specific for the side and rear setbacks. The City staff tried several times to remind the Planning commission the reason for the variances were for the side and rear setbacks from the property lines. The Residential Specialty code gives a fix for encroachment of the property lines and Sandy Building Code Official (Terrence Gift) provided the requirements to rating the walls that are within the setback given by the develop code. These are outlined in the Agency Comments; the reference is to the Residential Specialty Code, Table 302.1

Per the City Staff report Chapter 17.30 Zoning District Medium Density Residential (R2) within the Nicolas Glenn Subdivision the accessory structure does not affect the existing primary use or density of the property.

The proposed detached carport to be used as a RV storage is accessory to the primary use of the residential dwelling and is outright permitted use in subsection 17.34.10(B)(2) zone district. There was structure there previously in the same footprint.

### 17.74.10 Residential Accessory Structures

Proposed structure is more than 6 feet away from the primary structure.

- A. The structure is larger than 200 sq. ft. and taller than 12 feet, the side setback should be 5 feet, the proposed accessory structure is 2 feet the described fix is to rate the wall to a 1 hour standard. The Rear setback is 15 feet and the proposed structure is only 3 feet, again the described fix per the Residential Code is to rate the wall to a one hour standard.
- B. General Standards
  - 1) The accessory structure is to the rear of the primary structure (back yard)
  - 2) The set back from the front of the property far exceeds the minimum required 10 feet setback.

- 3) The proposed structure has a shed style roof (not opposed by City Staff) has 4/12 roof pitch sloped away from the property to the North and drains back on to the applicants property, if allowed to be finished the South side roof will have a gutter to handle the rain runoff. Note the previous structure shed the water from the roof to the neighbor's property to the North.
- 4) The proposed structure for vehicle storage (RV) is more than 20 feet from the street on the front side of the lot.
- 5) The proposed structure is less than the max size of 1,200 square feet; it is 392 square feet.
- 6) The proposed structure is less than the max height of 16 feet (measure per the direction of City staff). The proposed structure is 15 feet 1.25 inches.
- 7) Proposed structure complies with being on the same lot as the primary structure.
- 8) Not a temporary membrane structure.

City staff find that Subsection 17.74.10(A) side and rear setback will need to have a variance due to being less than 5 feet for the side (North) and rear east) setbacks.

The four utility companies did not provide comments opposed or in favor.

Sandy City staff recommended the approval of variance with reduction of the north side and east side setbacks. With four conditions listed in their report.

The City of Sandy Planning commission vote ending in a tie vote two in favor and 2 opposed, with one abstaining. The two in support of the variance both believed that the motion passed with the tie going to the applicant. The City Attorney, who was present by phone, later corrected this. The tie caused the application for variance for the setbacks to fail. There was more discussion on options and if any of the commissioners wanted to change their votes. There was no change and one of the commissioners stated that the applicant could just appeal their decision to City Council.

**SUBJECT:** File No. 19-007 AP – RV Storage Setback Variance Appeal

**AGENDA DATE:** April 15, 2019

**DEPARTMENT:** Planning & Development

**STAFF CONTACT:** James Cramer, Associate Planner

**Application Submitted:** Nov. 15, 2018  
**Deemed Complete:** Nov. 28, 2018  
**Final Order Issued:** Feb. 13, 2019  
**Appeal Filed:** Feb 22, 2019  
**120-Day Deadline:** March 28, 2019

**EXHIBITS:**

**Applicant’s submittals with appeal request**

- A. Notice of Intent to Appeal Form
- B. Applicant’s Narrative

**Documents from design review approval**

- C. Findings of Fact (includes all Exhibits reviewed at the Planning Commission hearing)
- D. Final Order

**Public Comments submitted in response to appeal notice**

- E. Bill and Barbara Linn
- F. Tom Newell

**Additional Documents Submitted by Staff**

- G. Applicant’s Submitted Height Dimensions
- H. Height of Building Definition

**I. BACKGROUND**

**A. BACKGROUND INFORMATION:**

On February 13, 2019, the Planning Commission issued a Final Order (18-051 VAR) denying the applicant’s request to reduce the property’s side (north) yard setback to 2 feet (19 inches to roofline) and rear (east) setback to 3 feet 5 inches (14 inches to roofline) when Subsection 17.38.30 requires a minimum side yard setback of 5 feet and minimum rear setback of 15 feet. This adjustment request would modify the setback to bring the partially constructed carport into compliance and allow the applicant to finish construction on the RV carport.

The partially constructed carport measures an overall height of 15 feet 1.25 inches (181.25 inches) and therefore meets the maximum 16-foot height limitation for accessory structures per Subsection 17.74.10(B)(6). The measuring methods delineated in “Height of Building” located within Subsection 17.10.30 were applied to calculate the overall height.

**B. SCOPE OF REVIEW:**

Prior to beginning the public hearing, the City Council will need to decide whether to review the application “on the record” or “de novo”. Review of the application “on the record” allows

the Council to review arguments received by the applicant and the public as part of the appeal of the Planning Commission decision, including testimony at this meeting, but would not require review of the entire application. A “de novo” hearing on the other hand would essentially treat the application as new allowing review of the entire application as if the application had not been previously reviewed by the Planning Commission and a decision had not been previously rendered. **Staff recommends the Council move to hold the hearing based “de novo”.**

**C. FACTUAL INFORMATION**

1. APPLICANT & PROPERTY OWNER: Robert Mottice
2. PROJECT NAME: RV Storage Setback Variance
3. SITUS ADDRESSES: 18050 Rachael Drive
4. LEGAL DESCRIPTION: 24E14DC, tax lot 12200
5. PROPERTY LOCATION: The second property south of the Solso Rd. / Rachael Dr. intersection on the east side of the street.
6. PROPERTY SIZE: 0.12 acres
7. COMPREHENSIVE PLAN DESIGNATION: Medium Density Residential
8. ZONING DISTRICT DESIGNATION: R-2, Medium Density Residential

**D. APPLICABLE CRITERIA:** Sandy Development Code; 17.12 Procedures for Decision Making; 17.18 Processing Applications; 17.22 Notices; 17.28 Appeals; and 17.38 Medium Density Residential (R-2).

**E. PROCEDURAL CONSIDERATIONS**

This request is being processed as a Type III Appeal. Notification of the proposal was mailed to property owners within 500 feet of the subject property and to affected agencies on March 18, 2019. A legal notice was published in the Sandy Post on Wednesday, April 3, 2019.

**F. PUBLIC COMMENTS**

As noted above, notification of the appeal was mailed on March 18, 2019. The notification period had not ended at time of staff report publication. Public comments received will be presented at the City Council public hearing.

**II. ANALYSIS OF APPLICANT/APPELLANT’S SUBMITTAL**

**GROUND FOR APPEAL #1 – Denial of the requested side and rear yard setback reduction.**

**Summary:** The applicant is appealing the Planning Commission’s January 28, 2019 decision to deny the request to reduce the property’s side (north) yard setback to 2 feet (19 inches to roofline) and rear (east) setback to 3 feet 5 inches (14 inches to roofline) when Subsection 17.38.30 requires a minimum side yard setback of 5 feet and minimum rear setback of 15 feet. This adjustment request would modify the setback to bring the partially constructed carport into compliance and allow the applicant to finish construction on the RV carport.

The partially constructed carport measures an overall height of 15 feet 1.25 inches (181.25 inches) and therefore meets the maximum 16-foot height limitation for accessory structures per Subsection 17.74.10(B)(6). The measuring methods delineated in “Height of Building” located within Subsection 17.10.30 were applied to calculate the overall height.

The applicant notes the accessory structure is of legal height and that *“the issues that were raised at the planning commission hearing kept coming back to the height, size and process, the bulk of the hearing revolved around these items when the hearing was specific for the side and rear setbacks.”* In addition, the applicant details compliance with the requirements of Subsection 17.74.10 – Residential Accessory Structures with the exception of the requested variance.

**Staff Analysis:** The proposed accessory structure (RV Storage) covers 392 square feet of area, therefore the structure is not permitted to be within any required setback of the R-2 zone district. As a result, the proposed accessory structure is required to have a minimum side (east) yard setback of 5 feet (same standard as the R-2 zone district 17.38.30 for the primary structure) and a minimum rear (east) yard setback of 15 feet (same standard as the R-2 zone district 17.38.30 for the primary structure). The applicant has requested special variances for the side (north) yard setback to be 2 feet (19 inches to roofline) and rear (east) setback to be 3 feet 5 inches (14 inches to roofline).

The applicant provided the height dimensions via email (Exhibit G) per the code determination on height which indicated the height did not exceed the maximum height, therefore not requiring a variance. The site plan indicated that the side and rear yard setbacks were not met.

The intent of setbacks for structures is to provide development predictability based on zone districts for property owners and citizens. While required setbacks result in the separation of primary structures to preserve open space they also provide means for a property owner to access and maintain a structure on their property. Additionally, in many cases setbacks provide the ability for public utilities to access a property through a recorded public utility easement and create a buffer for fire separation.

Staff recommended the City Council approve both variance requests with the following conditions:

1. Prior to building permit approval, the City shall contact NW Natural Gas, Portland General Electric, Wave Broadband and SandyNet and provide a two-week comment period for agencies to respond with any conflicts associated with the proposed structure’s encroachment into the recorded PUE.
2. The property shall install siding beginning at six feet above grade extending upwards to the proposed structure’s roof line for the full length of both the north and east façades.
3. The applicant shall use a minimum 1-Hour fire-rated wall for the area of the structure located within 3 feet of the north property line as well as verify the distance between the

north façade and property line and adjust the eave according to ORSC standards prior to approval of a building permit.

4. All siding and/or trim used on the accessory structure shall match the property's primary structure (single-family dwelling) in material and color.

At the January 28, 2019 Planning Commission Meeting, the Planning Commission voted on a motion to approve the requested two special variances (Variances A & B). The results of the vote were a tie with two votes to approve and two votes to deny the motion. Under Robert's Rules, a majority, or more than half, vote is the fundamental requirement to pass a motion therefore the motion did not carry, and the variances were denied.

### **III. RECOMMENDATION**

Staff recommends City Council hold a public hearing in “**de novo**” to take public testimony regarding the appeal. In addition, staff recommends the City Council approve the applicant's appeal for the reasons described above.

Exhibit D

City of Sandy



Agenda
Planning Commission Meeting
Meeting Location: City Hall- Council Chambers, 39250 Pioneer Blvd., Sandy, Oregon 97055
Meeting Date: Monday, January 28, 2019
Meeting Time: 7:00 PM

Table with 2 columns: Item Number and Page. Items include ROLL CALL, APPROVAL OF MINUTES, APPOINTMENTS: PLANNING COMMISSION CHAIR & VICE-CHAIR, REQUESTS FROM THE FLOOR - CITIZEN COMMUNICATION ON NON- AGENDA ITEMS, NEW BUSINESS, and 18-051 VAR RV Storage Setback Variance.

It is hereby recommended that the Planning Commission approve both variance requests with the following conditions:

- 1. Prior to building permit approval, the City shall contact NW Natural Gas, Portland General Electric, Wave Broadband and SandyNet and provide a two-week comment period for agencies to respond with any conflicts associated with the proposed structure's encroachment into the recorded PUE.
2. The property shall install siding beginning at six feet above grade extending upwards to the proposed structure's roof line for the full length of both the north and east façades.
3. The applicant shall use a minimum 1-Hour fire-rated wall for the area of the structure located within 3 feet of the north property line as well as verify the distance between the north façade and property line and adjust the eave according to ORSC standards prior to approval of a building permit.
4. All siding and/or trim used on the accessory structure shall match the property's primary structure (single-family dwelling) in material and color.

**"I make a motion to approve the requested side and rear yard setbacks with the condition 1-4 identified within Section IV of the attached Staff Report"**

[18-051 VAR RV Storage Setback Variance - Pdf](#)

5.2. 19-001 TREE City Townhouses Tree Variance

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Staff recommends the Planning Commission hold a public hearing to take public testimony regarding the proposal. Staff recommends the Planning Commission **approve** the variance request with modifications as recommended in this report.

"Make a motion to approve the variance request with modifications as recommended in this report."

[19-001 TREE - Pdf](#)

**6. ITEMS FROM COMMISSION AND STAFF**

**7. ADJOURN**



**Sandy Planning Commission  
Regular Meeting  
Monday, October 29, 2018**

Chairman Jerry Crosby called the meeting to order at 7:03 p.m.

**1. ROLL CALL**

Commissioner Carlton – Present  
Commissioner Lesowski – Present  
Commissioner MacLean Wenzel – Absent  
Commissioner Logan – Present  
Commissioner Mobley – Present  
Commissioner Abrams – Present  
Chairman Crosby – Present

Advisor Daisy Meade - Present

Others present: Planning & Building Director Kelly O'Neill Jr., Associate Planner Emily Meharg, Planning Assistant Rebecca Casey

**2. APPROVAL OF MINUTES – September 24, 2018**

**Motion:** To approve minutes for September 24, 2018

Moved By: Commissioner Lesowski

Seconded By: Commissioner Carlton

Yes votes: Commissioners Carlton, Lesowski, Logan, Abrams, and Chairman Crosby

No votes: None

Abstentions: None

The motion passed

**3. REQUESTS FROM THE FLOOR – CITIZEN COMMUNICATION ON NON-AGENDA ITEMS**

**None**

**NEW BUSINESS**

**4. PUBLIC HEARING – Orient Drive Special Variance (18-036 VAR)** Chairman Crosby opened the public hearing on File No. 18-036 VAR (Orient Drive Special Variance) at 7:03 p.m. Crosby noted that this is a legislative public hearing. He called for any abstentions, conflicts of interest, ex-parte contact, challenges to the jurisdiction of the Planning Commission, or any challenges to any individual member of the Planning Commission. With no declarations noted, he went over the public hearing procedures for a legislative public hearing and called for the staff report.

**Staff Report:**

Associate Planner Emily Meharg summarized the staff report and addressed the background, factual information, public comments staff received, applicable criteria, and went over a brief slide show. Meharg explained to the Commission that normally when a property is developed it "triggers" connection to all public utilities. Meharg followed to say that in the Development Code under Section 17.84.60(F) allows private on site sanitary sewer and storm drainage facilities without needing a Variance if the applicant can provide it on site but also stated that there is no exception though to broadband fiber and water which is the reason why this application is before the Planning Commission.

Meharg finished her report with the summary and conclusion and staff's recommendation to approve the variance request with modifications that were recommended in the staff report.

**Applicant Presentation:**

**Ray Moore, All County Surveyors and Planners, PO Box 955, Sandy, OR 97055**

Mr. Moore addressed concerns over the possible lack of water and the fire concerns. He explained the applicant could address this by having a below ground holding tank.

**Proponent Testimony:**

**Jim Schilling, 15585 Orient Drive, Boring, OR 97009**

Mr. Schilling said he is the co-owner of the property and wants to put on the record that he supports this Variance.

**Opponent Testimony:**

**None**

**Testimony:**

**John Nolen, 34935 SE Crescent Road, Boring, OR 97009**

Mr. Nolen said he isn't against the development but has some concerns. He stated his main concern is the possible shortage of water. He is worried about possible fire danger with lack of water. He also said he is worried that when he plans to develop his property he will be the one obligated to bring water to that area.

**Staff Recap:**

Associate Planner Emily Meharg again stated the City's position on this application. Planning and Building Director Kelly O'Neill Jr. followed up and addressed Mr. Nolen's comments regarding the "lack of water" and fire concerns. He referred Mr. Nolen to the Fire Department.

**Applicant Recap:**

Mr. Moore also addressed Mr. Nolen's concerns and said he will have plenty of time to comment once the project goes to a design review application.

**Discussion:**

As the Commission discussed the application, O'Neill explained in more detail about what a Local Improvement District (LID) is and how this could work in this situation. O'Neill gave the Snowberry subdivision as an example of when a reimbursement district was used.

O'Neill said the applicant would need to extend the water and fiber by 2,400 feet which is quite a bit and then hope that someone hooks to these within the next twenty years.

**Motion:** To Close Public Hearing at 7:29 p.m.

Moved by: Commissioner Carlton

Seconded by: Commissioner Mobley

No votes: None

Abstentions: None

The motion passed.

**Motion:** To accept file no. 18-036 VAR (Type III Special Variance for Public Utilities Services at 15585 SE Orient Dr.) as presented by staff.

Moved by: Commissioner Lesowski

Seconded by: Commissioner Logan

Yes votes: Commissioner Lesowski, Logan, Mobley, Abrams and Chairman Crosby

No votes: Commissioners Carlton

Abstentions: None

The motion passed.

**6. ITEMS FROM COMMISSION AND STAFF**

Planning and Building Director Kelly O'Neill Jr. told the Commission that there will not be a meeting held in November but said there are at least four different applications coming up soon that will be heard by the Commission.

O'Neill also mentioned that the applicants for the Bloom Annexation completed getting the TPR analysis done and that staff is still waiting for ODOT to comment but that the City's traffic engineer was ok with it.

O'Neill said staff is working with the State of Oregon on the Historical Cultural Designation which at some point will be brought before the Commission.

O'Neill explained that City Council adopted the first four chapters of the Development Code Amendments the Commission recommended for forwarding. The only section not adopted was 17.102 (Urban Forestry). He said that Council wants a Committee formed for this section that will include developers, builders, an arborist, community members, and a member from the Watershed Council.

O'Neill finished by giving updates on the Double Creek Condos that staff is currently working on, and the two different storage units staff has applications for.

**7. ADJOURNMENT**

**Motion:** To adjourn  
**Moved By:** Commissioner Logan  
**Seconded By:** Commissioner Abrams  
**Yes votes:** All Ayes  
**No votes:** None  
**Abstentions:** None  
The motion passed.

Chair Crosby adjourned the meeting at 7:48 p.m.

\_\_\_\_\_  
Chairman Jerry Crosby

Attest:

\_\_\_\_\_  
Kelly O'Neill Jr., Planning & Building  
Director

Date signed: \_\_\_\_\_



## Staff Report

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**Meeting Date:** January 28, 2019  
**From** James Cramer, Associate Planner  
**SUBJECT:** 18-051 VAR RV Storage Setback Variance

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**Background:**

Robert Mottice submitted an application to adjust the side (north) yard and rear (east) setbacks to accommodate a recreational vehicle (RV) carport. The proposed side (north) yard setback is 2 feet (19 inches to roofline) and rear (east) setback is 3 feet 5 inches (14 inches to roofline) when Subsection 17.38.30 requires a minimum side yard setback of 5 feet and minimum rear setback of 15 feet. This adjustment request would modify the setback to bring the partially constructed carport in this location closer to compliance and allow the applicant to finish construction on the RV carport.

**Recommendation:**

It is hereby recommended that the Planning Commission approve both variance requests with the following conditions:

1. Prior to building permit approval, the City shall contact NW Natural Gas, Portland General Electric, Wave Broadband and SandyNet and provide a two-week comment period for agencies to respond with any conflicts associated with the proposed structure's encroachment into the recorded PUE.
2. The property shall install siding beginning at six feet above grade extending upwards to the proposed structure's roof line for the full length of both the north and east façades.
3. The applicant shall use a minimum 1-Hour fire-rated wall for the area of the structure located within 3 feet of the north property line as well as verify the distance between the north façade and property line and adjust the eave according to ORSC standards prior to approval of a building permit.
4. All siding and/or trim used on the accessory structure shall match the property's primary structure (single-family dwelling) in material and color.

**"I make a motion to approve the requested side and rear yard setbacks with the condition 1-4 identified within Section IV of the attached Staff Report"**

**Code Analysis:**

See attached Staff Report.

**Budgetary Impact:**  
None.

**PLANNING COMMISSION  
STAFF REPORT  
TYPE III LAND USE PROPOSAL**

**SUBJECT:** File No. 18-051 VAR RV Storage Setback Variance

**AGENDA DATE:** January 28, 2019

**Application Submitted:** November 15, 2018  
**Application Complete:** November 28, 2018  
**120-Day Deadline:** March 28, 2019

**DEPARTMENT:** Planning Division

**STAFF CONTACT:** James Cramer, Associate Planner

**EXHIBITS:**

**Applicant's Submittals:**

- A. Land Use Application
- B. Narrative
- C. Site Plan and Elevations
- D. Historic Photography
- E. Parcel Information

**Public Comments:**

- F. John Lewis (December 28, 2018 & January 2, 2019)
- G. Mr. and Mrs. W. Linn (January 2, 2019)
- H. Tom Newell (January 2, 2019)
- I. Guimar and James DeVaere (January 4, 2019)
- J. Brandon Shay (January 14, 2019)

**Agency Comments:**

- K. Terrence (Terre) Gift (January 4, 2019)

**Additional Documents Submitted by Staff**

- L. Nicolas Glen No. 3 Plat

**I. BACKGROUND**

**A. PROCEEDING**

Type III Special Variance

**B. FACTUAL INFORMATION**

1. APPLICANT & PROPERTY OWNER: Robert Mottice

2. PROJECT NAME: RV Storage Setback Variance

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3. SITUS ADDRESSES: 18050 Rachael Drive
4. LEGAL DESCRIPTION: 24E14DC, tax lot 12200
5. PROPERTY LOCATION: The second property south of the Solso Rd. / Rachael Dr. intersection on the east side of the street.
6. PROPERTY SIZE: 0.12 acres
7. COMPREHENSIVE PLAN DESIGNATION: Medium Density Residential
8. ZONING DISTRICT DESIGNATION: R-2, Medium Density Residential

**C. PUBLIC COMMENTS**

Two public comments were received prior to publishing this staff report and are as follow:

1. John Lewis (Exhibit F) owns the property directly east of the subject property and are in support of the variance request.
2. Mr. and Mrs. W Linn (Exhibit G) have concerns regarding the structure’s height and the wood material being used for construction and therefore are not in support of the request.
3. Tom Newell (Exhibit H) has concerns regarding the height and setbacks with regards to the adjacent properties and their “visual” space.
4. Guimar and James DeVaere (Exhibit I) have concerns regarding the fact the applicant did not originally obtain a permit for the construction as well as do not believe the height of the structure should be as tall as proposed.
5. Brandon Shay (Exhibit J) believes the structure is an “eye sore”, to tall and could set a precedent to allow similar structures in the neighborhood.

**D. AGENCY COMMENTS**

One agency comment was received prior to publishing this staff report as follows:

1. Terrence (Terre) Gift (Exhibit K), the City of Sandy Building Code Official, submitted comments stating that garage walls or residential building walls less than 3 feet from the property line are required to comply with TABLE R302.1 in the Oregon Residential Specialty Code. If walls are constructed on the wood framed carport, then the walls shall be fire-rated with a minimum of 1-HR fire-rated construction. If the walls are less than 2 feet to the property line, then the maximum roof eave projections (including gutters) cannot exceed 4 inches.

**E. APPLICABLE CRITERIA:** Sandy Development Code Chapters: 17.12 Procedures for Decision Making; 17.18 Processing Applications; 17.22 Notices; 17.34 Medium Density Residential (R-2); 17.66 Adjustments and Variances; 17.74 Accessory Development Additional Provisions and Procedures; 17.98 Parking, Loading, and Access.

**F. EXPLANATION OF PROPOSED IMPROVEMENTS**

Robert Mottice submitted an application to adjust the side (north) yard and rear (east) yard setbacks to accommodate a partially constructed recreational vehicle (RV) carport. The proposed side (north) yard setback is 2 feet (19 inches to roofline) and rear (east) yard

setback is 3 feet 5 inches (14 inches to roofline) when Subsection 17.38.30 requires a minimum side yard setback of 5 feet and minimum rear yard setback of 15 feet. Approval of the request would permit the partially constructed RV carport to be completed in its current position.

**G. PROPERTY BACKGROUND**

The subject parcel is located within the Nicolas Glen No. 3 subdivision recorded January 12, 2000. The property includes a 1,338 square foot, two-story single-family residential dwelling with an attached two-car garage (not included in overall square footage). Per the applicant's submitted material, staff observed a photo of a carport previously located in the northeast portion of the property. The City has no recorded permits associated with this carport structure which has since been removed from the property. **Future development of the property shall require approval of a Land Use Application in accordance with applicable regulations.**

**H. PROCEDURAL CONSIDERATION ANY NOTICE**

Review of the variance requires a public hearing before the Sandy Planning Commission. Notification of this proposal was mailed to property owners within 500 feet of the subject property and to affected agencies on December 21, 2018. A legal notice was published in the Sandy Post on January 9, 2019

**II. ANALYSIS OF CODE COMPLIANCE**

**CHAPTER 17.30 – ZONING DISTRICT**

The subject property is located within the Medium Density Residential (R-2) zone district and within the Nicolas Glen Subdivision. This development consists of 165 platted lots of which 164 have been developed into single-family residential dwellings and one duplex dwelling.

*RESPONSE: The proposal does not affect the existing primary use or density of the property.*

**CHAPTER 17.38 – MEDIUM DENSITY RESIDENTIAL (R-2)**

The applicant proposes to incorporate a detached carport to be used for RV storage as an accessory use to the primary single-family residential dwelling. The proposed accessory use does not affect the existing primary use or density of the property as detailed in Chapter 17.30 of this report.

