



City of Tualatin

CITY ENGINEER'S PUBLIC FACILITIES FINDINGS & RECOMMENDED DECISION

**** APPROVAL WITH CONDITIONS ****

December 20, 2013

Case #: AR-13-07
Project: Nyberg Rivers Shopping Center
Location: 7455 - 7925 SW Nyberg Road (Tax Map 2S1 24 A, Tax Lots 1601, 1602, 1900, 2502, 2506, 2507, 2508, and 2700; Tax Map 2S1 24B, Tax Lots 2000, 2001, and 2100)
Applicant: Michael Kirk, CenterCal (503-968-8940)
Michael Cerbone, Cardno (503-419-2500)
Property Owners: Tuala Northwest, LLC, Dean McBale, George A. Gill, and ODOT

INTRODUCTION

Center Cal, LLC proposes developing an approximately 300,000 square foot shopping center on 31.91 acres of the old Kmart shopping center site. The shopping center includes a Cabela's, New Seasons, Michael's, Home Goods, LA Fitness, BJ's Restaurant, Barbara Johnson s, and a Wendy's. There are some additional tenant spots and pads that have yet to be determined. This includes the former Sylvan Learning Center, the former Curves, pad G-100, and pad H-100.

The redevelopment site is generally bounded by the Tualatin River to the north, SW Nyberg Street to the south, Interstate 5 to the east, and SW Martinazzi Avenue to the west.

The plan designations on the subject site are Office Commercial (CO), Center Commercial (CC), and High Density Residential (RH).

On August 26, 2013 the City Council voted unanimously to approve the Nyberg Rivers Master Plan and Conditional Use Permit with Resolution 5163-13 and 5164-13 respectively.

A neighborhood meeting was held by the applicant on August 8, 2013. One member of the public attended. Questions about timeline and procedure were answered. No concerns were raised. Staff mailed out notice of this ARB public hearing on November 5, 2013 and has received one letter of comment from surrounding property owners and the public. This comment is addressed in Section O of this staff report.

ARRANGEMENTS CAN BE MADE TO PROVIDE THESE MATERIALS IN ALTERNATIVE FORMATS, SUCH AS LARGE TYPE OR AUDIO RECORDING. PLEASE CONTACT THE COMMUNITY DEVELOPMENT DEPARTMENT AND ALLOW AS MUCH LEAD TIME AS POSSIBLE.

PUBLIC FACILITIES RECOMMENDATION

The following are the Public Facilities findings for AR 13-07, Nyberg Rivers. All references are to sections in the Tualatin Development Code (TDC) or Tualatin Municipal Code (TMC) unless otherwise noted.

TDC 74.120 ...No work shall be undertaken on any public improvement until after the construction plans have been approved by the City Engineer and a Public Works Permit issued and the required fees paid.

TDC 74.140 (1) All the public improvements required under this chapter shall be completed and accepted by the City prior to issuance of a Certificate of Occupancy.

TDC 74.330 Utility Easements

- (1) Utility easements for water, sanitary sewer and storm drainage facilities, telephone, television cable, gas, electric lines and other public utilities shall be granted to the City.**
- (4) ...For both on-site and off-site easement areas, a utility easement shall be granted to the City; Building Permits shall not be issued for the development prior to acceptance of the easement by the City.**
- (5) The width of the public utility easement shall meet the requirements of the Public Works Construction Code.**

TMC 4-1.010 This development is subject to all applicable building code requirements and all applicable building and development fees.

FINDINGS

These comments are a result of site investigation and review of the 3rd revision of submitted plan sheets received October 23, 2013:

1. Fire and Life Safety:
TMC 4-2.010 (1) Every application for a building permit and accompanying plans shall be submitted to the Building Division for review of water used for fire protection, the approximate location and size of hydrants to be connected, and the provisions for access and egress for firefighting equipment. If upon such review it is determined that the fire protection facilities are not required or that they are adequately provided for in the plans, the Fire and Life Safety Reviewer shall recommend approval to the City Building Official.

The submitted plans show an existing public fire hydrant at the northwest corner of building D-130 that is incorrectly labeled as proposed. Additionally there are twelve proposed private fire hydrants: five north of buildings 1010, 1040, F-100, G-100, & N-100, five south of buildings D-110, 1005, 1030, 1040, & N-100, and two east of building 1040. The private fire hydrants are located behind an appropriate backflow device. This is acceptable. The applicant will need to submit revised plans that show the existing public fire hydrant at the northwest corner of building D-130 labeled as public.

During the review of Building Permits the Building Official may determine that additional fire protection devices may be necessary upon recommendation of Tualatin Valley Fire & Rescue (TVF&R). The applicant will need to submit plans that comply with fire protection requirements as determined through the Building Division and Tualatin Valley Fire & Rescue (TVF&R).

Prior to issuance of a Public Works Permit:

- The applicant shall submit revised plans that show the existing public fire hydrant at the northwest corner of building D-130 labeled as public.

Prior to issuance of a Building Permit:

- The applicant shall submit plans that comply with fire protection requirements as determined through the Building Division and Tualatin Valley Fire & Rescue (TVF&R).

2. Transportation:

TDC 11.610 Transportation Goals and Objectives (2) (e) For development applications, including, but not limited to subdivisions and architectural reviews, a LOS of at least D and E are encouraged for signalized and unsignalized intersections, respectively.

TDC 73.400 (5)...a sidewalk shall be constructed along all street frontage, prior to use or occupancy of the building or structure proposed for said property. The sidewalks required by this section shall be constructed to City standards,...

TDC 74.420 (6) All required street improvements shall include curbs, sidewalks, storm drainage, streetlights, street signs, street trees, and, where designated, bikeways and transit facilities.

TDC 75.060 Existing Driveways and Street Intersections (2) The City Engineer may restrict existing driveways and street intersections to right-in and right-out by construction of raised median barriers or other means.

TDC 74.120 ...No work shall be undertaken on any public improvement until after the construction plans have been approved by the City Engineer and a Public Works Permit issued and the required fees paid.

TDC 74.140 (1) All the public improvements required under this chapter shall be completed and accepted by the City prior to issuance of a Certificate of Occupancy.

The applicant included a Transportation Impact Analysis by Kittelson & Associates dated April 2013 along with additional supporting information that match submittals provided for evaluation of Master Plan MP 13-01, Nyberg Rivers. Evaluation of MP 13-01 included traffic studies and additional supporting information from both the applicant's traffic engineer, Kittelson & Associates, and one hired by the City, DKS Associates. The City Council adopted Resolution 5163-13 as part of the master plan process. This resolution identified and approved street cross-sections for the Nyberg Rivers development to be required in this Architectural Review. These cross-sections include SW Seneca Street, SW Nyberg Street, and the Loop Road.

After reviewing the applicant's traffic impact analysis, DKS compiled a list of recommended street improvements. These recommendations consider the original Traffic Impact Analysis submitted by the applicant (April 2013), and subsequent options presented by their traffic engineer about how the shopping center might connect to SW Martinazzi Avenue. The recommendations are:

SW Boones Ferry Road

SW Boones Ferry Road is a City of Tualatin facility and designated as a Major Arterial from the intersection of SW Martinazzi Avenue to SW Lower Boones Ferry Road. Full construction of SW Boones Ferry Road to City standards would require 98 feet of right-of-way and include four 12-foot travel lanes, one 14-foot center turn lane, two 6-foot bike lanes, two 6-foot planters with street trees and street lights, and two 6-foot bike lanes. Existing right-of-way varies between approximately 98 and 180 feet with improvements that include two 12-foot travel lanes, a 14-foot center turn lane, two 6-foot bike lanes, a curb tight 6-foot sidewalk on the north, a 8-foot planter strip with curb, streetlights, and street trees on the south, and a 6-foot sidewalk on the south. This is acceptable.

Street "A" is a proposed right-in/right-out intersection on the south side and to the east of the City offices. Due to SW Boones Ferry Road's superelevation, this intersection will need a median on the north side of the eastbound travel lane to restrict westbound traffic from turning south. The plans do not show a median. The applicant will need to submit revised plans for SW Boones Ferry Road that include a median on the north side of the eastbound travel lane in order to restrict Street "A" to right-in/right-out movement, for review and approval. The applicant will need to construct SW Boones Ferry Road that include a median on the north side of the eastbound travel lane in order to restrict Street "A" to right-in/right-out movement as part of the Public Works Permit.

