

October 11, 2021

**EXHIBIT NN**

**Michael C. Robinson**

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VIA E-MAIL TO [PLANNING@CI.SANDY.OR.US](mailto:PLANNING@CI.SANDY.OR.US);  
SUBMITTED ON MONDAY, OCTOBER 11, 2021 BEFORE 4:00 P.M.

Mr. Jerry Crosby, Chair  
Sandy Planning Commission  
Sandy City Hall  
39250 Pioneer Blvd.  
Sandy, OR 97055

RE: City of Sandy File No. 21-014 SUB/TREE; Applicant's First Open Record Period Submittal

Dear Chair Crosby and Planning Commission Members:

This office represents Roll Tide Properties Corp., the Applicant. This seven-page letter and its eight exhibits are part of the Applicant's first open record period submittal timely submitted on Monday, October 11, 2021 before 4:00 p.m.

**1. Introduction and Schedule.**

**A. Status of Application Review.**

The Planning Commission opened the initial evidentiary hearing on September 27, 201. No one objected to the Planning Commission's jurisdiction to hear the Application nor to the *ex parte* disclosures. Following the Staff Report, public and Applicant testimony and Applicant rebuttal, the Applicant asked the Planning Commission to close the public hearing and leave the written record open on the schedule contained in the Applicant's October 6, 2021 letter. The Planning Commission granted the Applicant's request and the Applicant extended the 120-day period in ORS 227.178(1) for a final decision on the Application by the City until January 5, 2022.

The next events in the review of the Application are:

- The second open record period ends on October 18, 2021 at 4:00 p.m. for argument and evidence as those words are defined in ORS 197.763(9)(a) and (b);
- The Applicant's final written argument without new evidence is due on October 25, 2021 at 4:00 p.m.; and

- Planning Commission deliberation to a tentative decision without new evidence or public testimony on November 8, 2021 at 6:30 p.m.

**B. Response to Second City Transportation Engineer Memorandum.**

The Applicant's argument and evidence responding to the City Consulting Transportation Engineer Memorandum submitted October 7, 2021 will be part of the second open record period submittal.

**C. Applicable Approval Criteria are Those in Effect on March 31, 2021.**

The applicable appeal criteria in the Sandy Development Code ("SDC"), subject to statutory requirements, are those in effect on March 31, 2021, the date the Applicant submitted the Application because it made the Application complete within 180 days of the submittal date. The SDC amendments and Parks Master Plan adopted by the Sandy City Council after March 31, 2021 are not applicable approval criteria for the Application. ORS 227.178(3) ("Goal Post Rule" providing that applicable approval criteria are those in effect on Application submittal date).

**D. Characterization of Application.**

The Application is both a "Limited Land Use" application as defined in ORS 197.015(12) because it is a tentative residential subdivision within the City's Urban Growth Boundary (the "UGB") and a "Needed Housing" application as defined in ORS 197.303(1)(a). The City's procedures and any conditions of approval are subject to ORS 197.307(4) and (7). None of the exceptions in ORS 197.303(5) and (6) and 197.307(5) and (7) apply. A zoning map, comprehensive plan map amendment or variance is not included in the Application. As a Limited Land Use application, the Application is subject only to properly incorporated and applicable Comprehensive Plan (the "Plan"), including Transportation System Plan (the "TSP"), provisions. As a Needed Housing application, the Application is subject to only clear *and* objective standards that do not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

**3. Introductory Arguments.**

The Applicant respects the City and its residents, the staff, the Planning Department and the City Council. The differences between the Application and the Staff Report are the result of differing views of applicable approval criteria related to state law. Nothing in the Applicant's evidence and argument is directed to any person or decision maker but state law requires the Applicant to present its argument and evidence and raise its issues (the "raise it or waive it" requirement in ORS 197.763).

The Applicant will reserve most of its responses to the written and oral staff reports for its final written argument, as allowed by ORS 197.763(6)(e); *Buffalo Bend Associates, LLC v. Clackamas County*, \_\_\_\_ Or LUBA \_\_\_\_ (LUBA No. 2019-090/091, January 31, 2020). However, there

are a few issues from those Staff Reports, especially the oral Staff Report, and two Planning Commissioner comments, that are addressed here.

- Neither the Applicant nor its lawyers nor their motivation have anything to do with the Planning Commission's task in this quasi-judicial proceeding, which is deciding if the Applicant has met its legal burden of proof to show that the applicable approval criteria, as consistent with relevant statutes, are met by substantial evidence. This is not a contest of wills between individuals. The Applicant will make its case with due respect for all of the participants.
- Why are three Schwabe lawyers involved? The Applicant values the insight of others than just Mr. Robinson and the City has the services of two very competent lawyers. The Director's comment about the number of lawyers is irrelevant to the approval criteria.
- Why did the Applicant make a public records request? The request was not, as suggested by the Director, because the Applicant does not believe in its case but because the Applicant wants to understand the Director's direction, if any, to agencies and departments that might have influenced their comments.
- How is the Bailey Meadows Subdivision relevant to the Application? It is not relevant to whether the approval criteria are met but it is worth noting the difference between the two applications. In Bailey Meadows, the City and the Applicant worked together to find solutions to many of the issues – providing a second street to the subdivision by expanding the City's Urban Growth Boundary (the "UGB"), providing land for a needed public park and giving the City jurisdiction over part of Oregon Highway 211. In contrast, the City has not desired to find solutions for this Application acceptable to both parties and as the public record disclosures show, has desired to deny the Application without addressing the state law issues that are at the center of the issues in this Application. In fact, the Applicant emailed the Oregon Department of Transportation ("ODOT") after an August 25, 2021 telephone call with Mr. O'Neill, Jr. and Mr. Orem to talk about the Dubarko Road extension but ODOT never responded.
- Why did the Applicant submit its letters so close to the public hearing? The Applicant did so because it took that long to respond to the long Staff Report issued seven days before the public hearing and because the Planning Commission would have time during the open record period to review the letters.
- Are the Needed Housing and incorporation issues new to the City? No. ORS 197.195(1) became effective in 1991 and directs the City to comply within two years of September 29, 1991, over thirty years ago. The Oregon Court of Appeals decided *Paterson v. City of Bend* in 2005 and the Oregon Land Use Board of Appeals ("LUBA") decided *Oster v. City of Silverton* in 2019 and Bailey

Meadows raised the issue the same year. The Needed Housing statutes became effective in 1981 and Statewide Planning Goal 10, "Housing," has included Needed Housing for many years. The Applicant is not at fault for raising issues that have long been state law requirements for the City to satisfy. The City must comply with state law and the Applicant appropriately raised the issue.

- Is the parkland dedication requirement clear and objective? As Planning Commissioner Don Carlton observed in the hearing, the dedication standards in SDC 17.86.10 can be construed as clear and objective but the *choice* between dedication and fee in lieu in SDC 17.86.40 does *not* involve clear and objective standards or procedures, which means the decision to require parkland dedication is subject to a subjective procedure and unknown considerations that are neither clear nor objective as required by ORS 197.307(4).
- Why did the Applicant agree to provide a parkland dedication and the extension of Dubarko Road in the prior application but not in this Application? The Applicant did so then because that Application was a different application subject to different standards. The prior application does not control the Application and different Applications do not require the same results.

#### **4. Applicant's Evidence.**

##### **A. Mike Ard Memorandum dated October 9, 2021 (Exhibit 1).**

Mr. Ard's memorandum contains trip counts and demonstrates that the local streets will operate within required trip levels when considering vehicle trips generated by the subdivision.

##### **B. Dave Vandehey letter dated October 11, 2021 (Exhibit 2).**

ORS 197.307(4) requires that even clear and objective standards, conditions and procedures not have the effect, either in themselves or cumulatively, of discouraging Needed Housing through unreasonable cost or delay. Mr Vandehey's letter explains that the cost of the parkland dedication, the Dubarko Road extension and the U.S. Highway 26 frontage improvements will impose an unreasonable cost on the Needed Housing application. His letter also explains that the Dubarko Road extension will impose an unreasonable delay on the needed housing application. As a matter of evidence only, TSP Table 8, page 36, notes that the Dubarko Road extension (Project M20) is expected to cost \$3.2 million.

The City wants Dubarko Road to be connected to U.S. Highway 26, a State highway. As the Planning Commission learned in the prior Bull Run Subdivision application, ODOT required a "Grant of Access" for the connection under OAR 734-051-2010(2) because no right of access exists at the proposed connection location. U.S. Highway 26 is an access controlled highway at the connection location and a connection is not allowed without ODOT approval through a "Grant of Access." OAR 734-051-1070(1). A Grant of Access for a public approach like Dubarko Road is subject to the approval criteria in OAR 734-051-2020(4)-(14), including the

requirement that the property owner be the applicant for the Grant of Access. OAR 734-051-2020(6). U.S. Highway 26 is classified as a “Statewide Highway” at this location. 1999 Oregon Highway Plan, “State Highway Classification System Map,” PDF page 294. There is no legal right for Dubarko Road to connect to U.S. Highway 26 without the Applicant’s approval and without a Grant of Access approval, which is subject to highly discretionary approval criteria and for which no evidence exists to show it can or will be approved, or how long it will take to issue a decision on a Grant of Access request. Even if the City had property incorporated a specific TSP policy into the SDC so that it could require the Dubarko Road connection, it has no legal right to make the connection.

**But none of this matters because SDC 17.100.100.G.2, an exception to the street standards in SDC 17.100.100, expressly provides that “standards for street connections do not apply to freeways and other highways with full access control.” It is undisputed that U.S. Highway 26 has full access control where Dubarko Road would connect. Thus, the City cannot require the extension of Dubarko Road to U.S. Highway 26.**

**C. Erin Forbes’ Memorandum Concerning Attorney Fee Awards dated October 11, 2021 (Exhibit 3).**

City Attorney David Doughman discussed the issue of attorney fees awards to prevailing Needed Housing applicants with the Planning Commission at the September 27, 2021 public hearing under ORS 197.835(10)(b) requiring award of attorney fees when a local government’s decision is reversed. Ms. Forbes’ memorandum provides two recent examples of such mandatory awards.

**D. Erin Forbes’ Memorandum Analyzing SDC Under Incorporation and Clear and Objective Requirements (Exhibit 4).**

Ms. Forbes’ memorandum explains how the SDC standards relied upon in the Staff Report fail to satisfy the incorporation and clear and objective requirements.

The City cannot rely on the Plan, the TSP, the Transit Master Plan or the old Parks Master Plan because they are not properly incorporated into the applicable SDC standards. Even if they were, they all contain standards that are neither clear *nor* objective.

SDC 17.100.20.E.3 refers to the “Official Street Plan” and the Staff Report relies on this as a basis for requiring the Dubarko Road extension. Consistent with *Paterson* and *Oster*, the Official Street Plan, whatever it is, is not properly incorporated into the SDC. The term “Official Street Plan” is not defined in the SDC. The 2011 TSP is not described as the “Official Street Plan.” The term “Official Street Plan” does not appear in the 2011 TSP Chapter 3, “Motor Vehicle System Plan,” nor in any of the fifteen figures in TSP Chapter 3. An applicant is left to guess what the “Official Street Plan” is, what it requires and nothing leads from the “Official Street Plan” to any documents incorporated into the SDC.

Even if the “Official Street Plan” were incorporated, simply having the document incorporated is insufficient under ORS 197.195(1) to require the Dubarko Road extension. Both *Paterson* and

*Oster* require an incorporated Plan document to specify what specific policies, action items or standards apply as approval criteria.

**E. Erin Forbes' Memorandum Providing Recent Incorporation and Clear and Objective LUBA Decisions (Exhibit 5).**

Ms. Forbes' memorandum lists recent examples of LUBA reversing local government decisions relying on improper incorporation or subjective approval standards or affirming local government decisions properly applying the relevant statutes.

**F. Michael Robinson's Letter Providing Excerpts of Public Documents Obtained from the City (Exhibit 6).**

This letter contains excerpts of public documents obtained from the City. The main point of these documents is their lack of a desire to determine if the approval standards comply with state law. The Parks Master Plan, for example, is not incorporated into the SDC and cannot be a basis for either the Dubarko Road extension or the U.S. Highway 26 frontage improvements.

**G. Tracy Brown Memorandum Dated October 8, 2021 (Exhibit 7).**

Mr. Brown's memorandum addresses several of the issues raises in the Staff Report.

**H. Sandy Parks and Trials Advisory Board August 11, 2021 Staff Report (Exhibit 8).**

The Staff Report acknowledges that the City cannot rely on the previous Parks Master Plan because it was not properly incorporated into the SDC as required by ORS 197.195.(1).

**5. Conclusion.**

The record before the Planning Commission shows that the City cannot apply its previous Parks Master Plan, its Transit Master Plan, its TSP or its Plan because they have not been properly incorporated into the SDC as applicable approval criteria. The record also shows that various SDC standards relied upon to recommend denial are not clear *or* objective but even if they were, they impose unreasonable cost and delay on the Application.

While the Planning Commission will hear more evidence and argument before its November 8, 2021 deliberation, the record as of today demonstrates that the Application satisfies by substantial evidence all of the applicable approval criteria and can be approved.