**17.34.10 PERMITTED USES**

*RESPONSE: Subsection 17.34.10(B)(2) identifies accessory structures, detached or attached as an accessory use permitted outright within the R-2 zone district.*

**17.38.30 DEVELOPMENT STANDARDS**

Type	Standard
Minimum Lot Area	No minimum
Minimum Average Lot Width	

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- Single detached dwelling	50 ft.
- Single detached zero lot line dwelling	40 ft.
- Single attached zero lot line dwelling	30 ft.
- Other permitted uses	No minimum
Minimum Lot Frontage	20 ft. except as allowed by Section 17.100.160
Minimum Average Lot Depth	No minimum
Setbacks (Main Building)	
- Front yard	10 ft. minimum
- Rear yard	15 ft. minimum
- Side yard (interior)	5 ft. minimum 1
- Corner Lot	10 ft. minimum on side abutting the street
- Garage	20 ft. minimum for front vehicle access 15 ft. minimum if entrance is perpendicular to the street (subject to Section 17.90.220)
	5 ft. minimum for alley or rear access
Projections into Required Setbacks	See Chapter 17.74
Accessory Structures in Required Setbacks	See Chapter 17.74
Multi-family – Landscaping	25% minimum
- Setbacks	See Section 17.90.230
Structure Height	35 ft. maximum
Building Site Coverage	No minimum
Off-Street Parking	See Chapter 17.98

**RESPONSE:** *The proposed accessory structure does not meet the side or rear yard setback requirements of the R-2 zone district. The applicant has requested special variances for the interior side and rear yard setbacks which are further detailed within Chapter 17.66 of this report. In addition, all accessory structures in required setbacks are subject to the provisions in Chapter 17.74*

**CHAPTER 17.74 – ACCESSORY DEVELOPMENT ADDITIONAL PROVISIONS AND PROCEDURES**

This chapter is intended to establish the relationship between principal and accessory development and specify criteria for regulating accessory developments.

**RESPONSE:** *As defined in the Subsection 17.10.30 an accessory structure (detached) is;*

*“a structure that is clearly incidental to and subordinate to the main use of property and located on the same lot as the main use; freestanding and structurally separated from the main use.”*

*The applicant has expressed the intention of the proposed accessory structure is for RV storage. Staff finds this to be subordinate to and commonly associated with the primary use (single-family residential dwelling) of the property. Additionally, the proposed structure is located on the same lot of record as the primary use and is incidental in design to the primary structure.*

**17.74.10 RESIDENTIAL ACCESSORY STRUCTURES**

A detached accessory structure shall be separated from the primary structure by at least six (6) feet. An accessory structure located closer than six (6) feet from the primary structure shall be considered attached and is required to comply with the same setbacks as the primary structure.

A. Detached Accessory Structure Setbacks.

Accessory Structure Size	Interior Side Yard Setback	Rear Yard Setback
Up to 120 sq. ft., Up to 10 ft. tall	1 foot	1 foot
Up to 120 sq. ft., Up to 12 ft. tall	3 feet	3 feet
Larger than 120 sq. ft. up to 200 sq. ft. and up to 12 ft. in height	3 feet	3 feet
Larger than 200 sq. ft. or taller than 12 ft. in height	5 feet minimum or same as primary structure whichever is greater	15 feet minimum or same as primary structure whichever is greater

B. General Standards.

1. No accessory structure shall be located in front of the principal building. If located to the side of the principal building on an interior lot, the structure shall not be placed closer to the front lot line than the farthest back front wall of the principal building.
2. An accessory structure located on the street side of a corner lot shall follow the same setbacks as the principal building (10 feet).
3. The roof of the structure shall be constructed so that water runoff from the structure does not flow onto an abutting parcel.
4. Accessory structures for private vehicle storage which have an entrance from the street side yard (except alleys) shall have a minimum street side yard setback of 20 ft.
5. The total accumulative square footage of all accessory structures on an individual lot shall not exceed 1,200 square feet.
6. No accessory structure shall exceed a maximum height of 16 feet.
7. An accessory structure may be located on an adjacent lot that does not contain a primary structure provided:
  - a. Both lots are under the exact same ownership; and
  - b. A deed restriction is recorded requiring the accessory structure to be removed within 30 days of transfer of ownership of either lot into separate ownership; and
  - c. The accessory structure complies with setback requirements as applied to the lots under same ownership.
8. Exception for Temporary Use of Rigid Frame Fabric Membrane Structures. Exceptions to these standards may be made by the Planning Director for temporary storage of materials for not more than three days within any 30 day period.

**RESPONSE:** After observing the property and submitted photos, staff confirms that, once completed, the proposed structure will exceed 6 feet in distance from the primary structure. Based on this finding and the definition of an accessory structure (detached), **staff finds the criterion of Subsections 17.74.10(A) and 17.74.10(B) are applicable to the proposed structure.**

Subsection 17.74.10(A): The proposed accessory structure covers 392 square feet of area therefore the structure is not permitted to be within any required setback of the R-2 zone district. As a result, the proposed accessory structure is required to have a minimum side (east) yard setback of 5 feet (same standard as the R-2 zone district 17.38.30) and a minimum rear (east) yard setback of 15 feet (same standard as the R-2 zone district 17.38.30). The applicant has requested special variances for the interior side and rear yard setbacks which are further detailed within Chapter 17.66 of this report. Should Planning Commission approve the requested variances the proposal will be in compliance with this section of the code.

Subsection 17.74.10(B): The proposed accessory structure is located on the same lot of record as the associated primary structure and will be constructed behind the front plane/facade of the primary structure. The property is not a corner lot therefore there is no access from a street side yard. As observed in the submitted photos and plans, as well as described in the applicant's narrative, the roof line has been designed with a single pitched roof in order to direct stormwater runoff south onto the applicant's property as opposed to adjacent properties. Additionally, the applicant **shall install a gutter on the south roof line to mediate water run off on the site.** The overall height of the proposed accessory structure will be 15 feet 1.25 inches (181.25 inches).

#### **CHAPTER 17.66 – ADJUSTMENTS AND VARIANCES**

##### **17.66.60 VARIANCES**

Variations are a means of requesting a complete waiver or major adjustment to certain development standards. They may be requested for a specific lot or as part of a land division application. The Type II variance process is generally reserved for major adjustments on individual lots, while variations to development standards proposed as part of a land division are processed as a Type III application (requiring a public hearing).

**RESPONSE:** The applicant has requested the following two Type III Special Variations:

Variance A: To finish construction of an accessory structure 2 feet (19 inches to roofline) from an interior side (north) yard property line when Subsection 17.38.30 requires a minimum interior side yard setback of 5 feet in the R-2 zone district.

Variance B: To finish construction of an accessory structure 3 feet 5 inches (14 inches to roofline) from a rear (east) yard property line when Subsection 17.38.30 requires a minimum rear yard setback of 15 feet in the R-2 zone district.

##### **17.66.80 TYPE III SPECIAL VARIANCES**

The Planning Commission may grant a special variance waiving a specified provision under the Type III procedure if it finds that the provision is unreasonable and unwarranted due to the specific nature of the proposed development. In submitting an application for a Type III Special Variance, the proposed development explanation shall provide facts and evidence sufficient to enable the

Planning Commission to make findings in compliance with the criteria set forth in this section while avoiding conflict with the Comprehensive Plan.

One of the following sets of criteria shall be applied as appropriate.

- A. The unique nature of the proposed development is such that:
  - 1. The intent and purpose of the regulations and of the provisions to be waived will not be violated; and
  - 2. Authorization of the special variance will not be materially detrimental to the public welfare and will not be injurious to other property in the area when compared with the effects of development otherwise permitted.
- B. The variance approved is the minimum variance needed to permit practical compliance with a requirement of another law or regulation.
- C. When restoration or replacement of a nonconforming development is necessary due to damage by fire, flood, or other casual or natural disaster, the restoration or replacement will decrease the degree of the previous noncompliance to the greatest extent possible.

**Variance A:**

Subsection 17.74.10(A) requires accessory structures larger than 200 square feet or taller than 12 feet in height to be setback a minimum of 5 feet from an interior side yard property line or the same as the primary structure, whichever is greater. The subject property is located within the R-2 zone district and Section 17.38.30 identifies the interior side yard setback for a primary structure as a minimum of 5 feet.

Request: There is nothing unique about the subject property and the location of the carport on the subject property is of the applicant's making so a Type II Variance request would have to be denied. Therefore, the applicant requests a Type III Special Variance to reduce the required interior side yard setback of the property from 5 feet to 2 feet. This results in a 60 percent variation from the required setback standard identified in Subsections 17.74.10(A) and 17.38.30 of the development code.

- A. The unique nature of the proposed development is such that:
  - 1. The intent and purpose of the regulations and of the provisions to be waived will not be violated; and
  - 2. Authorization of the special variance will not be materially detrimental to the public welfare and will not be injurious to other property in the area when compared with the effects of development otherwise permitted.

***RESPONSE:*** *The intent of setbacks for structures is to provide development predictability based on zone districts for property owners and citizens. While required setbacks result in the separation of primary structures to preserve open space they also provide means for a property owner to access and maintain a structure on their property. Additionally, in many cases setbacks provide the ability for public utilities to access a property through a recorded public utility easement and create a buffer for fire separation.*

*The proposed structure is on private property and will not be detrimental to the public welfare. While the location of the proposed structure is in close proximity to the shared north property line it was observed that there are no structures on the adjacent property to the north in close proximity to the shared property line. The design of the proposed structure is open on all four sides however the applicant has expressed their intention on installing T1-11 siding for the upper eight feet of the north elevation and to be painted to match the existing primary structure (house) on the site. Additionally, this siding will wrap around to the eastside of the structure to help blend the structure into the neighborhood. With the exception of minimal exterior maintenance, it is reasonable to infer that the adjacent property owner to the north would not likely be negatively affected by any future maintenance of the proposed structure.*

*Oregon Residential Specialty Code (ORSC) R302.1 identifies that garage walls or residential building walls less than 3 feet from a property line are required to comply with TABLE R302. The structure is proposed to be 2 feet (19 inches to roofline) therefore, if approved, the building shall have a minimum of 1-Hour fire-rated construction. Additionally, if the walls are less than 2 feet of the property line, then the maximum roof eave projections (including gutters) cannot exceed 4 inches. **The applicant shall verify the distance between the north façade and property line and adjust the eave according to ORSC standards prior to approval of a building permit.***

*The property is located in the Nicolas Glen No. 3 subdivision recorded January 12, 2000. The plat identifies the subject property having a five-foot public utility easement (PUE) on the front, side and rear yard property lines. This would indicate that the proposed structure would encroach 3 feet into this PUE as identified on the plat. NW Natural Gas, Portland General Electric, Wave Broadband and SandyNet were notified of the proposal to which the City did not receive comments in favor or against.*

**RECOMENDATION:** *The Special Variance being requested is located on private property at the rear of the subject property with no other structures in close proximity. While the structure is proposed a short distance to the north property line, the ORSC identifies means to help mediate potential risks to neighboring properties which are covered within the conditions below. The intention of this code requirement is to provide a predictable set of development standards to promote open space on private property and create a buffer for fire separation. Additionally, the applicant proposes incorporating additional design elements to enhance the structure's facade and function to ensure it does not negatively affect neighboring properties or the aesthetic integrity of the neighborhood. **Staff recommends the Planning Commission approve the requested special variance to reduce the side (north) yard setback to 2 feet with the following conditions:***

- 1. Prior to building permit approval, the City shall contact NW Natural Gas, Portland General Electric, Wave Broadband and SandyNet and provide a two-week comment period for agencies to respond with any conflicts associated with the proposed structure's encroachment into the recorded PUE.*
- 2. The property shall install siding beginning at six feet above grade extending upwards to the proposed structure's north elevation roof line for the full length of the north façade.*
- 3. The applicant shall use a minimum 1-Hour fire-rated wall for the area of the structure located within 3 feet of the north property line as well as verify the distance between*

*the north façade and property line and adjust the eave according to ORSC standards prior to approval of a building permit.*

4. *All siding and/or trim used on the accessory structure shall match the property's primary structure (single-family dwelling) in material and color.*

**Variance B:**

Subsection 17.74.10(A) requires accessory structures larger than 200 square feet or taller than 12 feet in height to be setback a minimum of 15 feet from a rear yard property line or the same as the primary structure whichever is greater. The subject property is located within the R-2 zone district and Section 17.38.30 identifies the side interior setback for a primary structure as a minimum of 15 feet.

Request: The applicant requests a Type III Special Variance to reduce the required rear yard setback of the property from 15 feet to 3 feet 5 inches. This results in a 77 percent variation from the required setback standard identified in Subsections 17.74.10(A) and 17.38.30 of the development code.

- A. The unique nature of the proposed development is such that:
1. The intent and purpose of the regulations and of the provisions to be waived will not be violated; and
  2. Authorization of the special variance will not be materially detrimental to the public welfare and will not be injurious to other property in the area when compared with the effects of development otherwise permitted.

***RESPONSE:** The intent of setbacks for structures is to provide development predictability based on zone districts for property owners and citizens. While required setbacks result in the separation of primary structures to preserve open space they also provide means for a property owner to access and maintain a structure on their property. Additionally, in many cases setbacks provide the ability for public utilities to access a property through a recorded public utility easement and create a buffer for fire separation.*

*The proposed structure is on private property and will not be detrimental to the public welfare. While the location of the proposed structure is in close proximity to the shared east property line it was observed that there are no structures on the adjacent property to the east in close proximity to the shared property line. The design of the proposed structure is open on all four sides with the exception of the top eight feet of the north façade. The applicant has expressed their intention on installing T1-11 siding for the upper eight feet of the north elevation to be painted to match the existing primary structure (house) on the site. Additionally, this siding will wrap around to the eastside of the structure to help blend the structure into the neighborhood. The applicant has identified there is a tree located on the adjacent property to the east that blocks off-site views of the proposed structure. However, seasonal changes and the loss of leaves on trees will lead to increased visibility of the proposed structure. **To decrease the visibility of the contents within the proposed structure staff recommends the applicant install siding on the east elevation to match siding proposed on the remainder of the proposed structure.** With the exception of minimal exterior maintenance it is reasonable to infer that the adjacent property owner to the east would not likely be negatively affected by any future maintenance of the*

proposed structure. In addition, the property owner to the east of the subject property submitted a letter in support of the proposed structure.

The property is located in the Nicolas Glen No. 3 subdivision recorded January 12, 2000. The plat identifies the subject property having a five-foot public utility easement (PUE) on the front, side and rear yard property lines. This would indicate that the proposed structure would encroach 2 feet 7 inches into this PUE as identified on the plat. NW Natural Gas, Portland General Electric, Wave Broadband and SandyNet were notified of the proposal to which the City did not receive comments in favor or against.

**RECOMENDATION:** The Special Variance being requested is located on private property with no other structures in close proximity. The intention of this code requirement is to provide a predictable set of development standards to promote open space on private property and create a buffer for fire separation. Additionally, the applicant proposes incorporating additional design elements to enhance the structure's facade and function to ensure it does not negatively affect neighboring properties or the aesthetic integrity of the neighborhood. **Staff recommends the Planning Commission approve the requested special variance to reduce the rear (east) yard setback to 3 feet 5 inches with the following conditions:**

1. Prior to building permit approval, the City shall contact NW Natural Gas, Portland General Electric, Wave Broadband and SandyNet and provide a two week comment period for agencies to respond with any conflicts associated with the proposed structure's encroachment into the recorded PUE.
2. The property shall install siding beginning at six feet above grade extending upwards to the proposed structure's east elevation roof line for the full length of the east façade.
3. All siding and/or trim used on the accessory structure shall match the property's primary structure (single-family dwelling) in material and color.

#### **CHAPTER 17.98 – PARKING, LOADING, & ACCESS REQUIREMENTS**

##### **17.98.00 INTENT**

The intent of these regulations are to provide adequate capacity and appropriate location and design of on-site parking and loading areas as well as adequate access to such areas. The parking requirements are intended to provide sufficient parking in close proximity for residents, guests, customers, and/or employees of various land uses. These regulations apply to both motorized vehicles (hereinafter referred to as vehicles) and bicycles.

**RESPONSE:** The proposed carport is located in the rear portion of the subject property and therefore will require off-street improvements to comply with the standards and regulations of this chapter.

##### **17.98.130 PAVING**

- A. Parking areas, driveways, aisles and turnarounds shall be paved with concrete, asphalt or comparable surfacing, constructed to city standards for off-street vehicle areas.
- B. Gravel surfacing shall be permitted only for areas designated for non-motorized trailer or equipment storage, propane or electrically powered vehicles, or storage of tracked vehicles.

**RESPONSE:** As observed by staff and represented in the applicants submitted photographs the subject property currently has improved pavement between the right-of-way and proposed carport. **The applicant shall maintain the existing improved surface on the property as long as the structure is used for a motorized vehicle.**

### **III. SUMMARY AND CONCLUSION**

Robert Mottice submitted an application to adjust the side (north) yard and rear (east) yard setbacks to accommodate a partially constructed recreational vehicle (RV) carport. The proposed side (north) yard setback is 2 feet (19 inches to roofline) and rear (east) yard setback is 3 feet 5 inches (14 inches to roofline) when Subsection 17.38.30 requires a minimum side yard setback of 5 feet and minimum rear yard setback of 15 feet. Approval of this request would permit the partially constructed RV carport to be completed in its current position.

### **IV. RECOMMENDATION**

Staff recommends the Planning Commission hold a public hearing to take public testimony regarding the proposal. Staff recommends the Planning Commission **approve** both variance requests with the following conditions:

1. *Prior to building permit approval, the City shall contact NW Natural Gas, Portland General Electric, Wave Broadband and SandyNet and provide a two-week comment period for agencies to respond with any conflicts associated with the proposed structure's encroachment into the recorded PUE.*
2. *The property shall install siding beginning at six feet above grade extending upwards to the proposed structure's roof line for the full length of both the north and east façades.*
3. *The applicant shall use a minimum 1-Hour fire-rated wall for the area of the structure located within 3 feet of the north property line as well as verify the distance between the north façade and property line and adjust the eave according to ORSC standards prior to approval of a building permit.*
4. *All siding and/or trim used on the accessory structure shall match the property's primary structure (single-family dwelling) in material and color.*



**EXHIBIT A**



**LAND USE APPLICATION FORM**

(Please print or type the information below)

Planning Department  
39250 Pioneer Blvd.  
Sandy OR 97055  
503-668-4886

Name of Project Mottice RV Storage Structure  
 Location or Address 18050 Rachael Drive  
 Map & Tax Lot Number T \_\_\_\_\_, R \_\_\_\_\_, Section \_\_\_\_\_; Tax Lot(s) 153 05001099  
 Plan Designation \_\_\_\_\_ Zoning Designation \_\_\_\_\_ Acres .12

**Request:**

a variance from the required set backs on the North side of structure and the East side of the same structure from the property lines, so that I can permit the RV storage structure at its current location.

I am the (check one)  owner  lessee of the property listed above and the statements and information contained herein are in all respects true, complete and correct to the best of my knowledge and belief.

Applicant <u>Robert Mottice</u>	Owner <u>Robert Mottice</u>
Address <u>18050 Rachael Dr. / P.O. Box 813</u>	Address <u>Same</u>
City/State/Zip <u>Sandy OR 97055</u>	City/State/Zip <u>Same</u>
Phone <u>503-724-9208</u>	Phone _____
Email <u>robmo96@yahoo.com</u>	Email _____
Signature <u>Robert Mottice</u>	Signature _____

If signed by Agent, owner's written authorization must be attached.

File No. <u>18051 VNR</u>	Date <u>11/15/18</u>	Rec. No. _____	Fee \$ <u>1070.00</u>
Type of Review (circle one): Type I    Type II <u>Type III</u> Type IV			

24E14D012200

## EXHIBIT B

October 21, 2018

I purchased the residence at 18050 Rachael Drive, in the Nichols Glenn Subdivision, on September 24, 2018. I purchased this residence because it had RV parking with a covered structure on its North side. The RV parking runs the entire length of the North side of the lot. The lot is fenced on three sides and has a fence and gate on the street side. The house position on the property is actually flipped from what the City has on record. Please see attached.

The structure that existed on the property at the time I purchased it was most likely not permitted and sat on, or near, the property line on the North side. The structure was constructed using telephone poles (six) for posts, two by four roof rafters, three-eighths inch plywood sheathing, and three tab asphalt shingles. The roof was shed style and sloped from the south to the north, dumping the water on to the neighbor's property to the north. The roof was sagging -- please see the attached pictures. I planned to attach new posts to the telephone poles to get more height, but the posts were not stable and were not set in the ground well enough, so this entire structure was completely torn down.

Since the new structure was pretty close to the same size as the old one, and I moved the structure away from the North property line, I assumed that I would be in compliance. Therefore, I did not acquire a planning variance and permit for the new structure. I did increase the height and change the direction of the water runoff. The changing of the roof slope has diverted the water on to my property, which is a positive for the neighbor to the north that had standing water in their backyard. The current location sits farther off the property line, and saves the small tree in backyard.

The replacement RV cover doesn't comply with the required setbacks and height restrictions. This encroachment in the setbacks is no worse than what the former structure was and if anything, the distance is better and the water runoff from the roof is retained to my property. I am asking for a variance from the side (five feet) and rear (fifteen feet) setbacks, as well as the height limitation, (I require a twelve-foot clearance to remove my camper from the truck bed). My RV cover is placed two-and-a-half feet from the assumed property (fence) line on the North side and three feet and five inches from the assumed (fence) property line on the East side of my property. The RV cover is an open pole beam structure that has a shed roof with a 4/12 pitch from the north to the south; the roof is 3-tab asphalt shingles. The posts are treated 4x6's with five posts on each side, and each side is approximately ten feet apart.

I planned to install T1-11 siding down the upper portion (8') on the north side and match the height around the east to help blend the structure into neighborhood. This siding would be painted to match the house. The South side eave would have a gutter installed, and water would be directed away from the building toward the street. There are no other structures in the area impacted by the placement of the RV cover. The neighbor to the east has trees that block the direct view of it.

If the structure had to be moved to gain the required setbacks on the North side and East end, it would encroach on the tree in my backyard and also make it impossible to back the trailer and camper into the RV cover due to the angle and the location of existing RV slab. If the RV cover had to be moved fifteen feet off the east fence line the cover would be shortened by twelve feet, leaving only twelve feet remaining. Due to keeping the required separation from my house, I cannot move the RV cover to the west.

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I hope to get this variance approved so I can permit and finish the RV cover. I think once this cover is completed, it will blend into the neighborhood and will keep my RV and trailer off the street. The RV will sit behind a fence and along the side of the residence. Additionally, a big benefit is that water from this accessory structure will remain on my property and not drain on to my neighbor's property.

Thank you for considering this variance.