A crosswalk is correctly shown at the intersection of SW Boones Ferry Road with Street "A". Due to the potential high pedestrian traffic a higher degree of demarcation of the crosswalk is needed that includes material that is visually different and possibly raised. The applicant will need to submit revised plans that show a crosswalk at the intersection of SW Boones Ferry Road and Street "A" that includes material that is visually different and possibly raised, for review and approval. The applicant will need to construct a crosswalk at the intersection of SW Boones Ferry Road and Street "A" that includes material that is visually different and possibly raised.

SW Martinazzi Avenue & SW Seneca Street

SW Martinazzi Avenue is a City of Tualatin facility and designated as a Minor Arterial from SW Boones Ferry Road to SW Tualatin-Sherwood Road. Full construction of SW Martinazzi Avenue to City standards would require 74 feet of right-of-way and include two 12-foot travel lanes, one 14-foot center turn lane, two 6-foot bike lanes, two 6-foot planters with street trees and street lights, two 6-foot bike lanes, and two 6-foot sidewalks. Currently there is approximately 55-feet of right-of-way with improvements that include two 11- to 12-foot travel lanes, one 11- to 12-foot center turn lane, medians near SW Boones Ferry Road and SW Nyberg Street, 4- to 5-foot bike lanes, 5- to 5.5-foot curb tight sidewalks. This is acceptable.

SW Seneca Street to the east of SW Martinazzi Avenue is a City of Tualatin facility and designated as a Minor Collector. The City Council adopted Resolution 5163-13 which requires a public road with a 90-foot cross-section that includes two 12-foot travel lanes, one 14-foot center turn lane, two 6-foot bike lanes, two 8-foot parking strips, two 6-foot planter strips with curbs, streetlights, and street trees, and two 6-foot sidewalks. The plans show a potential 73-foot cross-section including two 11-foot travel lanes, a 14-foot center turn lane, two 6-foot bike lanes, two 6.5-foot planter strips, and two 5-foot sidewalks with an additional 1-foot landscape strip for SW Seneca Street extending east from a signalized intersection at SW Martinazzi Avenue and connecting to their development. The City Engineer has determined that the on-street parking should not be included in the cross-section as it is inconsistent with the character of the neighborhood, would cause conflicts with queues, and create concerns for public safety in an active pedestrian area. The applicant will need to submit revised plans that show SW Seneca Street from SW Martinazzi Avenue connecting to the Nyberg Rivers site for construction up to the requirements stated in Resolution 5163-13, without on-street parking, with signalization at SW Seneca Street & SW Martinazzi Avenue, for review and approval.

Kittelson and Associates conducted an analysis of the existing driveway easement to determine whether it would continue to operate at an acceptable level of service with full build-out of the proposed development. Their conclusion was that the driveway would continue to meet City of Tualatin operating standards (Level of Service E) for the minor street left turn movements at build-out of the proposed development. This analysis was documented in the information submitted to the City as a part of the Architectural Review submittal. The Kittelson analysis was supplemented with a November 22, 2013 letter which documents the benefit of the addition of Street A in reducing both existing volumes at the City driveway on Martinazzi.

DKS reviewed the Transportation Impact Analysis (TIA) and additional information submitted by Kittelson & Associates and had a different conclusion. Their analysis of the data indicates that the results are impacted by the assumption of a two-stage or a one-stage crossing for westbound left turns leaving the site. DKS concludes that when this location is analyzed as a one-stage crossing it will not meet City of Tualatin operating standards (Level of Service F). As a result of conflicting evidence, the applicant has voluntarily provided Seneca Street improvements on the submitted plans because of the belief that the development will be better serviced with the improvements. Therefore, the applicant proposes and the City accepts the following condition of approval: If the applicant obtains the right-of-way for the Seneca Street extension and traffic signal by April 1, 2014, the applicant will design and construct the Seneca Street extension along with a new signal at the SW Martinazzi Avenue/SW Seneca Street intersection per the Public Works Construction Code under a public works permit or if the applicant is unable to obtain the right-of-way by April 1, 2014, the applicant will provide a fee in lieu of the Seneca Street construction to the City in the amount of \$360,000, which accounts for the applicant's share of the improvements.

A private access easement, Washington County recorded document 8295, Book 773, Page 873, exists over City owned TLID 2S124B001900 for the benefit of property owners. With construction of the east extension of SW Seneca Street, this easement is no longer needed and creates an unnecessary burden over TLID 2S124B001900. If the east extension of SW Seneca Street is constructed, the applicant will need to extinguish the private access easement, Washington County recorded document 8295, Book 773, Page 873, exists over City owned TLID 2S124B001900.

SW Nyberg Road

SW Nyberg Road from I-5 to SW Tualatin Sherwood Road is an ODOT facility and designated by the City of Tualatin as a Major Arterial. The existing cross-section on the north side adjacent to this development from SW Tualatin-Sherwood Road to SW 75th Avenue includes two left turn lanes, three travel lanes, a curb tight sidewalk, and a varying planter strip with street trees. The existing cross-section on the north side adjacent to this development from SW 75th Avenue to I-5 includes three travel lanes, a bike lane, and a curb tight sidewalk with tree wells. The City Council adopted Resolution 5163-13 which requires a public road with no changes to the existing west and east-bound turn lanes, but addition of a 15-foot westbound right-turn lane, a 4-foot planter strip with curb, streetlights, and trees, a minimum of 12-feet for bike and pedestrian use, and a 2-foot landscape strip and a retaining wall with a hand rail.

Oregon Department of Transportation (ODOT) submitted an ODOT Response to Local Land Use Notification dated October 21, 2013. ODOT states that

- the site plan dated 9/16/13 as well as Exhibit A G-G Nyberg Rd I-5 to Eastern Entrance adequately reflect ODOT requirements including the maintenance access easements needed by ODOT and the frontage improvements on Nyberg Rd. Nyberg Rd improvements include: a 5 ft bike lane, a 15 ft right turn lane, a 4ft planter strip, a 7 ft sidewalk, a 2 ft landscape buffer, and a retaining wall with a handrail. No dedication of right-of-way to ODOT is needed for these improvements. It is our understanding that the lot lines are being adjusted. The applicant shall obtain an ODOT Permit for construction of the bike lane, right turn lane, planter strip, sidewalk, landscape buffer, retaining wall and drainage within the state highway right of way.
- Applicant shall enter into a Cooperative Improvement Agreement with ODOT to address ODOT permit requirements, providing graffiti removal and maintenance of the retaining wall including and the transfer of ownership of the improvement to ODOT.
- Record a 15ft maintenance easement adjacent to the retaining wall and a maintenance vehicle access easement through the development with ODOT.
- Tree placement and design shall be consistent with the ODOT Highway Design Manual or a design exception shall be obtained. The types of trees are to be approved by ODOT.
- ODOT has provided a response dated October 21, 2013 confirming the acceptability of the cross-section and closure of SW 75th Avenue and that no additional right-of-way is needed. The applicant will need to submit a copy of the ODOT Permit.

Washington County submitted responses dated May 21, 2013 and May 29, 2013. These are the same responses they submitted for the Master Plan MP-13-01, Nyberg Rivers.

Washington County requires issuance of a Facility Permit for construction of improvements within their right-of-way including a westbound right-turn lane at SW Nyberg Road, two southbound left-turn lanes and a shared through/right-turn lane from the site's access on SW Nyberg Road and two inbound receiving lanes with associated signal improvements to the intersection of SW Nyberg Road and the main site intersection. The applicant will need to submit a copy of the Washington County Facility Permit.

