

EXHIBIT QQ

October 25, 2021

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VIA E-MAIL TO PLANNING@CI.SANDY.OR.US;
SUBMITTED ON MONDAY, OCTOBER 25, 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 (the “Applications”); Applicant’s Final
Written Argument

Dear Chair Crosby and Planning Commission Members:

This office represents the Applicant. This letter is the Applicant’s final written argument without new evidence as those terms are defined in ORS 197.763(9)(a) and (b). Final written argument is the Applicant’s summary of its arguments in support of the Application and can include new issues. ORS 197.763(1) and ORS 197.763(6)(c) (Issues may be raised until the close of the record and final written argument is part of the record).

1. Summary of Arguments.

This letter summarizes the reasons why the Sandy Planning Commission (the Planning Commission”) should approve the Application with any necessary conditions of approval. The Planning Commission can find the following.

A. The Application requests tentative subdivision approval and is both a Limited Land Use Application and a Needed Housing Application. The Application does not request any variances nor are any of the Needed Housing exceptions applicable. State law provisions limit the approval criteria and discretion that the City may apply to the Application, unlike other kinds of Applications.

B. The requested park dedication cannot be based on the previous Parks Master Plan, as acknowledged in the Staff Report to the Parks and Trails Advisory Board nor can the City meet its *Nollan* and *Dolan* burden of proof to require the dedication without resorting to a standardless choice that is not clear and objective. The new Parks Master Plan was not effective on the date that this Application was submitted.

C. None of the Plans – the Transit Plan, the Comprehensive Plan the Parks Plan and the Transportation System Plan (the “TSP”) – referenced in the Staff Report can be used by the Planning Commission in making its decision on the Application because they are not properly incorporated into the land use regulations and contain standards and guidelines that are not clear and objective, contain non-clear and objective procedures and encourage non-clear and objective conditions, all of which result in unreasonable cost and delay in the provision of housing.

Most importantly, there is no effective legal rebuttal to the Applicant’s arguments so far. While the Planning Director asked for the Oregon Department of Transportation (“ODOT”) to have the Oregon Justice Department participate (it did not), the Planning Director did not ask for the Oregon Department of Land Conservation and Development (“DLCD”) to comment on the Application’s Needed Housing and incorporation arguments.

D. The requested extension of Dubarko Road cannot be based on the TSP because the TSP is not incorporated into the City’s land use regulations and even if it were, the relevant standards are not clear and objective. The same is true for the requested U.S. Highway 26 frontage improvements.

E. The standards that can be applied to the Application are satisfied by substantial evidence, including the Application narrative and evidence included in the Applicant’s two open record period letters.

F. The procedures applied by the Planning Commission to the Application must be clear and objective. The Director elevated this Type II Application to a Type III procedure based on a standard that is not clear and objective and which prejudiced the Applicant’s rights to a full and fair hearing by subjecting it to a procedure it was not required to undergo and by adding unreasonable cost and delay to the processing of the Application.

G. While some nearby residents to the west opposed the Application, the number of opponents was relatively small. Moreover, the neighbors will not experience cut-through traffic between U.S. Highway 26 and Oregon Highway 211 if Dubarko Road connected the two highways. In any event, the Application proposes a residential subdivision on land that has long been zoned for residential development.

H. Issues associated with matters that are not part of the Application – duplexes and development of the C-3 zoned property – are not a basis for the decision on the Application.

I. ORS 197.522 directs the Planning Commission to approve the Application if it is consistent with applicable land use regulations and Comprehensive Plan policies. If the Application is not consistent, then the Applicant is entitled to offer an amendment or to propose a condition of approval that would make the Application consistent with the standards, considering the requirements of incorporation and clear and objective standards, conditions and procedures. In the event this statute is invoked, the Planning Commission, which could make the final decision in the event its decision is not appealed, can extend the 120-day period in ORS

227.178(1) in order to set forth a new time limitation for final action on the consideration of an amendment or condition of approval.

J. The Planning Director stated at the September 27, 2021 public hearing that the City has approved many applications in the past without the issues raised by the Applicant. While that is undoubtedly true, if those decisions were not challenged, those past decisions cannot substitute for correctly applying law to this Application.

K. The evidentiary record is closed, so additional public testimony may not be provided. The Application would not object to answering questions based on the record without new facts and would not object to others answering questions as long as the Applicant has the last word and new facts are not added to the record.

2. Conclusion.

The Applicant appreciates the Planning Commission's consideration of its argument and evidence. The Applicant respectfully requests that the Planning Commission approve the Application with clear and objective conditions of approval because it satisfies the clear and objective and properly incorporated approval standards and that it provide the Applicant the opportunity under ORS 197.522, if it tentatively determines to deny the Application.

Very truly yours,



Michael C. Robinson

MCR/jmhi

cc: Mr. Dave Vandehey (*via email*)
Mr. Alex Reverman (*via email*)
Mr. Carey Sheldon (*via email*)
Mr. Tracy Brown (*via email*)
Mr. Ray Moore (*via email*)
Mr. Tyler Henderson (*via email*)
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