The Applicant respectfully requests that the Planning Commission approve the Application.

Mr. Jerry Crosby, Chair  
October 11, 2021  
Page 7

Very truly yours,



Michael C. Robinson

MCR/jmhi  
Enclosures

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

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## EXHIBITS

- Exhibit 1**      October 9, 2021 Memorandum from Mike Ard, P.E.
- Exhibit 2**      October 8, 2021 Letter from Dave Vandehey
- Exhibit 3**      October 11, 2021 Memorandum from Erin Forbes Concerning Attorney Fee Awards
- Exhibit 4**      October 11, 2021 Memorandum from Erin Forbes Analyzing the SDC Under Incorporation and Clear and Objective Requirements
- Exhibit 5**      October 11, 2021 Memorandum from Erin Forbes Providing Recent Incorporation and Clear and Objective LUBA Decisions
- Exhibit 6**      October 11, 2021 Letter from Michael Robinson Providing Excerpts of Public Documents Obtained from the City
- Exhibit 7**      October 8, 2021 Memorandum form Tracy Brown
- Exhibit 8**      August 11, 2021 Staff Report to the Sandy Parks and Trails Advisory Board





21370 SW Langer Farms Pkwy  
Suite 142, Sherwood, OR 97140

## Technical Memorandum

**To:** Dave Vandehey, Roll Tide Properties Corporation  
**From:** Michael Ard, PE  
**Date:** October 9, 2021  
**Re:** **Deer Meadows Subdivision – Local Street Traffic Volumes**

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The updated traffic impact study prepared for the Deer Meadows Subdivision dated September 27, 2021 contained a new analysis section addressing daily traffic volumes on the impacted local streets in the site vicinity (page 19). The analysis underlying this report section was based on trip generation and distribution estimates for both the existing residential development in the site vicinity and the projected future volumes associated with the proposed Deer Meadows Subdivision. Although the procedures used were appropriate, the most accurate way to determine existing traffic volumes on local streets is through direct measurement. Since 24-hour count data was not available at the time the prior report was issued, the analysis provided represented the most accurate assessment that could be made at the time. However, 24-hour tube counts were subsequently collected at the west end of Therese Street, at the south end of Antler Avenue, and at the south end of Meadow Avenue to verify the assumptions used in the prior report.

This memorandum provides detailed data and analysis refining the prior local street traffic volume estimates. Based on the updated data and analysis, the conclusions of the prior report remain valid. All local streets in the site vicinity currently operate with traffic volumes of less than 1,000 average daily trips, and they will continue to operate with traffic volumes of less than 1,000 daily trips in the future either with or without the addition of site trips from the proposed Deer Meadows development.

### Data Collection and Analysis

Existing daily traffic volumes on the impacted local streets in the site vicinity were determined based on 24-hour tube counts collected at three locations:

- On Therese Street immediately east of SE Langensand Road;
- On Antler Avenue immediately north of Dubarko Road; and
- On Meadow Avenue immediately north of Dubarko Road.

Traffic volumes were measured for the first two locations from 12:00 PM on Tuesday October 5, 2021, to 12:00 PM on Wednesday October 6, 2021. Traffic volumes for the third location were measured from 1:00 PM on Wednesday October 6, 2021, to 1:00 PM on Thursday October 7, 2021.

The detailed traffic count data collected on each local street is reported in the attached technical appendix. It should be noted that the tube count data collected on Antler Avenue and Meadow Avenue was collected on the north side of the two southernmost driveways on each roadway. Accordingly, the projected twenty



trips per day associated with these two homes was manually added to the observed count data to more accurately reflect the highest total traffic volumes experienced on these roadways.

Since traffic count data was collected during the COVID-19 pandemic and the total number of trips observed using these three roadways was lower than the total volume that would normally be projected for the 100 homes served by these streets, the count data was used to determine the actual distribution of existing site trips to and from the local area, while the more conservative ITE Trip Generation data was used to determine the number of trips that would be expected under normal conditions.

Overall, the data showed that 63 percent of site trips to and from the local area utilized Therese Street. An additional 18 percent of site trips were observed to use Antler Avenue, and the remaining 19 percent of site trips were observed to use Meadow Avenue.

Based on the ITE Trip Generation data, the 100 homes served by these three local street access locations would be projected to generate 944 average daily trips.

Conservatively assuming that all homes located north of Dubarko Road within the proposed Deer Meadows subdivision will utilize Fawn Street to connect to one of these three points of access, Fawn Street will carry up to 230 vehicles per day east of Meadow Avenue, and up to 270 vehicles per day east of Antler Avenue.

The average daily traffic volumes based on the observed travel patterns and the conservative trip generation estimate of existing and future daily traffic volumes are detailed in Table 1 below.

**Table 1 - Existing and Future Local Street Traffic Volumes**

	Existing Daily Traffic (ADT)	Deer Meadows Site Trips (ADT)	Future Daily Traffic (ADT)
Therese Street	594	130	<b>724</b>
Antler Avenue	171	38	<b>209</b>
Meadow Avenue	179	40	<b>219</b>

### **Conclusions**

Based on the observed travel patterns and the updated analysis, all local streets are projected to operate with average daily volumes well below the 1,000-trip threshold allowable on local streets per City of Sandy Standards. The prior conclusions from the Deer Meadows Subdivision Traffic Impact dated September 27, 2021 remain valid, and no additional mitigation is recommended in conjunction with the proposed development.

# Appendix

# Daily Volume Count Report

**Study Name** Therese Street at West End  
**Location** 45.390451676168354 / -122.24944115113888  
**Roadway Orientation** West / East

**Site Code** 6197414110  
**Study Date** 10/5/2021  
**Direction**

Start Time	10-4-2021		Tues		Wed		Thurs		Fri		Sat		Sun		Week Average	
	West	East	West	East	West	East	West	East	West	East	West	East	West	East	West	East
12:00 AM																
01:00					2										0	2
02:00					1										0	1
03:00															0	0
04:00					4	1									4	1
05:00					8										8	0
06:00					9										9	0
07:00					12	4									12	4
08:00					25	9									25	9
09:00					25	11									25	11
10:00					14	11									14	11
11:00					19	9									19	9
12:00 PM					21	11									21	11
01:00					8	15									8	15
02:00					10	14									10	14
03:00					14	14									14	14
04:00					13	22									13	22
05:00					13	35									13	35
06:00					13	27									13	27
07:00					7	15									7	15
08:00					8	14									8	14
09:00					5	8									5	8
10:00					2	4									2	4
11:00					3										0	3
					1										1	0
Lane	0	0	94	171	137	59	0	0	0	0	0	0	0	0	230	230
Day	0	0	265		196		0	0	0	0	0	0	0	0	461	461
AM Peak Vol.					08:00	08:00									08:00	08:00
					25	11									25	11
PM Peak Vol.															02:00	04:00
					14	35									14	35

# Daily Volume Count Report

**Study Name** Antler Avenue at South End  
**Location** 45.390127381061774 /-122.24708957295321  
**Roadway Orientation** North /South

**Site Code** 3772865912  
**Study Date** 10/5/2021  
**Direction**

Start Time	10-4-2021		Tues		Wed		Thurs		Fri		Sat		Sun		Week Average	
	North	South	North	South	North	South	North	South	North	South	North	South	North	South	North	South
12:00 AM															0	0
01:00															0	0
02:00															0	0
03:00															0	0
04:00															0	0
05:00															0	1
06:00															1	1
07:00															0	5
08:00															1	2
09:00															4	4
10:00															6	5
11:00															6	4
12:00 PM															6	7
01:00															1	3
02:00															1	0
03:00															6	6
04:00															3	8
05:00															9	2
06:00															3	5
07:00															4	2
08:00															2	2
09:00															2	0
10:00															1	0
11:00															0	0
Lane	0	0	32	28	24	29	0	0	0	0	0	0	0	0	56	57
Day	0	0	60	53	53	0	0	0	0	0	0	0	0	0	113	113
AM Peak Vol.															11:00	11:00
PM Peak Vol.															04:00	03:00

# Daily Volume Count Report

**Study Name** Meadow Avenue at South End  
**Location** 45.390044087921844 /-122.24620506924413  
**Roadway Orientation** North /South

**Site Code** 8339814368  
**Study Date** 10/6/2021  
**Direction**

Start Time	10-4-2021		Tues		Wed		Thurs		Fri		Sat		Sun		Week Average	
	North	South	North	South	North	South	North	South	North	South	North	South	North	South	North	South
12:00 AM																
01:00																
02:00																
03:00							4									4
04:00																
05:00							1	5							1	5
06:00							1	2							1	2
07:00							7	9							7	9
08:00							2	4							2	4
09:00							2	4							2	4
10:00							2	6							2	6
11:00							2	4							2	4
12:00 PM							3	1							3	1
01:00							8	7							8	7
02:00							8	4							8	4
03:00							6	3							6	3
04:00							3	4							3	4
05:00							4	2							4	2
06:00							2								2	
07:00							6	3							6	3
08:00																
09:00																
10:00																
11:00																
Lane	0	0	0	0	37	23	20	39	0	0	0	0	0	0	57	62
Day	0	0	0	0	60	59	59	59	0	0	0	0	0	0	119	119
AM Peak Vol.					07:00	07:00	07:00	07:00							07:00	07:00
PM Peak Vol.					02:00	01:00	01:00								02:00	01:00
					8	7	7								8	7

# Trip Generation Calculation Worksheet



Land Use Description: Single-Family Detached Housing  
ITE Land Use Code: 210  
Independent Variable: Dwelling Units  
Quantity: 100 Dwelling Units

## Summary of ITE Trip Generation Data

### **AM Peak Hour of Adjacent Street Traffic**

Trip Rate: 0.74 trips per dwelling unit  
Directional Distribution: 25% Entering 75% Exiting

### **PM Peak Hour of Adjacent Street Traffic**

Trip Rate: 0.99 trips per dwelling unit  
Directional Distribution: 63% Entering 37% Exiting

### **Total Weekday Traffic**

Trip Rate: 9.44 trips per dwelling unit  
Directional Distribution: 50% Entering 50% Exiting

## Site Trip Generation Calculations

100 Dwelling Units

	Entering	Exiting	Total
AM Peak Hour	19	55	74
PM Peak Hour	62	37	99
Weekday	472	472	944

Data Source: *Trip Generation Manual, 10th Edition*, Institute of Transportation Engineers, 2017

# Trip Generation Calculation Worksheet



Land Use Description: Single-Family Detached Housing  
ITE Land Use Code: 210  
Independent Variable: Dwelling Units  
Quantity: 22 Dwelling Units

## Summary of ITE Trip Generation Data

### **AM Peak Hour of Adjacent Street Traffic**

Trip Rate: 0.74 trips per dwelling unit  
Directional Distribution: 25% Entering 75% Exiting

### **PM Peak Hour of Adjacent Street Traffic**

Trip Rate: 0.99 trips per dwelling unit  
Directional Distribution: 63% Entering 37% Exiting

### **Total Weekday Traffic**

Trip Rate: 9.44 trips per dwelling unit  
Directional Distribution: 50% Entering 50% Exiting

## Site Trip Generation Calculations

22 Dwelling Units

	Entering	Exiting	Total
AM Peak Hour	4	12	16
PM Peak Hour	14	8	22
Weekday	104	104	208

Data Source: *Trip Generation Manual, 10th Edition*, Institute of Transportation Engineers, 2017





***ROLL TIDE PROPERTIES CORPORATION***

October 8, 2021

Michael C. Robinson  
Schwabe Williamson & Wyatt  
[mrobinson@schwabe.com](mailto:mrobinson@schwabe.com)

Michael:

I represent the ownership of the property known as Deer Meadows Subdivision in Sandy, OR. I am writing to inform you that under the current application for this property it is not financially feasible to dedicate a park or extend Dubarko Rd. and connect it to Highway 26. The loss of dwelling units due to the parkland and ROW dedication and cost of Dubarko Rd. and Hwy 26 frontage improvements will discourage this project through unreasonable cost. Also, including the connection of Dubarko Rd. to Highway 26 extends our projects timeline adding to the unfeasibility of it. The delay is unreasonable because connecting to Dubarko requires a grant of access and there is no timeline for acquiring it or whether it can be acquired.

Sincerely,

*Dave Vandehey*

Vice President  
Roll Tide Properties Corporation

PO Box 703  
Cornelius, OR 97113  
503-327-6084

## Memorandum

VIA E-MAIL

**To:** Mike Robinson  
**From:** Erin M. Forbes  
**Date:** October 11, 2021  
**Subject:** Decisions on Attorney Fee Awards in Needed Housing LUBA Cases  
**File No.:** 126769-255102

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ORS 197.835(10)(b) provides that if LUBA reverses a local government decision on a development application on the basis that the local government's decision was outside the range of discretion allowed, and subsequently orders the local government to grant approval of the application, then LUBA "shall award attorney fees to the applicant and against the local government." In other words, an award of attorney fees in this situation is mandatory.

The following is a list of 2021 LUBA orders where motions for attorney fees were awarded after a denial of a needed housing application was reversed and approval of the application ordered.