The plans show the addition of a 5-foot bike lane, a 15-foot westbound right-turn lane, a 4-foot planter strip with curb, streetlights, and trees, a 7-foot sidewalk, and a 2-foot landscape strip prior to a hand rail on top of a retaining wall. Additionally, SW 75th Avenue's access to SW Nyberg Street is closed. This cross-section is acceptable. The applicant will submit a copy of the ODOT Permit and Washington County Facility Permit for construction of SW Nyberg Street from I-5 to SW Tualatin Sherwood Road to add a 5-foot bike lane, a 15-foot westbound right-turn lane, a 4-foot planter strip with curb, streetlights, and trees, a 7-foot sidewalk, and a 2-foot landscape strip prior to a hand rail on top of a retaining wall and close SW 75th Avenue's access. The applicant will need to construct SW Nyberg Street from I-5 to SW Tualatin Sherwood Road to add a 5-foot bike lane, a 15-foot westbound right-turn lane, a 4-foot planter strip with curb, streetlights, and trees, a 7-foot sidewalk, and a 2-foot landscape strip and a retaining wall with a hand rail on top and close SW 75th Avenue's access.

SW Nyberg Street

SW Nyberg Street from SW Martinazzi Avenue to SW Tualatin-Sherwood Road is a City of Tualatin facility and designated as a Minor Collector. Currently 55 feet of right-of-way exist with improvements that include two 11-foot travel lanes, a 5-foot planter, and a 5-foot sidewalk. The City Council adopted Resolution 5163-13 which requires a public road with two 11-foot westbound travel lanes, a 6-foot bike lane, a 5- to 6-foot curb tight sidewalk with streetlights, and a varied width 4- to 6-foot planter strip with trees. The plans show a two 11-foot westbound travel lanes, a 6-foot bike lane, a 5- to 6-foot curb tight sidewalk with streetlights, and a varied width 4- to 6-foot planter strip with trees in compliance with the resolution. This cross-section is acceptable. The applicant will need to submit final plans for SW Nyberg Street from SW Martinazzi Avenue to SW Tualatin-Sherwood Road that include two 11-foot westbound travel lanes, a 6-foot bike lane, a varied width 5- to 6-foot curb tight sidewalk with streetlights, and a varied width 4- to 6-foot planter strip with trees in compliance with Resolution 5163-13, for review and approval. The applicant will need to construct SW Nyberg Street from SW Martinazzi Avenue to SW Tualatin-Sherwood Road that include two 11-foot westbound travel lanes, a 6-foot bike lane, a varied width 5- to 6-foot curb tight sidewalk with streetlights, and a varied width 4- to 6-foot planter strip with trees in compliance with Resolution 5163-13.

The plans show along the section of SW Nyberg Street south of building B, portions of the public curb tight sidewalk and all of the planter strip on private property. Public streets need to be within right-of-way or public easement. The applicant is proposing to include the sidewalk within a public easement while maintaining the planter strip on private property. The City Engineer finds this acceptable. The applicant will need to grant a public sidewalk easement from right-of-way to back of sidewalk adjacent to SW Nyberg Street.

The Loop Road

The Loop Road is a City of Tualatin facility designated as a Minor Collector that connects SW Nyberg Street to SW Boones Ferry Road and SW Seneca Street over this development site.

The City Council adopted Resolution 5163-13 which requires a public road with varying cross-sections as detailed below.

From the SW Nyberg Street main intersection north to the south side of building 1010 the cross-section is to include three 12-foot southbound travel lanes consisting of two southbound left turn lanes and a shared through/right turn lane from the site's access onto SW Nyberg Street, two inbound receiving northbound 12-foot travel lanes, a center median consisting of an 18-inch concrete median with striping on both sides for a total of 2.5-feet, a 4 to 7-foot planter strip on the east side with curb, streetlights, and trees, a 4-foot planter on the west side with curb, streetlights adjacent to the travel lanes, and groundcover and shrubs with a 14-foot shared path with tree wells, and associated signal improvements at the main entrance. The plans show travel lanes, median, and an east planter strip that meets the requirements. The plans show on the west side a 4-foot planter adjacent to the parking lot with streetlights and a 14-foot shared path with 2'x2' tree wells adjacent to the travel lanes. The City Engineer has determined that placement of the planter strip adjacent to the parking lot instead of the travel lanes is acceptable as the tree wells provide a similar vegetative buffer. The submitted 2'x2' tree well specification is inadequate to provide healthy canopied trees with adequate root spread that won't potentially damage walkways. The applicant will need to submit revised plans for the Loop Road from the SW Nyberg Street main intersection north to the south side of building 1010 that includes the City's standard 5'x5' tree wells within the 14-foot wide shared path, for review and approval. The applicant will need to construct Loop Road from the SW Nyberg Street main intersection north to the south side of building 1010 that includes the City's standard 5'x5' tree wells.

From the south side of building 1010 west to the south side of building D-120 the cross-section is to include two 12- to 13-foot travel lanes, a 12-foot pedestrian walkway on the north side with tree wells, a 6-foot planter and 5-foot sidewalk on the south side. The plans show a cross-section that meets the requirement that includes 13-foot travel lanes. This cross-section is acceptable. The applicant will need to submit final plans from the south side of building 1010 west to the south side of building D-120 that include two 13-foot travel lanes, a 12-foot pedestrian walkway on the north side with tree wells, a 6-foot planter and 5-foot sidewalk on the south side, for review and approval. The applicant will need to construct a cross-section from the south side of building 1010 west to the south side of building D-120 that include two 13-foot travel lanes, a 12-foot pedestrian walkway on the north side with tree wells, a 6-foot planter and 5-foot sidewalk on the south side.

Along the west side of buildings D-120, D-125, and D-130 the cross-section is to include two 14-foot travel lanes, two 17.5-foot angled parking aisles, a 10-foot wide pedestrian walkway on the east side with tree wells, a 4-foot sloped landscape area on the west side, and a 12-foot multi-use path on the west side. The plans show a cross-section that meets this requirement with the exception of tree wells on the east side. The City Engineer finds that the trees provided in the parking buffer strips provide adequate canopy without the inclusion of tree wells. This cross-section is acceptable. The applicant will need to submit final plans that show along the west side of buildings D-120, D-125, and D-130 two 14-foot travel lanes, two 17.5-foot angled parking aisles, a 10-foot wide pedestrian walkway on the east side, trees planted in the parking buffers, a 4-foot sloped landscape area on the west side, and a 12-foot multi-use path on the west side, for review and approval. The applicant will need to construct along the west side of buildings D-120, D-125, and D-130 two 14-foot travel lanes, two 17.5-foot angled parking aisles, a 10-foot wide pedestrian walkway on the east side, trees planted in the parking buffers, a 4-foot sloped landscape area on the west side, and a 12-foot multi-use path on the west side.

North of building D-130 the Loop Road is identified as Street "A" and the cross-section is to include two 12-foot travel lanes with a pork chop at the intersection of Boones Ferry Road that will be mountable for emergency vehicles, 4-foot planter strips with curbs, streetlights, and trees, a 6-foot bike lane and 5-foot sidewalk on the east side, and a 12-foot multi-use path on the west side. The plans reflect this cross-section. This cross-section is acceptable. The applicant will need to submit final plans that show two 12-foot travel lanes with a pork chop at the intersection of Boones Ferry Road that will be mountable for emergency vehicles, 4-foot planter strips with curbs, streetlights, and trees, a 6-foot bike lane and 5-foot sidewalk on the east side, and a 12-foot multi-use path on the west side. The applicant will need to construct two 12-foot travel lanes with a pork chop at the intersection of Boones Ferry Road that will be mountable for emergency vehicles, 4-foot planter strips with curbs, streetlights, and trees, a 6-foot bike lane and 5-foot sidewalk on the east side, and a 12-foot multi-use path on the west side.

North of building D-130 the greenway trail ends with a crosswalk across Street "A". Due to the potential high pedestrian traffic interacting with the traffic using Street "A" a higher degree of demarcation of the crosswalk is needed that includes a raised material. The applicant will need to submit revised plans that show a raised crosswalk at the intersection of the greenway trail and Street "A", for review and approval. The applicant will need to construct a raised crosswalk at the intersection of the greenway trail and Street "A".

In this singular instance, instead of dedication of right-of-way for the Loop Road over its entirety, the City Engineer has allowed the dedication of a public access easement over the entire cross-section, construction and inspection of the entire cross-section to Public Works Construction Code standards, and a maintenance agreement for performance to City standards. The Public Works Construction Code standards include, but are not limited to: travel lanes, medians, curbs and gutters, planter strips, street trees and tree wells, 24-inch root barriers for any tree near public sidewalks, streets, or utility lines in easements, sidewalks, illumination, signage, striping, crosswalks, and raised crosswalks. The applicant will need to obtain a Public Works Permit for all cross-sections of the Loop Road. The applicant will need to grant a maintenance agreement to City standards for all cross-sections of the Loop Road.