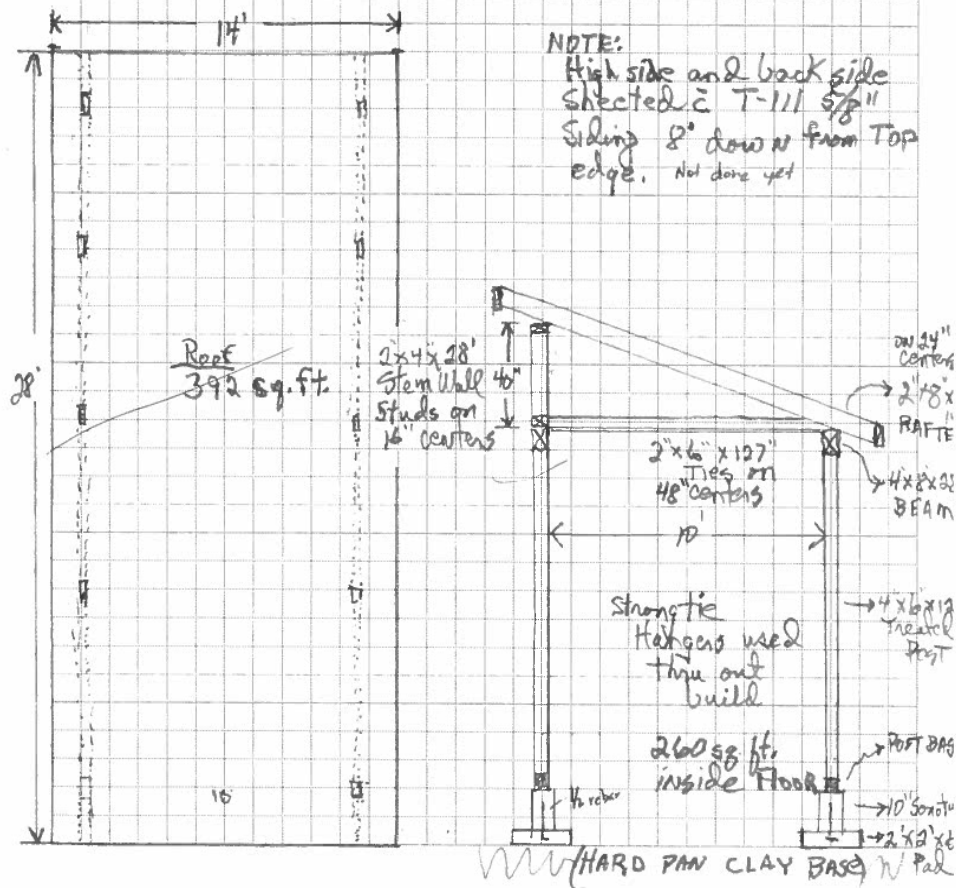
*Robert Mottice*  
Robert Mottice



R.V. Storage Structure  
(Need 12' head room)

10-1-2018  
12050 Rachel Drive  
Sandy, Oregon

15 lb feet, 20 year 3 tabs

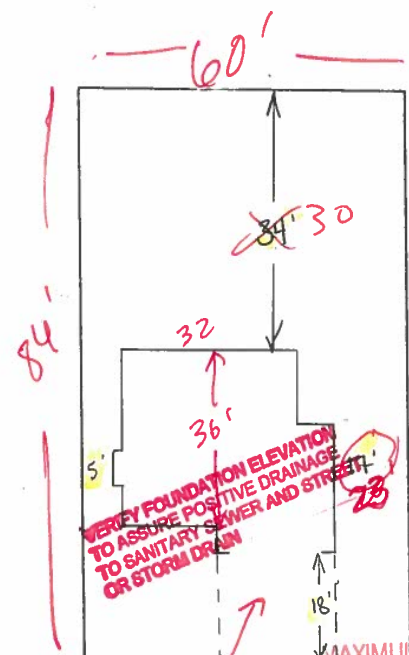


TE CORPORATION  
40 S POPE LANE  
GON CITY OR 97045

# 1567

0 RACHAEL DRIVE  
153, NICHOLAS GLEN 3

CITY OF SANDY  
CITY COPY



REVIEWED	
CITY OF SANDY	
BASED UPON INFORMATION SHOWN	SUBJECT TO INSPECTION AND TEST
PUBLIC WORKS	<u>BY</u> <u>2/21/07</u>
PLANNING	<u>DATE 2/19/07</u>
BUILDING	
DATE	

VERIFY FOUNDATION ELEVATION  
TO ASSURE POSITIVE DRAINAGE  
TO SANITARY SEWER AND STREET

MAXIMUM RESIDENTIAL  
DRIVEWAY APPROACH  
WIDTH = 24 FEET









RACHAEL DRIVE

install  
proper count  
curbs

Please  
submit  
& complete  
accurate information  
in the future



**EXHIBIT D**

18050 Rachael Dr  
Sandy, OR 97055

**\$339,950**



Adorable 3 Bedroom Sandy home with RV Parking and New Roof. Nice and Bright with lots of Natural Light, Newer Hardwoods and Gas Fireplace in the Living Room, Updated SS Appliances in the Kitchen, Master Suite with Walk-In Closet. Enjoy Outdoor Entertaining in the Well Maintained Backyard with great Patio and Covered Storage area.

- 3 Bedroom -- 2.5 Bath
- New Hardwoods & Doors
- New Roof
- Gas Fireplace
- Central Air
- RV Parking
- Fenced Backyard
- Covered Storage

To View This Property Call:

**Kris Shuler**  
Broker

503-826-9000  
503-480-2191









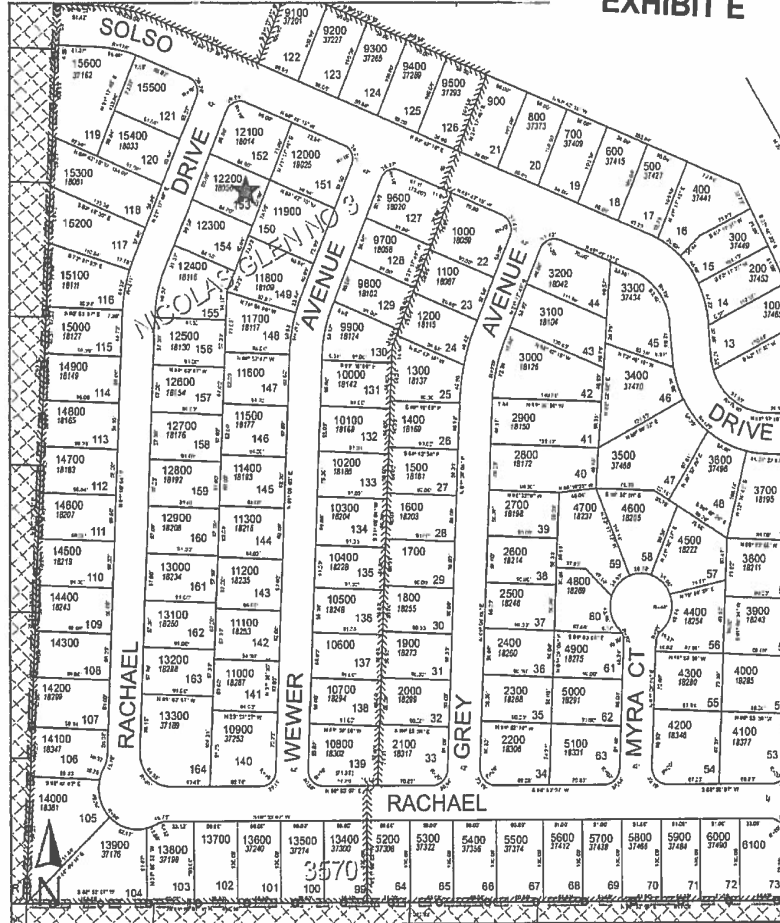


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EXHIBIT E



First American Title™

ParcelID: 05001099

This map/plot is being furnished as an aid in locating the herein described land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.



After recording return to:  
Robert Mottice  
18050 Rachael Drive  
Sandy, OR 97055

Until a change is requested all tax  
statements shall be sent to the  
following address:

Robert Mottice  
~~18050 Rachael Drive~~ P.O. Box 813  
Sandy, OR 97055

File No.: 7012-3093365 (sll)  
Date: July 10, 2018

THIS SPACE RESERVED FOR RECORDER'S USE

READ & APPROVED  
*Rbm*

#### STATUTORY WARRANTY DEED

**Brandon M. Benfield and Kyndra E. Benfield, as tenants by the entirety**, Grantor, conveys and warrants to **Robert Mottice**, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:

**LEGAL DESCRIPTION:** Real property in the County of Clackamas, State of Oregon, described as follows:

**LOT 153, NICOLAS GLEN NO. 3, IN THE CITY OF SANDY, COUNTY OF CLACKAMAS AND STATE OF OREGON.**

**Subject to:**

1. The **2018-2019** Taxes, a lien not yet payable.
2. Covenants, conditions, restrictions and/or easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

The true consideration for this conveyance is **\$340,000.00**. (Here comply with requirements of ORS 93.030)

APN: 05001099

Statutory Warranty Deed  
- continued

File No.: 7012-3093365 (sll)

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

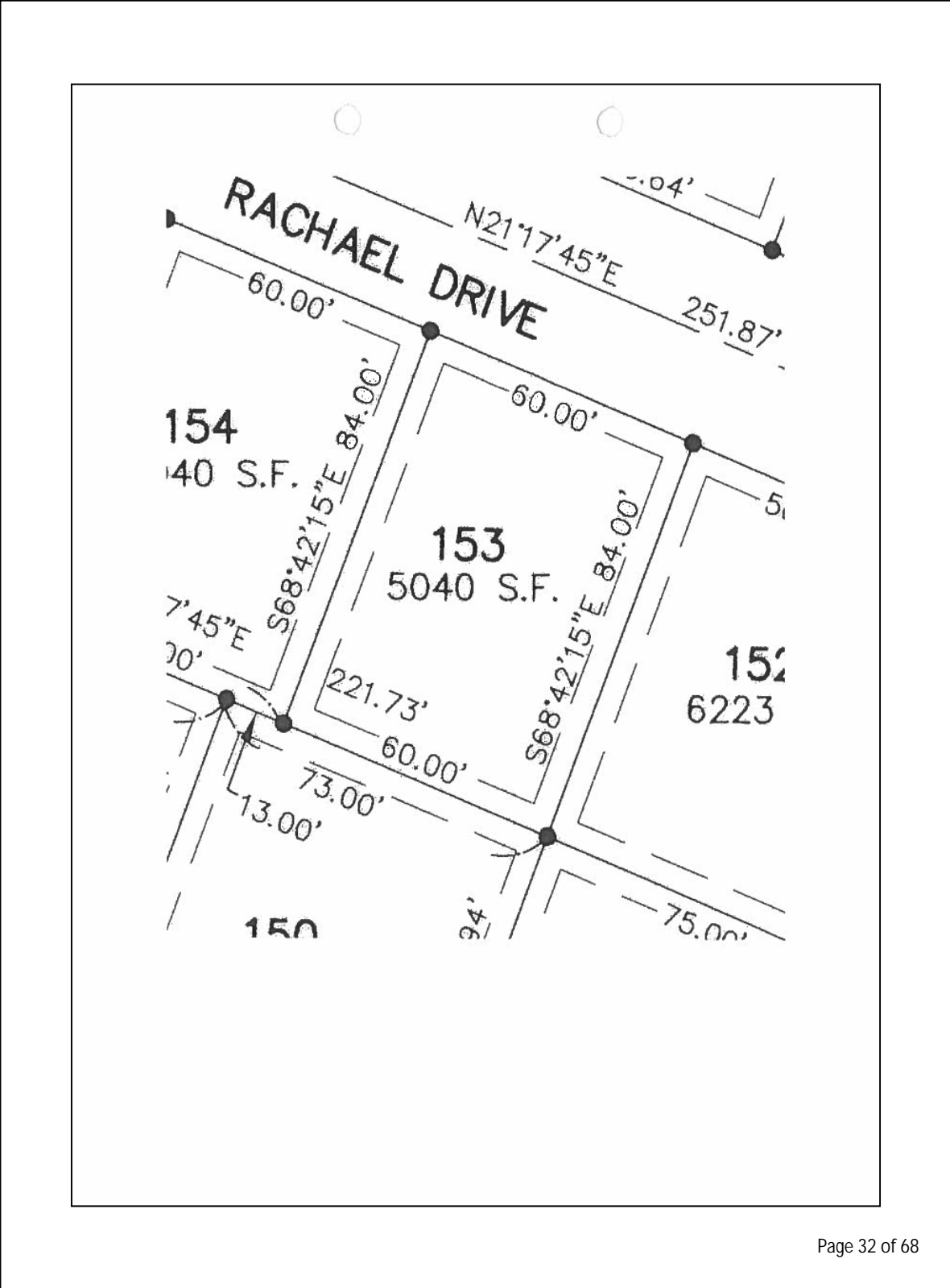
\_\_\_\_\_  
Brandon M. Benfield

\_\_\_\_\_  
Kyndra E. Benfield

STATE OF Oregon                    )  
  )ss.  
County of Multnomah                )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by **Brandon M. Benfield and Kyndra E. Benfield.**

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires:





COMMENT SHEET for File No. 18-051 VAR:

EXHIBIT F

RECEIVED

DEC 28 2018

CITY OF SANDY

I am a direct backyard neighbor to Mr. Mottice. We have no issues with the carport/RV cover. ~~##~~

The construction of this carport is very well done and poses no threat or incumbrance to our property or for that matter other neighboring properties. In fact, there was a covered area that was in the same spot as the newly placed construction when the property was purchased. The only thing I have noticed is new construction is higher and perhaps a bit larger than previous buildings.

My recommendation is to let Mr. Mottice continue and complete as planned.

Your Name

JOHN LEWIS

Phone Number

503-577-9348

Address

~~108~~ 18081 WEWER AVE SANDY OR 97055

APPLICABLE CRITERIA: Sandy Municipal Code: 17.12 Procedures for Decision Making; 17.18 Processing Applications; 17.22 Notices; 17.34 Medium Density Residential (R-2); 17.66 Adjustments and Variances; 17.74 Accessory Development Additional Provisions and Procedures.

COMMENT SHEET for File No. 18-051 VAR:

RECEIVED

JAN 02 2019

CITY OF SANDY

RECEIVED

DEC 28 2018

CITY OF SANDY

I am a direct backyard neighbor to Mr. Mottice. We have no issues with the carport/RV cover. ##

The construction of this carport is very well done and poses no threat or incumbrance to our property or for that matter other neighboring properties. In fact, there was a covered area that was in the same spot as the newly placed construction when the property was purchased. The only thing I have noticed is new construction is higher and perhaps a bit larger than previous building.

My recommendation is to let Mr. Mottice continue and complete as planned.

Your Name

JOHN LEWIS

Phone Number

503-577-9348

Address

~~108~~ 18081 WEWER AVE SANDY OR 97055

APPLICABLE CRITERIA: Sandy Municipal Code: 17.12 Procedures for Decision Making; 17.18 Processing Applications; 17.22 Notices; 17.34 Medium Density Residential (R-2); 17.66 Adjustments and Variances; 17.74 Accessory Development Additional Provisions and Procedures.



EXHIBIT G

RECEIVED

JAN 02 2019

CITY OF SANDY

COMMENT SHEET for File No. 18-051 VAR:

We have looked at this project at length and discussed it. This project is too high and obstructs the view of other houses, also it is too close to the property line, another thing that concerns us is it is made of wood which would create a fire hazard. We vote no for these reasons and if you allow one property owner to do this then everyone else could do this which in turn could cause problems

Mr & Mrs W. Linn Phone Number 503 826-9639

18071 S.E. Grey Av Sandy, Oregon 97055 Address

APPLICABLE CRITERIA: Sandy Municipal Code: 17.12 Procedures for Decision Making; 17.18 Processing Applications; 17.22 Notices; 17.34 Medium Density Residential (R-2); 17.66 Adjustments and Variances; 17.74 Accessory Development Additional Provisions and Procedures.

**EXHIBIT H**

City of Sandy Planning and Building Department

December 29, 2018

Comment Sheet on File 18-051

RECEIVED  
JAN 02 2019  
CITY OF SANDY

Thank you for seeking community input on this matter.

I must admit I am not real keen on allowing this structure to circumvent the existing building codes noted on the variance request. But based more on the (approximately) twenty foot height of the structure with a roof peak that is as tall as the adjacent single story family dwelling.

I am most concerned for the three adjoining properties whose backyard "visual" space has been sacrificed to this two story structure. Besides being closed-in by this object projecting twelve feet (or more) above their fences along the property lines, it is casting a 'manufactured' shade interfering with the enjoyment of their backyard space and success of lawn and garden growth on these plots.

I am also worried about the precedent this construction will set. The Nicolas Glen sub-division has many RV'ers who may view this construction as an opportunity to do the same. Already we have experienced campers and trailers parked along the curbs for days beyond the limits.

This matter should not just be of concern to properties within 500 feet as this variance could eventually impact other lots throughout the neighborhood with added RV carports.

Respectfully,



Tom Newell

18007 Rachael Drive

EXHIBIT I

RECEIVED

JAN 04 2019

CITY OF SANDY

COMMENT SHEET for File No. 18-051 VAR:

Planning Commission, City of Sandy.

We believe this application should not be approved as is. The main factor being that the applicant is a City of Gresham firefighter. Meaning he knew for a fact that he would need a permit to build, but chose to build without one. Construction also continued even after the project was red taped and supposed to Cease.

we also don't think a storage building needs to be two story and as tall as the house.

A modification to the permit could work if the building was only one story.

Guimar & James Dehere 503-201-5298  
Your Name Phone Number

1817le Rachael Drive, Sandy OR 97055  
Address

APPLICABLE CRITERIA: Sandy Municipal Code: 17.12 Procedures for Decision Making; 17.18 Processing Applications; 17.22 Notices; 17.34 Medium Density Residential (R-2); 17.66 Adjustments and Variances; 17.74 Accessory Development Additional Provisions and Procedures.

EXHIBIT J

RECEIVED

JAN 14 2019

CITY OF SANDY

COMMENT SHEET for File No. 18-051 VAR:

WE ARE NOT HAPPY WITH THIS STRUCTURE  
IT IS VERY LARGE AND IS AN "EYE SORE"  
WE FEEL THIS STRUCTURE IS TOO TALL AND  
ALLOWING THIS MAY SET A PRECEDENT FOR  
FUTURE SIMILAR PROJECTS IN OUR NEIGHBORHOOD.

BRAWLEY SHAY 971 404 7237  
Your Name Phone Number

37201 SOLSO DR  
Address

APPLICABLE CRITERIA: Sandy Municipal Code: 17.12 Procedures for Decision Making; 17.18 Processing Applications; 17.22 Notices; 17.34 Medium Density Residential (R-2); 17.66 Adjustments and Variances; 17.74 Accessory Development Additional Provisions and Procedures.



EXHIBIT K

James Cramer <jcramer@ci.sandy.or.us>

**2107 ORSC (Oregon Residential Specialty Code) requirements for Carport within 3 feet of property line -**

Terre Gift <tgift@ci.sandy.or.us>  
To: James Cramer <jcramer@ci.sandy.or.us>

Fri, Jan 4, 2019 at 3:20 PM

James, the following comments are based upon ORSC R302.1, and apply to the Carport.

Garage walls or residential building walls less than 3 feet from the property line are required to comply with TABLE R302.1.

If walls are constructed to the wood framed carport, then the walls shall be fire-rated with a minimum of 1-HR fire-rated construction.

If the walls are less than 2 feet of the property line, then the maximum roof eave projections (including gutters) cannot exceed 4 inches .

Your friend in the Building Department,

Terrence Gift, CBO  
Building Codes Official  
City of Sandy  
39250 Pioneer Blvd.  
Sandy, Oregon 97055

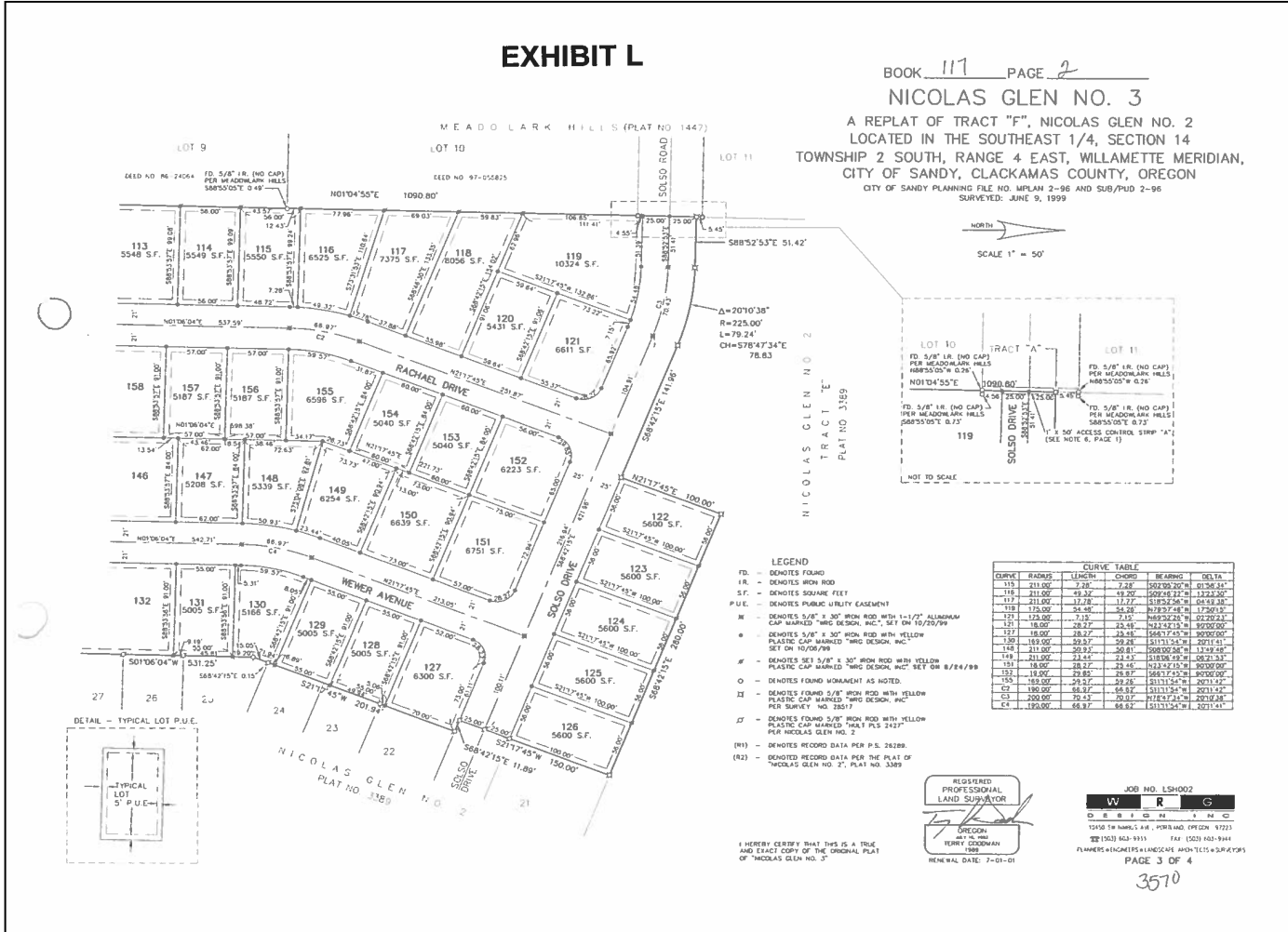
Desk Line: 503-489-2164  
Cell Phone: 503-741-0347  
Fax: 503-668-8714

**FIRST PREVENTERS:** Whether their title is Building Official, Inspector, Plan Reviewer, or Fire Marshal their mission is the same: to prevent harm by ensuring compliance with building safety codes before a disaster occurs. Prevention goes unnoticed by design and definition. Success is a non-event. First Preventers play a major role in saving lives, protecting property, and reducing recovery costs often borne by the public.

# EXHIBIT L

BOOK 117 PAGE 2  
**NICOLAS GLEN NO. 3**

A REPLAT OF TRACT "F", NICOLAS GLEN NO. 2  
 LOCATED IN THE SOUTHEAST 1/4, SECTION 14  
 TOWNSHIP 2 SOUTH, RANGE 4 EAST, WILLAMETTE MERIDIAN,  
 CITY OF SANDY, CLACKAMAS COUNTY, OREGON  
 CITY OF SANDY PLANNING FILE NO. MPLAN 2-96 AND SUB/PLUD 2-96  
 SURVEYED: JUNE 9, 1999





## Staff Report

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**Meeting Date:** January 28, 2019  
**From:** Emily Meharg, Associate Planner  
**SUBJECT:** 19-001 TREE

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**Background:**

Bruce Erickson submitted an application on behalf of McKenzie Cook for a variance to the tree retention standards of Chapter 17.102, Urban Forestry. Removal of 19 trees from the property was previously approved (File No. 17-049 TREE) in conjunction with an application to construct 6 townhouses on the property (File No. 17-048 SUB). Three (3) trees were retained on the property in compliance with the minimum tree retention requirement. However, once grading of the site began, it became apparent that the surface roots for one of the retained trees were very close to the future townhome on Lot 6. With this application, the applicant is requesting to remove one of the required retention trees and to plant two mitigation trees in its place. This requires a variance to the City's tree retention standards since the minimum tree retention standard would no longer be met.

**Recommendation:**

Staff recommends the Planning Commission hold a public hearing to take public testimony regarding the proposal. Staff recommends the Planning Commission **approve** the variance request with modifications as recommended in this report.

"Make a motion to approve the variance request with modifications as recommended in this report."

**Code Analysis:**

See attached

**Budgetary Impact:**

None

**STAFF REPORT  
TYPE III LAND USE PROPOSAL**

**REPORT DATE:** January 22, 2019

**SUBJECT:** File No. 19-001 TREE Center City Townhouses Tree Variance

**AGENDA DATE:** January 28, 2019

**Application Submitted:** January 7, 2019  
**Application Complete:** January 9, 2019  
**120-Day Deadline:** May 9, 2019

**DEPARTMENT:** Planning Division

**STAFF CONTACT:** Emily Meharg, Associate Planner

**EXHIBITS:**

**Applicant's Submittals:**

- A. Land Use Application
- B. Narrative (including maps)
- C. Arborist Report (Teragan & Associates Inc.)
- D. PGE Facilities Plan

**Public Comments:**

- E. Richard L. Webster (January 14, 2019)

**Additional Documents Submitted by Staff**

- F. Final Order 17-049 TREE

**I. BACKGROUND**

**A. PROCEEDING**

Type III Tree Variance

**B. FACTUAL INFORMATION**

1. APPLICANT: Bruce Erickson
2. OWNER: McKenzie Cook
3. PROJECT NAME: Center City Townhouses Tree Variance
4. SITUS ADDRESSES: No situs
5. LEGAL DESCRIPTION: T2S R4E Section 13DB Tax Lot 2100
6. PROPERTY LOCATION: North of McCormick Drive, west of Wolf Drive

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7. PROPERTY SIZE: 0.38 acres
8. COMPREHENSIVE PLAN DESIGNATION: High Density Residential
9. ZONING DISTRICT DESIGNATION: High Density Residential, R-3

**C. PUBLIC COMMENTS**

One public comment was received prior to publishing this staff report. Richard L. Webster (Exhibit E) at 17735 Loundree Dr. stated that the application is ok with him.