- *Legacy Development Grp. v. City of the Dalles*, LUBA No. 2020-099 (May 17, 2021) (awarding \$18,039.50 in attorney fees to the applicant after reversing denial of needed housing application)
- *Nieto v. City of Talent*, LUBA No. 2020-100 (May 10, 2021) (awarding \$15,387.50 in attorney fees to the applicant after reversing denial of needed housing application)

The above orders are attached to this memorandum as **Exhibits 1** and **2**, respectively.

EMF

PDX\126769\255102\EMF\31932544.1

1                                   BEFORE THE LAND USE BOARD OF APPEALS  
2                                   OF THE STATE OF OREGON

3  
4                                   LEGACY DEVELOPMENT GROUP, INC.,  
5   *Petitioner,*

6  
7   vs.

8  
9                                   CITY OF THE DALLES,  
10   *Respondent,*

11  
12   and

13  
14                                   DENISE LYNNE DIETRICH-BOKUM,  
15                                   ROBERT CLAYTON BOKUM,  
16                                   GARY GINGRICH, TERRI JO JESTER GINGRICH,  
17                                   DAMON ROLLA HULIT, and  
18                                   ROBERTA KAY WYMORE-HULIT,  
19   *Intervenors-Respondents.*

20  
21   LUBA No. 2020-099

22  
23   ORDER

24   **BACKGROUND**

25                   In *Legacy Development Group, Inc. v. City of The Dalles*, \_\_\_ Or LUBA  
26   \_\_\_ (LUBA No 2020-099, Feb 24, 2021), petitioner appealed the city council’s  
27   denial of its application for a 72-lot subdivision to include 83 dwellings and a  
28   community park. Petitioner argued that the four provisions of The Dalles  
29   Municipal Code (TDMC) on which the city council relied to deny its application  
30   failed to satisfy the statutory requirement in ORS 197.307(4) that the city apply  
31   only “clear and objective” standards to an application for housing. We agreed  
32   with petitioner that none of the four TDMC provisions on which the city council

1 relied to deny the application satisfied the ORS 197.307(4) requirement that the  
2 city apply only “clear and objective” standards.

3 In the petition for review, petitioner requested that LUBA reverse the  
4 decision and order the city to approve the application. Petition for Review 32.  
5 We agreed with petitioner that the city’s decision to deny the application was  
6 outside the range of discretion allowed the city under its comprehensive plan and  
7 implementing ordinances, and we reversed the city’s decision and ordered it to  
8 approve the application. ORS 197.835(10)(a)(A). Because we sustained  
9 petitioner’s first assignment of error and reversed the decision, we did not address  
10 the second assignment of error that argued that the city committed a procedural  
11 error that prejudiced petitioner’s substantial rights or the third assignment of error  
12 that argued that the city’s decision violated the Fifth Amendment to the United  
13 States Constitution.

14 **MOTION FOR ATTORNEY FEES**

15 ORS 197.835(10)(b) provides, “If the board \* \* \* reverse[s] the decision  
16 and orders the local government to grant approval of the application, the board  
17 shall award attorney fees to the applicant and against the local government.”  
18 Petitioner moves for an award of attorney fees in the amount of \$28,460. An  
19 award of attorney fees under ORS 197.835(10)(b) is mandatory. If LUBA  
20 reverses a local government decision to deny an application and orders the local  
21 government to approve the application under ORS 197.835(10)(a), LUBA must  
22 award attorney fees to the applicant against the local government.

1 In awarding attorney fees pursuant to ORS 197.835(10)(b), although the  
2 award is mandatory, LUBA is afforded the discretion to determine the amount of  
3 attorney fees that is reasonable under the specific facts of the case. *Young v. City*  
4 *of Sandy*, 33 Or LUBA 817, 819 (1997). Intervenors-respondents (intervenors)  
5 and the city each object to petitioner’s motion.

6 **A. Intervenors Are Not Liable for an Attorney Fee Award under**  
7 **ORS 197.835(10)(b)**

8 Intervenors respond to the motion for attorney fees, noting that city did not  
9 participate to defend its decision on appeal and observing that any award of  
10 attorney fees under ORS 197.835(10)(b) is “against the local government.” Thus,  
11 intervenors argue that they may not be held liable for any award of fees under  
12 ORS 197.835(10)(b). We agree. The statute is clear that an award of fees under  
13 ORS 197.835(10)(b) is “against the local government.”

14 **B. Amount of Fees**

15 The city objects to the amount of fees sought in petitioner’s motion.

16 **1. Fees for Non-Attorney Services**

17 The fees sought by petitioner include \$20,295 in fees for 73.8 hours of  
18 services that were provided by a land use planner who is not an attorney. The city  
19 argues that those fees should be reduced by \$11,467.50 because fees incurred by  
20 engaging the services of a land use planner are not fees for “legal services” and  
21 are therefore not recoverable under the plain meaning of the phrase “attorney

1 fees” in ORS 197.835(10)(b), as construed by the Court of Appeals in *Stewart v.*  
2 *City of Salem*, 240 Or App 466, 247 P3d 763 (2011).<sup>1</sup>

3 We agree. In *Stewart*, citing the Oregon Supreme Court’s decision in *Colby*  
4 *v. Gunson*, 349 Or 1, 238 P3d 374 (2010), the Court of Appeals reviewed the  
5 meaning of the phrase “attorney fees,” as used in ORS 197.830(10)(b), and  
6 concluded that it means “the reasonable value of legal services provided by an  
7 attorney that are related to the applicant’s appeal.” *Stewart*, 240 Or App at 473.  
8 Accordingly, the land use planner fees are reduced by the amount requested by  
9 the city, \$11,467.50.<sup>2</sup>

## 10 2. Hourly Rate for Lead Attorney

11 Next, the city argues that the rate of \$465 per hour charged by petitioner’s  
12 lead attorney is not reasonable because it is “well above” the median rate  
13 customarily charged in the Tri-County area (Multnomah, Washington, and  
14 Clackamas Counties outside of downtown Portland) for similar services.<sup>3</sup>  
15 Response to Cost Bill and Motion for Attorney Fees 5. One of the factors we

<sup>1</sup> The city’s response is confusing and includes requests for an award of “not more than \$14,867.50” and, in the alternative, “not more than \* \* \* \$9,679.50.” Response to Cost Bill and Motion for Attorney Fees 7.

<sup>2</sup> The city does not argue that the fees included in petitioner’s motion should be reduced by the full \$20,295 attributable to the land use planner.

<sup>3</sup> Petitioner’s lead attorney is based in Clark County, Washington. The city’s response assumes that rates in Clark County, Washington, are similar to rates in the Tri-County area. Response to Cost Bill and Motion for Attorney Fees 5.

1 consider in determining the amount of an attorney fee award is the fee  
2 customarily charged in the locality for similar legal services. *6710 LLC v. City of*  
3 *Portland*, 41 Or LUBA 608, 611 (2002) (citing ORS 20.075(2)(c)).

4 In its response, the city cites the Oregon State Bar 2017 Economic Survey  
5 (the 2017 Survey) and states that the 2017 Survey lists the median rate for an  
6 attorney practicing land use and real estate law in the Tri-County area with years  
7 of experience comparable to petitioner's lead attorney as \$275 per hour.  
8 Response to Cost Bill and Motion for Attorney Fees 5. The city argues that,  
9 adjusting for inflation after 2017 at an annual rate of five percent, a reasonable  
10 rate for attorney services is \$335 per hour. We have previously relied on Oregon  
11 State Bar economic surveys as an accurate indicator of the fees customarily  
12 charged in a community. *Van Dyke v. Yamhill County*, \_\_\_ Or LUBA \_\_\_, \_\_\_  
13 (LUBA Nos 2020-032/033, Order, Apr 1, 2021) (slip op at 17-18); *6710 LLC*, 41  
14 Or LUBA at 612.

15 The burden is on the party seeking the attorney fees to establish that the  
16 requested rates are reasonable, even in the absence of an objection. *6710 LLC*, 41  
17 Or LUBA at 611. Petitioner's statements that \$465 per hour is their lead  
18 attorney's customary rate and that their lead attorney has chaired the government  
19 relations committee for a home builders association do not explain why the rate  
20 charged by their lead attorney is reasonable. Absent any assistance from  
21 petitioner, we agree with the city that petitioner has not established that a rate that  
22 is nearly 40 percent higher than the median rate for an attorney practicing land

1 use and real estate law in the Tri-County area is reasonable.<sup>4</sup> Accordingly,  
2 petitioner is awarded fees for the 13.2 hours that their lead attorney spent on the  
3 appeal, at a rate of \$335 per hour.<sup>5</sup>

4 In sum, petitioner’s motion for attorney fees is partially granted, as  
5 follows:

6	Lead Attorney	\$4,422.00 (13.2 hours at \$335 per hour)
7	Other Attorney	\$162.50
8	Other Attorney	\$105.00
9	Paralegal	\$4,522.50 <sup>6</sup>
10	Land Use Planner	\$8,827.50 (\$20,295 minus \$11,467.50)
11	Total	\$18,039.50

<sup>4</sup> Petitioner asserts that “[t]he total fees are \$31,223 for 108 billable hours, for an average rate of \$289” and argues that that average rate is “consistent with the Portland metro area.” Cost Bill and Motion for Attorney Fees 2. However, petitioner does not otherwise develop that argument or argue that the average rate for all attorney and non-attorney services in an appeal is relevant to LUBA’s assessment of the reasonableness of the rate that petitioner’s lead attorney actually charged for services.

<sup>5</sup> Petitioner’s detailed statement of attorney fees includes \$267.50 for the services of two other attorneys in the law firm, to which the city does not object.

<sup>6</sup> Although the city’s response includes a request for a reduction in the fees for paralegal services based on its argument that the *total* amount of time spent by petitioner’s law firm on the appeal (108 hours) is unreasonable, the city does not assert any independent basis for us to reject or reduce the amount of fees incurred for paralegal services or argue that 20.10 hours for paralegal services is an unreasonable amount of time for the appeal.



1 **COST BILL**

2           Petitioner, the prevailing party in this appeal, filed a cost bill seeking an  
3 award of its filing fee in the amount of \$200. Petitioner is awarded the cost of its  
4 filing fee in the amount of \$200, payable by the city and intervenors. The Board  
5 will return petitioner’s \$200 deposit for costs.

6           Dated this 17th day of May 2021.

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\_\_\_\_\_  
Melissa M. Ryan  
Board Member

1 BEFORE THE LAND USE BOARD OF APPEALS  
2 OF THE STATE OF OREGON

3  
4 TONY NIETO and TORY NIETO,  
5 *Petitioners,*

6  
7 vs.

8  
9 CITY OF TALENT,  
10 *Respondent,*

11  
12 and

13  
14 VERNON J. DAVIS, MARY A. TSUI,  
15 LAURIE E. CUDDY, and FOREST L. DAVIS,  
16 *Intervenors-Respondents.*

17  
18 LUBA No. 2020-100

19  
20 ORDER

21 **BACKGROUND**

22 In *Nieto v. City of Talent*, \_\_\_ Or LUBA \_\_\_ (LUBA No 2020-100, Mar  
23 10, 2021), petitioners appealed the city’s denial of their application to subdivide  
24 their 26.58-acre property into a 49-lot residential subdivision. Petitioners argued  
25 that the single basis for the hearings officer’s denial of its subdivision application,  
26 failure to satisfy Talent Municipal Code (TMC) 17.10.060(F), was barred by  
27 ORS 197.307(4), a portion of the needed housing statute that prohibits the city  
28 from applying standards that are not “clear and objective” to applications for the  
29 development of housing. We agreed with petitioners that the city’s decision was

1 barred by ORS 197.307(4) because TMC 17.10.060(F) is not a “clear and  
2 objective” standard.

3         Petitioners requested that LUBA “reverse the Decision and order the City  
4 to approve the Subdivision as presented in the Application and as recommended  
5 by City Staff.” Petition for Review 37. Pursuant to ORS 197.835(10)(a)(A), we  
6 reversed the city’s decision as “outside the range of discretion allowed the [city]  
7 under its comprehensive plan and implementing ordinances” and ordered the city  
8 to approve the application.<sup>1</sup> In doing so, we did not address petitioners’ other  
9 assignments of error, some of which argued that the city’s decision was an  
10 unconstitutional taking of petitioners’ property.

<sup>1</sup> ORS 197.835(10) provides, in relevant part:

“(a) The board shall reverse a local government decision and order the local government to grant approval of an application for development denied by the local government if the board finds:

“(A) Based on the evidence in the record, that the local government decision is outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances; or

“\* \* \* \* \*

“(b) If the board does reverse the decision and orders the local government to grant approval of the application, the board shall award attorney fees to the applicant and against the local government.”

1 **MOTION FOR ATTORNEY FEES**

2 Petitioners move for an award of attorney fees in the amount of  
3 \$18,269.75. An award of attorney fees under ORS 197.835(10)(b) is mandatory.  
4 If LUBA reverses a local government decision denying an application and orders  
5 the local government to approve the application under ORS 197.835(10)(a),  
6 LUBA must award attorney fees to the applicant against the local government.