No speed bumps or humps are proposed. Speed bumps or humps are not to be constructed as it would restrict flow of vehicles along the public access easement acting as the Loop Road. This is acceptable.

The plans only show a 62.5-foot access easement over the travel lanes of the portion of the Loop Road from the SW Nyberg Street main site intersection to south of building 1010. The public access easement is needed over all cross-sections of the Loop Road. The applicant will need to grant a public access easement over all cross-sections of the Loop Road.

Street "A" is not an approved street name. Street names need to be chosen from the approved street name list or otherwise approved by the City Engineer as a Pioneer name. The applicant will need to submit revised plans that show an approved street name in place of Street "A", for review and approval.

No work shall be undertaken on any public improvement until after the construction plans have been approved by the City Engineer and a Public Works Permit issued and the required fees paid. The applicant has not obtained all Public Works and Water Quality Permits. The applicant will need to obtain all Public Works and Water Quality Permits needed for this development.

All the public improvements required under this chapter shall be completed and accepted by the City prior to issuance of a Certificate of Occupancy. The applicant has not completed all public improvements. The applicant will need to complete all the public improvements and private water quality facilities and have them accepted by the City.

Prior to issuance of a Public Works Permit:

- *The applicant shall submit revised plans of SW Boones Ferry Road that include a median on the north side of the eastbound travel lane in order to restrict Street "A" to right-in/right-out movement, for review and approval.*
- *The applicant shall submit revised plans that show a crosswalk at the intersection of SW Boones Ferry Road and Street "A" that includes material that is visually different and possibly raised, for review and approval.*
- *The applicant shall submit revised plans that show SW Seneca Street from SW Martinazzi Avenue connecting to the Nyberg Rivers site for construction up to the requirements stated in Resolution 5163-13, without on-street parking, with signalization at SW Seneca Street & SW Martinazzi Avenue, for review and approval.*
- *The applicant shall submit a copy of the ODOT Permit and Washington County Facility Permit for construction of SW Nyberg Street from I-5 to SW Tualatin Sherwood Road to add a 5-foot bike lane, a 15-foot westbound right-turn lane, a 4-foot planter strip with curb, streetlights, and trees, a 7-foot sidewalk, and a 2-foot landscape strip and a retaining wall with a hand rail on top and close SW 75th Avenue's access.*
- *The applicant shall submit final plans for SW Nyberg Street from SW Martinazzi Avenue to SW Tualatin-Sherwood Road that include two 11-foot westbound travel lanes, a 6-foot bike lane, a varied width 5- to 6-foot curb tight sidewalk with streetlights, and a varied width 4- to 6-foot planter strip with trees in compliance with Resolution 5163-13, for review and approval.*

- *The applicant shall grant a public sidewalk easement from right-of-way to back of sidewalk adjacent to SW Nyberg Street.*
- *The applicant shall submit revised plans for the Loop Road from the SW Nyberg Street main intersection north to the south side of building 1010 that includes the City's standard 5'x5' tree wells within the 14-foot wide shared path, for review and approval.*
- *The applicant shall submit final plans from the south side of building 1010 west to the south side of building D-120 that include two 13-foot travel lanes, a 12-foot pedestrian walkway on the north side with tree wells, a 6-foot planter and 5-foot sidewalk on the south side, for review and approval.*
- *The applicant shall submit final plans that show along the west side of buildings D-120, D-125, and D-130 two 14-foot travel lanes, two 17.5-foot angled parking aisles, a 10-foot wide pedestrian walkway on the east side, trees planted in the parking buffers, a 4-foot sloped landscape area on the west side, and a 12-foot multi-use path on the west side, for review and approval.*
- *The applicant shall submit final plans that show two 12-foot travel lanes with a pork chop at the intersection of Boones Ferry Road that will be mountable for emergency vehicles, 4-foot planter strips with curbs, streetlights, and trees, a 6-foot bike lane and 5-foot sidewalk on the east side, and a 12-foot multi-use path on the west side.*
- *The applicant shall submit revised plans that show a raised crosswalk at the intersection of the greenway trail and Street "A", for review and approval.*
- *The applicant shall grant a maintenance agreement to City standards for all cross-sections of the Loop Road.*
- *The applicant shall grant a public access easement over all cross-sections of the Loop Road.*
- *The applicant shall submit revised plans that show an approved street name in place of Street "A", for review and approval.*

Prior to Issuance of a Building Permit:

- *The applicant shall obtain all Public Works and Water Quality Permits needed for this development.*
- *The applicant shall obtain a Public Works Permit for all cross-sections of the Loop Road.*

Prior to Issuance of a Certificate of Occupancy:

- *The applicant shall construct SW Boones Ferry Road that include a median on the north side of the eastbound travel lane in order to restrict Street "A" to right-in/right-out movement as part of the Public Works Permit.*
- *The applicant shall construct a crosswalk at the intersection of SW Boones Ferry Road and Street "A" that includes material that is visually different and possibly raised.*
- *If the applicant obtains the right-of-way for the Seneca Street extension and traffic signal by April 1, 2014, the applicant will design and construct the Seneca Street extension along with a new signal at the SW Martinazzi Avenue/SW Seneca Street intersection per the Public Works Construction Code under a public works permit or if the applicant is unable to obtain the right-of-way by April 1, 2014, the applicant will provide a fee in lieu of the Seneca Street construction to the City in the amount of \$360,000, which accounts for the applicant's share of the improvements.*
- *If the east extension of SW Seneca Street is constructed, the applicant shall extinguish the private access easement, Washington County recorded document 8295, Book 773, Page 873, exists over City owned TLID 2S124B001900.*

- *The applicant shall construct SW Nyberg Street from I-5 to SW Tualatin Sherwood Road to add a 5-foot bike lane, a 15-foot westbound right-turn lane, a 4-foot planter strip with curb, streetlights, and trees, a 7-foot sidewalk, and a 2-foot landscape strip prior to a hand rail on top of a retaining wall and close SW 75th Avenue's access.*
- *The applicant shall construct SW Nyberg Street from SW Martinazzi Avenue to SW Tualatin-Sherwood Road that include two 11-foot westbound travel lanes, a 6-foot bike lane, a varied width 5- to 6-foot curb tight sidewalk with streetlights, and a varied width 4- to 6-foot planter strip with trees in compliance with Resolution 5163-13.*
- *The applicant shall construct Loop Road from the SW Nyberg Street main intersection north to the south side of building 1010 that includes the City's standard 5'x5' tree wells within the 14-foot wide shared path.*
- *The applicant shall construct a cross-section from the south side of building 1010 west to the south side of building D-120 that include two 13-foot travel lanes, a 12-foot pedestrian walkway on the north side with tree wells, a 6-foot planter and 5-foot sidewalk on the south side.*
- *The applicant shall construct along the west side of buildings D-120, D-125, and D-130 two 14-foot travel lanes, two 17.5-foot angled parking aisles, a 10-foot wide pedestrian walkway on the east side, trees planted in the parking buffers, a 4-foot sloped landscape area on the west side, and a 12-foot multi-use path on the west side.*
- *The applicant shall construct two 12-foot travel lanes with a pork chop at the intersection of Boones Ferry Road will be mountable for emergency vehicles, 4-foot planter strips with curbs, streetlights, and trees, a 6-foot bike lane and 5-foot sidewalk on the east side, and a 12-foot multi-use path on the west side.*
- *The applicant shall construct a raised crosswalk at the intersection of the greenway trail and Street "A."*
- *The applicant shall complete all the public improvements and private water quality facilities and have them accepted by the City.*

3. Access:

TDC 73.400 Access

- (2) Owners of two or more uses, structures or parcels of land may agree to utilize jointly the same ingress and egress when the combined ingress and egress of both uses, structures, or parcels of land satisfies their combined requirements as designated in this code; provided that satisfactory legal evidence is presented to the City Attorney in the form of deeds, easements, leases or contracts to establish joint use.**
- (11) Minimum Access Requirements for Commercial, Public and Semi-Public Uses. If 1-99 parking spaces are required, only one access is required. If 100-249 parking spaces are required, two accesses are required. Ingress and egress shall not be less than 32 feet wide for the first 50 feet from the right-of-way and 24 feet thereafter.**
- (12) Minimum Access Requirements for Industrial Uses. If 1-250 parking spaces are required, only one access is required. Ingress and egress shall not be less than 36 feet wide for the first 50 feet from the right-of-way and 24 feet thereafter.**
- (14) (a) Unless otherwise herein provided, maximum driveway widths shall not exceed 40 feet.**

(15) Distance between Driveways and Intersections. Distances listed shall be measured from the stop bar at the intersection. (a) At the intersection of collector or arterial streets, driveways shall be located a minimum of 150 feet from the intersection.