**D. APPLICABLE CRITERIA:** Sandy Development Code Chapters: 17.12 Procedures for Decision Making; 17.18 Processing Applications; 17.22 Notices; 17.102 Urban Forestry.

**E. EXPLANATION OF PROPOSED IMPROVEMENTS**

Bruce Erickson submitted an application on behalf of McKenzie Cook for a variance to the tree retention standards of Chapter 17.102, Urban Forestry. Removal of 19 trees from the property was previously approved (File No. 17-049 TREE) in conjunction with an application to construct 6 townhouses on the property (File No. 17-048 SUB). Three (3) trees were retained on the property in compliance with the minimum tree retention requirement. However, once grading of the site began, it became apparent that the surface roots for one of the retained trees were very close to the future townhome on Lot 6. With this application, the applicant is requesting to remove one of the required retention trees and to plant two mitigation trees in its place. This requires a variance to the City's tree retention standards since the minimum tree retention standard would no longer be met.

**F. PROPERTY BACKGROUND**

The subject parcel is the result of a property line adjustment that occurred in 2016 (File No. 16-028 PLA). Prior to the property line adjustment, there were two parcels (tax lots 2100 and 2200) under single ownership divided by a north-south property line. The property line adjustment changed the common lot line to an east-west orientation and facilitated the sale of the southern parcel (tax lot 2100) for future development. Prior to the property line adjustment and subsequent sale of the property, the contiguously owned parcels were greater than one acre; therefore, the tree retention requirements of Chapter 17.102, Urban Forestry, apply. In 2017, the applicant submitted concurrent applications for a six (6) lot subdivision (File No. 17-048 SUB) and associated tree removal (File No. 17-049 TREE). The proposed tree removal request was to remove 19 trees from the two properties and to retain three (3) trees in compliance with the minimum tree retention requirements. However, once grading of the site began, it became apparent that the surface roots for one (1) of the three (3) required retention trees were very close to the future townhome on Lot 6. With this application (File No. 19-001 TREE), the applicant is requesting to remove one (1) of the three (3) required retention trees and to plant two (2) mitigation trees in its place. This requires a variance to the City's tree retention standards since the minimum tree retention standard would no longer be met.

**G. PROCEDURAL CONSIDERATIONS**

Review of the tree variance request is a Type III procedure that requires a public hearing before the Sandy Planning Commission. Notification of this proposal was mailed to property

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owners within 500 feet of the subject property and to affected agencies on January 10, 2019. A legal notice was published in the Sandy Post on January 16, 2019.

## II. ANALYSIS OF CODE COMPLIANCE

### CHAPTER 17.102 – URBAN FORESTRY

#### 17.102.20 APPLICABILITY

This chapter applies only to properties within the Sandy Urban Growth Boundary that are greater than one acre including contiguous parcels under the same ownership.

- A. General: No person shall cut, harvest, or remove trees 11 inches DBH or greater without first obtaining a permit and demonstrating compliance with this chapter.
  - 1. As a condition of permit issuance, the applicant shall agree to implement required provisions of this chapter and to allow all inspections to be conducted.
  - 2. Tree removal is subject to the provisions of Chapter 15.44, Erosion Control, Chapter 17.56, Hillside Development, and Chapter 17.60 Flood and Slope Hazard.
- B. Exceptions: The following tree removals are exempt from the requirements of this chapter.
  - 1. Tree removal as required by the city or public utility for the installation or maintenance or repair of roads, utilities, or other structures.
  - 2. Tree removal to prevent an imminent threat to public health or safety, or prevent imminent threat to public or private property, or prevent an imminent threat of serious environmental degradation. In these circumstances, a Type 1 tree removal permit shall be applied for within seven days following the date of tree removal.

***RESPONSE:** The subject property contains 0.38 acres; however, prior to the re-plat of the property (File No. 16-028 PLA), tax lots 2100 and 2200 were under the same ownership and totaled approximately 1.12 acres. Thus, compliance with the tree retention requirements of Chapter 17.102 was required. Chapter 17.102 requires retention of three (3) trees (1.11 x 3) 11-inches or greater diameter at breast height (DBH) and in good condition. With the previous tree removal request in 2017 (File No. 17-049 TREE, Exhibit F), the applicant removed 19 trees from the two parcels and retained the minimum requirement of three (3) trees on the subject property. With this application (File No. 19-001 TREE), the applicant is requesting to remove one (1) of the three (3) required retention trees due to proximity of the tree to a proposed retaining wall and the building footprint on Lot 6 in the City Center Townhouses. This would result in only two (2) retention trees on the properties, which is a variance to the tree retention standards of Section 17.102.50.*

#### 17.102.50 TREE RETENTION AND PROTECTION REQUIREMENTS

- A. Tree Retention: The landowner is responsible for retention and protection of trees required to be retained as specified below:
  - 1. At least three trees 11 inches DBH or greater are to be retained for every one-acre of contiguous ownership.

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2. Retained trees can be located anywhere on the site at the landowner's discretion before the harvest begins. Clusters of trees are encouraged.
3. Trees proposed for retention shall be healthy and likely to grow to maturity, and be located to minimize the potential for blow-down following the harvest.
4. If possible, at least two of the required trees per acre must be of conifer species.
5. Trees within the required protected setback areas may be counted towards the tree retention standard if they meet these requirements.

**RESPONSE:** *The subject property requires retention of at least three (3) trees 11-inches or great DBH and in good health. In 2017, the applicant received approval to remove all but three (3) required retention trees from the site (File No. 17-049 TREE, Exhibit F). With this application (File No. 19-001 TREE), the applicant is requesting to remove one (1) of the three (3) retention trees due to proximity of the tree to a proposed retaining wall and the building footprint on Lot 6 in the Center City Townhouses. This would result in only two (2) retention trees on the properties, which is a variance to the tree retention standards of Section 17.102.50. This variance request is a Type III application and must be brought before Planning Commission.*

**17.102.60 TREE REPLANTING REQUIREMENTS**

1. All areas with exposed soils resulting from tree removal shall be replanted with a ground cover of native species within 30 days of harvest during the active growing season, or by June 1st of the following spring.
2. All areas with exposed soils resulting from tree removal occurring between October 1 and March 31 shall also be covered with straw to minimize erosion.
3. Removal of hazard trees as defined shall be replanted with two native trees of quality nursery stock for every tree removed.
4. Tree Removal allowed within the FSH Overlay District shall be replanted with two native trees of quality nursery stock for every tree removed.
5. Tree Removal not associated with a development plan must be replanted following the provisions of OAR Chapter 629, Division 610, Section 020-060

**RESPONSE:** *The applicant's narrative (Exhibit B) states that the applicant will cover all exposed areas with straw and later replant with a native groundcover. **The applicant shall replant any areas with exposed soil resulting from tree removal with a native ground cover. The applicant shall submit a site plan detailing the species, size, and location of native ground cover, or submit additional information demonstrating that there are no areas with exposed soil resulting from tree removal for Planning staff review and approval (e.g., there shouldn't be any exposed soil if the stumps are not removed).***

**17.102.70 VARIANCES**

Under a Type III review process, the Planning Commission may allow newly-planted trees to substitute for retained trees if:

1. The substitution is at a ratio of at least two-to-one (i.e., at least two native quality nursery grown trees will be planted for every protected tree that is removed); and
2. The substitution more nearly meets the intent of this ordinance due to:

- a. The location of the existing and proposed new trees, or
- b. The physical condition of the existing trees or their compatibility with the existing soil and climate conditions; or
- c. An undue hardship is caused by the requirement for retention of existing trees.
- d. Tree removal is necessary to protect a scenic view corridor.

**RESPONSE:** *The applicant is proposing to remove one (1) of the three (3) required retention trees on the site and is requesting a variance to the tree retention standards. The applicant is proposing to retain the other two (2) trees. The applicant submitted an updated Arborist Report by Teragan & Associates (Exhibit C) that evaluated the three (3) retention trees after preliminary grading and excavation of the site resulted in root damage to one (1) of the trees. The arborist report identifies the following three (3) trees:*

- *Tree #1: 60-inch DBH Douglas fir in good health and good structural condition*
- *Tree #2: 47-inch DBH Western red cedar in fair health and good structural condition*
- *Tree #3: 43-inch DBH Douglas fir in fair health and fair structural condition*

*Tree #1 has already sustained root damage to its surface roots due to the grading of the site. In addition, staff observed a large section of a tree trunk had been felled inside the tree protection fencing and was laying against Tree #1, thus, the applicant received a violation for not maintaining the required tree protection area during tree falling that occurred on the site. Based on the size of Tree #1 (60-inches DBH), the arborist report states that no construction activity should come within 30 feet on one of the tree's sides and 60 feet on the other sides. The proposed development on Lot 6 includes a wall within 8.5 feet on three sides of the tree. In addition, the building footprint for the townhome on Lot 6 will encroach within the critical root zone of Tree #1. Thus, the arborist report recommends that Tree #1 be removed. **The applicant shall remove Tree #1 and plant two (2) mitigation trees as proposed. The mitigation trees shall be 6-8 foot tall native evergreens of quality nursery stock. The applicant shall locate the mitigation trees in a spot that is easily visible for City staff to monitor the health of these trees in the future.***

*The intent of the Urban Forestry code is "to conserve and replenish the ecological, aesthetic and economic benefits of urban forests." The intent of the tree retention standard is to protect large, healthy trees that are likely to grow to maturity. While the code does allow newly-planted trees to substitute for retained trees, the intent is not to remove all of the existing trees on a site and replace them with newly-planted trees. All trees provide important benefits, but large, mature trees provide greater and more immediate ecological value, including reducing urban heat island effect, providing habitat, managing stormwater, and improving air quality. Thus, while the code sets a substitution ratio of at least two mitigation trees for every one protected tree that is removed, it would be nearly impossible to determine, for example, how many young 6 foot tall mitigation Douglas firs it would actually take to provide value equal to that of a mature 60-inch DBH Douglas fir. In addition, most development sites are graded or otherwise impacted during construction, leaving the soil compacted. This creates harsh conditions for newly planted mitigation trees, which often struggle to survive in the compacted soils. Recognizing that retention trees are often impacted by development, staff recommended the following in the Final Order for the original approval for tree removal on the site (File No. 17-*

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049 TREE, Exhibit F): "To avoid potential issues with removal of retention trees in the future, staff encourages the applicant to retain more than three (3) 11-inch DBH or greater trees in good condition on the site." The applicant chose not to retain more than the absolute bare minimum number of retention trees and now the applicant is asking to reduce the number of retention trees below the minimum threshold and to plant mitigation trees instead. **In order to improve the chance of survival for newly-planted mitigation trees, the applicant shall aerate the soil to a depth of 3 feet in a 15 foot radius around the location of each proposed mitigation tree. In addition, the applicant shall obtain a letter of credit in the amount of \$500 per tree to cover replacement and establishment of the mitigation tree should it die within 3 years.**

Per the applicant's narrative (Exhibit B), the applicant is planning to move the storm detention facility and retaining wall to minimize conflict with the roots of Trees #2 and #3. The arborist report (Exhibit C) cites that while the proposed location of the storm detention facility would have detrimental impacts to Trees #2 and #3, it's possible that Trees #2 and #3 could be saved if the storm detention facility and sidewalk are moved further away from the trees' critical root zones (CRZ). Specifically, the report states "If and [sic] improvements can be kept at least 23.5 feet from tree #2 and #3, it may be possible to retain the [sic] two out of the three trees successfully as long as the project arborist is on site during any excavations within 23.5 feet of trees #2 and #3." The submitted site plan with needed root protection zones attached to the narrative (Exhibit B), details a setback sidewalk with planter strip. A section of the proposed sidewalk is located within the CRZ of Tree #3. Section 17.84.30(A.3) of the Sandy Development Code allows exceptions to the standard sidewalk/planter strip design to save mature trees. **The applicant shall update the plan set to detail a curb-tight sidewalk in the section where the proposed sidewalk encroaches within the CRZ of Tree #3 and shall submit to the City for review and approval. The applicant shall update the plan set to relocate other improvements, including the storm detention facility and PGE vault, as far outside of the 23.5 foot CRZ around Tree #2 and the 21.5 foot CRZ around Tree #3 as possible and shall submit to the City for review and approval. The applicant shall retain an arborist on site during any excavations within 23.5 feet of Tree #2 and 21.5 feet of Tree #3. The applicant shall relocate the tree protection fencing around Trees #2 and #3 per the arborist's recommendation and shall call for an inspection with the City once the tree protection fencing is reestablished.**

The arborist report (Exhibit C) states that if too many roots are impacted within the CRZ such that the tree's structural stability is compromised, Tree #2 and/or Tree #3 may still need to be removed. Staff supports relocating the storm detention facility and retaining an arborist on site during excavations to monitor the impact of construction on critical roots in an effort to retain Trees #2 and #3. **If the arborist finds that Trees #2 and #3 can be successfully retained then the applicant shall retain Trees #2 and #3. If the arborist finds that Tree #2 and/or Tree #3 cannot be successfully retained, the applicant shall submit a land use application for a Type III Tree Variance before Planning Commission and shall include an arborist report with an updated recommendation related to the removal of Tree #2 and/or Tree #3. The applicant shall also be required to pay a third party arborist review fee for any trees proposed for removal from the property in the future.**

As a condition of Final Order 17-049 TREE (Exhibit F), the applicant was required to record a tree protection covenant for the three (3) retained trees. With removal of the one (1) retention tree, the tree protection covenant will include two (2) retention trees and two (2) mitigation

*trees. The applicant shall record a tree protection covenant specifying protection of the two (2) required retention trees and two (2) required mitigation trees and limiting removal without submittal of an Arborist's Report and City approval. This document shall include a sketch identifying the species and location of the retention and mitigation trees.*

*If the trees are removed during prime nesting season (February 1- July 31), the applicant shall check for nests prior to tree removal. If nests are discovered, the applicant shall delay tree removal until after the nesting season or shall hire a professional to relocate the nests to an appropriate nearby location, provided the species using the nest is not invasive.*

### **III. SUMMARY AND CONCLUSION**

Bruce Erickson submitted an application on behalf of McKenzie Cook for a variance to the tree retention standards of Chapter 17.102, Urban Forestry. Removal of 19 trees from the property was previously approved (File No. 17-049 TREE) in conjunction with an application to construct 6 townhouses on the property (File No. 17-048 SUB). Three (3) trees were retained on the property in compliance with the minimum tree retention requirement. However, once grading of the site began, it became apparent that the surface roots for one of the retained trees were very close to the townhome on Lot 6. With this application, the applicant is requesting to remove one of the required retention trees and to plant two mitigation trees in its place. However, as stated in the arborist report, the remaining two trees will be difficult to adequately protect from being damaged unless the storm facility and sidewalk are redesigned.

### **IV. RECOMMENDATION**

Staff recommends the Planning Commission hold a public hearing to take public testimony regarding the proposal. Staff recommends the Planning Commission **approve** the variance request with modifications as recommended in this report.

- **The applicant shall replant any areas with exposed soil resulting from tree removal with a native ground cover. The applicant shall submit a site plan detailing the species, size, and location of native ground cover, or submit additional information demonstrating that there are no areas with exposed soil resulting from tree removal for Planning staff review and approval (e.g., there shouldn't be any exposed soil if the stumps are not removed).**
- **The applicant shall remove Tree #1 and plant two (2) mitigation trees as proposed. The mitigation trees shall be 6-8 foot tall native evergreens of quality nursery stock.**
- **The applicant shall locate the mitigation trees in a spot that is easily visible for City staff to monitor the health of these trees in the future.**
- **In order to improve the chance to survival of newly-planted mitigation trees, the applicant shall aerate the soil to a depth of 3 feet in a 15 foot radius around the location of each proposed mitigation tree. In addition, the applicant shall obtain a letter of credit in the amount of \$500 per tree to cover replacement and establishment of the mitigation tree should it die within 3 years.**
- **The applicant shall update the plan set to detail a curb-tight sidewalk in the section where the proposed sidewalk encroaches within the CRZ of Tree #3 and shall submit to the City for review and approval. The applicant shall update the plan set to relocate other improvements, including the storm detention facility and PGE vault, as far**

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outside of the 23.5 foot CRZ around Tree #2 and the 21.5 foot CRZ around Tree #3 as possible and shall submit to the City for review and approval. The applicant shall retain an arborist on site during any excavations within 23.5 feet of Tree #2 and 21.5 feet of Tree #3. The applicant shall relocate the tree protection fencing around Trees #2 and #3 per the arborist's recommendation and shall call for an inspection with the City once the tree protection fencing is reestablished.

- If the arborist finds that Trees #2 and #3 can be successfully retained then the applicant shall retain Trees #2 and #3. If the arborist finds that Tree #2 and/or Tree #3 cannot be successfully retained, the applicant shall submit a land use application for a Type III Tree Variance before Planning Commission and shall include an arborist report with an updated recommendation related to the removal of Tree #2 and/or Tree #3. The applicant shall also be required to pay a third party arborist review fee for any trees proposed for removal from the property in the future.
- The applicant shall record a tree protection covenant specifying protection of the two (2) required retention trees and two (2) required mitigation trees and limiting removal without submittal of an Arborist's Report and City approval. This document shall include a sketch identifying the species and location of the retention and mitigation trees.
- If the trees are removed during prime nesting season (February 1- July 31), the applicant shall check for nests prior to tree removal. If nests are discovered, the applicant shall delay tree removal until after the nesting season or shall hire a professional to relocate the nests to an appropriate nearby location, provided the species using the nest is not invasive.



### LAND USE APPLICATION FORM

(Please print or type the information below)

Planning Department  
39250 Pioneer Blvd.  
Sandy OR 97055  
503-668-4886

## EXHIBIT A

Name of Project Center City Townhouses (6 Units)

Location or Address Northwest Corner of McCormick Drive and Wolf Drive, Sandy, OR

Map & Tax Lot Number T 2 S. , R 4 E. , Section 13DB ; Tax Lot(s) 2100

Plan Designation R-3  Zoning Designation R-3  Acres 0.39

**Request:**

Request for a Variance to Tree Retention Requirements as specified in Section 17.102.50, which may be permitted subject to provisions of Section 17.102.70 (City of Sandy, Development Code, Chapter 17.102 Urban Forestry).

I am the (check one)  owner  lessee of the property listed above and the statements and information contained herein are in all respects true, complete and correct to the best of my knowledge and belief.

Applicant Bruce W. Erickson, P.E.	Owner McKenzie "Ken" Cook
Address 22035 SE Firwood Road	Address 79110 Via Corta
City/State/Zip Sandy, OR 97055	City/State/Zip La Quinta, CA 92253
Phone 971-400-0339	Phone 503-932-0128
Email berickson@bhhsnw.com	Email kenmarylou@aol.com
Signature <i>Bruce W. Erickson</i>	Signature DocuSigned by: <i>McKenzie "ken" Cook</i>

If signed by Agent, owner's written authorization must be attached.

File No. <u>13-001</u>	Date <u>1/7/19</u>	Rec. No.	Fee \$ <u>430.00</u>
Type of Review (circle one): Type I    Type II <u>Type III</u> Type IV			

*24E13DB 2100*



## EXHIBIT B

### **REQUEST FOR A VARIANCE TO TREE RETENTION REQUIREMENTS AS SPECIFIED IN SECTION 17.102.50, WHICH MAY BE PERMITTED SUBJECT TO PROVISIONS OF SECTION 17.102.70 (CITY OF SANDY DEVELOPMENT CODE, CHAPTER 17.102 URBAN FORESTRY).**

#### **LAND USE APPLICATION SUPPLEMENTAL INFORMATION TYPE III PERMIT FOR TREE REMOVAL.**

**An application for a Type III Permit shall contain the following information:**

- 1. Two copies of a scaled site plan to contain the following: dimensions of the property and parcel boundaries, location and species of trees 11" DBH or greater to be retained, location and type of tree protection measures to be installed.**

This information is shown in Exhibits A and B attached hereto.

- 2. A brief narrative describing the project.**

The project was approved in November 2017 (File No. 17-048 SUB) as a Type II Subdivision to allow for the six lot Center City Townhouses subdivision located to the north of McCormick Drive and west of Wolf Drive subject to Conditions of Approval. Prior to the above approval, the applicant did submit a Tree Inventory and Retention Plan to the City for approval, which was approved in September 2017 (File No. 17-049 TREE). This Arborist Report and Tree Plan is attached hereto as Exhibit C. This approval gave authorization to remove 19 trees from the subdivision property and adjacent church property to the north. Per Section 17.102.50 of the development code three trees on the subdivision property were to be retained and protected. These trees were a 54-inch cedar, a 44-inch cedar, and a 38 inch Douglas fir. This condition was also stated in the subdivision conditions of approval.

The 19 trees were removed from the site in September 2018, and the 3 trees to be retained were protected as required in Section 17.102.50 B, of the development code. Once grading commenced on site, it became apparent the surface roots for one of the retained trees were very close to the townhome on Lot 6. Grading was then ceased in this area, and an Arborist retained to examine the site for his opinion on whether the tree could be saved or not. The need for a 10' storm drainage easement along the west boundary of the property, to serve the church property to the north, further impacted the subject tree. This required the lot lines and buildings to be shifted eastward and closer to the tree.

- 3. Estimated starting and ending dates.**

Until this variance is approved to remove the retained tree, no grading activities will commence in this area nor will the tree be removed. In addition, should the Arborist recommended a larger protective area for the trees to be retained, the protection fence for these trees will be removed and replaced to fit the expanded protection area. In order to

further protect the two remaining trees to be retained, the proposed grading retaining walls will be relocated, as well as relocating the storm water detention system, to areas outside of any expanded protective area. This redesign work will be undertaken immediately and completed before the end of the month. Once the approval is given to remove the tree, the tree will be removed and grading operations within this area commenced. The planting of two additional trees as a substitution to the tree removed, will occur after the site grading is completed and weather permitting.

**4. A scaled re-planting plan indicating ground cover type, species of trees to be planted, and general location of replanting.**

The proposed location for the planting of the two substitute trees is shown in attached Exhibit D. The two substitute trees will be native conifer trees of quality nursery stock. The size and species of the two trees will be as recommended or approved by the City.

Generally, the entire site not covered by buildings or other improvements will be landscaped, to provide an attractive development. Landscaping elements will include lawn or turf, bark mulch, shrubbery, and other types of native grass, as approved by the City. All exposed areas from tree removal activities will be replanted with a ground cover of native species, that will not compact the soil within the protection zones of retained trees.

**5. An application for removal of a hazard tree within a protected setback area or a tree required to be retained as defined in Chapter 17.102.50 shall also contain a report from a certified arborist or professional forester indicating that the condition or location of the tree presents a hazard or danger to persons or property and that such hazard or danger cannot reasonably be alleviated by treatment or pruning.**

The Applicant has retained the services of a Board Certified Master Arborist, Terrance P. Flanagan of Teragan & Associates, Inc., to review the location of the three trees to be retained and the site plans showing the location of planned improvements. His report is attached hereto as Exhibit E.

In summary, his report recommends that one tree (Tree #1, a 60-inch Douglas fir) be removed as the grading and the planned improvements are too close to it. He also recommended that Tree #2 (47-inch Western Red Cedar) and Tree #3 (43-inch Douglas fir) be removed if we could not relocate planned improvements further away from these trees.

**6. A list of property owners on mailing labels within 500 feet of the subject property.**

This list is provided, an attached as Exhibit F.

**7. A written narrative addressing applicable code Sections 17.102.50, 17.102.60, and 17.102.70.**

**17.102.50 Tree Retention and Protections Requirements**

The Applicant will retain the two protected tree (Tree #2 and Tree #3) by relocating planned improvements so they will not be impacted by site development activities. Both trees are in fair to good condition, conifer species and greater than 11 inches DBH.

No grading or construction activity will occur within the necessary protective area as recommended in the Arborist Report, which is at least 6 times the diameter of the tree on a radius from the center of the tree. (This protective area is shown by the circles around the trees on Exhibits A and B.) The existing protective barrier fencing in the field will be relocated to cover this expanded circle zone, from the 10 horizontal feet circle from the outside edge of the tree trunk as was required in Section 17.102.50 B.

The Applicant will notify the City, as required, before proceeding with tree removal or construction activity within the subject area, so that the City may inspect and approve of installation of tree protection measures.