7 In awarding attorney fees pursuant to ORS 197.835(10)(b), although the  
8 award is mandatory, LUBA is afforded the discretion to determine the amount of  
9 attorney fees that is reasonable under the specific facts of the case. *Young v. City*  
10 *of Sandy*, 33 Or LUBA 817, 819 (1997). LUBA will look to the factors listed in  
11 ORS 20.075(2) for guidance in determining the amount of an attorney fee award.  
12 *Schaffer v. City of Turner*, 37 Or LUBA 1066, 1072 (2000). We identify the  
13 relevant facts and legal criteria on which we rely in determining what award of  
14 attorney fees is reasonable. *See McCarthy v. Oregon Freeze Dry, Inc.*, 327 Or 84,  
15 96, *adh'd to on recons*, 327 Or 185, 957 P2d 1200 (1998) (so stating).

16 The city objects to petitioners' motion on procedural and substantive  
17 grounds.<sup>2</sup>

<sup>2</sup> Some of the city's objections argue that petitioners failed to properly plead reversal of the city's decision under ORS 197.835(10)(a)(A). Response to Motion for Attorney Fees and Cost Bill 4-7. We reject those objections for two reasons.

First, as noted, petitioners requested that that LUBA "reverse the Decision and order the City to approve the Subdivision as presented in the Application and

1           **A.     Timing of Motion**

2           First, the city argues that LUBA should deny petitioners’ motion for  
3 attorney fees because it was not filed within the time set in OAR 661-010-  
4 0075(1)(a), which provides that a motion for attorney fees must be filed within  
5 14 days of the Board’s final opinion and order.

6           Petitioners concede that the motion was filed one day late but respond that  
7 LUBA should treat the untimeliness as a “technical violation” pursuant to OAR  
8 661-010-0005 and allow the motion.<sup>3</sup> We agree with petitioners. *See Schatz v.*

as recommended by City Staff.” Petition for Review 37. Using the operative language of ORS 197.835(10)(a)(A) is sufficient to plead and request the remedy of reversal of the decision with an order to the city to approve the application.

Second, the objections are, in essence, an impermissible collateral attack on our final opinion and order that determined that the city’s decision was outside the range of discretion allowed it under the TMC. Our decision was not appealed, and it is the law of the case. *Beck v. City of Tillamook*, 313 Or 148, 831 P2d 678 (1992) *see also Walter v. City of Eugene*, 74 Or LUBA 671 (2016) (rejecting a city’s objection to a motion for attorney fees under ORS 197.835(10)(b) that was, in essence, an impermissible collateral attack on LUBA’s final opinion and order).

<sup>3</sup> OAR 661-010-0005 provides:

“These rules are intended to promote the speediest practicable review of land use decisions and limited land use decisions, in accordance with ORS 197.805-197.855, while affording all interested persons reasonable notice and opportunity to intervene, reasonable time to prepare and submit their cases, and a full and fair hearing. The rules shall be interpreted to carry out these objectives and to promote justice. Technical violations not affecting the substantial rights of parties shall not interfere with the review of a land use decision or limited land use decision.”

1 *City of Jacksonville*, 21 Or LUBA 571, 571 n 1 (1991) (accepting motion for  
2 attorney fees filed two days late); *Jones v. Lane County*, 29 Or LUBA 573, 573-  
3 74 (1995) (accepting cost bill filed eight days late). The city’s substantial rights  
4 include the right to respond to petitioners’ motion, which it has done. Therefore,  
5 petitioners’ violation of OAR 661-010-0075(1)(a) does not affect our review.

6 **B. Amount of Fees**

7 The burden is on the party seeking the attorney fees to establish that the  
8 requested rates are reasonable. *6710 LLC v. City of Portland*, 41 Or LUBA 608,  
9 611 (2002). We understand the city to argue that the amount of attorney fees  
10 sought is not reasonable for three reasons.

11 First, according to the city, petitioners’ counsel may not recover fees for  
12 time spent developing arguments in the petition for review and reply brief that  
13 LUBA ultimately did not reach in its final opinion and order.<sup>4</sup> Petitioners respond  
14 that whether LUBA reached the merits of an argument included in petitioners’  
15 brief has no relevance to whether the amount of attorney fees sought is  
16 reasonable. We agree. As the Court of Appeals explained in *Stewart v. City of*  
17 *Salem*, “‘attorney fees,’ under ORS 197.835(10)(b), means the reasonable value  
18 of legal services provided by an attorney that are related to the applicant’s appeal  
19 of a local government decision to LUBA.” 240 Or App 466, 473, 247 P3d 763

<sup>4</sup> As noted, LUBA sustained petitioners’ first assignment of error and did not reach the remaining assignments of error that argued, in part, that the city’s decision was an unconstitutional taking of petitioners’ property.

1 (2011). Nothing in the statute limits attorney fees to only those that are related to  
2 issues that LUBA actually addressed in its final opinion and order. We reject the  
3 city’s argument.

4         Second, we understand the city to argue that petitioners’ fee statement  
5 lacks sufficient detail to justify the amount of fees sought. OAR 661-010-  
6 0075(1)(e)(A) requires that a motion for attorney fees include a “detailed  
7 statement of the amount of attorney fees sought.” This argument is largely  
8 derivative of the city’s first argument that petitioners may not be awarded fees  
9 for arguments made in connection with issues that LUBA did not reach and, for  
10 the reasons explained above, we reject it.

11         Moreover, we agree with petitioners that their statement satisfies OAR  
12 661-010-0075(1)(e)(A). Petitioners’ statement includes entries such as “Work  
13 with [redacted] to outline brief and develop strategy (1.5);” “Continue drafting  
14 brief (1.5);” and “Review and Analyze Response Brief and provide summary to  
15 client team regarding same (1.5).” Motion for Attorney Fees and Cost Bill,  
16 Attachment 1 at 5-6. Such entries are more than sufficient to meet the  
17 requirements of the rule.

18         Third, the city objects to the following charges included in the motion for  
19 attorney fees: (1) petitioners’ \$400 filing fee and deposit for costs and (2) charges  
20 that seek reimbursement for “computer legal research.” Petitioners respond that  
21 the total amount of attorney fees requested, \$18,269.75, does not include the \$400

1 filing fee and deposit for costs. Based on that response, we reject the city’s  
2 argument.

3 Petitioners also respond that charges for computer legal research are a  
4 reasonable and typical part of the legal services provided by an attorney and  
5 petitioners should be able to be reimbursed for those charges. However, we agree  
6 with the city that ORS 197.835(10)(b) does not authorize recovery of charges  
7 incurred for “computer legal research.”

8 ORS 197.835(10)(b) authorizes recovery of “attorney fees” and does not  
9 mention expenses. In this respect, it is unlike ORS 197.830(15)(b), which  
10 explicitly authorizes recovery of “reasonable attorney fees *and expenses.*”  
11 (Emphasis added.) Further, ORCP 68A, cited by the Court of Appeals in *Stewart*  
12 as context for interpreting ORS 197.835(10)(b), also distinguishes between  
13 “attorney fees” and “costs and disbursements.” Accordingly, we deduct  
14 \$2,882.25 for “computer legal research” from the stated total of \$18,269.75, for  
15 a total award of \$15,387.50.

## 16 **COSTS**

17 Petitioners, the prevailing parties in this appeal, filed a cost bill seeking an  
18 award of their filing fee in the amount of \$200. Petitioners are awarded the cost  
19 of their filing fee in the amount of \$200, payable by the city and intervenors-  
20 respondents. The Board shall return petitioners’ \$200 deposit for costs.

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1 Dated this 10th day of May 2021.

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Melissa M. Ryan

7 Board Member

## Memorandum

VIA E-MAIL

**To:** Mike Robinson  
**From:** Erin M. Forbes  
**Date:** October 11, 2021  
**Subject:** Analysis of Staff Report Bases for Denial as Relate to Limited Land Use and Needed Housing Requirements  
**File No.:** 126769-255102

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This memorandum sets forth the reasons why the Planning Director's analysis of the Sandy Development Code ("SDC") as relates to Oregon's Limited Land Use and Needed Housing Statutes is insufficient and why denial based on the identified sections of the SDC is improper.

### **1. Limited Land Use Statute / Proper Incorporation of Plan**

ORS 197.195(1) provides that, for limited land use decisions, "[i]f a city or county does not incorporate its comprehensive plan provisions into its land use regulations, the comprehensive plan provisions may not be used as a basis for a decision by the city or county or on appeal from that decision."

Under *Oster v. City of Silverton*, LUBA No. 2018-103 (May 7, 2019), whether comprehensive plan (or related plan, such as a TSP) provisions have been "incorporate[d]" into a city's land use regulations does not depend on whether the standard is "clear in the TSP or 'codified' in the [development code]; instead, the question is whether the [development code] provisions that the city concluded incorporated the [plan] standard make clear what *specific policies or standards in the TSP apply to a limited land use decision as approval criteria.*" *Oster*, Slip Op. at p. 12. Standards that merely "generally 'incorporate[] by reference the city's public facility master plans, including plans for domestic water, sanitary sewer, storm drainage, parks, and transportation'" do not meet the requirement of ORS 197.195(1). "Incorporation by reference of the entirety of each of the city's public facilities plans falls far short of satisfying the incorporation standard in ORS 197.195(1)." *Id.*

In *Oster*, the Silverton Development Code was found to improperly incorporate the TSP where it provided that "[g]eneral street improvement requirements are provided in SDC 3.4.100, *with more specific requirements provided in the city of Silverton transportation system plan and the city's public works design standards.*" *Oster*, Slip Op. at p. 11.

Similarly, in *Paterson v. City of Bend*, 118 P.3d 842, 846 (Or. App. 2005), the Oregon Appeals Court affirmed LUBA’s holding that certain provisions of the Bend Subdivision Ordinance did not properly incorporate the Bend General Plan. LUBA found that the City of Bend’s code provision that required “compliance with the Bend Area General Plan and implementing land use ordinances and policies” did not meet the incorporation requirement of ORS 197.195(1). *Paterson v. City of Bend*, LUBA No. 2004-115, Slip. Op. at p. 5 (April 5, 2005). LUBA held that “ORS 197.195(1) contemplates more than a broad injunction to comply with unspecified portions of the comprehensive plan” and that a local government must “at least amend its land use regulations to make clear what *specific* policies or other provisions of the comprehensive plan apply to a limited land use decision as approval criteria.” *Id.*, Slip Op. at pp. 5-6 (emphasis added). The Oregon Appeals Court agreed and held that “by its terms, ORS 197.195(1) provides that, if a local government does not incorporate specific plan provisions into its enactments, the ‘plan standards’ set out in those provisions are not applicable.” *Paterson*, 118 P.3d at 846.

The chart below shows that the Planning Director improperly applied the City of Sandy’s Transportation System Plan and Parks Master Plan to the Application, and subsequently recommended denial of the Application on that improper basis, because the Sandy Development Code does not incorporate that Plan into its development code as described in *Oster* and *Paterson*.

SDC Code Provision Relied Upon	Reason Why Plan Cited is Not Properly Incorporated
<p>SDC 17.84.30.C</p> <p>Where a development site is traversed by or adjacent to a future trail linkage identified within the <b>Transportation System Plan</b>, improvement of the trail linkage shall occur concurrent with development. Dedication of the trail to the City shall be provided in accordance with 17.84.90.D.</p>	<p>Staff found that the standards of Section 17.84.50(B) was not met. <i>See, e.g.</i>, Staff Report at p. 16. But this standard only includes a “broad injunction to comply with unspecified portions of” the TSP, and does not “make clear what specific policies or other provisions” apply. <i>See Paterson</i>, Slip Op. at p. 6. This standard improperly “generally incorporat[es] by reference the” TSP. <i>See Oster</i>, Slip Op. at pp. 11-12.</p>
<p>SDC 17.84.50.B</p> <p>5. If the study identifies level-of-service conditions less than the minimum standard established in the development code or the <b>Sandy Transportation System Plan</b>, or fails to demonstrate that average daily traffic on existing or proposed streets will meet the ADT standards established in the development code or fails to meet the Oregon</p>	<p>Staff found that the standards of Section 17.84.50(B) were not met in numerous instances. <i>See, e.g.</i>, Staff Report at p. 13. But this standard only includes a “broad injunction to comply with unspecified portions of” the Sandy Comprehensive Plan and the Sandy official street plan, and does not “make clear what specific policies or other provisions” apply. <i>See Paterson</i>, Slip Op. at p. 6. This standard improperly</p>