On the west side of Street "A" the plans show a 24-foot wide access to the City back parking lot approximately 140 feet from the intersection of SW Boones Ferry Road & Street "A". The distance from the intersection is less than 150 feet, but is acceptable due to existing improvements. The minimum width for this access is 32 feet, 8 feet more than shown. The applicant will need to submit revised plans that show a 32-foot wide access to the City's back parking lot approximately 140 feet south of SW Boones Ferry Road without requiring relocation of existing structures, for review and approval.

On the east side of Street "A" the plans show a 40-foot private access easement with 24-foot wide driveway cut for a future driveway to Heron's Landing Apartments. The City Council adopted Resolution 5163-13 requirements include the 40-foot private access easement for Heron's Landing opposite the City parking lot access. This private access easement and driveway cut is slightly offset from the access to the City parking lot and only 110 feet away from the intersection of SW Boones Ferry Road, a Major Arterial. The driveway cut needs to be a minimum of 32 feet wide, 8 feet more than shown, and be located opposite the City's parking lot access, therefore as far as reasonable from the intersection of SW Boones Ferry Road & Street "A", for review and approval. The construction of the driveway cut is not needed at this time. The applicant will need to submit revised plans that show the Heron's Landing Apartments driveway cut to be a minimum of 32-feet wide with associated 40- foot private access easement and located opposite the City parking lot access approximately 140 feet south of SW Boones Ferry Road, for review and approval. The applicant will need to submit a copy of the private access easement allowing Heron's Landing Apartments access to Street "A", for review and approval.

Access will be needed from each remaining lot to public right-of-way or the public access easement acting as the Loop Road. Buildings E-100 and F-100 are shown to be on a future lot purchased through ODOT surplus to the east of the main entry. Buildings G-100 and H-100 are both shown on a lot is east of the main entry and north of the future ODOT lot. No access is shown to either of these lots. Both of these lots need private access easements to SW Nyberg Road. There will be a median restricting turning movements for the entire segment of the public access easement acting as the Loop Road from SW Nyberg Street to south of building 1010. In order to have full access both in and out of the main entry access at SW Nyberg Road traffic will have to circulate through the east parking area to reach the north end of this segment. The applicant will need to submit revised plans that show private access easements for the lots with buildings E-100, F-100, G-100, and H-100 to allow circulation from the intersection of the public access easement acting as the Loop Road from SW Nyberg Street through the east parking area to south of building 1010, for review and approval. The applicant will need to submit copies of the recorded documents that show private access easements for the lots with buildings E-100, F-100, G-100, and H-100 to allow circulation from the intersection of the public access

easement acting as the Loop Road from SW Nyberg Street through the east parking area to south of building 1010, for review and approval.

The applicant is proposing closure of two existing accesses to SW Martinazzi Avenue, just north of SW Nyberg Street, to two accesses to SW Martinazzi Avenue from TLID 2S124B002000 at the northeast corner of SW Martinazzi Avenue & SW Nyberg Street. As all existing direct access to public right-of-way would then be closed, private access to a public street would then be to the east through TLID 2S124B001602 and then south to SW Nyberg Road through a private access easement. The applicant will need to submit a copy of the private access easement from TLID 2S124B002000 through TLID 2S124B001602 to a public right-of-way, for review and approval.

Prior to issuance of a Public Works Permit:

- *The applicant shall submit revised plans that show a 32-foot wide access to the City's back parking lot approximately 140 feet south of SW Boones Ferry Road without requiring relocation of existing structures, for review and approval.*
- *The applicant shall submit revised plans that show the Heron's Landing Apartments driveway cut to be a minimum of 32-feet wide with associated 40- foot private access easement and located opposite the City parking lot access approximately 140 feet south of SW Boones Ferry Road, for review and approval.*
- *The applicant shall submit a copy of the private access easement allowing Heron's Landing Apartments access to Street "A", for review and approval.*
- *The applicant shall submit revised plans that show private access easements for the lots with buildings E-100, F-100, G-100, and H-100 to allow circulation from the intersection of the public access easement acting as the Loop Road from SW Nyberg Street through the east parking area to south of building 1010, for review and approval.*
- *The applicant shall submit copies of the recorded documents that show private access easements for the lots with buildings E-100, F-100, G-100, and H-100 to allow circulation from the intersection of the public access easement acting as the Loop Road from SW Nyberg Street through the east parking area to south of building 1010, for review and approval.*
- *The applicant shall submit a copy of the private access easement from TLID 2S124B002000 through TLID 2S124B001602 to a public right-of-way, for review and approval.*

4. Water:

TDC 74.610 (1) Water lines shall be installed to serve each property in accordance with the Public Works Construction Code. Water line construction plans shall be submitted to the City Engineer for review and approval prior to construction.

TMC 3-3.040 (2) For nonresidential uses, separate meters shall be provided for each structure.

TMC 3-3.120 (2) The owner of property to which City water is furnished for human consumption shall install in accordance with City standards an appropriate backflow prevention device on the premises where any of the following circumstances exist: (b) Where there is a fire protection service, and irrigation service or a nonresidential service connection which is two inches or larger in size;

TMC 3-3.120 (4) requires all irrigation systems to be installed with a double check valve assembly.

TDC74.610 (3) As set forth in TDC Chapter 12, Water Service, the City has three water service levels. All development applicants shall be required to connect the proposed development site to the service level in which the development site is located.

The applicant recently obtained a Public Works Permit (PWP 13-66) to relocate and modify public sanitary sewer, stormwater, and water lines throughout this development. Construction of changes allowed under PWP 13-66 are almost complete. The submitted plans reflect most of the construction of PWP 13-66, excepting some recent field changes.

The plans show existing public water lines to the west of buildings D-120, D-125, and D130, south of building D-120, west of building E-100 and north of buildings E-100 and F-100. A private water system for fire and domestic service is looped between these two public lines with additional private fire hydrants off the public water lines north of building E-100 and south of building 1005. Both ends of the private loop and the additional private fire hydrants include double check valve assemblies. A public water line is proposed from north of building E-100 west to north of building F-100. This is acceptable. The applicant will need to submit final water system plans, for review and approval. The applicant will need to construct the public water system.

The plans show a 15-foot wide public water line easement over proposed public water lines. This is acceptable. The applicant will need to grant a 15-foot wide public water line easement over proposed public water lines.

The City will need access to the public water line for routine maintenance. No access easements are shown. The applicant will need to submit revised plans that show access easements to public water lines, for review and approval. The applicant will need to grant an access easement to public water lines.

The plans do not show private water line easements over the private looped water system serving all lots. Private water line easements are needed to assure the ability of all lots to obtain fire and domestic water service. The applicant will need to submit copies of private water line easements.

Private water lines are shown across public utility easements, some crossing at angles or changing direction within the easement. Private lines crossing public easements should be minimized and only cross perpendicular to public lines. The applicant will need to submit revised plans that minimize private water lines crossing public utility easements and only cross perpendicular to the public lines, for review and approval.

Trees are shown within public water line easements. Trees need to be located outside public water line easements. The applicant will need to submit revised plans that show trees located outside public water line easements, for review and approval.

Note: Any trees within 10 feet of a public water line will need a 24-inch deep, 10-foot long root barrier centered on the tree trunk at the edge of the public water easement.

Note: This site is located in service level 'A' and the proposed connection to the public system is within this service level. The 'A' water service level has unique operating characteristics. It needs to be noted that flow tests need to be performed, or calculated, under summertime conditions.