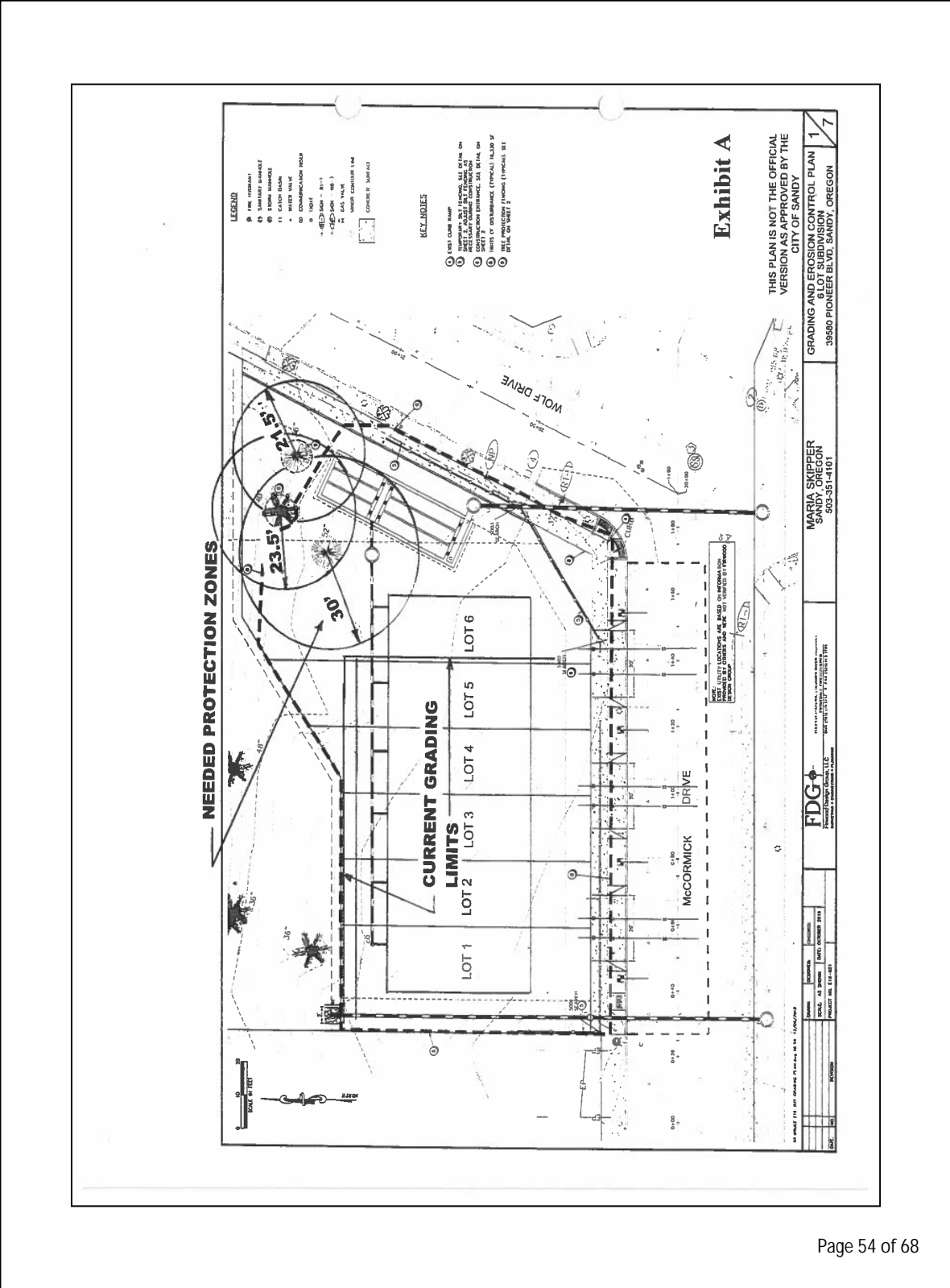
**17.102.60 Tree Replanting Requirements**

The Applicant agrees with the tree replanting requirements of this section. All areas with exposed soils resulting from the tree removal occurring between October 1 and March 31 will be covered with straw to minimize erosion, and later replanted with a ground cover of native species. Two native trees of quality nursery stock will be replanted for every tree removed.

**17.102.70 Variances**

Under a Type III review process, which we are requesting, the Planning Commission may allow newly-planted trees to substitute for retained trees if: 1. The substitution is a ratio of at least two-to-one (i.e., at least two native quality nursery grown trees will be planted for every protected tree that is removed); and 2. The substitution more nearly meets the intent of this ordinance due to: a. location of the existing and proposed new trees, or b. Physical condition of the existing trees or their compatibility with the existing soil and climate conditions; or c. Undue hardship is caused by the requirement for retention of existing trees; and d. Tree removal is necessary to protect a scenic corridor.

The Applicant is agreeable to the substitution ratio of two-to-one for the removal of protected Tree #1. These two replacement trees will be native quality nursery grown trees. The applicant further believes that this substitution more nearly meets the intent of this ordinance due to the existing location of Tree #1 and its proximity to planned site improvements, and the proposed location of the two new trees.



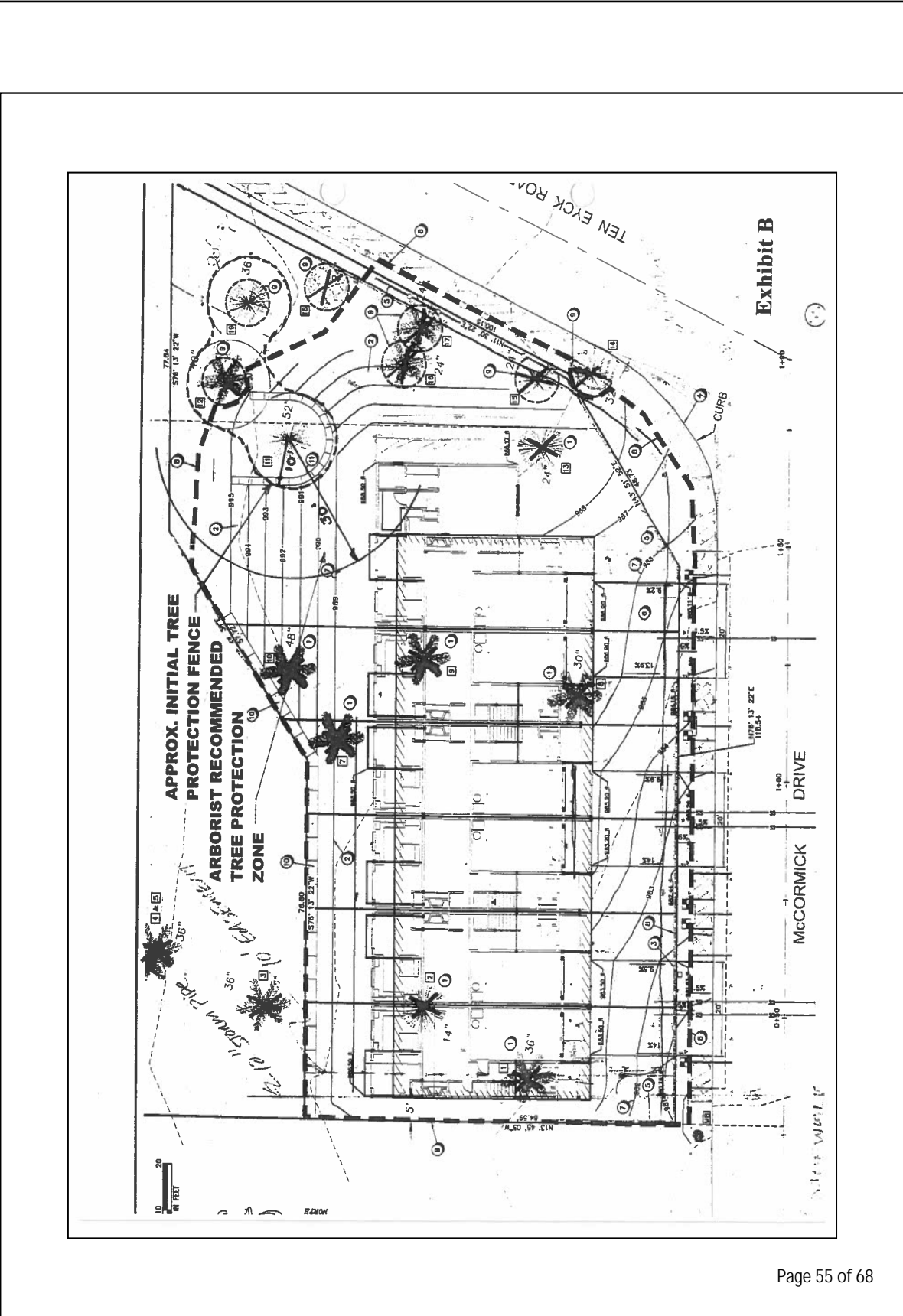


Exhibit B





December 14, 2018

## EXHIBIT C

Bruce Erickson  
Berkshire-Hathaway  
39460 Proctor Blvd  
Sandy, OR 97055

RE: Tree Protection on the Center City Townhouse Project

### Summary

After a review of the trees on December 5, 2018 and the site plans showing the location of planned improvements, I do not recommend retaining any of the three trees that have been left on site.

It may be possible that trees #2 and 3 could be retained if the impact to their roots is discovered to be acceptable by the project arborist. If the trees #2 and 3 are to be retained, the arborist shall be on site to observe the number and size of roots impacted during excavation in order to determine if the trees can remain on the site safely. If the placement of the improvements closest to the trees is moved further away, that may also make it possible to retain the trees.

### Assignment

The purpose of this report is to evaluate the ability to safely retain three trees long term on the property of the Center City Townhouses Project.

### Assumptions and Limiting Conditions

Please see Appendix #2 for a detailed list of Assumptions and Limiting conditions.

### Background

The City of Sandy has requested a review of the three trees that have been retained on the site. A concern has arisen that roots from the most southern tree has experienced root damage from equipment operating on the site.

A tree plan was created by Richard Gillum of Rich's Tree Service, date unknown. The scan copy of the plan that I received was very difficult to read but it is not clear which trees were to be retained from the tree plan. However, per Bruce Erickson of Berkshire-Hathaway, the project current engineer/real estate broker, the three trees in the northeast corner of the property are to be retained.

Teragan & Associates, Inc.  
3145 Westview Circle • Lake Oswego, OR 97034  
• (503) 697-1975 • Fax (503) 697-1976 • E-mail : info@teragan.com

**Observations**

On December 5, 2018 I met with Mr. Erickson to review the trees and the planned improvements. The trees are located in the northeast corner of the property on the northwest corner of the intersection of McCormick Drive and Wolf Drive, Sandy, OR.

The three trees have been numbered on the Site and Stormwater Plan which is attached as appendix # 3.

**Tree Inventory**

Tree Number	Common Name	Scientific Name	Tree Diameter*	Tree Health Condition	Tree Structure Condition	Comments
1	Douglas-fir	Pseudotsuga menziesii	60"	Good	Good	Significant butt log swell, sweep, live crown ratio 75%
2	Western red cedar	Thuja plicata	47"	Fair	Good	Full crown, 85% live crown ratio, crown foliage a bit thin
3	Douglas-fir	Pseudotsuga menziesii	43"	Fair	Fair	Live crown ratio 80%, open branched crown, foliage a bit thin.

\*Tree Diameter was measured at 4.5 feet above ground level, the industry standard to measure a tree diameter known as diameter breast height (DBH)

Tree #1 has already had some root damage on its surface root south of the tree. The root damage was the reason for the City of Sandy to require that these trees be evaluated again.

**Discussion**

The three trees that have been chosen to be retain on the site have full crowns; are in fair to good condition and are good specimens to be retain that should add to the site for many years to come if they can be properly protected.

Per the Site and Stormwater Plan, sheet 3/10, tree # 1 will be less than 8.5 feet away from a planned retaining wall; tree #2 will be less than 11 feet from the north corner of an underground water detention facility; and tree #3 will be less than 10 feet from the north side of the detention facility.

Generally, it is best to come no closer than 6 times the diameter of a tree on a radius from the center of the tree on one side of the tree that is to have construction nearby. On the other three sides, construction should come no closer than 12 times. Encroaching within these parameters can be done, possibly without impacting the long-term health or structure of the tree if done carefully within limits as dictated by the site and the tree. 6 times the diameter of an excurrent form conifer such as these trees usually equates to the length of the tree's dripline, the extent of the tree's branches

Tree #1 is 60-inches diameter tree as measured at 4.5 feet above ground. With a tree 60 inches in diameter no construction activity should come within 30 feet on one of the tree's sides, 60 feet on the other sides of the tree. The plan for the project indicates a new wall will be installed



within 8.5 feet on three sides of the tree, far less than 3 times the diameter of the tree, way too close to the tree to expect that severe damage won't occur to the tree roots.

Tree # 2 is 47-inch diameter Western red cedar (*Thuja plicata*) at 4.5 feet above ground. The guidelines would indicate that no construction should come within 23.5 feet on one side of the tree. However, as this tree is to the north of tree # 1, the spread of its roots is limited to the south/southwest due to the presence of the roots from tree #1. It is unlikely that tree #2's roots will be impacted by the wall construction as long as the eastern side of the wall is modified to not extend to the north/northeast. However, the construction of the storm detention facility will impact the tree on its southeast side within 11 feet of the tree's center. This distance is less than 3 times the tree diameter and too close to be sure that the construction won't severely impact its roots. There is a chance that the distribution of the tree's roots may not extend too greatly in the direction where the facility is to be located. However, to be sure that the excavation for the storm facility won't cause the loss of too many roots, the project arborist shall be on site during the excavation to document any roots encountered and guide the pruning of any roots large than one inch. If too many roots are encountered, the project arborist may have to recommend removal of the tree due to concerns of the tree's structural stability.

Tree # 3 is a 43-inch diameter Douglas-fir that will have the northeast side of the storm detention facility within 10 feet of the tree's center, the new sidewalk on the east side of the tree will be within 15 feet. Ideally no construction activity should not come within 21.5 feet on any side of the tree. It may be possible to encroach closer than the suggested guidelines if the project arborist can observe the excavation to see if any roots are impacted and if so, they can be pruned without impacting the structural stability of the tree. In addition, grading for the new sidewalk may have to be limited if roots are encountered which will cause the sidewalk to be constructed on top of grade. The project arborist shall also have the ability to call for the tree's removal if too many roots are impacted that would impact the structural stability of the tree.

Moving the storm water detention facility or redesigning it so that it will be placed further from tree #2 and #3 will give those two trees better probability to be able to be successfully retained.

#### **Tree Protection**

If and improvements can be kept at least 23.5 feet from tree # 2 and # 3, it may be possible to retain the two out of the three trees successfully as long as the project arborist is on site during any excavations within 23.5 feet of trees # 2 and 3.

#### **Conclusion**

It will be very difficult to adequately protect the three trees from being damaged to the point of becoming unstable unless the design of the storm facility and new sidewalk is redesigned. The improvements should not be placed within at least six times the diameter of the trees.

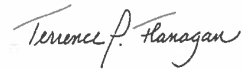
As the project is designed now it will not be possible to retain tree # 1 and trees # 2 and 3 are unlikely to be adequately protected given the need to encroach on the trees' root systems.

### Recommendations

I recommend that tree # 1 be removed as the planned retaining wall is too close to it. In addition, trees # 2 and 3 should also be removed unless either the project arborist can confirm that critical roots are not impacted during the excavation for the installation of the improvements or the planned improvement are move further away from the trees.

Please call if you have any questions or concerns regarding this report.

Sincerely,



Terrence P. Flanagan  
*ISA Board Certified Master Arborist, #PN-0120 BMTL*  
*ISA Tree Risk Assessment Qualified*  
*Member, American Society of Consulting Arborists*

### Enclosures

- Appendix 1: Certification of Performance
- Appendix 2: Assumptions and Limitations Conditions
- Appendix 3: Site Plan with Tree Numbering

### Appendix 1 Certification of Performance

I, Terrence P. Flanagan, Certify:

- That a representative of Teragan & Associates, Inc., has inspected the tree(s) and/or the property referred to in this report. The extent of the evaluation is stated in the attached report.
- That Teragan & Associates, Inc. has no current or prospective interest in the vegetation of the property that is the subject of this report, and Teragan & Associates, Inc. has no personal interest or bias with respect to the parties involved.
- That Teragan & Associates, Inc.'s compensation is not contingent upon the reporting of a predetermined conclusion that favors the cause of the client or any other party, or upon the results of the assessment, the attainment of stipulated results, or the occurrence of any subsequent events.
- That the analysis, opinions, and conclusions that were developed as part of this report have been prepared according to commonly accepted arboricultural practices.
- That a Board-Certified Master Arborist has overseen the gathering of data.

### Appendix 2 Assumptions and Limiting Conditions

1. Any legal description provided to the consultant is assumed to be correct. Teragan and Associates, Inc. checked the species identification and tree diameters in the field.
2. It is assumed that this property is not in violation of any codes, statutes, ordinances, or other governmental regulations.
3. The consultant is not responsible for information gathered from others involved in various activities pertaining to this project. Care has been taken to obtain information from reliable sources.
4. Loss or alteration of any part of this delivered report invalidates the entire report.
5. Drawings and information contained in this report may not be to scale and are intended to be used as display points of reference only.
6. The consultants' role is only to make recommendations. Inaction on the part of those receiving the report is not the responsibility of the consultant.
7. This report is to certify the trees that are on site, their condition, outlining the tree protection steps to protect the trees to be retained on site. This report is written to meet the requirements necessary for tree protection on properties that are to be developed for residential or commercial use.





RECEIVED

JAN 14 2019

CITY OF SAND

EXHIBIT E

COMMENT SHEET for File No. 19-001 TREE:

THIS APPLICATION IS OK WITH ME.

RICHARD L. WEBSTER 503-826-9350  
Your Name Phone Number

1735 LONDREE DR.  
Address

APPLICABLE CRITERIA: Sandy Municipal Code: 17.12 Procedures for Decision Making; 17.18 Processing Applications; 17.22 Notices; 17.102 Urban Forestry.



**CITY OF  
SANDY**

39250 PIONEER BOULEVARD • SANDY, OR 97055  
www.ci.sandy.or.us

PHONE (503) 668-5533  
FAX (503) 668-8714

*Gateway to Mt. Hood*

**FINDINGS OF FACT and FINAL ORDER  
TYPE I REVIEW**

**DATE:** September 28, 2017

**FILE NO.:** 17-049 TREE

**PROJECT NAME:** City Townhomes Tree Removal

**APPLICANT:** Maria Skipper

**OWNERS:** McKenzie Cook and David Gradner (Church of Christ)

**ADDRESS:** NW corner of McCormick Drive and Wolf Drive

**LEGAL DESCRIPTION:** T2S R4E Section 13DB, Tax Lots 2100 and 2200

**PROPOSAL:** Remove 19 trees from the lot associated with the City Townhomes subdivision in compliance with Section 17.102, Urban Forestry.

**DECISION:** The applicant is authorized to remove 19 trees in preparation for the City Townhomes subdivision.

**EXHIBITS:**

Applicant's Submittals

- A. Land Use Application Form
- B. Tree Protection Plan and Arborist Report

**FINDINGS OF FACT:**

1. The goals and policies of the Sandy Comprehensive Plan are not directly applicable to this application because relevant code sections do not cite specific policies as criteria for evaluating the proposal.
2. The subject lots have a Plan Map designation of Commercial, and a Zoning Map designation of C-1, Central Business District, and R-3, High Density Residential.
3. Section 17.102, Urban Forestry, applies to properties within the Sandy Urban Growth Boundary that are greater than one acre in area (including contiguous parcels under the same

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- 1 -

ownership). Prior to the replat of the property (File No. 16-028 PLA), tax lots 2100 and 2200 were under the same ownership and totaled 1.12 acres. The trees proposed for removal are located on both lots, which total more than one (1) acre. Therefore, the proposal must be processed to determine compliance with Section 17.102, Urban Forestry.

4. Following approval of File No. 16-028 PLA, the applicant submitted the current application requesting approval to remove 19 trees to accommodate construction of six (6) row homes.
5. On August 25, 2017, the applicant submitted a separate application (17-048 SUB) for subdivision of the property into six (6) lots.
6. Section 17.102.20(A) states: "no person shall cut, harvest or remove trees 11 inches DBH or greater without first obtaining a permit and demonstrating compliance with this chapter." Section 17.102.80 specifies that violations of this section are subject to enforcement procedures contained in Chapter 17.06, specifically Section 17.06.80. This section specifies that each violation of the code is considered a separate offense punishable by a fine.
7. The applicant proposes to remove 19 trees that are 11-inches diameter at breast height (DBH) or greater.
8. Section 17.102.30 (A) details the procedures and application requirements for Type I tree removal permits. The applicant submitted a tree removal application in compliance with Section 17.102.30 (B). The proposal is considered a Type I permit because fewer than 50 trees are proposed to be removed.
9. Section 17.102.50 (A) details tree retention and protection requirements. Section 17.102.50 (A.1.) states: "at least three trees 11 inches DBH or greater are to be retained for every one-acre of contiguous ownership." The subject properties are 1.12 acres, therefore, three (3) retention trees are required. **The applicant shall install protective barrier fencing around protected trees as specified in Section 17.102.50 (B). The applicant shall request an inspection of erosion control measures and tree protection measures as specified in Section 17.102.50 (C) prior to construction activities or grading. The applicant shall record a tree protection covenant specifying protection of retained trees limiting removal without submittal of an Arborist's Report and City approval. This document shall include a sketch identifying the location of required protected trees and shall be recorded as part of the Final Plat. The tree protection covenant shall be submitted to the City for review and approval prior to recording.**
10. The submitted arborist report and tree plan (Exhibit B) by Richard Gillum of Rich's Tree Service verified tree locations and conditions on January 25, 2016. The report identifies six (6) native trees in good condition that are 11-inches DBH or greater on the subject property (tree numbers 11, 12, 13, 15, 16, and 19 on the submitted arborist report and tree plan). The report also identifies seven (7) trees in fair condition (tree numbers 8, 9, 17, 20, 21, 22, and 23), 8 trees in poor condition (tree numbers 1, 2, 3, 4, 5, 7, 10, and 18), and 1 tree in very poor condition (tree number 6) on the subject property, as well as one tree in fair condition in the right-of-way (tree number 14). With removal of the 19 trees in this application, the site



will retain three (3) trees 11-inches DBH or greater and in good condition. The retained trees are a 54-inch cedar, a 44-inch cedar, and a 38-inch Douglas fir, all in good condition (tree numbers 11, 12, and 19 on the submitted arborist report and tree plan). Per the tree protection covenant conditioned in Finding 9, above, future removal of the three (3) retention trees will not be allowed without submittal of an Arborist's Report and City approval. **The applicant shall also be required to pay a third party arborist review fee for any trees proposed for removal from either property in the future.** To avoid potential issues with removal of retention trees in the future, staff encourages the applicant to retain more than three (3) 11-inch DBH or greater trees in good condition on the site.

**DECISION:**

This application to remove 19 trees is **approved** as modified by the conditions listed below.

**CONDITIONS OF APPROVAL:**

1. **Prior to final plat approval for the City Townhomes subdivision, the applicant shall complete the following:**
  - a. Submit proof of a tree protection covenant specifying protection of retained trees and limiting removal without submittal of an Arborist's Report and City approval. This document shall include a sketch identifying the location of the three (3) protected trees. The tree protection covenant shall be submitted to the City for review and approval prior to recording.
2. Tree removal shall be limited to 19 trees (11-inches DBH or greater) as detailed on the submitted tree protection plan.
3. Install protective barrier fencing around retention trees as specified in Section 17.102.50(B) to protect trees. Request an inspection of erosion control measures and tree protection measures as specified in Section 17.102.50(C) prior to construction activities, grading, or removal of any trees.
4. Future tree removal on the subject properties will not be allowed without submittal of an Arborist's Report and City approval in accordance with the tree protection covenant. The applicant shall also be required to pay a third party arborist review fee for any trees proposed for removal from either property in the future. Tree removal without permit authorization may result in a fine per occurrence as specified in Section 17.06.80.

\_\_\_\_\_  
Emily Meharg  
Associate Planner

**RIGHT OF APPEAL**

A decision on a land use proposal or permit may be appealed to the Planning Commission by an affected party by filing an appeal with the Director within twelve (12) days of notice of the decision. The notice of 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.

**FINDINGS OF FACT and FINAL ORDER  
TYPE III LAND USE PROPOSAL**

**DATE:** February 13, 2019

**FILE NO.** 18-051 VAR

**PROJECT NAME:** RV Storage Setback Variance

**OWNER/APPLICANT:** Robert Mottice

**LEGAL DESCRIPTION:** 24E14DC, tax lot 12200

**DECISION:** Denied by the Planning Commission

The above-referenced proposal was reviewed as two, Type III Special Variance requests. Robert Mottice submitted an application to adjust the side (north) yard and rear (east) yard setbacks to accommodate a partially constructed recreational vehicle (RV) carport. The proposed side (north) yard setback is 2 feet (19 inches to roofline) and rear (east) yard setback is 3 feet 5 inches (14 inches to roofline) when Subsection 17.38.30 requires a minimum side yard setback of 5 feet and minimum rear yard setback of 15 feet.