<p>Department of Transportation's mobility standard, the applicant shall propose improvements and funding strategies for mitigating identified problems or deficiencies that will be implemented concurrent with the proposed development.</p>	<p>“generally incorporat[es] by reference the” referenced plans. <i>See Oster</i>, Slip Op. at pp. 11-12.</p>
<p>SDC 17.84.90 – Land for Public Purposes</p> <p>D. Where a development is traversed by, or adjacent to, a future trail linkage identified within the <b>Transportation System Plan</b>, dedications of suitable width to accommodate the trail linkage shall be provided. This width shall be determined by the City Engineer, considering the type of trail facility involved.</p>	<p>SDC 17.84.90.C only includes a “broad injunction to comply with unspecified portions of” the TSP, and does not “make clear what specific policies or other provisions” apply. <i>See Paterson</i>, Slip Op. at p. 6. This standard improperly “generally incorporat[es] by reference the” TSP. <i>See Oster</i>, Slip Op. at pp. 11-12.</p>
<p>SDC 17.86.40 – Cash in Lieu of Dedication</p> <p>A.3 Compatibility with the <b>Parks Master Plan</b>, Public Facilities element of the Comprehensive Plan, and the City of Sandy Capital Improvements Program in effect at the time of dedication</p>	<p>SDC 17.86.40.A.3 only includes a “broad injunction to comply with unspecified portions of” the Parks Master Plan, and does not “make clear what specific policies or other provisions” apply. <i>See Paterson</i>, Slip Op. at p. 6. This standard improperly “generally incorporat[es] by reference the” Parks Master Plan. <i>See Oster</i>, Slip Op. at pp. 11-12.</p>
<p>SDC 17.100.60.E – Approval Criteria</p> <p>3. The proposed street pattern is connected and consistent with <b>the Comprehensive Plan or official street plan for the City of Sandy</b>.</p>	<p>SDC 17.100.60.E.3 only includes a “broad injunction to comply with unspecified portions of” the Sandy Comprehensive Plan and the Sandy official street plan, and does not “make clear what specific policies or other provisions” apply. <i>See Paterson</i>, Slip Op. at p. 6. This standard improperly “generally incorporat[es] by reference the” referenced plans. <i>See Oster</i>, Slip Op. at pp. 11-12.</p>
<p>SDC 17.100.60.E – Approval Criteria</p> <p>5. Adequate public facilities are available or can be provided to serve the proposed subdivision.</p>	<p>The Staff Report relies upon the TSP and the Parks Master Plan as a basis for determining the Application did not meet these criteria. But neither the TSP nor the Parks Master Plan are mentioned in these approval criteria. Even if they were, to be applied as approval</p>

<p>6. All proposed improvements meet City standards.</p>	<p>criteria, more than just a “broad injunction to comply with unspecified portions of” the TSP and Parks Master Plan is required. Even the Staff Report fails to specify what portions of those Plans apply to these criteria. <i>See</i> Staff Report at pp. 7-8 (paragraph 21(A) and (B) and paragraph 22).</p>
<p>SDC 17.100.100 – Streets Generally</p> <p>A. <i>Street Connectivity Principle</i>. The pattern of streets established through land divisions should be connected to: (a) provide safe and convenient options for cars, bikes and pedestrians; (b) create a logical, recognizable pattern of circulation; and (c) spread traffic over many streets so that key streets (particularly U.S. 26) are not overburdened.</p>	<p>The Staff Report relies upon the TSP as a basis for determining the Application did not meet this criterion. But the TSP is not mentioned in this approval criterion. Even if it were, to be applied as an approval criterion, more than just a “broad injunction to comply with unspecified portions of” the TSP is required. Even the Staff Report fails to specify what portions of the TSP applies to this criteria. <i>See, e.g.</i>, Staff Report at p. 5 (paragraph 18(B)) &amp; p. 12 (paragraph 37(C)(vi)).</p>

**2. Needed Housing Statute / Clear and Objective Criteria & Procedures Required**

ORS 197.307(4) provides that, for regulating housing applications, including needed housing applications, “a local government may adopt and apply only clear and objective standards, conditions and procedures,” which standards “[m]ay not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.” ORS 227.173(2) further provides that “[w]hen an ordinance establishing approval standards is required under ORS 197.307 to provide clear and objective standards, the standards must be clear and objective on the face of the ordinance.”

If a standard or procedure applicable to a needed housing or housing application is not clear and objective, it cannot be applied to the application. *Nieto v. City of Talent*, LUBA No. 2020-100, Slip Op. at p. 7 (Mar. 10, 2021). Approval standards and procedures are not clear and objective if they impose “subjective, value-laden analyses that are designed to balance or mitigate impacts of the development on (1) the property to be developed or (2) the adjoining properties or communities.” *Id.* at p. 9 (quoting *Rogue Valley Assoc. of Realtors v. City of Ashland*, 35 Or LUBA 139, 158 (1998), *aff’d*, 158 Or App 1, *rev den*, 328 Or 594 (1999)); *see also Legacy Dev. Grp. v. City of the Dalles*, LUBA No. 2020-099, at p. 14 (Feb. 24, 2021). Further, the needed housing statutes require that the standards, conditions, and procedures that apply to needed housing are “*both* ‘clear’ and ‘objective.’” *Nieto*, Slip Op. at p. 9.

The chart below shows that the Planning Director improperly applied approval criteria and procedures that are not clear and objective to the Application, and subsequently recommended denial of the Application based on subjective and unclear criteria and standards.

SDC Code Provision Relied Upon	Reason Why Provision is Not Clear and Objective
<p>SDC 17.82.00 – Intent</p> <p>The intent is to provide for <b>convenient, direct, and accessible</b> pedestrian access to and from public sidewalks and transit facilities; provide a <b>safe, pleasant and enjoyable</b> pedestrian experience by connecting activities within a structure to the adjacent sidewalk and/or transit street; and, promote the use of pedestrian, bicycle, and transit modes of transportation.</p>	<p>All of the bolded terms and phrases identified in SDC 17.82.00 are subjective and unclear because they are undefined and allow the decision maker to make a “subjective, value-laden analysis” as to what is “convenient, direct, and accessible” and what is “safe, pleasant and enjoyable”; and what those terms mean. <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9. Such terms and phrases are “designed to balance or mitigate impacts of the development.” <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9.</p>
<p>SDC 17.82.20 – Building Orientation</p> <p>B. Dwellings shall have a primary entrance connecting directly between the street and building interior. A <b>clearly marked, convenient, safe and lighted</b> pedestrian route shall be provided to the entrance, from the transit street. The pedestrian route shall consist of materials such as concrete, asphalt, stone, brick, permeable pavers, <b>or other materials as approved by the Director</b>. The pedestrian path shall be permanently affixed to the ground with gravel subsurface <b>or a comparable subsurface as approved by the Director</b>.</p> <p>C. Primary dwelling entrances shall be <b>architecturally emphasized</b> and visible from the street and shall include a covered porch <b>at least feet in depth</b>.</p>	<p>All of the bolded terms and phrases identified in SDC 17.82.20 are subjective and unclear because they are undefined and allow the decision maker to make a “subjective, value-laden analysis” as to what is “clearly marked, convenient, safe and lighted” and what is “architecturally emphasized”; and what those terms mean. <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9. Such terms and phrases are “designed to balance or mitigate impacts of the development.” <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9.</p> <p>The allowance for the Director to approve “other materials” and “a comparable subsurface” do nothing other than allow for the Director to make a “subjective, value-laden analysis” as to what may be allowed. <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9. Such terms and phrases are “designed to balance or mitigate impacts of the development.” <i>Legacy Dev.</i></p>

	<p><i>Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9.</p> <p>Subsection C omits the number of feet in depth the “covered porch” must be, making the criterion impossible to apply in any clear and objective way.</p>
<p>SDC 17.84.30 – Pedestrian and bicyclist requirements</p> <p>A.2 Sidewalks along arterial and collector streets shall be separated from curbs with a planting area, <b>except as necessary</b> to continue an existing curb-tight sidewalk. The planting area shall be landscaped with trees and plant materials approved by the City. The sidewalks shall be a minimum of six feet wide.</p> <p>A.3 Sidewalk improvements shall be made <b>according to City standards, unless the City determines that the public benefit in the particular case does not warrant imposing a severe adverse impact to a natural or other significant feature</b> such as requiring removal of a mature tree, requiring <b>undue</b> grading, or requiring modification to an existing building. . . .</p>	<p>All of the bolded terms and phrases identified in SDC 17.84.30.A are subjective and unclear because they are undefined and allow the decision maker to make a “subjective, value-laden analysis” as to what is “necessary,” what is “a severe adverse impact,” what an “other significant feature” is, what is “undue”; and what those terms mean. <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9. Such terms and phrases are “designed to balance or mitigate impacts of the development.” <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9.</p> <p>Further, the standard allows the City to “determine that the public benefit in the particular case does not warrant imposing a severe adverse impact,” but it does not describe what the City must analyze or consider, or how to do that, in making such a determination. This is neither clear nor objective because it allows for complete discretion by the City.</p>
<p>SDC 17.84.30 – Pedestrian and bicyclist requirements</p> <p>B. <b>Safe and convenient</b> pedestrian and bicyclist facilities that strive to minimize travel distance <b>to the extent practicable</b> shall be provided in conjunction with new development within and between new subdivisions, commercial developments, industrial areas, residential areas, public transit stops, school transit stops, and</p>	<p>While “safe and convenient” is defined by this subsection, the definition itself includes phrases that are subjective and unclear because they are undefined and allow the decision maker to make a “subjective, value-laden analysis” as to what “the extent practicable” means, what is “reasonably free,” what “hazards” are being discussed,” how something may “discourage” travel, what a “short” trip is, what are “travel needs,” and how “destination and length of trip” are considered, what is considered “unusually</p>

<p>neighborhood activity centers such as schools and parks, as follows:</p> <ol style="list-style-type: none"><li>1. For the purposes of this section, “safe and convenient” means pedestrian and bicyclist facilities that: are <b>reasonably free</b> from <b>hazards</b> which would <b>interfere with</b> or <b>discourage</b> travel for <b>short</b> trips; provide a direct route of travel between destinations; and meet the <b>travel needs</b> of pedestrians and bicyclists <b>considering destination and length of trip</b>.</li><li>2. To meet the intent of B., above, rights-of-way connecting cul-de-sacs or passing through <b>unusually long or oddly shaped</b> blocks shall be a minimum of 15 feet wide with eight feet of pavement.</li><li>3. Twelve feet wide pathways shall be provided in areas with <b>high bicycle volumes</b> or multi-use by bicyclists, pedestrians, and joggers.</li><li>4. Pathways and sidewalks shall be encouraged in new developments by clustering buildings or constructing <b>convenient</b> pedestrian ways. . . .</li></ol>	<p>long or oddly shaped,” what the city considers “high” volume or “convenient”; and what those terms mean. <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9. Such terms and phrases are “designed to balance or mitigate impacts of the development.” <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9.</p>
<p>SDC 17.84.40 – Transit and school bus transit requirements</p> <p>A. Development sites located along existing or planned transit routes shall, <b>where appropriate</b>, incorporate bus pull-outs and/or shelters into the site design. These improvements shall be installed <b>in accordance with the guidelines and standards of the transit agency</b>. School bus pull-outs and/or shelters may also be required, <b>where appropriate</b>, as a condition of approval for a residential development of greater than 50 dwelling units where a school</p>	<p>All of the bolded terms and phrases identified in SDC 17.84.40 are subjective and unclear because they are undefined and allow the decision maker to make a “subjective, value-laden analysis” as to when something is “appropriate,” what specific “guidelines and standards of the transit agency” apply and how an applicant can be “in accordance” with them, what a “large number” of children is, what distance is considered “near,” what is “safe, convenient access,” and what makes an entrance “prominent”; and what those terms mean. <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9. Such terms and phrases are “designed to balance or mitigate</p>



<p>bus pick-up point is anticipated to serve a <b>large</b> number of children.</p> <p>B. New developments at or <b>near</b> existing or planned transit or school bus transit stops shall design development sites to provide <b>safe, convenient access</b> to the transit system, as follows:</p> <p>1. Commercial and civic use developments shall provide a <b>prominent</b> entrance oriented towards arterial and collector streets, with front setbacks reduced as much as possible to provide access for pedestrians, bicycles, and transit.</p> <p>2. All developments shall provide <b>safe, convenient</b> pedestrian walkways between the buildings and the transit stop, in accordance with the provisions of 17.84.30.B.</p>	<p>impacts of the development.” <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9.</p>
<p>SDC 17.84.50 – Street Requirements</p> <p>E. Local streets shall be <b>designed to discourage</b> through traffic. NOTE: for the purposes of this section, “through traffic” means the traffic traveling through an area that does not have a local origination or destination. To discourage through traffic and excessive vehicle speeds the following street design characteristics shall be considered, <b>as well as other designs intended to discourage</b> traffic:</p> <p>1. Straight segments of local streets should be kept to less than a quarter mile in length. <b>As practical</b>, local streets should include traffic calming features, and design features such as curves and “T” intersections while maintaining <b>pedestrian connectivity</b>.</p> <p>2. Local streets should typically intersect in “T” configurations rather than four-way intersections to <b>minimize conflicts and discourage through traffic</b>. Adjacent “T”</p>	<p>All of the bolded terms and phrases identified in SDC 17.84.50.E are subjective and unclear because they are undefined and allow the decision maker to make a “subjective, value-laden analysis” as to what is “designed to discourage through traffic,” what is “practical,” what may “minimize conflicts” and what is considered a “conflict”; and what those terms mean. <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9. Such terms and phrases are “designed to balance or mitigate impacts of the development.” <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9.</p> <p>Further, the standard allows for undefined and unidentified “other designs intended to discourage traffic,” but does not explain how those designs are reviewed or chosen, or how it is determined that they are “intended to discourage traffic.”</p>