Note: Private water pumps may be needed for domestic use or required for fire systems.

With SW Seneca Street construction, the public water line south of the City Offices will need to be relocated to within SW Seneca Street. The plans do not show this relocation. The applicant will need to submit revised plans that show the public water line south of the City Offices will need to be relocated to within SW Seneca Street, for review and approval.

Irrigation for plantings maintained by the City along I-5 and in the median of SW Tualatin-Sherwood Road are served by a line south of Wendy's that crosses ODOT property north of SW Nyberg Road. With the reconstruction of SW Nyberg Road and proposed development, the irrigation line will be affected. The applicant will need to submit revised plans that show a public irrigation line to the irrigation system serving the City maintained plantings along I-5 and in the median of SW Tualatin-Sherwood with associated water meter and backflow prevention, for review and approval. The applicant will need to construct a public irrigation line to the irrigation system serving the City maintained plantings along I-5 with associated water meter and backflow prevention.

Prior to issuance of a Public Works Permit:

- *The applicant shall submit final water system plans, for review and approval.*
- *The applicant shall grant a 15-foot wide public water line easement over proposed public water lines.*
- *The applicant shall submit revised plans that show access easements to public water lines, for review and approval.*
- *The applicant shall grant an access easement to public water lines.*
- *The applicant shall submit copies of private water line easements.*
- *The applicant shall submit revised plans that minimize private water lines crossing public utility easements and only cross perpendicular to the public lines, for review and approval.*
- *The applicant shall submit revised plans that show trees located outside public water line easements, for review and approval.*
- *The applicant shall submit revised plans that show the public water line south of the City Offices will need to be relocated to within SW Seneca Street, for review and approval.*
- *The applicant shall construct a public irrigation line to the irrigation system serving the City maintained plantings along I-5 and in the median of SW Tualatin-Sherwood with associated water meter and backflow prevention.*

Prior to issuance of a Certificate of Occupancy:

- *The applicant shall construct the public water system.*
- *The applicant shall construct a public irrigation line to the irrigation system serving the City maintained plantings along I-5 and in the median of SW Tualatin-Sherwood with associated water meter and backflow prevention.*
- *The applicant shall complete all the public water improvements and have them accepted by the City.*

5. Sanitary Sewer:

TDC 74.620 (1) Sanitary sewer lines shall be installed to serve each property in accordance with the Public Works Construction Code. Sanitary sewer construction plans and calculations shall be submitted to the City Engineer for review and approval prior to construction.

TDC 74.330 Utility Easements (1) Utility easements for water, sanitary sewer and storm drainage facilities, telephone, television cable, gas, electric lines and other public utilities shall be granted to the City.

The applicant recently obtained a Public Works Permit (PWP 13-66) to relocate and modify public sanitary sewer, stormwater, and water lines throughout this development. Construction of changes allowed under PWP 13-66 are almost complete. The submitted plans reflect most of the construction of PWP 13-6, excepting some recent field changes.

The plans show existing public sanitary sewer lines to the west of buildings D-120, D-125, and D130, north of buildings D-130, D110, 100, and 1010, and south of building E-100. A proposed public sanitary sewer line is shown from north of building C east to south of building 1040 then south to west of building F-100. This is acceptable. The applicant will need to submit sanitary sewer system plans, for review and approval. The applicant will need to construct the public sanitary sewer system.

The plans show a 15-foot wide public sanitary sewer line easement over proposed public water lines. This is acceptable. The applicant will need to grant a 15-foot wide public sanitary sewer line easement over proposed public water lines.

The City will need access to the public sanitary sewer manholes for routine maintenance. No access easements are shown. The applicant will need to submit revised plans that show access easements to public sanitary sewer manholes, for review and approval. The applicant will need to grant an access easement to public sanitary sewer manholes.

North of building 1005 one private sanitary sewer line crosses public easements multiple times to locate a grease interceptor within parking spaces. The building has a second lateral directly connecting to the public sanitary sewer line. Both laterals connect cross public easements at angles less than perpendicular. Private lines crossing public easements should be minimized and only cross perpendicular to public lines. The applicant will need to submit revised plans that minimize private sanitary sewer lines crossing public utility easements and only cross perpendicular to the public lines, for review and approval.

Trees are shown within public sanitary sewer line easements. Trees need to be located outside public sanitary sewer line easements. The applicant will need to submit revised plans that show trees located outside public sanitary sewer line easements, for review and approval.

Note: Any trees within 10 feet of a public sanitary sewer line will need a 24-inch deep, 10-foot long root barrier centered on the tree trunk at the edge of the public sanitary sewer easement.

With SW Seneca Street construction, the public sanitary sewer line south of the City Offices will need to be relocated to within SW Seneca Street. The plans do not show this relocation. The applicant will need to submit revised plans that show the public sanitary sewer line south of the City Offices will need to be relocated to within SW Seneca Street, for review and approval.

Prior to issuance of a Public Works Permit:

- *The applicant shall submit sanitary sewer system plans, for review and approval.*
- *The applicant shall grant a 15-foot wide public sanitary sewer line easement over proposed public water lines.*
- *The applicant shall submit revised plans that show access easements to public sanitary sewer manholes, for review and approval.*
- *The applicant shall grant an access easement to public sanitary sewer manholes.*
- *The applicant shall submit revised plans that minimize private sanitary sewer lines crossing public utility easements and only cross perpendicular to the public lines, for review and approval.*
- *The applicant shall submit revised plans that show trees located outside public sanitary sewer line easements, for review and approval.*
- *The applicant shall submit revised plans that show the public sanitary sewer line south of the City Offices will need to be relocated to within SW Seneca Street, for review and approval.*

Prior to issuance of a Certificate of Occupancy:

- *The applicant shall construct the public sanitary sewer system.*
- *The applicant shall complete all the public sanitary sewer improvements and have them accepted by the City.*

6. Storm Drainage & Water Quality:

TDC 74.630 Storm Drainage System

- (1) Storm drainage lines shall be installed to serve each property in accordance with City standards. Storm drainage construction plans and calculations shall be submitted to the City Engineer for review and approval prior to construction.**
- (2) The storm drainage calculations shall confirm that adequate capacity exists to serve the site. The discharge from the development shall be analyzed in accordance with the City's Storm and Surface Water Regulations (TMC 3-5).**

TDC 74.650 Water Quality, Storm Water Detention and Erosion Control

- (2) On all other development applications, prior to issuance of any building permit, the applicant shall arrange to construct a permanent on-site water quality facility and storm water detention facility and submit a design and calculations indicating that the requirements of the Surface Water Management Ordinance will be met and obtain a Stormwater Connection Permit from Clean Water Services.**
- (3) For on-site private and regional non-residential public facilities, the applicant shall submit a stormwater facility agreement, which will include an operation and maintenance plan provided by the City, for the water quality facility for the City's review and approval. The applicant shall submit an erosion control plan prior to**

issuance of a Public Works Permit. No construction or disturbing of the site shall occur until the erosion control plan is approved by the City and the required measures are in place and approved by the City.

TMC 3-5-220 Criteria for Requiring On-Site Detention to be Constructed.

- (1) There is an identified downstream deficiency, as defined in TMC 3-5.210, and detention rather than conveyance system enlargement is determined to be the more effective solution.**
- (2) There is an identified regional detention site within the boundary of the development.**

TMC 3-5-330 Permit Required. Except as provided in TMC 3-5.310, no person shall cause any change to improved or unimproved real property that will, or is likely to, increase the rate or quantity of run-off or pollution from the site without first obtaining a permit from the City and following the conditions of the permit.

TMC 3-5-380 Criteria for Granting Exemptions to Construction of On-Site Water Quality Facilities. A regional public facility may be constructed to serve private non-residential development provided:

- (1) The facility serves more than one lot; and**
- (2) All owners sign a stormwater facility agreement; and**
- (3) Treatment accommodates reasonable worst case impervious area for full build-out, stormwater equivalent to existing or proposed roof area is privately treated in LIDA facilities, and any detention occurs on each lot.**

The applicant recently obtained a Public Works Permit (PWP 13-66) to relocate and modify public sanitary sewer, stormwater, and water lines throughout this development. Construction of changes allowed under PWP 13-66 are almost complete. The submitted plans reflect most of the construction of PWP 13-66, excepting some recent field changes.