**EXHIBITS:**

**Applicant's Submittals:**

- A. Land Use Application
- B. Narrative
- C. Site Plan and Elevations
- D. Historic Photography
- E. Parcel Information

**Public Comments:**

- F. John Lewis (December 28, 2018 & January 2, 2019)
- G. Mr. and Mrs. W. Linn (January 2, 2019)
- H. Tom Newell (January 2, 2019)
- I. Guimar and James DeVaere (January 4, 2019)
- J. Brandon Shay (January 14, 2019)

**Agency Comments:**

- K. Terrence (Terre) Gift (January 4, 2019)

**Additional Documents Submitted by Staff**

- L. Nicolas Glen No. 3 Plat
- M. 18-051 VAR RV Storage Setback Variance Staff Report

## FINDINGS OF FACT

### General

1. These findings supplement and are in addition to the staff report dated January 28, 2019, which is incorporated herein by reference (Exhibit M). Where there is a conflict between these findings and the staff report, these findings shall control.
2. These findings are based on the applicant's submittal materials deemed complete on November 28, 2018. These items are identified as Exhibits A – E including a written narrative, a site plan with associated elevations, historic photography as well as parcel information.
3. The subject site consists of one parcel with a total area of approximately 0.12 acres. The subject property is located within the Nicolas Glen No. 3 subdivision recorded January 12, 2000. The property includes a 1,338 square foot, two-story single-family residential dwelling with an attached two-car garage (not included in the overall square footage).
4. The parcel has a Comprehensive Plan Designation of Medium Density Residential and a Zoning Map designation of R-2, Medium Density Residential.
5. Property owner Robert Mottice submitted an application to adjust the side (north) yard and rear (east) yard setbacks to accommodate a partially constructed recreational vehicle (RV) carport. Additionally, Mr. Mottice requested a Special Variance to allow the structure to exceed the maximum 16-foot height limitation.
6. Specifically, the applicant's submission included the following three Special Variance requests:
  - Variance A: To finish construction of an accessory structure 2 feet (19 inches to roofline) from an interior side (north) yard property line when Subsection 17.38.30 requires a minimum interior side yard setback of 5 feet in the R-2 zone district.
  - Variance B: To finish construction of an accessory structure 3 feet 5 inches (14 inches to roofline) from a rear (east) yard property line when Subsection 17.38.30 requires a minimum rear yard setback of 15 feet in the R-2 zone district.
  - Variance C: To allow the final height of the structure to exceed the maximum 16-foot height limitation Subsection 17.74.10(B)(6) requires for residential detached accessory structures.
7. Upon further review it was determined the height of the existing structure did not exceed the height limitation of Subsection 17.74.10(B)(6) therefore the requested Variance C was not required.
8. Notification of this proposal was mailed to property owners within 500 feet of the subject property and to affected agencies on December 21, 2018. A legal notice was published in the Sandy Post on January 9, 2019.

9. On January 28, 2019 the Planning Commission held a public hearing to review the application. At this hearing the Planning Commission voted on a motion to approve the requested two special variances. The results of the vote were a tie with two votes to approve and two votes to deny the motion. Under Robert's Rules, a majority, or more than half, vote is the fundamental requirement to pass a motion, therefore the motion did not carry and was denied.

17.30 – Zone Districts

10. The subject property is located within the Medium Density Residential (R-2) zone district and within the Nicolas Glen Subdivision. This development consists of 165 platted lots of which 164 have been developed into single-family residential dwellings and one duplex dwelling.

17.38 – Medium Density Residential

11. The applicant proposes to incorporate a detached carport to be used for RV storage as an accessory use to the primary single-family residential dwelling. The proposed accessory use does not affect the existing primary use or density of the property as detailed in Chapter 17.30 of this report.
12. Subsection 17.38.10(B)(2) identifies accessory structures, detached or attached as an accessory use permitted outright within the R-2 zone district.
13. The proposed accessory structure does not meet the side or rear yard setback requirements of the R-2 zone district (Subsection 17.38.30). The applicant has requested the three special variances identified in Item No. 6 above which are further detailed within Finding Nos. 24-36 below.

17.74 – Accessory Development Additional Provisions and Procedures

14. Subsection 17.10.30 defines an accessory structure (detached) as, "*a structure that is clearly incidental to and subordinate to the main use of property and located on the same lot as the main use; freestanding and structurally separated from the main use.*"
15. The applicant expressed the intention of the proposed detached accessory structure is for RV storage. The proposed use of the structure is subordinate to and commonly associated with the primary use (single-family residential dwelling) of the property. Additionally, the proposed structure is located on the same lot of record as the primary use and is incidental in design to the primary structure.
16. A detached accessory structure shall be separated from the primary structure by at least six (6) feet (Subsection 17.40.10). After conducting a site visit at the subject property and reviewing the submitted photos, staff confirms that, once completed, the proposed structure will exceed 6 feet in distance from the primary structure and therefore meets the definition of a detached accessory structure.
17. The proposed accessory structure covers 392 square feet of area; therefore the structure is not permitted to be within any required setback of the R-2 zone district. As a result, the proposed accessory structure is required to have a minimum side (east) yard setback of 5 feet (same standard as the R-2 zone district 17.38.30) and a minimum rear (east) yard

setback of 15 feet (same standard as the R-2 zone district 17.38.30). The applicant has requested two special variances from the required setback standards, one for the interior side yard setback and one for the rear yard setback which are further detailed within Finding Nos. 24-33 below.

18. The proposed accessory structure is located on the same lot of record as the associated primary structure and will be constructed behind the front plane/facade of the primary structure.
19. The property is not a corner lot, therefore there is no access from a secondary street side yard.
20. As observed in the submitted photos and plans, as well as described in the applicant's narrative, the roof line has been designed with a single pitched roof in order to direct stormwater runoff south onto the applicant's property as opposed to adjacent properties. Additionally, the applicant proposes to install a gutter on the south roof line to mediate water run off on the site.
21. The overall height of the proposed accessory structure will be 15 feet 1.25 inches (181.25 inches), and therefore will not exceed the 16-foot height limitation of Subsection 17.74.10(B)(6) meaning that requested Variance C is not required as further detailed in Finding Nos. 34-36 below.

17.66 – Adjustments and Variances

22. The applicant requests two Type III Special Variances to the side and rear yard setback requirements of Subsection 17.38.30. In order for a variance to be approved, the applicant must meet all criteria of Section 17.66.70.
23. As presented within Exhibit M, the intent of setbacks for structures is to provide development predictability based on zone districts for property owners and citizens. While required setbacks result in the separation of primary structures to preserve open space they also provide means for a property owner to access and maintain a structure on their property. Additionally, in many cases setbacks provide the ability for public utilities to access a property through a recorded public utility easement and create a buffer for fire separation.

Variance A – interior side (north) yard setback

24. The applicant requested to finish construction of an accessory structure 2 feet (19 inches to roofline) from an interior side (north) yard property line when a 5-foot setback is required.
25. The proposed accessory structure is on private property and will not be detrimental to the public welfare. While the location of the proposed structure is in close proximity to the shared north property line it was observed that there are no structures on the adjacent property to the north in close proximity to the shared property line. The design of the proposed structure is open on all four sides; however, the applicant expressed their intention on installing T1-11 siding for the upper eight feet of the north elevation and to be painted to match the existing primary structure (house) on the site. Additionally, this siding will wrap around to the eastside of the structure to help blend the structure into the neighborhood. With the exception of minimal exterior maintenance, it is reasonable to infer that the

adjacent property owner to the north would not likely be negatively affected by any future maintenance of the proposed structure.

26. Oregon Residential Specialty Code (ORSC) R302.1 identifies that garage walls or residential building walls less than 3 feet from a property line are required to comply with TABLE R302. The structure is proposed to be 2 feet (19 inches to roofline) from the property line, therefore, if approved, the building shall have a **minimum of 1-Hour fire-rated construction**. Additionally, if the walls are less than 2 feet from the property line, then the maximum roof eave projections (including gutters) cannot exceed 4 inches. **The applicant shall verify the distance between the north façade and property line and adjust the eave according to ORSC standards prior to approval of a building permit.**
27. The property is located in the Nicolas Glen No. 3 subdivision recorded January 12, 2000. The plat identifies the subject property having a five-foot public utility easement (PUE) on the front, side and rear yard property lines. This would indicate that the proposed structure would encroach 3 feet into this PUE as identified on the plat. NW Natural Gas, Portland General Electric, Wave Broadband and SandyNet were notified of the proposal, but the City did not receive comments in favor or against the proposed accessory structure location.
28. At the January 28, 2019 Planning Commission Meeting staff recommended approval of the requested variance with the following conditions:
  - Prior to building permit approval, the City shall contact NW Natural Gas, Portland General Electric, Wave Broadband and SandyNet and provide a two-week comment period for agencies to respond with any conflicts associated with the proposed structure's encroachment into the recorded PUE.
  - The applicant shall install siding beginning at six feet above grade extending upwards to the proposed structure's roof line for the full length of both the north and east façades.
  - The applicant shall use a minimum 1-Hour fire-rated wall for the area of the structure located within 3 feet of the north property line as well as verify the distance between the north façade and property line and adjust the eave according to ORSC standards prior to approval of a building permit.
  - All siding and/or trim used on the accessory structure shall match the property's primary structure (single-family dwelling) in material and color.

Variance B – rear (east) yard setback

29. The applicant requested to finish construction of an accessory structure 3 feet 5 inches (14 inches to roofline) from a rear (east) yard property line when a 15-foot setback is required.
30. The proposed structure is on private property and will not be detrimental to the public welfare. While the location of the proposed structure is in close proximity to the shared east property line it was observed that there are no structures on the adjacent property to the east in close proximity to the shared property line. The design of the proposed structure is open on all four sides with the exception of the top eight feet of the north façade. The applicant has expressed their intention on installing T1-11 siding for the upper eight feet of the north elevation to be painted to match the existing primary structure (house) on the site. Additionally, this siding will wrap around to the eastside of the structure to help blend the

structure into the neighborhood. The applicant has identified an existing tree located on the adjacent property to the east that blocks off-site views of the proposed structure. However, seasonal changes and the loss of leaves on the identified tree will lead to increased visibility of the proposed structure. **To decrease the visibility of the contents within the proposed structure staff recommended the applicant install siding on the east elevation to match siding proposed on the remainder of the proposed structure.**

31. With the exception of minimal exterior maintenance, staff believes it is reasonable to infer that the adjacent property owner to the east would not likely be negatively affected by any future maintenance of the proposed structure. In addition, the property owner to the east of the subject property submitted a letter in support of the proposed structure (Exhibit F).
32. The property is located in the Nicolas Glen No. 3 subdivision recorded January 12, 2000. The plat identifies the subject property having a five-foot public utility easement (PUE) on the front, side and rear yard property lines. This would indicate that the proposed structure would encroach 2 feet 7 inches into this PUE as identified on the plat. NW Natural Gas, Portland General Electric, Wave Broadband and SandyNet were notified of the proposal, but the City did not receive comments in favor or against the proposed accessory structure location.
33. At the January 28, 2019 Planning Commission Meeting staff recommended approval of the requested variance with the following conditions:
  - Prior to building permit approval, the City shall contact NW Natural Gas, Portland General Electric, Wave Broadband and SandyNet and provide a two-week comment period for agencies to respond with any conflicts associated with the proposed structure's encroachment into the recorded PUE.
  - The applicant shall install siding beginning at six feet above grade extending upwards to the proposed structure's roof line for the full length of both the north and east façades.
  - The applicant shall use a minimum 1-Hour fire-rated wall for the area of the structure located within 3 feet of the north property line as well as verify the distance between the north façade and property line and adjust the eave according to ORSC standards prior to approval of a building permit.
  - All siding and/or trim used on the accessory structure shall match the property's primary structure (single-family dwelling) in material and color.

Variance C -residential detached accessory structure height

34. The applicant requested to finish construction of a detached accessory structure with a height that exceeds the maximum 16-foot height limitation.
35. The overall height of the proposed accessory structure will be 15 feet 1.25 inches (181.25 inches).
36. Upon further review it was determined the height of the existing structure did not exceed the height limitations of Subsection 17.74.10(B)(6) therefore the requested Variance C was not required.



17.98 – Parking, Loading, & Access Requirements

37. The proposed carport is located in the rear portion of the subject property and therefore will require off-street improvements to comply with the standards and regulations of this chapter. As observed by staff and represented in the applicant's submitted photographs the subject property currently has improved surfacing (pavement) between the right-of-way and proposed carport.

**DECISION**

At the January 28, 2019 Planning Commission Meeting, the Planning Commission voted on a motion to approve the requested two special variances (Variances A & B). The results of the vote were a tie with two votes to approve and two votes to deny the motion. Under Robert's Rules, a majority, or more than half, vote is the fundamental requirement to pass a motion therefore the motion did not carry and was **denied**.

  
Jerry Crosby  
Chair, Planning Commission

2/13/19  
Date

**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.

Exhibit F

RECEIVED

MAR 29 2019

CITY OF SANDY

COMMENT SHEET for File No. 19-007 AP:

2nd Comment its too High,  
Too close to property line, its wood  
that creates a fire hazard, I vote  
absolutely not! it also blocks view

Bill & Barbara Linn 503-826-9639  
Your Name Phone Number

18071 SE Grey Av. Sandy, OR 97055  
Address

APPLICABLE CRITERIA: Sandy Development Code; 17.12 Procedures for Decision Making; 17.18 Processing Applications; 17.22 Notices; 17.28 Appeals; and 17.38 Medium Density Residential (R-2).



Exhibit G

James Cramer <jcramer@ci.sandy.or.us>

File No.: 19-007 AP

James Cramer <jcramer@ci.sandy.or.us>  
To: Tom Newell <tom.newell@live.com>

Wed, Mar 27, 2019 at 4:04 PM

Tom,

Sorry about that, yes it was a typo, my apologies for any confusion. I will add your message to the file for the record. Never hesitate to reach out or think you're being a pest if you have any questions, we appreciate the interest and input.

On Wed, Mar 27, 2019 at 1:39 PM Tom Newell <tom.newell@live.com> wrote:

Thank you for the definition.

You did not address the "color of the roof" query that I had. Would you tell me if that was simply a typo or is it the focus of the appeal?

Please feel free to re-submit my original my original message into the record.

Sorry to be a pest here, Tom

Sent from my iPad

On Mar 27, 2019, at 1:20 PM, James Cramer <jcramer@ci.sandy.or.us> wrote:

Tom,

Thank you for reaching out. Subsection 17.74.010.B.6 limits the overall height of any accessory structure to 16 feet tall. The "Height of Buildings" definition within Chapter 17.10 of the land development code determines how to calculate the overall height of a building (see attached). Essentially you take the average between the high and low points of a pitched/gabled roof and add it to the height between the grade and low point of the pitched/gabled roof. Based on this method of determining the building's height and the applicant's measurements it was determined that the structure meets the height limitation and therefore is in compliance. The request before Planning Commission was to reduction to the side and rear yard setbacks and the applicant is appealing the Planning Commission's decision to deny the setback requests.

Attached is the Final Order approved by the Planning Commission for your review. Please let me know if you have any questions and if you would like me to add your original message into the record or if you will be supplying another.

I hope all is well,

On Wed, Mar 27, 2019 at 12:28 PM Tom Newell <tom.newell@live.com> wrote:

Hi James.....

My name is Tom Newell. I live at 18007 Rachael Dr across the street from the 'new development' cited in 19-007 AP.

I had submitted concerns to this project when it was 18-051 VAR. And, today I have questions as to how you can state that this structure is measured at only 15'-1.25" . As I sit and look at the structure out my front window, it is clearly taller than 15 feet. It is a single pitch incline roof that has to culminate at 22 or more feet tall. This was clearly my main concern as this went before the Planning Commission and remains the same today.

I am considering entering another comment for this appeal and am seeking clarification on the measuring to form my response.

Oh, and by the way.....I note on page two of the packet I received under the bulletpoint DECISION: it states that this a decision....."on roof color that is under review(File 19-007 AP)". That is not correct is it??

Thank you for inviting the community to respond to these neighborhood issues. Feel free to call if you would prefer over emailing.

Tom Newell

503-477-2911

Sent from [Mail](#) for Windows 10

--

James A. Cramer  
Associate Planner  
City of Sandy  
[39250 Pioneer Blvd](#)  
[Sandy, OR 97055](#)  
phone [\(503\) 783-2587](#)  
[jcramer@ci.sandy.or.us](mailto:jcramer@ci.sandy.or.us)  
**Office Hours 8am - 4pm**

This e-mail is a public record of the City of Sandy and is subject to the State of Oregon Retention Schedule and may be subject to public disclosure under the Oregon Public Records Law. This e-mail, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please send a reply e-mail to let the sender know of the error and destroy all copies of the original message.

<[Height of Building Calculation.pdf](#)>

<[18-051 VAR RV Storage Setback Variance Final Order Signed.pdf](#)>

--

James A. Cramer  
Associate Planner  
City of Sandy  
[39250 Pioneer Blvd](#)  
[Sandy, OR 97055](#)  
phone [\(503\) 783-2587](#)  
[jcramer@ci.sandy.or.us](mailto:jcramer@ci.sandy.or.us)  
**Office Hours 8am - 4pm**

COMMENT SHEET for File No. 19-007 AP:

City of Sandy Planning Commission,

Our position still stands, we do not agree that this appeal should be approved.

Mr. Mottice is the Deputy Fire Marshal for the City of Gresham. He knew that he would need a permit to build, but chose not to. In our minds this means he was trying to get away with something he knew was wrong.

Also, If this appeal is approved it would set a precedence of large out buildings that would not be welcomed in the neighborhood.

Guimar Dellaere

503-201-5298

Thank you

Your Name

Phone Number

18176 Rachael Drive, Sandy OR 97055

Address

APPLICABLE CRITERIA: Sandy Development Code: 17.12 Procedures for Decision Making: 17.18 Processing Applications: 17.22 RECEIVED Appeals: and 17.38 Medium Density Residential (R-2).

APR 04 2019

CITY OF SANDY

APR 12 2019

COMMENT SHEET for File No. 19-007 AP:

CITY OF SANDY

We have no problem with the building of AI storage. Please let them build it. Thank you.

Jesse: Kristhine Canham

503-863-6799

Your Name

Phone Number

18033 Kachael Dr. Sandy, OR 97055

Address

APPLICABLE CRITERIA: Sandy Development Code: 17.12 Procedures for Decision Making: 17.18 Processing Applications: 17.22 Notices: 17.28 Appeals: and 17.38 Medium Density Residential (R-2).

**To:**  
Sandy City Council  
City Hall Council Chambers

**From:**  
Allison and Adam Holms  
Property Owners at  
18014 Racheal Drive  
Sandy, OR 97055

**Date:** April 15, 2019

**To whom it may concern regarding**  
RV storage setback on the property location at 18050 Racheal Drive, Sandy, OR

We, the homeowners at 18014 Racheal drive, the residence immediately adjacent to the structure, bare no opposition to construction and completion of the RV structure constructed by Mr. Robert Mottica. Mr. Robert Mottica has approached my husband and myself prior to construction to ask if we had any objection before starting the project. We appreciated his willingness to communicate with his neighbors and Mr. Mottica has been diligent about respecting noise levels and ensuring no debris material on our side of the fence line. We respectfully request for an exception to the setback rule and allow Mr. Mottica to leave the structure where it stands and to be able to complete the project.

If I am unable to attend the meeting in person, the town can help, but welcome any questions or concerns. Our contact information is below.

Respectfully Signed



Allison Holms  
(805) 881-1334  
allisonholms@gmail.com



Adam Holms  
(805) 888-2535  
adamholms88@gmail.com



## Exhibit K

James Cramer <jcramer@ci.sandy.or.us>

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### Completeness Letter and Clarification

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**Robert Mottice** <robmo96@yahoo.com>  
To: James Cramer <jcramer@ci.sandy.or.us>

Sun, Dec 9, 2018 at 6:43 PM

OK, got measurements on the top, highest point to bottom of beam - 59 1/2"  
Ground to bottom of beam - 151 1/2"

I hope this what you were looking for.

Robert Mottice

Sent from my iPhone  
[Quoted text hidden]

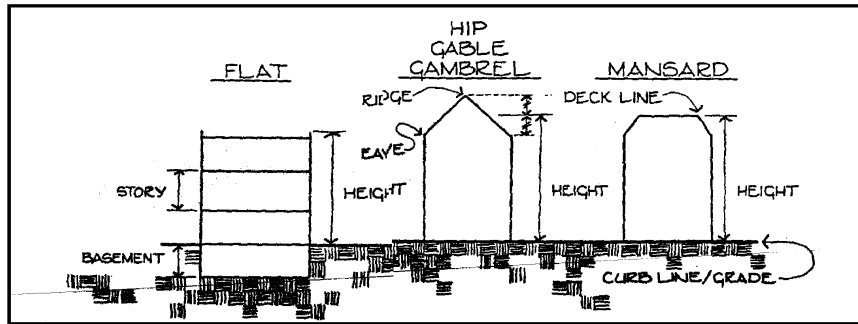
<Height measurements.pdf>



nails or other mechanical fasteners while timber framing uses mortice and tenon (wood joint) or metal fasteners.

**Height of Buildings:** The vertical distance above a reference datum measured to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof. The reference datum shall be selected by either of the following, whichever yields a greater height of building:

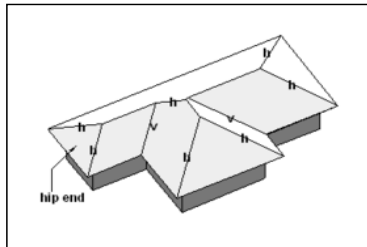
- A. The elevation of the highest adjoining sidewalk or ground surface within a 5-foot horizontal distance of the exterior wall of the building when such sidewalk or ground surface is not more than 10 feet above lowest grade.
- B. An elevation 10 feet higher than the lowest grade when the sidewalk or ground surface described in Item "A" above is more than 10 feet above lowest grade.



Determining Building Height Example

**High-Turnover Sit Down Restaurant** – This type of restaurant consists of a sit-down, full-service eating establishment with turnover rates of approximately one hour or less. This type of restaurant is usually moderately priced and frequently belongs to a restaurant chain. This restaurant type is different than fast-food and quality restaurants as defined in the Institute of Transportation Engineers, Trip Generation manual.

**Hipped roof.** A type of roof where all sides slope downwards to the walls, usually with a fairly gentle slope. Thus it is a roof with no gables or other vertical sides to the roof. A square hip roof is shaped like a pyramid. Hip roofs on rectangular houses will have two triangular sides and two trapezoidal ones. Hip roofs often have dormers. Where two hipped ("h") roof forms adjoin, the edge is called a valley ("v"). See graphic.