<p>intersections shall maintain a minimum of 150 feet between the nearest edges of the two rights-of-way.</p>	
<p>SDC 17.84.50 – Street Requirements</p> <p><b>H. Where required by the Planning Commission or Director</b>, public street improvements <b>may be required</b> through a development site to provide for the <b>logical</b> extension of an existing street network or to connect a site with a nearby neighborhood activity center, such as a school or park. Where this creates a land division incidental to the development, a land partition shall be completed concurrent with the development.</p>	<p>All of the bolded terms and phrases identified in SDC 17.84.50.H are subjective and unclear because they are undefined and allow the decision maker to make a “subjective, value-laden analysis” as to whether to require public street improvements and what a “logical extension” is; and what those terms mean. <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9. Such terms and phrases are “designed to balance or mitigate impacts of the development.” <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9.</p>
<p>SDC 17.84.50.J</p> <p>3. <b>As far as practical</b>, arterial streets and collector streets shall be extended in alignment with existing streets by continuation of the street centerline. When staggered street alignments resulting in “T” intersections are unavoidable, they shall leave a minimum of 150 feet between the nearest edges of the two rights-of-way.</p> <p>5. Streets shall be designed to intersect at angles <b>as near as practicable</b> to right angles and shall comply with the following: . . . .</p>	<p>All of the bolded phrases identified in SDC 17.84.50.J are subjective and unclear because they are undefined and allow the decision maker to make a “subjective, value-laden analysis” as to whether something is done “as far as practical” or “as near as practicable”; and what those terms mean. <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9. Such terms and phrases are “designed to balance or mitigate impacts of the development.” <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9.</p>
<p>SDC 17.84.60.D</p> <p><b>As necessary</b> to provide for <b>orderly</b> development of adjacent properties, public facilities installed concurrent with development of a site shall be extended through the site to the edge of adjacent property(ies).</p>	<p>All of the bolded phrases identified in SDC 17.84.60.D are subjective and unclear because they are undefined and allow the decision maker to make a “subjective, value-laden analysis” as to whether something is “necessary” and what “orderly development” is; and what those terms mean. <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9. Such terms and phrases are “designed</p>

	<p>to balance or mitigate impacts of the development.” <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9.</p>
<p>SDC 17.86.40 – Cash in lieu of dedication</p> <p><b>At the city's discretion only</b>, the city <b>may accept</b> payment of a fee in lieu of land dedication. The city <b>may require</b> payment in lieu of land when the park land to be dedicated is less than three acres. A payment in lieu of land dedication is separate from Park Systems Development Charges, and is not eligible for a credit of Park Systems Development Charges. The amount of the fee in lieu of land dedication (in dollars per acre) shall be set by City Council Resolution, and it shall be based on the typical market value of developed property (finished lots) in Sandy net of related development costs.</p> <p>A. The following factors shall be used in the choice of whether to accept land or cash in lieu:</p> <ol style="list-style-type: none"> <li>1. The <b>topography, geology, access to, parcel size, and location of land</b> in the development available for dedication;</li> <li>2. <b>Potential adverse/beneficial effects</b> on environmentally sensitive areas;</li> <li>3. <b>Compatibility with the Parks Master Plan, Public Facilities element of the Comprehensive Plan, and the City of Sandy Capital Improvements Program</b> in effect at the time of dedication;</li> <li>4. <b>Availability</b> of previously acquired property; and</li> <li>5. The <b>feasibility</b> of dedication.</li> </ol>	<p>All of the bolded terms and phrases identified in SDC 17.86.40 are subjective and unclear because they are undefined and / or allow the decision maker to make a “subjective, value-laden analysis” as to what those terms and phrases (i.e., “adverse/beneficial effects,” “compatibility with” and “feasibility”) mean. <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9. Such terms and phrases are “designed to balance or mitigate impacts of the development.” <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9.</p> <p>The phrase “at the city’s discretion only” is wholly subjective because it literally allows the city to use “discretion” in determining whether it will accept payment of a fee in lieu of parkland dedication.</p> <p>The factors used in the choice of whether to accept land or cash in lieu do not explain what about the “topography, geology, access to, parcel size, and location of land” would make cash in lieu versus dedication an appropriate option. They do not explain how much of a beneficial or adverse effect must occur, nor what such effects even are. They require compatibility with various plans, but do not explain what must be compatible with those plans and what parts of those plans are relevant to the decision. They do not explain how “availability” of previously acquired property is relevant, what that means, who must have acquired said property, or how to apply it to the decision. And they do not describe how the feasibility of dedication is determined.</p>

	<p>These factors are unclear and subjective, as is the process for determining whether to accept cash in lieu of dedication versus requiring dedication.</p>
<p>SDC 17.100.60.E</p> <ol style="list-style-type: none"> <li>1. The proposed subdivision is <b>consistent with</b> the density, setback and dimensional standards of the base zoning district.</li> <li>2. The proposed subdivision is <b>consistent with the design standards</b> set forth in this chapter.</li> <li>5. <b>Adequate</b> public facilities are available or can be provided to serve the proposed subdivision.</li> <li>6. All proposed improvements meet <b>City standards</b>.</li> </ol>	<p>The phrase “consistent with” is neither clear nor objective because it does not define how the proposed subdivision can be “consistent with” the stated standards, and it allows for the decision maker to make a “subjective, value-laden analysis” “designed to balance or mitigate impacts of the development.” <i>See Legacy Dev. Grp.</i>, Slip Op. at p. 14 (holding that terms such as “consistent” are designed to balance or mitigate impacts from development and are therefore not objective); <i>Nieto</i>, Slip Op. at p. 9.</p> <p>The term “adequate” is neither clear nor objective because it is undefined and it allows the decision maker to make a “subjective, value-laden analysis” “designed to balance or mitigate impacts of the development.” <i>Legacy Dev. Grp.</i>, Slip Op. at p. 14; <i>Nieto</i>, Slip Op. at p. 9.</p> <p>The phrases “design standards” and “City standards” are not clear nor objective because the criteria do not define what design standards or City standards should be applied, and therefore they allow the decision maker to make a “subjective, value-laden analysis” “designed to balance or mitigate impacts of the development.” <i>Legacy Dev. Grp.</i>, Slip Op. at p. 14; <i>Nieto</i>, Slip Op. at p. 9.</p>
<p>SDC 17.100.100</p> <p>A. <i>Street Connectivity Principle</i>. The pattern of streets established through land divisions should be connected to: (a) provide <b>safe and convenient options</b> for cars, bikes and pedestrians; (b) create a <b>logical, recognizable pattern</b> of circulation; and (c) spread traffic</p>	<p>All of the bolded terms identified in SDC 17.100.100.A, D &amp; E are subjective and unclear because they are undefined and allow the decision maker to make a “subjective, value-laden analysis” as to what is “safe and convenient,” what is a “logical, recognizable pattern,” how many streets is “many” streets, which streets are “key,” how to determine</p>

<p>over <b>many</b> streets so that <b>key</b> streets (particularly U.S. 26) are not <b>overburdened</b>.</p> <p>D. <i>Street Spacing</i>. Street layout shall <b>generally</b> use a rectangular grid pattern with <b>modifications as appropriate</b> to adapt to topography or natural conditions.</p> <p>E. <i>Future Street Plan</i>. Future street plans are conceptual plans, street extensions and connections on acreage adjacent to land divisions. They assure access for future development and promote a <b>logical, connected</b> pattern of streets. It is in the interest of the city to promote a <b>logical, connected</b> pattern of streets. All applications for land divisions shall provide a future street plan that shows the pattern of existing and proposed future streets within the boundaries of the proposed land divisions, proposed connections to abutting properties, and extension of streets to adjacent parcels within a 400 foot radius of the study area where development may <b>practically</b> occur.</p>	<p>whether something is “overburdened,” what “generally” means, what “modifications” are allowed and when they are “appropriate,” what a “logical, connected pattern of streets” is, and how “practical[ ]” something may be; they are not clear and objective, but rather are “designed to balance or mitigate impacts of the development.” <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9.</p>
<p>SDC 17.100.120</p> <p>A. <i>Blocks</i>. Blocks shall have <b>sufficient width</b> to provide for two tiers of lots at <b>appropriate depths</b>. However, exceptions to the block width shall be allowed for blocks that are adjacent to arterial streets or natural features.</p> <p>B. <i>Residential Blocks</i>. Blocks fronting local streets shall not exceed 400 feet in length, <b>unless topographic, natural resource, or other similar physical conditions justify</b> longer blocks.</p> <p>D. <i>Pedestrian and Bicycle Access Way Requirements</i>. In any block in a residential or commercial district over 600 feet in length, a pedestrian and bicycle accessway with a minimum improved surface of ten feet within a 15-foot right-of-way or tract shall be</p>	<p>All of the bolded terms and phrases identified in SDC 17.100.120 are subjective and unclear because they are undefined and allow the decision maker to make a “subjective, value-laden analysis” as to what is “sufficient,” “appropriate”; what specific features from the general list supplied in part B would justify longer blocks; and how “public convenience and mobility” could be “enhance[d]” and what those terms mean. <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9. Such terms and phrases are “designed to balance or mitigate impacts of the development.” <i>Legacy Dev. Grp.</i>, Slip Op. at pp. 12 - 14; <i>Nieto</i>, Slip Op. at p. 9.</p>

Memo to: Mike Robinson

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<p>provided through the middle of the block. <b>To enhance public convenience and mobility</b>, such accessways may be required to connect to cul-de-sacs, or between streets and other public or semipublic lands or through greenway systems.</p>	
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## Memorandum

VIA E-MAIL

**To:** Mike Robinson  
**From:** Erin M. Forbes  
**Date:** October 11, 2021  
**Subject:** LUBA Decisions on Limited Land Use Applications (proper incorporation of plans) and Needed Housing Applications (clear and objective standards & procedures)  
**File No.:** 126769-255102

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This memorandum sets forth the LUBA opinions issued between January 1, 2019 and the present where LUBA substantively discussed and decided on (1) the proper incorporation of comprehensive plans, transportation system plans and the like, as required by the Limited Land Use statutes; and (2) whether standards, conditions, and procedures applied to Needed Housing applications are clear and objective as required by the Needed Housing statutes.

### **1. Proper Incorporation / Limited Land Use Applications**

ORS 197.195(1) provides that “[i]f a city or county does not incorporate its comprehensive plan provisions into its land use regulations, the comprehensive plan provisions may not be used as a basis for a decision by the city or county or on appeal from that decision.”

The following is a list of LUBA opinions issued between January 1, 2019 and the present where LUBA reversed or remanded a local government’s decision to deny a needed housing application.

*Oster v. City of Silverton*, LUBA No. 2018-103 (May 7, 2019) (reversing)

The above-listed case is the only LUBA case published during this time period addressing the proper incorporation requirement of the limited land use decision statute.

### **2. Clear and Objective Standards & Procedures / Needed Housing Applications**

ORS 197.307(4) provides that “a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing.” ORS 227.173(2) further provides that “[w]hen an ordinance establishing approval

standards is required under ORS 197.307 to provide only clear and objective standards, the standards must be clear and objective on the face of the ordinance.”

The following is a list of LUBA opinions issued between January 1, 2019 and the present where LUBA reversed or remanded a local government’s decision to deny a needed housing application, or where LUBA affirmed a local government’s approval of an application and did not apply subjective standards.

- *Legacy Development Grp. v. City of the Dalles*, LUBA No. 2020-099 (Feb. 24, 2021) (reversing)
- *Nieto v. City of Talent*, LUBA No. 2020-100 (Mar. 10, 2021) (reversing)
- *Buffalo-Bend Associates, LLC v. Clackamas County*, LUBA No. 2019-091 (Jan. 31, 2020) (remanding for failure to apply needed housing statutes and failure to analyze whether applicable criteria are clear and objective)
- *Knoell v. City of Bend*, LUBA No. 2021-037 (Aug. 20, 2021) (affirming approval of subdivision application that was approved after city declined to apply approval criteria that were not clear and objective based on needed housing rules)

Only one decision since 2019 has been issued where LUBA found that challenged standards were clear and objective, contrary to the applicant’s objections. *See Piculell Living Trust v. City of Eugene*, LUBA No. 2019-067 (Nov. 19, 2019) (affirming city’s decision to impose conditions of approval that were appealed by the applicant on basis that the relevant approval criteria were not clear and objective under the needed housing statutes).

\* \* \*

As stated above, the cases listed above were found through a search of LUBA opinions issued between 2019 and the present. With the exception of *Piculell*, all the cases cited support that LUBA is looking carefully at whether local governments are analyzing their development standards with the requirements of the limited land use and needed housing statutes in mind (that is, whether the standards properly incorporate the identified plans and whether the standards and procedures are clear and objective).

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October 11, 2021

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**VIA E-MAIL**

Mr. Jerry Crosby, Chair  
Sandy Planning Commission  
Sandy City Hall  
39250 Pioneer Blvd.  
Sandy, OR 97055

RE: City of Sandy File No. 21-014 SUB/TREE; Applicant's Submittal of Materials  
Received Pursuant to Public Record Request

Dear Chair Crosby and Planning Commission Members:

This office represents the Applicant in the above referenced Application. The Applicant requested, via public records request, correspondence relating to this Application. Several of those emails are relevant to the Director's decision-making process as relates to his recommendation for denial of the Application, and they are attached to this letter.