The plans show existing public stormwater lines to the west of buildings D-120, D-125, and D130, north of buildings D-130, D110, 100, 1010 and 1040, west of building 1040, and east of buildings H-100 and G-100. A proposed public stormwater facility treating SW Nyberg Street is shown and south of building E-100 partially within right-of-way with the rest within a public stormwater easement. The facility is shown over a public water line easement. The facility needs to be outside of the public water line easement. The applicant will need to submit revised stormwater system plans that include the public stormwater treatment facility within a public stormwater easement outside of the public water line easement, for review and approval. The applicant will need to grant a public stormwater facility easement for the public stormwater facility. The applicant will need to construct the public stormwater system.

Private stormwater lines are shown across and catch basins within public utility easements, some crossing at angles or changing direction within the easement. Private lines crossing public easements should be minimized and only cross perpendicular to public lines and private facilities and structures should be located outside of public easements. The applicant will need to submit revised plans that minimize private stormwater lines crossing public utility easements and only cross perpendicular to the

public lines and private facilities and structures located outside of public easements, for review and approval.

Private stormwater treatment for the entire site's impervious area is accommodated within a system of filter vaults scattered throughout the site. This is acceptable. One filter vault and connecting private stormwater line treating runoff for the private access easement acting as the Loop Road is shown within SW Nyberg Street right-of-way. Private treatment facilities and lines need to be on private property. The applicant will need to submit revised plans that show all private stormwater treatment facilities and lines including the filter vault at the intersection of the private access easement acting as the Loop Road is shown within SW Nyberg Street to be located on private property, for review and approval.

The applicant has provided preliminary stormwater calculations that indicate that adequate treatment is provided. Final stormwater treatment and conveyance calculations are needed to show that the entire system is adequate. The applicant will need to submit final public and private stormwater treatment and conveyance calculations, for review and approval. The applicant will need to submit a copy of a recorded Private stormwater maintenance agreement, for review and approval.

South of building 1030 and east of building 1040 a total of three LIDA planters are shown within parking landscaping. These LIDA planters are in excess of the required treatment. This is acceptable. The applicant will need to submit final plans that show three LIDA planters within parking landscaping south of building 1030 and east of building 1040, for review and approval.

South of building 1040 a LIDA rain garden is shown within parking lot landscaping over a public stormwater line and easement. These LIDA rain garden is in excess of the required treatment. No infiltration, treatment facilities or private piping are allowed over public stormwater easements. The applicant will need to submit revised plans that do not show the LIDA rain garden over public easements, for review and approval.

The ODOT Response to Local Land Use Notification dated October 21, 2013 correctly states "The city has also agreed to maintaining the stormwater relating to the ODOT drainage via an existing ODOT/Washington County IGA for the signalized intersection on Nyberg Rd." Operations' maintenance crews need access to the public stormwater facility and manholes for routine maintenance. No access easements are shown. The applicant will need to submit revised plans that show access easements to the public stormwater facility and manholes, for review and approval. The applicant will need to grant a public access easement to the public stormwater facility and manholes.

Trees are shown within public stormwater line easements. Trees need to be located outside public stormwater line easements. The applicant will need to submit revised plans that show trees located outside public stormwater line easements, for review and approval.

Note: Any trees within 10 feet of a public stormwater line will need a 24-inch deep, 10-foot long root barrier centered on the tree trunk at the edge of the public stormwater easement.

The parking lot north of the City offices is shown to be reconfigured in order to construct Street "A". The existing public stormwater system is shown to be partially reconfigured, but is not connected to any public stormwater line. The applicant needs to submit revised plans that include a complete and connected stormwater treatment and conveyance system for the parking lot north of the City offices, for review and approval.

The plans show mechanical filters treating the public Street "A" and future SW Seneca Street. As existing public treatment of adjacent public lots lack adequate capacity, redeveloping the existing system to connect and treat the new impervious area would be impractical, and the additional impervious area is small, this is acceptable. The applicant will need to submit final plans that show mechanical filters treating the public Street "A" and future SW Seneca Street, for review and approval.

The City will need access to the public stormwater manholes for routine maintenance. No access easements are shown. The applicant will need to submit revised plans that show access easements to public stormwater manholes, for review and approval. The applicant will need to grant an access easement to public stormwater manholes.

With SW Seneca Street construction, the public stormwater line south of the City Offices will need to be relocated to within SW Seneca Street. The plans do not show this relocation. The applicant will need to submit revised plans that show the public stormwater line south of the City Offices will need to be relocated to within SW Seneca Street, for review and approval.

Prior to issuance of a Water Quality Permit:

- *The applicant shall grant a public stormwater facility easement for the public stormwater facility.*
- *The applicant shall submit revised plans that show all private stormwater treatment facilities and lines including the filter vault at the intersection of the private access easement acting as the Loop Road is shown within SW Nyberg Street to be located on private property, for review and approval.*
- *The applicant shall submit final plans that show three LIDA planters within parking landscaping south of building 1030 and east of building 1040, for review and approval.*
- *The applicant shall submit revised plans that do not show the LIDA rain garden over public easements, for review and approval.*
- *The applicant shall submit revised plans that show access easements to the public stormwater facility and manholes, for review and approval.*
- *The applicant shall grant a public access easement to the public stormwater facility and manholes.*
- *The applicant shall submit revised plans that include a complete and connected stormwater treatment and conveyance system for the parking lot north of the City offices, for review and approval.*
- *The applicant shall submit final plans that show mechanical filters treating the public Street "A" and future SW Seneca Street, for review and approval.*

Prior to issuance of a Public Works Permit:

- *The applicant shall submit revised stormwater system plans that include the public stormwater treatment facility within a public stormwater easement outside of the public water line easement, for review and approval.*

- *The applicant shall submit revised plans that minimize private stormwater lines crossing public utility easements and only cross perpendicular to the public lines and private facilities and structures located outside of public easements, for review and approval.*
- *The applicant shall submit revised plans that show trees located outside public stormwater line easements, for review and approval.*
- *The applicant shall submit revised plans that show access easements to public stormwater manholes, for review and approval.*
- *The applicant shall grant an access easement to public stormwater manholes.*
- *The applicant shall submit revised plans that show the public stormwater line south of the City Offices will need to be relocated to within SW Seneca Street, for review and approval.*

Prior to issuance of a Certificate of Occupancy:

- *The applicant shall construct the public stormwater system.*
- *The applicant shall complete all the public stormwater improvements and have them accepted by the City.*

7. Grading:

TDC 74.640 (1) Development sites shall be graded to minimize the impact of storm water runoff onto adjacent properties and to allow adjacent properties to drain as they did before the new development. (2) A development applicant shall submit a grading plan showing that all lots in all portions of the development will be served by gravity drainage from the building crawl spaces; and that this development will not affect the drainage on adjacent properties. The City Engineer may require the applicant to remove all excess materials from the development site.

The submitted plans appear to minimize the impact of stormwater runoff to adjacent properties and allow adjacent properties to drain as they did before the development. This requirement is met.

8. Erosion Control:

TDC 74.650 (3) ..the applicant shall submit an erosion control plan prior to issuance of a Public Works Permit. No construction or disturbing of the site shall occur until the erosion control plan is approved by the City and the required measures are in place and approved by the City. In order to reduce the amount of sediment discharged into the public storm system, erosion control measures are required during construction. If the site is over 1 acre in size a NPDES Erosion Control Permit is required.

If the development's disturbed area during construction is between 1 and 5 acres in size, a 1200-CN NPDES Erosion Control Permit is required. If it is over 5 acres, a 1200-C NPDES Erosion Control Permit is required. The proposed disturbed area of the development site is a total of approximately 31.91 acres. A NPDES Erosion Control Permit is required. The applicant has obtained a 1200-C for a portion of the site that included demolition of two buildings, construction of PWP 13-66, and grading for the future Cabela's building. The applicant will need to submit an amended 1200-C for the remainder of the site, for review and approval.