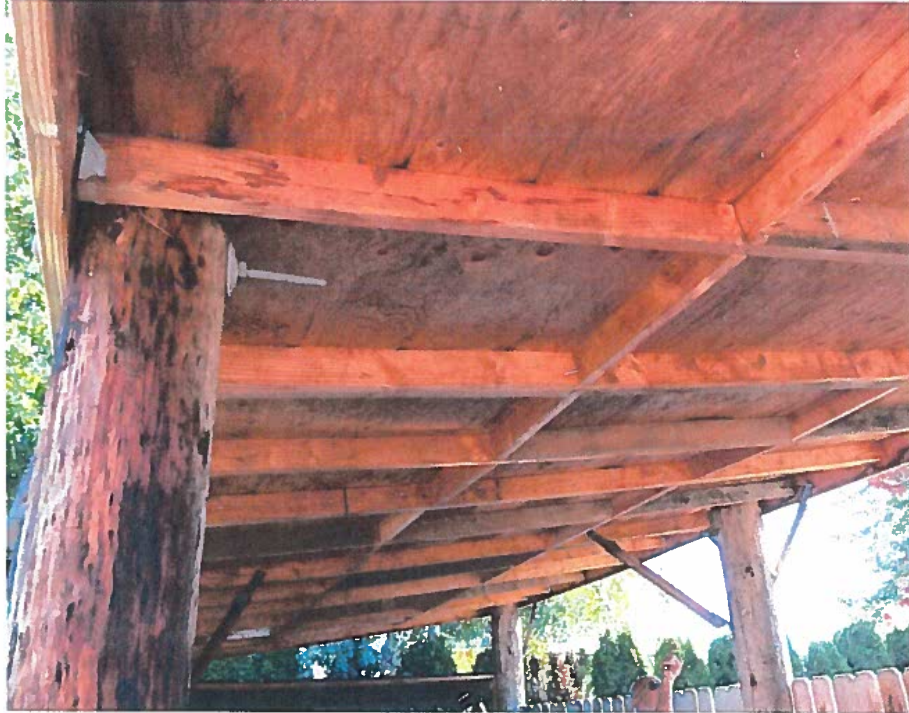
Hipped Roof Example

17.10 - 16

Revised by Ordinance 2016-05 effective 10/03/16









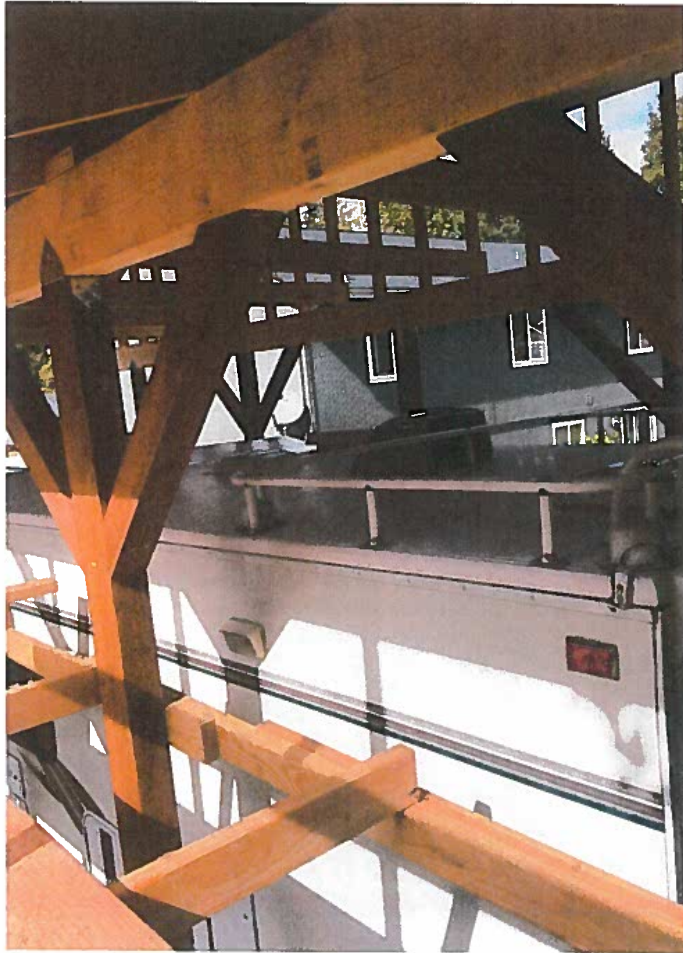




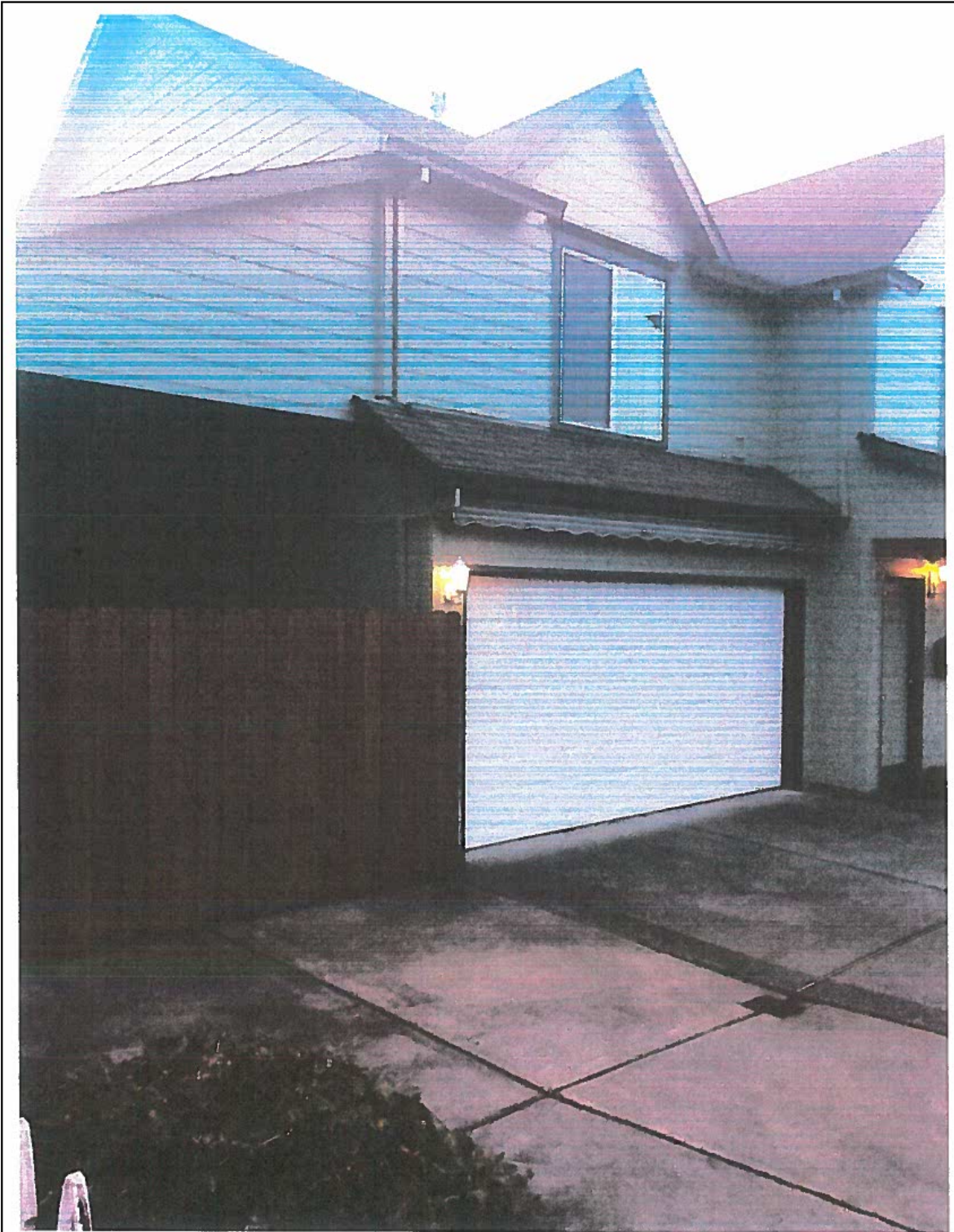


















**MINUTES**  
**City Council Meeting**  
**Monday, April 1, 2019 City Hall- Council Chambers, 39250**  
**Pioneer Blvd., Sandy, Oregon 97055 6:00 PM**

**COUNCIL PRESENT:** Stan Pulliam, Mayor, Jeremy Pietzold, Council President, John Hamblin, Councilor, Laurie Smallwood, Councilor, Jan Lee, Councilor, Carl Exner, Councilor, and Bethany Shultz, Councilor

**COUNCIL ABSENT:**

**STAFF PRESENT:** Karey Milne, Recorder Clerk and Jordan Wheeler, City Manager

**MEDIA PRESENT:**

1. **Work Session 6PM**
2. **Roll Call**
3. **Agenda**
  - 3.1. Agenda Review
  - 3.2. Community Campus Direction Follow Up

The Council discussed options for the community campus and information for staff to research:

- Placing on the ballot the formation of an aquatic or parks and recreation district.
- A cost analysis for the minimum work needed for the systems and maintenance needs at the pool.
- Energy modeling and incentives for the pool
- Cost analysis for constructing a new pool vs. replace/rebuild.
- Refinements to concept plan for improvements within available resources.
- Partnership opportunities for developing the site and partnership and/or contracting opportunities for operations.
- Interim uses and work needed for gymnasium and lower building.
- Explore field trip opportunities to places with successful aquatic and recreation centers.

**4. Adjourn Work Session**

**5. Regular Council Meeting 7PM**

**6. Pledge of Allegiance**

**7. Roll Call**

**8. Changes to the Agenda**

**9. Public Comment**

Oregon Trail Academy 5th Grade Students came to talk to council about plastic pollution.

**10. Consent Agenda**

10.1. Award Contract for Bluff Road Rehabilitation Project

Staff Report - 0124

10.2. Intergovernmental Agreement with Clackamas County for Community Development Block Grant (CDBG)

Staff Report - 0125

Moved by Jan Lee, seconded by Carl Exner

*Motion to approve the consent agenda.*

CARRIED.

**11. New Business**

11.1. Arbor Week Proclamation

Staff Report - 0126

11.2. Planning Commission Appointment

Staff Report - 0127

Mayor Pulliam, reviewed how the interview process went, they came to the decision to bring Christopher Mayton to council for appointment for the Planning Commission vacancy.

Christopher Mayton, came before council and spoke a few words.

Moved by John Hamblin, seconded by Jeremy Pietzold

*Motion to appoint Christopher Mayton as Planning Commissioner.*

CARRIED.

**12. Report from the City Manager**

City Manager, Jordan Wheeler, reviewed some upcoming items and dates, as well as some past items that happened over the last week or so.

**13. Committee /Council Reports**

Councilors gave their committee and or council reports.

**14. Staff updates**

14.1. [Monthly Reports](#)

**15. Adjourn**



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Mayor, Stan Pulliam



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City Recorder, Karey Milne



## Staff Report

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**Meeting Date:** May 20, 2019

**From** Mike Walker, Public Works Director

**SUBJECT:** Award Contract for 2019 Pavement Maintenance Program

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**Background:**

The City opened bids for the 2019 Pavement Maintenance Program on April 24th. A tabulation of bids received and a Recommendation of Award is attached. The project is split into two schedules. Schedule A consists of asphalt overlays and associated work. Schedule B consists of slurry seals on selected City streets. The streets to be treated are shown on the attached maps. The asphalt overlay work can start anytime after the contract is awarded, the slurry seal work will probably take place later in the summer when warmer, drier weather is more likely.

**Recommendation:**

Award Schedule A to Knife River Corporation and Schedule B to Intermountain Slurry Seal.

**Budgetary Impact:**

Since the work will cross over into the 2019-2021 biennium there are sufficient funds in the Street Fund budget to accomplish this work.




CURRAN-McLEOD, INC.  
CONSULTING ENGINEERS

6655 S.W. HAMPTON STREET, SUITE 210  
PORTLAND, OREGON 97223

**NOTICE OF INTENT TO AWARD**

**Date:** April 26, 2019

**From:** Hassan Ibrahim, P.E.  
CURRAN-McLEOD, INC. 

**TO:** ALL BIDDERS

**RE: CITY OF SANDY  
2019 ASPHALT OVERLAYS & SLURRY SEAL**

On Wednesday, April 24, 2019 the City of Sandy received four (4) bids for schedule "A" and three (3) bids for schedule "B" of the 2019 Asphalt Overlays & Slurry Seal project. A tabulation of all bids for both schedules is attached to this letter and summarized as follows:

No.	Bidder	Total Bid Schedule "A" Asphalt Overlays	Total Bid Schedule "B" Slurry Seal
1.	Knife River Corporation	\$230,000.00	
2.	Jim Turin & Sons, Inc	\$237,658.00	
3.	Eastside Paving, Inc.	\$259,530.00	
4.	S2 Contractors, Inc.	\$271,170.00	
5.	Intermountain Slurry Seal, Inc.		\$375,000.00
6.	Blackline, Inc.		\$391,180.00
7.	VSS International, Inc.		\$430,401.00

After a review of the bids and supporting information, the City of Sandy has confirmed their intent to award the construction contract for the Asphalt Overlays schedule "A" to **Knife River Corporation** and Slurry Seal Schedule "B" to **Intermountain Slurry Seal, Inc.** This memorandum is intended to provide the Notice of Intent to Award to all responsive bidders in accordance with State Statutes ORS279C.375.

In accordance with ORS 279B.410, this Notice of Intent to Award shall constitute a final decision by the City to award the contract if no written protest of the award is filed with the City within seven (7) calendar days of the date of this Notice of Intent to Award. The actual award is subject to the approval by the City Council.

Enclosure: Bid Tabulation

Cc: Mr. Mike Walker, City of Sandy

PHONE: (503) 684-3478

E-MAIL: [cmi@curran-mcleod.com](mailto:cmi@curran-mcleod.com)

FAX: (503) 624-8247

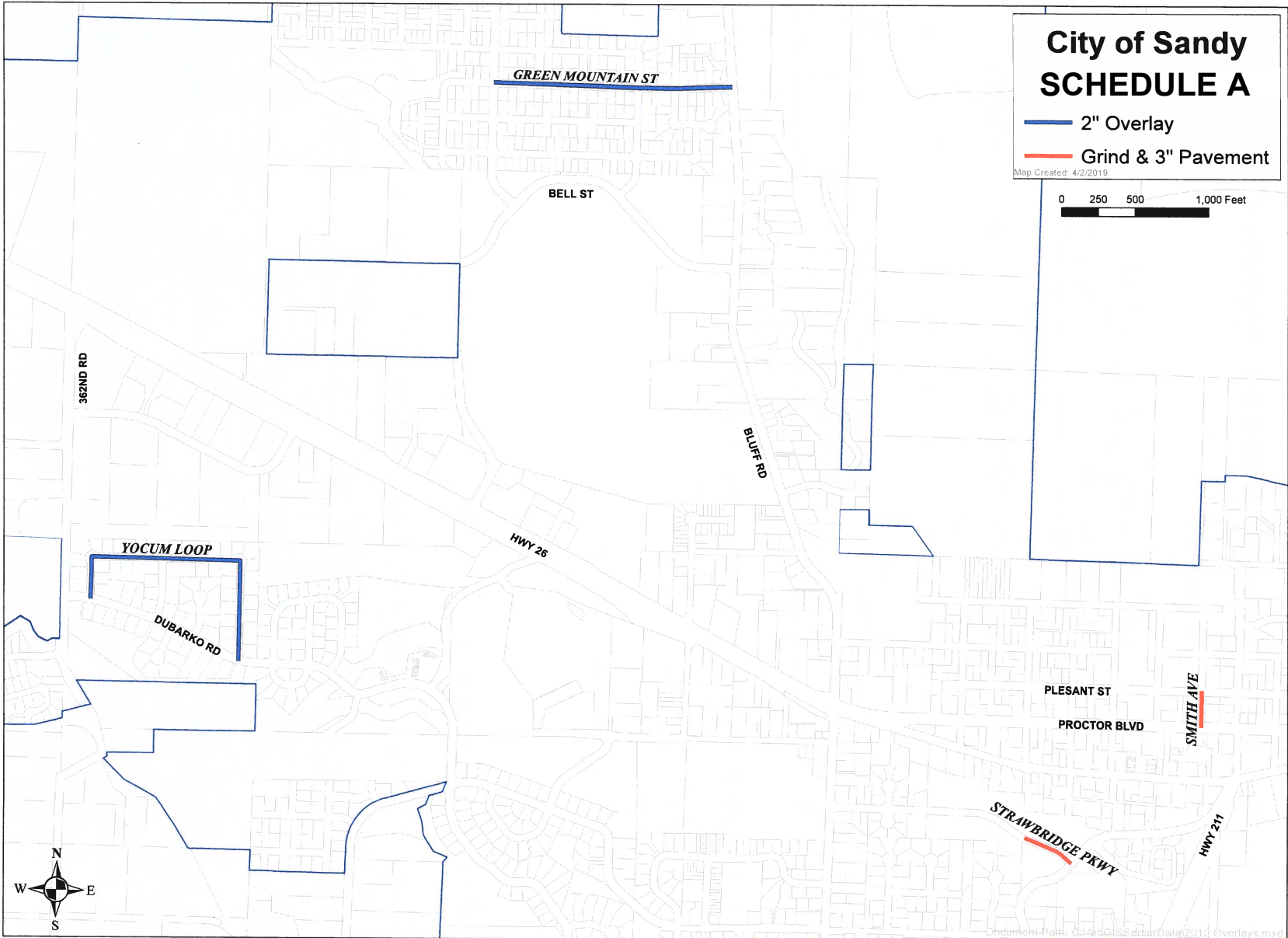


# City of Sandy SCHEDULE A

- 2" Overlay
- Grind & 3" Pavement

Map Created: 4/2/2019

0 250 500 1,000 Feet



Document Path: C:\ArcGIS\ServerData\2019\Overlays.mxd





## Staff Report

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**Meeting Date:** May 20, 2019  
**From** Mike Walker, Public Works Director  
**SUBJECT:** ODOT - City IGA for Right-of-Way Services

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**Background:**

Attached please find an Intergovernmental Agreement (IGA) for Right-of-Way Acquisition and associated services for the US 26 - Vista Loop to Ten Eyck Pedestrian Improvements Project. As part of this project ODOT will oversee the right-of-way consultant's work and make offers to property owners for acquiring necessary right-of-way for this project. The dollar amount of the agreement (\$400,000) includes both ODOT's services (\$10,000) and the estimated cost of the land to be acquired (\$390,000). The amount of land required and the number of properties affected is not known at this time as the preliminary design has yet to begin. Because of the long lead time necessary to process property acquisitions ODOT requires that the City deposit it's share of the anticipated right-of-way costs well in advance of knowing the amount of land required and prior to making any offers. Any funds remaining would be returned to the City.

**Recommendation:**

Authorize the City Manager to sign the IGA on behalf of the City.

**INTERGOVERNMENTAL AGREEMENT  
FOR RIGHT OF WAY SERVICES**  
US-26: Ten Eyck Rd/Wolf Dr - Vista Loop)

THIS AGREEMENT is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, hereinafter referred to as "State"; and City of Sandy, acting by and through its elected officials, hereinafter referred to as "Agency," both herein referred to individually or collectively as "Party" or "Parties."

**RECITALS**

1. By the authority granted in Oregon Revised Statute (ORS) 190.110, 283.110, 366.572 and 366.576, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a Party to the agreement, its officers, or agents have the authority to perform.
2. By the authority granted in ORS 366.425, State may accept deposits of money or an irrevocable letter of credit from any county, city, road district, person, firm, or corporation for the performance of work on any public highway within the State. When said money or a letter of credit is deposited, State shall proceed with the Project. Money so deposited shall be disbursed for the purpose for which it was deposited.
3. That certain Ten Eyck Road/Wolf Drive and West Vista Loop are City Streets under the jurisdiction and control of Agency and Agency may enter into an agreement for the acquisition of real property.
4. US-26, is a part of the state highway system under the jurisdiction and control of the Oregon Transportation Commission (OTC).
5. This Agreement shall define roles and responsibilities of the Parties regarding the real property to be used as part of right of way for road, street or construction of public improvement. The scope and funding is further described in IGA Agreement number 31098. Hereinafter, all acts necessary to accomplish services in this Agreement shall be referred to as "Project."
6. As of this time there are no local public agencies (LPAs) certified to independently administer federal-aid projects for right of way services. Therefore, State is ultimately responsible for the certification and oversight of all right of way activities under this Agreement (except as provided under "Agency Obligations" for LPAs in State's certification program for consultant selection).

**NOW THEREFORE**, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

**TERMS OF AGREEMENT**

1. Under such authority, to accomplish the objectives in Agreement No. 31098, State and Agency agree to perform certain right of way activities shown in Special Provisions - Exhibit

A, attached hereto and by this reference made a part hereof. For the right of way services State performs on behalf of the Agency, under no conditions shall Agency's obligations exceed a maximum of \$400,000, including all expenses, unless agreed upon by both Parties.

2. The work shall begin on the date all required signatures are obtained and shall be completed no later than 10 calendar years following the date of final execution, on which date this Agreement automatically terminates unless extended by a fully executed amendment.
3. The process to be followed by the Parties in carrying out this Agreement is set out in Exhibit A.
4. It is further agreed both Parties will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."

#### **STATE OBLIGATIONS**

1. State shall perform the work described in Special Provisions - Exhibit A.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.
3. State shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
4. State's right of way contact person for this Project is David Mendelson, Right of Way Project Manager, 123 NW Flanders Street, Portland, OR 97209, 503-731-8451, or assigned designee upon individual's absence. State shall notify the other Party in writing of any contact changes during the term of this Agreement.

#### **AGENCY OBLIGATIONS**

1. Agency shall perform the work described in Special Provisions - Exhibit A.
2. Agency certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within Agency's current appropriation or limitation of current budget. Agency is willing and able to finance all, or its pro-rata share of all, costs and expenses incurred in the Project up to its maximum.
3. Agency's needed right of way services, as identified in Exhibit A, may be performed by qualified individuals from any of the following sources:



- a. Agency staff,
- b. State staff,
- c. Staff of another local public agency, as described in ODOT's Right of Way Manual and approved by the State's Region Right of Way Office;
- d. Consultants from State's Full Service Architectural and Engineering (A&E) Price Agreement 2 Tier Selection Process. Tier 2 procurements must be requisitioned through State's Local Agency Liaison (LAL) with solicitation process administered by State Procurement Office. Forms and procedures for Tier 2 process are located at: <http://www.oregon.gov/ODOT/CS/OPO/docs/fs/tier2guide.doc>;
- e. \*Appraiser services procured by Agency from State's Qualified Appraiser List (on line at <http://www.oregon.gov/ODOT/HWY/ROW/Pages/index.aspx>);
- f. \*Other right of way related services procured by Agency from any source of qualified contractors or consultants.

\* Selections may be based on price alone, price and qualifications, or qualifications alone followed by negotiation. **Federally funded procurements** by Agency for right of way services must be conducted under State's certification program for consultant selection and must comply with requirements in the [LPA A&E Requirements Guide](#) (and must use the State's standard [A&E Contract Template for LPAs](#) which may be modified to include State-approved provisions required by Agency). **State and local funded procurements** by Agency must be in conformance with applicable State rules and statutes for A&E "Related Services" (and Agency may use its own contract document).

4. If Agency intends to use Agency staff, staff of another local public agency, consultants (except for consultants on State's Qualified Appraiser List), or contractors to perform right of way services scheduled under this Agreement, Agency must receive prior written approval from State's Region Right of Way Office.
5. The LPA A&E Requirements Guide and A&E Contract Template referenced above under paragraph 3 are available on the following Internet page: [http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx#Local\\_Public\\_Agency\\_\(LPA\)\\_Consultant\\_Templates\\_and\\_Guidance\\_Docs](http://www.oregon.gov/ODOT/CS/OPO/Pages/ae.aspx#Local_Public_Agency_(LPA)_Consultant_Templates_and_Guidance_Docs).
6. Agency or its subcontractor will strictly follow the rules, policies and procedures of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, ORS Chapter 35 and the "State Right of Way Manual."
7. Agency represents that this Agreement is signed by personnel authorized to do so on behalf of Agency.
8. Agency's right of way contact person for this Project is Mike Walker, Project Manager, 39250 Pioneer Blvd, Sandy, Or 97055, 503-489-2162, [mwalker@ci.sandy.or.us](mailto:mwalker@ci.sandy.or.us), or assigned designee upon individual's absence. Agency shall notify the other Party in writing of any contact information changes during the term of this Agreement.



**PAYMENT FOR SERVICES AND EXPENDITURES:**

1. In consideration for the services performed by State (as identified in the attached Exhibit A), Agency agrees to pay or reimburse State a maximum amount of \$400,000. Said maximum amount shall include reimbursement for all expenses, including travel expenses. Travel expenses shall be reimbursed to State in accordance with the current Oregon Department of Administrative Services' rates. Any expenditure beyond federal participation will be from, or reimbursed from, Agency funds. Payment in Agency and/or federal funds in any combination shall not exceed said maximum, unless agreed upon by both Parties.
2. Agency agrees to reimburse salaries and payroll reserves of State employees working on Project, direct costs, costs of rental equipment used, and per-diem expenditures.

**GENERAL PROVISIONS:**

1. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person, under any of the following conditions:
  - a. If either Party fails to provide services called for by this Agreement within the time specified herein or any extension thereof.
  - b. If either Party fails to perform any of the other provisions of this Agreement or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms, and after receipt of written notice fails to correct such failures within ten (10) days or such longer period as may be authorized.
  - c. If Agency fails to provide payment of its share of the cost of the Project.
  - d. If State fails to receive funding, appropriations, limitations or other expenditure authority sufficient to allow State, in the exercise of its reasonable administrative discretion, to continue to make payments for performance of this Agreement.
  - e. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or State is prohibited from paying for such work from the planned funding source.
2. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
3. Agency acknowledges and agrees that State, the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of Agency which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by State.

4. Agency shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, Agency expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
5. All employers that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. Both Parties shall ensure that each of its subcontractors complies with these requirements.
6. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against State or Agency with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
7. With respect to a Third Party Claim for which State is jointly liable with Agency (or would be if joined in the Third Party Claim), State shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Agency in such proportion as is appropriate to reflect the relative fault of State on the one hand and of Agency on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of State on the one hand and of Agency on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. State's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if State had sole liability in the proceeding.
8. With respect to a Third Party Claim for which Agency is jointly liable with State (or would be if joined in the Third Party Claim), Agency shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by State in such proportion as is appropriate to

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reflect the relative fault of Agency on the one hand and of State on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of Agency on the one hand and of State on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Agency's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

9. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
10. When federal funds are involved in this Agreement, Exhibits B and C are attached hereto and by this reference made a part of this Agreement, and are hereby certified to by Agency.
11. When federal funds are involved in this Agreement, Agency, as a recipient of federal funds, pursuant to this Agreement with the State, shall assume sole liability for Agency's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon Agency's breach of any such conditions that requires the State to return funds to the Federal Highway Administration, hold harmless and indemnify the State for an amount equal to the funds received under this Agreement; or if legal limitations apply to the indemnification ability of Agency, the indemnification amount shall be the maximum amount of funds available for expenditure, including any available contingency funds or other available non-appropriated funds, up to the amount received under this Agreement.
12. The Parties hereto agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.
13. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
14. This Agreement and attached exhibits and Agreement No. 31098 constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change,

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if made, shall be effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Agreement shall not constitute a waiver by State of that or any other provision.