As you know, Mr. O'Neill's Staff Report for the September 27, 2021 public hearing noted that the Applicant made a public records request. The Applicant made the request, which Mr. O'Neill acknowledged is proper under Oregon law, to make sure it has all of the information allowing it to respond to the issues in this Application. The materials submitted with this letter are relevant to the arguments in support of the Director's recommendation to deny the Application.

The Applicant appreciates that the Director has an obligation to recommend either approval or denial of any application. However, even though here the Director has recommended denial of the Application, the email correspondence between the Director and the agencies asked to review the Application shows a lack of analysis of the needed housing statutes and whether the Commission may rely on the Comprehensive Plan, Transportation System Plan, Transit Master Plan, or Parks Plan in making its decision to approve or deny the Application. Indeed, there appears to have been no discussion between the Director and those agencies of the fact that the Application is both a needed housing application (which requires the application of only clear and objective approval criteria, standards, and procedures) and a limited land use decision (which allows reliance on the City's Comprehensive, Transportation System, Transit Master Plan, and Parks Plans *only if* those plans are properly incorporated into the approval criteria).

Mr. Jerry Crosby, Chair

October 11, 2021

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The attached correspondence shows that no consideration was given to the fact that the Applicant's second Application was no longer requesting a Plan amendment, and that as submitted now, it was subject to different approval criteria and different state laws (namely, the needed housing and limited land use decision statutes) when analyzing the Applicant's submission materials.

Please place this letter and the enclosed attachments before the Planning Commission prior to its meeting on November 8, 2021, and in the official Development Services Department file for the above-referenced Application.

Very truly yours,



Michael C. Robinson

MCR/jmhi

Enclosures

cc: Mr. Dave Vandehey (*via email*) (*with enclosures*)  
Mr. Carey Sheldon (*via email*) (*with enclosures*)  
Mr. Alex Reverman (*via email*) (*with enclosures*)  
Mr. Ray Moore (*via email*) (*with enclosures*)  
Mr. Tyler Henderson (*via email*) (*with enclosures*)  
Mr. Tracy Brown (*via email*) (*with enclosures*)  
Mr. Garrett H. Stephenson (*via email*) (*with enclosures*)  
Ms. Erin M. Forbes (*via email*) (*with enclosures*)  
Mr. Kelly O'Niell (*via email*) (*with enclosures*)  
Mr. David Doughman (*via email*) (*with enclosures*)

PDX\126769\255102\EMF\31929536.1

**From:** Kelly O'Neill Jr. <koneill@ci.sandy.or.us>  
**Sent:** Monday, August 16, 2021 12:10 PM  
**To:** Shelley Denison  
**Subject:** Re: Video for 21-014

I think if you use a combination of the notice I created and the applicant narrative that should do the trick. We should stay factual about the parkland and Dubarko Road extension, and state that certain plans (i.e. the Parks Master Plan and TSP) required additional parkland dedication and the road connection, but not hint at those two items leading to any sort of denial. If you can use the site plan and plat as visuals in the video that would be great also. Thanks!

On Mon, Aug 16, 2021 at 8:46 AM Shelley Denison <[sdenison@ci.sandy.or.us](mailto:sdenison@ci.sandy.or.us)> wrote:

Hey Kelly,

I'm gonna make this video today. Are there certain things I should focus on?

I'm also thinking about directing folks to watch the development process video as well.

--

**Shelley Denison**  
**Associate Planner**

City of Sandy  
Development Services Department  
39250 Pioneer Blvd  
Sandy, OR 97055  
503-783-2587  
[sdenison@ci.sandy.or.us](mailto:sdenison@ci.sandy.or.us)

*"Cities have the capability of providing something for everybody, only because, and only when, they are created by everybody." - Jane Jacobs*

--

Kelly O'Neill Jr.  
Development Services Director

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39250 Pioneer Blvd  
Sandy, OR 97055  
(503) 489-2163  
[koneill@ci.sandy.or.us](mailto:koneill@ci.sandy.or.us)

**From:** BRUMLEY Seth A <Seth.A.BRUMLEY@odot.state.or.us>  
**Sent:** Monday, August 16, 2021 2:58 PM  
**To:** Kelly O'Neill Jr.  
**Cc:** BOLEN Glen A  
**Subject:** RE: Deer Meadows

Hi Kelly,

I am meeting with our planning manager tomorrow morning to discuss this. We have a new process for engaging with DOJ. I hope to be able to provide more information at our meeting tomorrow.

Thanks,  
Seth

---

**From:** Kelly O'Neill Jr. <koneill@ci.sandy.or.us>  
**Sent:** Monday, August 16, 2021 2:33 PM  
**To:** BRUMLEY Seth A <Seth.A.BRUMLEY@odot.state.or.us>  
**Subject:** Re: Deer Meadows

This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond.

Seth - Can you get me the DOJ attorney contact information so that I can forward to our city attorney?

On Sun, Aug 15, 2021 at 2:12 PM BRUMLEY Seth A <[Seth.A.BRUMLEY@odot.state.or.us](mailto:Seth.A.BRUMLEY@odot.state.or.us)> wrote:

I can try, but it may be difficult to get somebody by Tuesday. I will talk to our manager Monday morning.

---

**From:** Kelly O'Neill Jr. <[koneill@ci.sandy.or.us](mailto:koneill@ci.sandy.or.us)>  
**Sent:** Saturday, August 14, 2021 10:41 PM  
**To:** BRUMLEY Seth A <[Seth.A.BRUMLEY@odot.state.or.us](mailto:Seth.A.BRUMLEY@odot.state.or.us)>  
**Subject:** Re: Deer Meadows

This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond.

Can an attorney from ODOT make our meeting on Tuesday? I have engaged the City land use attorney on this project and believe the ODOT attorney needs to be involved also.

On Wed, Aug 11, 2021, 4:19 PM Kelly O'Neill Jr. <[koneill@ci.sandy.or.us](mailto:koneill@ci.sandy.or.us)> wrote:

How about Tuesday the 17th at 11:30 am?

On Wed, Aug 11, 2021, 2:54 PM BRUMLEY Seth A <[Seth.A.BRUMLEY@odot.state.or.us](mailto:Seth.A.BRUMLEY@odot.state.or.us)> wrote:

Hi Kelly,

ODOT received the land use application for Deer Meadows and I have been asked to help coordinate the ODOT response since it is very important to the TSP implementation. Do you have time tomorrow afternoon or early next week to meet and discuss the Dubarko Rd extension? It looks like Monday afternoon after 3:00 and most times on Tuesday would work for me and Avi.

Thanks,

Seth

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--

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Development Services Director

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**From:** Kelly O'Neill Jr. <koneill@ci.sandy.or.us>  
**Sent:** Friday, August 27, 2021 8:28 AM  
**To:** BRUMLEY Seth A  
**Cc:** TAYAR Abraham \* Avi  
**Subject:** Re: Deer Meadows

Great. I want to hear from Mike Walker and our attorney as well.

On Fri, Aug 27, 2021 at 8:27 AM BRUMLEY Seth A <[Seth.A.BRUMLEY@odot.state.or.us](mailto:Seth.A.BRUMLEY@odot.state.or.us)> wrote:

Sounds good. We can make that recommendation and let the City negotiate from there as needed. I will make that change.

---

**From:** Kelly O'Neill Jr. <[koneill@ci.sandy.or.us](mailto:koneill@ci.sandy.or.us)>  
**Sent:** Friday, August 27, 2021 8:13 AM  
**To:** BRUMLEY Seth A <[Seth.A.BRUMLEY@odot.state.or.us](mailto:Seth.A.BRUMLEY@odot.state.or.us)>  
**Cc:** TAYAR Abraham \* Avi <[Abraham.TAYAR@odot.state.or.us](mailto:Abraham.TAYAR@odot.state.or.us)>  
**Subject:** Re: Deer Meadows

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John Replinger said, " I think the "not preclude " language is far from ideal. I say construct it."

On Thu, Aug 26, 2021 at 1:37 PM Kelly O'Neill Jr. <[koneill@ci.sandy.or.us](mailto:koneill@ci.sandy.or.us)> wrote:

Thanks Seth and Avi. I will review and also get feedback from Replinger, Mike Walker and our attorney.

On Thu, Aug 26, 2021, 1:26 PM BRUMLEY Seth A <[Seth.A.BRUMLEY@odot.state.or.us](mailto:Seth.A.BRUMLEY@odot.state.or.us)> wrote:

Hi Kelly,

Here is a draft ODOT comment letter for Deer Meadows. I am still working with our manager to try and arrange a discussion between our DOJ attorney and the City attorney, but I don't think it would significantly change our comments. Please take a look and let me know if anything needs clarification before I submit a final version.

Thanks,

Seth

--

Kelly O'Neill Jr.

Development Services Director

City of Sandy

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--

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**From:** Kelly O'Neill Jr. <koneill@ci.sandy.or.us>  
**Sent:** Monday, August 30, 2021 11:41 AM  
**To:** Andi Howell  
**Cc:** Marisol Martinez  
**Subject:** Re: Deer Meadows

Andi - Do you have a timeline for a revised memo? I need it ASAP. Thanks

On Thu, Aug 26, 2021 at 4:09 PM Kelly O'Neill Jr. <koneill@ci.sandy.or.us> wrote:  
That said, if you want to expand on the importance it would help.

On Thu, Aug 26, 2021 at 4:08 PM Kelly O'Neill Jr. <koneill@ci.sandy.or.us> wrote:  
This is great, thank you!

On Thu, Aug 26, 2021 at 3:36 PM Andi Howell <ahowell@ci.sandy.or.us> wrote:  
Hi there, attached is a memo regarding Deer Meadows Subdivision. I briefly referenced the Transit Master Plan in this memo.

If you would like me to expand on the importance of transit amenities with a village development, include the pages of the Transit Master Plan and/or the importance of planned developments with access to major arterial road/highways to reduce costs of operations and greatly improve transit's ability to serve the development, please let me know.

Thank you,

Andi

**Andi Howell**  
Transit Director

City of Sandy  
16610 Champion Way  
Sandy, OR 97055  
503-489-0925  
[ahowell@ci.sandy.or.us](mailto:ahowell@ci.sandy.or.us)

[Sandy Transit Web and Trip Planner](#)





--

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**From:** Kelly O'Neill Jr. <koneill@ci.sandy.or.us>  
**Sent:** Tuesday, August 31, 2021 10:20 AM  
**To:** MW  
**Subject:** Re: PW comments file no. 21-014 Deer Meadows

Also, Street C is a public access lane so I think your comment that the ROW has to be at least 50 feet is not applicable.

On Tue, Aug 31, 2021 at 9:39 AM Kelly O'Neill Jr. <koneill@ci.sandy.or.us> wrote:

Thanks Mike. How about water and sanitary sewer? You had comments on both with Bull Run Terrace but I do not see anything in this memo. Do you want either utility extended east in Highway 26 to the furthest extent of the property boundary?

On Tue, Aug 31, 2021 at 9:13 AM MW <mwalker@ci.sandy.or.us> wrote:

Kelly,

attached please find my comments. Let me know if questions.

--

Mike Walker

Director of Public Works

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--

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**From:** Kelly O'Neill Jr. <koneill@ci.sandy.or.us>  
**Sent:** Tuesday, August 31, 2021 10:59 AM  
**To:** MW  
**Subject:** Re: PW comments file no. 21-014 Deer Meadows

here are some examples:

1. The applicant shall install all water lines and fire hydrants in compliance with the applicable standards in Section 17.100.230, which lists requirements for water facilities. According to the Public Works Director the existing 8-inch diameter water line resides in an easement granted to the City of Sandy recorded at 2004-110340. **The applicant shall replace the existing waterline with an 8-inch diameter water line at a depth approved by the City Engineer.** There will be no compensation or credits for replacement of the existing water line. This pipe is a standard pressure line and will be used to provide domestic water service to the development. The City's water master plan shows an 18-inch diameter water line in Dubarko Road south of Highway 26. **The applicant shall install an 18-inch water line in Dubarko Rd. connected to the existing 18-inch water line at the west end of the site and the existing 12-inch line on Highway 26.** Due to the elevation of the site relative to the existing water reservoirs on Vista Loop Drive this line will be a low-pressure, high-volume line and will be used for fire protection. The cost difference between a standard diameter water line and the required 18-inch water line is eligible for Water System Development Charge (SDC) credits. The amount of the credit provided will be based on the Water System Construction Cost Credit table in the Water System Development Charge Methodology adopted by City Council motion on September 5, 2017. Section 17.84.60D SMC states: "As necessary to provide for orderly development of adjacent properties, public facilities installed concurrent with development of a site shall be extended through the site to the edge of adjacent property(ies)". **The applicant shall extend the existing 12-inch water main in Highway 26 east from the proposed intersection of Dubarko Road and Highway 26 to the east boundary of the site.** The cost difference between a standard diameter (8 inch) water line and the required 12-inch water line is eligible for Water System Development Charge (SDC) credits. The amount of the credit provided will be based on the Water System Construction Cost Credit table in the Water System Development Charge Methodology adopted by City Council motion on September 5, 2017.

2. The applicant intends to install sanitary sewer lines in compliance with applicable standards in Section 17.100.240. [Add MW comments] All lots except Lot 7 are designed to gravity drain to the sanitary sewer line in Dubarko Road. Due to grade, Lot 7 is not able to drain to the line in Dubarko Road but is proposed to connect to the existing sanitary sewer line at the north end of the park property. According to the Public Works Director the recently adopted Wastewater System Facilities Plan (2019) identified a capacity deficiency in the Southeast pump station and force main as well as several conveyance lines downstream. The City will adopt a Sanitary Sewer SDC surcharge on each Equivalent Residential Unit developed in the basin served by the Southeast pump station. The surcharge amount will be calculated by dividing the estimated cost of the required capacity improvements by the estimated number of dwelling units that can be built in the pump station drainage basin. The surcharge will be collected with each building permit issued in the basin.

3. Section 17.100.250(A) details requirements for stormwater detention and treatment. A public stormwater quality and detention facility is proposed as Tract C to be located at the northwest corner of the proposed development. [Add MW comments] This facility has been sized and located to accommodate the water quality and stormwater detention needs of all streets in addition to Lots 1-4. The applicant submitted a revised utility plan (Exhibit M) detailing a second stormwater facility identified as Tract C in the SW corner

of the property. The revised utility plan also removed the 15-foot-wide public stormwater easement and utilities along the west lot line of Lots 1, 2, and 4. The water quality and detention needs of Lots 5-7 will be accommodated on each of those lots and stormwater from Lots 5 and 6 will be routed to flow through Tract B. After onsite detention and water quality treatment, stormwater from Lot 7 will be piped and connected to the existing storm line in the park. **All site runoff shall be detained such that post-development runoff does not exceed the predevelopment runoff rate for the 2, 5, 10 and 25 year storm events. Stormwater quality treatment shall be provided for all site drainage per the standards in the City of Portland Stormwater Management Manual (COP SWMM).**

On Tue, Aug 31, 2021 at 10:56 AM Kelly O'Neill Jr. <[koneill@ci.sandy.or.us](mailto:koneill@ci.sandy.or.us)> wrote:

Ok, thanks. I want to deny this application on a number of things...previously we required sanitary sewer extended in the Highway 26 ROW. Please add anything applicable for water and sanitary sewer also.

On Tue, Aug 31, 2021 at 10:55 AM MW <[mwalker@ci.sandy.or.us](mailto:mwalker@ci.sandy.or.us)> wrote:

I wondered about that but since they identified it as a street I added the comment. I will edit the comments and re send them.

On Tue, Aug 31, 2021 at 10:20 AM Kelly O'Neill Jr. <[koneill@ci.sandy.or.us](mailto:koneill@ci.sandy.or.us)> wrote:

Also, Street C is a public access lane so I think your comment that the ROW has to be at least 50 feet is not applicable.

On Tue, Aug 31, 2021 at 9:39 AM Kelly O'Neill Jr. <[koneill@ci.sandy.or.us](mailto:koneill@ci.sandy.or.us)> wrote:

Thanks Mike. How about water and sanitary sewer? You had comments on both with Bull Run Terrace but I do not see anything in this memo. Do you want either utility extended east in Highway 26 to the furthest extent of the property boundary?

On Tue, Aug 31, 2021 at 9:13 AM MW <[mwalker@ci.sandy.or.us](mailto:mwalker@ci.sandy.or.us)> wrote:

Kelly,

attached please find my comments. Let me know if questions.

--

Mike Walker

Director of Public Works

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**From:** Kelly O'Neill Jr. <koneill@ci.sandy.or.us>  
**Sent:** Thursday, September 02, 2021 2:53 PM  
**To:** MW  
**Subject:** Re: revised comments 21-014

Thank you! Sorry for all the back and forth but I want to raise these issues now especially with my recommendation being a denial.

On Thu, Sep 2, 2021, 2:42 PM MW <[mwalker@ci.sandy.or.us](mailto:mwalker@ci.sandy.or.us)> wrote:

Thanks Kelly,

I dropped references to Street "C" as a street in this version. However they can't have it both ways... if its a street it doesn't meet the intersection spacing standard, if its a public access lane it doesn't meet the 150 ft. minimum separation between an 'access' to a collector (Street "B") and an arterial street (Dubarko). This version addresses that.

On Thu, Sep 2, 2021 at 2:29 PM Kelly O'Neill Jr. <[koneill@ci.sandy.or.us](mailto:koneill@ci.sandy.or.us)> wrote:

I modified the date to Sep. 2 and changed the highlighted section to just reference 17.100.160. See attachment. Good?

On Thu, Sep 2, 2021 at 2:12 PM Kelly O'Neill Jr. <[koneill@ci.sandy.or.us](mailto:koneill@ci.sandy.or.us)> wrote:

In Section 17.100.160 of the narrative, Tracy says:

"Due to the configuration of the subject property and the location and access limitations to Dubarko Drive and Street B, Street C is proposed as a Public Access Lane as detailed below."

On Thu, Sep 2, 2021 at 2:05 PM MW <[mwalker@ci.sandy.or.us](mailto:mwalker@ci.sandy.or.us)> wrote:

Kelly,

Here you go... Check the italicized and highlighted comments and delete or edit as you see fit.

On Thu, Sep 2, 2021 at 12:17 PM Kelly O'Neill Jr. <[koneill@ci.sandy.or.us](mailto:koneill@ci.sandy.or.us)> wrote:

Mike - Any updates?

On Wed, Sep 1, 2021 at 9:36 AM Kelly O'Neill Jr. <[koneill@ci.sandy.or.us](mailto:koneill@ci.sandy.or.us)> wrote:

Mike - If you can get the revised letter to me today that would be much appreciated. Thanks

On Tue, Aug 31, 2021 at 3:42 PM Kelly O'Neill Jr. <[koneill@ci.sandy.or.us](mailto:koneill@ci.sandy.or.us)> wrote:

Received, thank you.

On Tue, Aug 31, 2021 at 3:32 PM MW <[mwalker@ci.sandy.or.us](mailto:mwalker@ci.sandy.or.us)> wrote:

Kelly,



My revised comments are attached - Take a look at the discussion in italics regarding Street C.

--

Mike Walker

Director of Public Works

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Date: October 11, 2021

To: Sandy Planning Commission

From: Tracy Brown, Tracy Brown Planning Consultants, LLC

Subject: Deer Meadows Subdivision (File No. 21-014) Staff Recommended Conditions

The purpose of this memo is to provide additional written testimony regarding items identified in the September 17, 2021 staff report in bold type. It is our understanding items identified in bold type are staff recommended Conditions of Approval. As detailed below, the applicant is requesting modifications to a few of these Conditions.

1. Finding 30 - This Condition lists Lots 9-16, 20, and 21 as requiring shared driveways. *Response: A review of the submitted plan and the listed lots reveals that it is not feasible to require all of these lots to share driveways. Driveways are typically shared in pairs only. With this in mind, we request this Condition be modified to only require shared driveways for Lots 9/10 and 14/15. After reviewing this Condition we have determined it is not feasible to require Lot 11 to share a driveway, Lots 12/13 already share a private drive (Tract B), there is no lot for Lot 16 to share access with, and Lots 20/21 already share a private drive (Tract A).*
2. Finding 34 - This Condition requires all residential structures on lots abutting Highway 26, Dubarko Road, and Street B to have their primary entrances oriented towards these streets. *Response: As noted in the narrative submitted with this application, the submitted application is a "Needed Housing" application pursuant to ORS 197.303(1) and ORS 197.307(4), therefore only objective standards and procedures apply to the application review. The words "primary entrances" and "oriented toward" as used in Section 17.82.20(A) are subjective words. The applicant is fine with complying with this Condition for homes located abutting Dubarko Road and Street B, but because of the grade separation between Highway 26 and the lots abutting this road, the applicant is opposed to this Condition for Lots 13, 21, 22, 25, and 26 abutting Highway 26. The applicant requests this Condition be modified.*
3. Finding 54 requires a transit pad and bench adjacent to Lot 1 and 5. *Response: The lot numbers in this recommendation are confusing in that Lots 1 and 5 are located along Street A, a local street, not a transit street. In addition, the applicant does not propose extending Dubarko Road to intersect with Highway 26 as stated in this Finding. The applicant requests this Condition be removed.*
4. Finding 69 requires the applicant to replace the existing 8-inch waterline and install an 18-inch waterline. *Response: The recommendations in this Condition are addressed in the applicant's attorney's 9/24/21 letter.*
5. Finding 70 requires the applicant to extend the existing 12-inch waterline to the eastern boundary of the site. *Response: The recommendation in this Condition is addressed in the applicant's attorney's 9/24/21 letter.*

6. Finding 88 requires the applicant to update the Street Tree Plan and install trees 30 feet on center along Street C and Highway 26 with the trees along Street C to be located behind the sidewalk and the trees along Highway in a planter strip.

*Response: The applicant is fine with installing trees along Street C but since no improvements including a planter strip are proposed along Highway 26, the applicant requests this Condition be revised to require trees to be planted at the back of those lots (Lots 13, 21, 22, 25, 26) abutting Highway 26. The applicant requests this Condition be modified accordingly.*



City of Sandy  
39250 Pioneer Blvd.,  
Sandy, OR 97055

Agenda Date: August 11, 2021

To: Parks and Trails Advisory Board

From: Kelly O'Neill Jr., Development Services Director

Sarah Richardson, Staff Liaison Parks and Trails Advisory Board

Subject: Deer Meadows Subdivision

Attachments: None

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**Background:**

Deer Meadows is a proposed 32 lot subdivision located at 40808 Hwy. 26, Sandy, OR which is 15.91 acres.

The developer originally proposed a subdivision known as Bull Run Terrace with a zoning map amendment. The Bull Run Terrace proposal was denied by the City Council on 12/29/20.

The current application is a new land use application and does not include a zoning map amendment. The board discussed the previous land use application at meetings in June, July, and November of 2020. Minutes from those meetings can be accessed from the Public Meeting portal on the city's website: <https://sandy.civicweb.net/Portal/>

The proposed site is adjacent to the Deer Pointe subdivision, and to 1.40 acres of land designated for park development that was dedicated with the plat of Deer Pointe. Based on the 1997 Parks Master Plan, a neighborhood park is two to seven acres. Therefore, additional land dedication is needed to provide adequate area for the planned park. Additional land would provide capacity for desired community amenities and for the conceptual park as designed by ESA, the consultant for the Parks and Trails Master Plan.

According to the developer's narrative the Low Density Residential (R-1) zoned land will have 30 single family home lots (these could also be duplexes per House Bill 2001), and the Medium Density Residential (R-2) zoned land will have between 38 multifamily dwelling units and 66 multifamily dwelling units. The Village Commercial (C-3) land could also include multifamily dwelling units, but the number of units is unknown at this time. If multifamily dwelling units are proposed on the C-3 land the City of Sandy will collect parks fee in lieu.

Based on the subdivision proposal the calculation for the parkland is as follows:

R-1: 30 units x 3 x 0.0043 = 0.39 acres

R-2 minimum: 38 units x 2 x 0.0043 = 0.33 acres

R-2 maximum: 66 units x 2 x 0.0043 = 0.57 acres

Total minimum = 0.72 acres of parkland

Total maximum = 0.96 acres of parkland

NOTE: The number of dwelling units could be modified if conditions of approval require additional right-of-way dedication or parkland dedication.

The board can recommend that the developer dedicate land or pay a Fee in Lieu of land dedication.

### **Municipal Code 17.86.10 MINIMUM PARKLAND DEDICATION REQUIREMENTS**

***Parkland Dedication:*** *New residential subdivisions, planned developments, multi-family or manufactured home park developments shall be required to provide parkland to serve existing and future residents of those developments.*

*Calculation of Required Dedication: The required parkland acreage to be dedicated is based on a calculation of the following formula rounded to the nearest 1/100 (0.00) of an acre: Required parkland dedication (acres) = (proposed units) x (persons/unit) x 0.0043 (per person park land dedication factor).*

*To read the entire Municipal Code related to Parkland and Open Space visit the Municipal Code Library:*

[https://library.municode.com/or/sandy/codes/code\\_of\\_ordinances?nodeId=TIT17DECO\\_CH17.86PAOPSP\\_S17.86.50MISTOPSPDE](https://library.municode.com/or/sandy/codes/code_of_ordinances?nodeId=TIT17DECO_CH17.86PAOPSP_S17.86.50MISTOPSPDE)

However, pursuant to ORS 197.195, the City cannot rely on the adopted parks master plan (i.e. the 1997 Parks Master Plan) to require the dedication of land or impose other standards in the plan because the standards are not incorporated into the development code. Further, because the master plan does not apply, the City might have difficulty in requiring the parkland to be dedicated at a particular location.

**Staff Recommendation: Require parkland dedication with the Deer Meadows subdivision plat.**

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