**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

**Signature Page to Follow**

**CITY OF SANDY**, by and through  
its Elected Officials

By \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_

Date \_\_\_\_\_

**Agency Contact:**

Mike Walker  
39250 Pioneer Blvd.  
Sandy, Oregon 97055  
503-489-2162  
mwalker@ci.sandy.or.us

**State Contact:**

David Mendelson  
123 NW Flanders Street,  
Portland, Oregon 97209  
503-731-8451  
David.Mendelson@odot.state.or.us

**STATE OF OREGON**, by and through  
its Department of Transportation

By \_\_\_\_\_  
State Right of Way Manager

Date \_\_\_\_\_

**APPROVAL RECOMMENDED**

By \_\_\_\_\_  
Region 1) Right of Way Manager

Date \_\_\_\_\_

By \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

By \_\_\_\_\_  
Assistant Attorney General

Date \_\_\_\_\_

**APPROVED**

(If Litigation Work Related to Condemnation is  
to be done by State)

By \_\_\_\_\_  
Chief Trial Counsel

Date \_\_\_\_\_

**SPECIAL PROVISIONS EXHIBIT A**  
**Right of Way Services**

THINGS TO BE DONE BY STATE OR AGENCY

1. Pursuant to this Agreement, the work performed on behalf of the Agency can be performed by the Agency, the Agency's consultant, the State or a State Flex Services consultant, as listed under Agency Obligations, paragraph 3 of this Agreement. The work may be performed by Agency staff or any of these representatives on behalf of Agency individually or collectively provided they are qualified to perform such functions and after receipt of approval from the State's Region 1 Right of Way Manager.
2. With the exception of work related to appraisals, State shall not enter into any subcontracts for any of the work scheduled under this Agreement without obtaining prior written approval from Agency.

**Instructions:** Insert either: State, Agency, or N/A on each line.

**A. Preliminary Phase**

1. State shall provide preliminary cost estimates.
2. State shall make preliminary contacts with property owners.
3. State shall gather and provide data for environmental documents.
4. State shall develop access and approach road list.
5. State shall help provide field location and Project data.

**B. Acquisition Phase**

1. General:
  - a. When doing the Acquisition work, as described in this Section, State shall provide Agency with a status report of the Project monthly.
  - b. Title to properties acquired shall be in the name of the State.
  - c. The Agency shall adopt a resolution of intention and determination of necessity in accord with ORS 35.235 and ORS 35.610, authorizing acquisition and condemnation, such approval will be conditioned on passage of a resolution by Agency substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof. If the Oregon Department of Justice is to handle condemnation work, prior approval evidenced by Chief Trial Counsel, Department of Justice, signature on this Agreement is required; and authorization for such representation shall be included in the resolution adopted by the Agency. Prior approval by Oregon Department of Justice is required.

2. Legal Descriptions:

- a. State shall provide sufficient horizontal control, recovery and retracement surveys, vesting deeds, maps and other data so that legal descriptions can be written.
- b. State shall provide construction plans and cross-section information for the Project.
- c. State shall write legal descriptions and prepare right of way maps. If the Agency acquires any right of way on a State highway, the property descriptions and right of way maps shall be based upon centerline stationing and shall be prepared in accordance with the current "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide" and the "Right of Way Engineering Manual." The preliminary and final versions of the property descriptions and right of way maps must be reviewed and approved by the State.
- d. State shall specify the degree of title to be acquired (e.g., fee, easement).

3. Real Property and Title Insurance:

- a. State shall provide preliminary title reports, if State determines they are needed, before negotiations for acquisition commence.
- b. State shall determine sufficiency of title (taking subject to). If the Agency acquires any right of way on a State highway, sufficiency of title (taking subject to) shall be determined in accordance with the current "State Right of Way Manual" and the "ODOT Right of Way & Rail/Utility Coordination Contractor Services Guide." Agency shall clear any encumbrances necessary to conform to these requirements, obtain Title Insurance policies as required and provide the State copies of any title policies for the properties acquired.
- c. State shall conduct a Level 1 Initial Site Assessment, according to State Guidance, within Project limits to detect presence of hazardous materials on any property purchase, excavation or disturbance of structures, as early in the Project design as possible, but at a minimum prior to property acquisition or approved design.
- d. State shall conduct a Level 2 Preliminary Site Investigation, according to State Guidance, of sufficient scope to confirm the presence of contamination, determine impacts to properties and develop special provisions and cost estimates, if the Level 1 Initial Site Assessment indicates the potential presence of contamination that could impact the properties.
  - If contamination is found, a recommendation for remediation will be presented to Agency.
- e. State shall be responsible for proper treatment and cost of any necessary remediation.

- f. State shall conduct asbestos, lead paint and other hazardous materials surveys for all structures that will be demolished, renovated or otherwise disturbed. Asbestos surveys must be conducted by an AHERA (asbestos hazard emergency response act) certified inspector.

4. Appraisal:

- a. State shall conduct the valuation process of properties to be acquired.
- b. State shall perform the Appraisal Reviews to set Just Compensation.
- c. State shall recommend Just Compensation, based upon a review of the valuation by qualified personnel.

5. Negotiations:

- a. State shall tender all monetary offers to land-owners in writing at the compensation level shown in the Appraisal Review. State shall have sole authority to negotiate and make all settlement offers. Conveyances taken for more or less than the approved Just Compensation will require a statement justifying the settlement. Said statement will include the consideration of any property trades, construction obligations and zoning or permit concessions. If State performs this function, it will provide the Agency with all pertinent letters, negotiation records and obligations incurred during the acquisition process.
- b. State and Agency shall determine a date for certification of right of way and agree to cosign the State's Right of Way Certification form. State and Agency agree possession of all right of way shall occur prior to advertising for any construction contract, unless exceptions have been agreed to by Agency and State.
- c. State agrees to file all Recommendations for Condemnation at least seventy (70) days prior to the right of way certification date if negotiations have not been successful on those properties.

6. Relocation:

- a. State shall perform any relocation assistance, make replacement housing computations, and do all things necessary to relocate any displaced parties on the Project.
- b. State shall make all relocation and moving payments for the Project.
- c. State shall facilitate the relocation appeal process.

**C. Closing Phase**



1. State shall close all transactions. This includes drawing of deeds, releases and satisfactions necessary to clear title, obtaining signatures on release documents, and making all payments
2. State shall record conveyance documents, only upon acceptance by appropriate agency.

#### **D. Property Management**

1. State shall take possession of all the acquired properties. There shall be no encroachments of buildings or other private improvements allowed upon the State highway right of way.
2. State shall dispose of all improvements and excess land consistent with State prevailing laws and policies.

#### **E. Condemnation**

1. State may offer mediation if the State and property owners have reached an impasse.
2. State shall perform all administrative functions in preparation of the condemnation process, such as preparing final offer and complaint letters.
3. State shall perform all legal and litigation work related to the condemnation process, including all settlement offers. (Therefore, prior approval evidenced by Chief Trial Counsel, Department of Justice, signature on this Agreement is required. Where it is contemplated that property will be obtained for Agency for the Project, such approval will be conditioned on passage of a resolution by Agency substantially in the form attached hereto as Exhibit D, and by this reference made a part hereof, specifically identifying the property being acquired.)
4. When State shall perform legal or litigation work related to the condemnation process, Agency acknowledges, agrees and undertakes to assure that no member of Agency's board or council, nor Agency's mayor, when such member or mayor is a practicing attorney, nor Agency's attorney nor any member of the law firm of Agency's attorney, board or council member, or mayor, will represent any party, except Agency, against the State of Oregon, its employees or contractors, in any matter arising from or related to the Project which is the subject of this Agreement.

#### **F. Transfer of Right of Way to State**

When right of way is being acquired in Agency's name, Agency agrees to transfer and State agrees to accept all right of way acquired on the State highway. The specific method of conveyance will be determined by the Agency and the State at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. Agency agrees to provide the

State all information and file documentation the State deems necessary to integrate the right of way into the State's highway system. At a minimum, this includes: copies of all recorded conveyance documents used to vest title in the name of the Agency during the right of way acquisition process, and the Agency's Final Report or Summary Report for each acquisition file that reflects the terms of the acquisition and all agreements with the property owner(s).

**G. Transfer of Right of Way to Agency**

When right of way is being acquired in State's name, State agrees to transfer and Agency agrees to accept all right of way acquired on the Agency's facility, subject to concurrence from FHWA at the time of the transfer. The specific method of conveyance will be determined by the State and the Agency at the time of transfer and shall be coordinated by the State's Region Right of Way Manager. If requested, State agrees to provide Agency information and file documentation associated with the transfer.

For purposes of Exhibits B and C, references to Department shall mean State, references to Contractor shall mean Agency, and references to Contract shall mean Agreement.

**EXHIBIT B (Local Agency or State Agency)**

**CONTRACTOR CERTIFICATION**

Contractor certifies by signing this Contract that Contractor has not:

- (a) Employed or retained for a commission, percentage, brokerage, contingency fee or other consideration, any firm or person (other than a bona fide employee working solely for me or the above Contractor) to solicit or secure this Contract,
- (b) agreed, as an express or implied condition for obtaining this Contract, to employ or retain the services of any firm or person in connection with carrying out the Contract, or
- (c) paid or agreed to pay, to any firm, organization or person (other than a bona fide employee working solely for me or the above Contractor), any fee, contribution, donation or consideration of any kind for or in connection with, procuring or carrying out the Contract, except as here expressly stated (if any):

Contractor further acknowledges that this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

**DEPARTMENT OFFICIAL CERTIFICATION**

Department official likewise certifies by signing this Contract that Contractor or his/her representative has not been required directly or indirectly as an expression of implied condition in connection with obtaining or carrying out this Contract to:

- (a) Employ, retain or agree to employ or retain, any firm or person or
- (b) pay or agree to pay, to any firm, person or organization, any fee, contribution, donation or consideration of any kind except as here expressly stated (if any):

Department official further acknowledges this certificate is to be furnished to the Federal Highway Administration, and is subject to applicable State and Federal laws, both criminal and civil.

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Exhibit C  
Federal Provisions  
Oregon Department of Transportation

**CERTIFICATION OF NONINVOLVEMENT IN ANY DEBARMENT AND SUSPENSION**

Contractor certifies by signing this Contract that to the best of its knowledge and belief, it and its principals:

- 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency; judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery
- 2. Have not within a three-year period preceding this Contract been convicted of or had a civil

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falsification or destruction of records, making false statements or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
4. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

List exceptions. For each exception noted, indicate to whom the exception applies, initiating agency, and dates of action. If additional space is required, attach another page with the following heading: Certification Exceptions continued, Contract Insert.

**EXCEPTIONS:**

Exceptions will not necessarily result in denial of award, but will be considered in determining Contractor responsibility. Providing false information may result in criminal prosecution or administrative sanctions.

The Contractor is advised that by signing this Contract, the Contractor is deemed to have signed this certification.

**II. INSTRUCTIONS FOR CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS--PRIMARY COVERED TRANSACTIONS**

1. By signing this Contract, the Contractor is providing the certification set out below.
2. The inability to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The Contractor shall explain why he or she cannot provide the certification set out below. This explanation will be considered in connection with the Department determination to enter into this transaction. Failure to furnish an explanation

shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government or the Department may terminate this transaction for cause of default.
4. The Contractor shall provide immediate written notice to the Department if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Department's Program Section (Tel. (503) 986-3400) to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The Contractor agrees by entering into this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transactions with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the Department or agency entering into this transaction.
7. The Contractor further agrees by entering into this Contract that it will include the Addendum to Form FHWA-1273 titled, "Appendix B--Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions", provided by the Department entering into this covered transaction without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List published by the U. S. General Services Administration.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government or the Department, the Department may terminate this transaction for cause or default.

III. ADDENDUM TO FORM FHWA-1273,  
REQUIRED CONTRACT PROVISIONS

This certification applies to subcontractors, material suppliers, vendors, and other lower tier participants.

- Appendix B of 49 CFR Part 29 -

**Appendix B--Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

Instructions for Certification

1. By signing and submitting this Contract, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this Contract is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this Contract is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this Contract that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this Contract that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement list.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions**

- a. The prospective lower tier participant certifies, by entering into this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.
- b. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall submit a written explanation to Department.

**IV. EMPLOYMENT**

1. Contractor warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Contractors, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranting, Department shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. Contractor shall not engage, on a full or part-time basis or other basis, during the period of the Contract, any professional or technical personnel who are or have been at any time during the period of this Contract, in the employ of Department, except regularly retired employees, without written consent of the public employer of such person.
3. Contractor agrees to perform consulting services with that standard of care, skill and diligence normally provided by a professional in the performance of such consulting services on work similar to that hereunder. Department shall be entitled to rely on the accuracy, competence, and completeness of Contractor's services.

**V. NONDISCRIMINATION**

During the performance of this Contract, Contractor, for himself, his assignees and successors in interest, hereinafter referred to as Contractor, agrees as follows:

1. Compliance with Regulations. Contractor agrees to comply with Title VI of the Civil Rights Act of 1964, and Section 162(a) of the Federal-Aid Highway Act of 1973 and the Civil Rights Restoration Act of 1987. Contractor shall comply with the regulations of the Department of Transportation relative to nondiscrimination in Federally assisted

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programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are incorporated by reference and made a part of this Contract. Contractor, with regard to the work performed after award and prior to completion of the Contract work, shall not discriminate on grounds of race, creed, color, sex or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices, when the Contract covers a program set forth in Appendix B of the Regulations.

2. Solicitation for Subcontractors, including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations made by Contractor for work to be performed under a subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and regulations relative to nondiscrimination on the grounds of race, creed, color, sex or national origin.
3. Nondiscrimination in Employment (Title VII of the 1964 Civil Rights Act). During the performance of this Contract, Contractor agrees as follows:
  - a. Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including

apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.

- b. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex or national origin.
4. Information and Reports. Contractor will provide all information and reports required by the Regulations or orders and instructions issued pursuant thereto, and will permit access to his books, records, accounts, other sources of information, and his facilities as may be determined by Department or FHWA as appropriate, and shall set forth what efforts he has made to obtain the information.
5. Sanctions for Noncompliance. In the event of Contractor's noncompliance with the nondiscrimination provisions of the Contract, Department shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
  - a. Withholding of payments to Contractor under the agreement until Contractor complies; and/or
  - b. Cancellation, termination or suspension of the agreement in whole or in part.
6. Incorporation of Provisions. Contractor will include the provisions of paragraphs 1 through 6 of this section in every subcontract, including procurement of materials and leases of equipment, unless exempt from Regulations, orders or instructions issued pursuant thereto. Contractor shall take such action with respect to any subcontractor or procurement as Department or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is

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threatened with litigation with a subcontractor or supplier as a result of such direction, Department may, at its option, enter into such litigation to protect the interests of Department, and, in addition, Contractor may request Department to enter into such litigation to protect the interests of the State of Oregon.

VI. DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26, Contractor shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

**DBE POLICY STATEMENT**

**DBE Policy.** It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assist contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this Contract.

**Required Statement For USDOT Financial Assistance Agreement.** If as a condition of assistance the Agency has submitted and the US Department of Transportation has approved a Disadvantaged Business Enterprise Affirmative Action Program which the Agency agrees to carry out, this affirmative action program is incorporated into the financial assistance agreement by reference.

**DBE Obligations.** The Department and its Contractor agree to ensure that Disadvantaged Business Enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds. In this regard, Contractor shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that Disadvantaged Business Enterprises have the opportunity to compete for and perform contracts. Neither Department nor its contractors shall discriminate on the basis of race, color, national origin or sex in the award and performance of federally-assisted contracts. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of

such contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Department deems appropriate.

The DBE Policy Statement and Obligations shall be included in all subcontracts entered into under this Contract.

**Records and Reports.** Contractor shall provide monthly documentation to Department that it is subcontracting with or purchasing materials from the DBEs identified to meet Contract goals. Contractor shall notify Department and obtain its written approval before replacing a DBE or making any change in the DBE participation listed. If a DBE is unable to fulfill the original obligation to the Contract, Contractor must demonstrate to Department the Affirmative Action steps taken to replace the DBE with another DBE. Failure to do so will result in withholding payment on those items. The monthly documentation will not be required after the DBE goal commitment is satisfactory to Department.

Any DBE participation attained after the DBE goal has been satisfied should be reported to the Departments.

**DBE Definition.** Only firms DBE certified by the State of Oregon, Department of Consumer & Business Services, Office of Minority, Women & Emerging Small Business, may be utilized to satisfy this obligation.

**CONTRACTOR'S DBE CONTRACT GOAL**

**DBE GOAL   0   %**

By signing this Contract, Contractor assures that good faith efforts have been made to meet the goal for the DBE participation specified in the Contract for this project as required by ORS 200.045, and 49 CFR 26.53 and 49 CFR, Part 26, Appendix A.

VII. LOBBYING

The Contractor certifies, by signing this agreement to the best of his or her knowledge and belief, that:



1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor also agrees by signing this agreement that he or she shall require that the language of this certification be included in all lower tier subagreements, which exceed \$100,000 and that all such subrecipients shall certify and disclose accordingly.

FOR INQUIRY CONCERNING  
DEPARTMENT'S DBE PROGRAM  
REQUIREMENT CONTACT OFFICE OF  
CIVIL RIGHTS AT (503)986-4354.

**RESOLUTION EXERCISING THE POWER OF EMINENT DOMAIN EXHIBIT D  
Right of Way Services**

**(Instructions, please delete before completing form)**Regions: This portion of the document is unlocked. The LPA should block and copy to incorporate this language into their own standard resolution form **OR** fill in an "attested to" line or signature line at the bottom and use this form.

WHEREAS (insert title of agency) may exercise the power of eminent domain pursuant to (Agency's charter) (statutes conferring authority) and the Law of the State of Oregon generally, when the exercise of such power is deemed necessary by the (insert title of agency)'s governing body to accomplish public purposes for which (insert title of agency) has responsibility;

WHEREAS (insert title of agency) has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public;

WHEREAS the project or projects known as (insert Project name) have been planned in accordance with appropriate engineering standards for the construction, maintenance or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, travel safeguarded; and

WHEREAS to accomplish the project or projects set forth above it is necessary to acquire the interests in the property described in "Exhibit A," attached to this resolution and, by this reference incorporated herein; now, therefore

BE IT HEREBY RESOLVED by (Agency's Council, Commission, or Board)

1. The foregoing statements of authority and need are, in fact, the case. The project or projects for which the property is required and is being acquired are necessary in the public interest, and the same have been planned, designed, located, and will be constructed in a manner which will be most compatible with the greatest public good and the least private injury;
2. The power of eminent domain is hereby exercised with respect to each of the interests in property described in Exhibit A. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law;
3. The (insert title of agency)'s staff and the (Agency's Attorney, Counsel, or District's Counsel (or) (The Oregon Department of Transportation and the Attorney General) are authorized and requested to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined above or determinable by the (Agency's Council, Commission, or Board).
4. (insert title of agency) expressly reserves its jurisdiction to determine the necessity or propriety of any acquisition, its quantity, quality, or locality, and to change or abandon any acquisition.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_



**MINUTES**  
**City Council Meeting**  
**Monday, April 29, 2019 City Hall- Council Chambers, 39250**  
**Pioneer Blvd., Sandy, Oregon 97055 6:00 PM**

**COMMITTEE PRESENT:** Stan Pulliam, Mayor, Jeremy Pietzold, Council President, John Hamblin, Councilor, Laurie Smallwood, Councilor, Jan Lee, Councilor, Carl Exner, Councilor, Bethany Shultz, Councilor, and Kathleen Walker, Board Member, Frits van Gent, Amber Pritchard, Jeff Cary

**COMMITTEE ABSENT:** , Brian Singer, Valerie Wicklund

**STAFF PRESENT:** Karey Milne, Recorder Clerk, Jordan Wheeler, City Manager, Andi Howell, Transit Director, David Snider, Economic Development Manager , Ernie Roberts, Police Chief , Greg Brewster, Interim IT/SandyNet Director, Kelly O'Neill, Planning Director, Mike Walker, Public Works Director, Sarah McIntyre, Library Director, Tanya Richardson, Community Services Director, and Tyler Deems, Finance Director

**MEDIA PRESENT:**

**1. Pledge of Allegiance**

**2. Roll Call**

**3. Elections of Chair and Vice Chair**

**3.1.**

John Hamblin was nominated and elected the Chair of the Budget Committee.  
No Vice Chair was elected.

Motion by Councilor Pietzold, seconded by Jeff Cary.

**4. Presentation of the Budget Message and Budget Summary**

**4.1. [City of Sandy Proposed Budget](#)**

City Manger Jordan Wheeler delivered the budget message to the Budget Committee. Manager Wheeler also detailed the budget philosophy and approach, as well as budget constraints and difficulties that the city is facing for the upcoming biennium.

**5. Department Budget Presentations**

- 5.1. Department Directors presented their individual budgets to the Budget Committee. The Committee asked clarifying questions throughout the presentations, which Directors answered.

**6. Public Comment**

- 6.1. None.

**7. Budget Committee Deliberations**

- 7.1. Continued to next meeting, May 6, 2019.

**8. Adjourn**



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Mayor, Stan Pulliam



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City Recorder, Karey Milne

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**MINUTES**  
**City Council Meeting**  
**Monday, May 6, 2019 City Hall- Council Chambers, 39250 Pioneer Blvd., Sandy, Oregon 97055 6:00 PM**

**COMMITTEE MEMBERS**

**PRESENT:**

Jeremy Pietzold, Council President, Laurie Smallwood, Councilor, John Hamblin, Councilor, Jan Lee, Councilor, Carl Exner, Councilor, Bethany Shultz, Councilor, Stan Pulliam, Mayor, and Kathleen Walker, Board Member Amber Prichard, Jeff Cary,

**COMMITTEE MEMBERS**

**ABSENT:**

Valerie Wicklund, Frits van Gent. Brian Singer

**STAFF PRESENT:**

Karey Milne, Recorder Clerk, Jordan Wheeler, City Manager, Tyler Deems, Finance Director, Sarah Richardson, Community Services, Mike Walker, Public Works Director, Kelly O'Neill, Planning Director, and Greg Brewster, Interim IT/SandyNet Director

**MEDIA PRESENT:**

**1. Roll Call**

**2. Continuation of Department Budget Presentations**

2.1. [Proposed Budget](#)

2.2.

Department Directors finished their individual budget presentations. The Committee asked clarifying questions, which Directors answered.

**3. Public Comment**

3.1.

None.

**4. Budget Committee Deliberations**

The Budget Committee discussed the proposed budget and possible changes.

\$4,000 of revenue was mistakenly left out of the budget. The Committee requested that this revenue be added to the Parks, Buildings, & Grounds budget.

Amber Pritchard, moved to fund the Lieutenant and Traffic officer in this biennium. Discussion occurred and the motion was amended to add Traffic Officer, July 1 2019, then Lieutenant July 1, 2020, to be able to identify and implement funding source(s).

The amended motion was seconded by Councilor Lee.

Councilor Pietzold noted that he would like to see the previous motion amended to reflect that the funding source be a new or outside funding source, and not impact other department's budgets.

Discussion occurred among the Committee.

Councilor Hamblin made a motion to add the Patrol Officer position effective July 1, 2019 and the Lieutenant position effective July 1, 2020 with new or outside funding. The motion was seconded by Councilor Lee.

Members in favor: Councilor Pietzold, Jeff Cary, Councilor Hamblin, Mayor Pulliam, Councilor Smallwood, Councilor Lee, Councilor Schultz, and Amber Pritchard.

Members opposed: Councilor Exner and Kathleen Walker.

The motion passed.

Councilor Smallwood made a motion to approve the proposed budget as amended. The motion was seconded by Councilor Lee.

The motion passed unanimously.

Councilor Schultz made a motion to approve the city's permanent tax rate. The motion was seconded by Councilor Exner.

The motion passed unanimously.

5. **Adjourn**
6. **Sandy Urban Renewal Agency & Budget Committee**
7. **Roll Call**
8. **Public Comment**
  - 8.1. None.
9. **Presentation of Sandy Urban Renewal Agency Budget**
  - 9.1. [Proposed Budget](#)

City Manager Jordan Wheeler provided the Budget Committee with an overview of the Sandy Urban Renewal Agency plan and proposed budget. Included in this overview was revenue information, and as well as specific project information.

**10. SURA & Budget Committee Deliberations**

Mayor Pulliam made a motion to approve the Sandy Urban Renewal Agency's budget as proposed. Councilor Pietzold seconded the motion.

Finance Director Tyler Deems read aloud a statement from Committee member Frits van Gent related to Urban Renewal. Paul Reed, Mt. Hood Athletic Club, offered some explanation in regards to pieces of the Mr. van Gent's statement.

Councilor Smallwood and Council Hamblin called for a vote.

Per Mr. van Gent's statement, he would not vote in favor of the budget at proposed.

The motion passed unanimously by all in attendance.

**11. Adjourn**



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Mayor, Stan Pulliam



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City Recorder, Karey Milne