A City of Tualatin erosion control permit is required if there is construction or disturbing of the site. The applicant has obtained a City of Tualatin erosion control permit for a portion of the site. An erosion control permit needs to include all areas to be disturbed. The applicant will need to obtain a City of Tualatin erosion control permit that includes the entire site area to be disturbed.

Note: Both the City of Tualatin erosion control permit and 1200-C need to reflect the balanced cut and fill of the floodplain.

Prior to issuance of a Building Permit:

- *The applicant shall obtain a City of Tualatin erosion control permit that includes the entire site area to be disturbed.*
- *The applicant shall submit an amended 1200-C for the remainder of the site, for review and approval.*

9. Stormwater Connection Permit:

TDC 74.650 Water Quality, Storm Water Detention and Erosion Control (2) On all other development applications, prior to issuance of any building permit, the applicant shall arrange to construct a permanent on-site water quality facility and storm water detention facility and submit a design and calculations indicating that the requirements of the Surface Water Management Ordinance will be met and obtain a Stormwater Connection Permit from the Unified Sewerage Agency.

The applicant has submitted a CWS Service Provider Letter (SPL) indicating that Sensitive Areas exist on-site. In the SPL the applicant has received an initial response indicating that their proposed development meets CWS requirements. CWS has submitted a Memorandum dated October 17, 2013, with review comments.

CWS will indicate final approval of activities relating to wetlands & buffers after final permit plans are submitted prior to issuance of associated permits. Any vegetated corridor mitigation required in the SPL will need to be included in the Water Quality Permit. The applicant will need to submit final plans that comply with the Service Provider Letter and CWS Memorandum comments, for review and approval. The applicant will need to obtain a Stormwater Connection Permit.

Prior to the issuance of a Water Quality Permit:

- *The applicant shall submit final plans that comply with the Service Provider Letter conditions and Clean Water Services Memorandum comments, for review and approval.*
- *The applicant shall obtain a Stormwater Connection Permit.*

10. Floodplain District:

TDC 70.110 Development Permit Required.

A development permit shall be obtained before construction or development begins within any area of special flood hazard established by TDC 70.050. The permit shall be for all structures, including manufactured homes, as set forth in the "Definitions," and for all other development, including fill and other activities, also as set forth in the "Definitions."

This site includes zones "A10" and "B" floodplain based on FEMA FIRM 410227 0002 D, dated February 19, 1987. A revision to the FIRM is in process that is expected to be adopted by FEMA. While not officially approved by FEMA for insurance purposes, as responsible managers of the local floodplain the best known information will be used. This revision shows the Base Flood Elevation for this area varies from 129.8 feet on the north side of SW Boones Ferry Road, 128.1 west of SW Martinazzi Avenue, 129.3 feet along the east side of TLID 2S124B001500, 127.9 feet near the midpoint of TLID 2S124A002700, and 126.8 feet on the west side of I-5 based on the NAVD 1988 datum. To convert the NAVD datum to the NGVD 1929 within Tualatin subtract 3.52 feet. A Flood Hazard Area Development Permit (FHADP) is required.

Balanced cut and fill is required. Additionally, Resolution 5163-13 which approved the master plan reiterates no increase in the 100-Year Floodplain associated with improvements to public "Street A" and SW Seneca Street. The submitted narrative indicates that balanced cut and fill will be performed. This is acceptable.

The FHADP requires a 1st survey (that shows existing conditions) prior to a building permit, a 2nd survey (that shows the finished floor elevation at least one foot above the base flood elevation) prior to a framing inspection, and a 3rd survey (that shows the as-built finished floor elevation at least one foot above the base flood elevation) prior to occupancy.

The applicant has not obtained a FHADP. The applicant has not submitted any surveys. The applicant will need to submit a completed FHADP application and a 1st survey prior to issuance of a building permit. The applicant will need to submit a 2nd survey prior to a framing inspection. The applicant will need to submit a 3rd survey prior to a certificate of occupancy.

Prior to issuance of a Building Permit:

- *Prior to a Framing Inspection:*
- *The applicant shall submit a 2nd survey.*

Prior to issuance of a Certificate of Occupancy:

- *The applicant shall submit a 3rd survey.*

11. Natural Resource Protection Overlay District (NRPO):

72.020(1) (1) The designated significant natural resources are the Greenways and Natural Areas on Map 72-1, which shows the general location of the NRPO District. The general locations of Other Natural Areas are shown on the Recreation Resources Map (Figure 3-4) of the Parks and Recreation Master Plan.

72.030 Greenways.

(1) Greenways can exhibit diverse characteristics. Those along the Tualatin River and Hedges, Nyberg and Saum Creeks can be natural in some sections and have pedestrian and bike paths in other sections. Greenways in built-up areas such as in subdivisions are typically landscaped with lawn and often include concrete pedestrian/bike paths.

(2) Riverbank Greenway (NRPO-GR).

- (a) Except as provided in Subsection (b), the NRPO District along the south bank of the Tualatin River, beginning at the City's western Urban Growth Boundary (UGB) and extending to the City's eastern UGB, and along the north bank of the Tualatin River from the northwest corner of Tax Lot 1007 to the southeast corner of Tax Lot 1006, Washington County Tax Map 2S1 24B, shall have a width as measured from a line 40 feet inland from the top of the bank extending to the middle of the river. The top of the bank shall be where the landform called "the bank" changes from a generally up-slope feature to a generally flat feature. The NRPO District shall automatically apply to property annexed to the City, except as provided for in Appendix G to the Parks and Recreation Master Plan.**
- (b) For the area 300 feet east and west of the I-5 right-of-way as shown on Map 72-1, the NRPO District on the south bank of the Tualatin River shall have a width as measured from a line 75 feet in-land from the top of the bank extending to the middle of the river.**

72.060(1) Except as provided in Subsection (2), no building, structure, grading, excavation, placement of fill, vegetation removal, impervious surface, use, activity or other development shall occur within Riverbank, Creek and Other Greenways, and Wetland and Open Space Natural Areas.

72.060(2) The following uses, activities and types of development are permitted within Riverbank, Creek and Other Greenways, and Wetland and Open Space Natural Areas provided they are designed to minimize intrusion into riparian areas:

- (a) Public bicycle or pedestrian ways, subject to the provisions of TDC 72.070.**
- (b) Public streets, including bridges, when part of a City approved transportation plan, and public utility facilities, when part of a City approved plan and provided appropriate restoration is completed.**
- (c) Except in Wetland Natural Areas, private driveways and pedestrian ways when necessary to afford access between portions of private property that may be bisected by a Greenway or Open Space Natural Area.**
- (d) Except in Creek Greenways and Wetland Natural Areas, outdoor seating for a restaurant within the Central Urban Renewal District, but outside of any sensitive area or its vegetated corridor.**
- (e) Public parks and recreational facilities including, but not limited to, boat ramps, benches, interpretive stations, trash receptacles and directional signage, when part of a City-approved Greenway or Natural Area enhancement plan.**
- (f) Landscaping, when part of a landscape plan approved through the Architectural Review process. City initiated landscape projects are exempt from the Architectural Review process. Landscaping in Greenways and Natural Areas shall comply with the approved Plant List in the Parks and Recreation Master Plan. When appropriate, technical advice shall be obtained from the Oregon Department of Fish and Wildlife, U.S. Soil Conservation Service, or similar agency, to ensure the proposed landscaping will enhance the preservation of any existing fish or wildlife habitats in the vicinity.**
- (g) Wildlife protection and enhancement, including the removal of non-native vegetation and replacement with native plant species.**

- (h) Except in Wetland Natural Areas, public boating facilities, irrigation pumps, water-related and water-dependent uses including the removal of vegetation necessary for the development of water-related and water-dependent uses, and replacement of existing structures with structures in the same location that do not disturb additional riparian surface.**
- (i) In Wetland Natural Areas, perimeter mowing and other cutting necessary for hazard prevention.**

72.060(3) The City may, through the subdivision, conditional use, architectural review, or other development approval process, attach appropriate conditions to approval of a development permit. Such conditions may include, but are not limited to:

- (a) Use of Greenways and Natural Areas for storm drainage purposes;**
- (b) Location of approved landscaping, pedestrian and bike access areas, and other non-building uses and activities in Greenways and Natural Areas;**
- (c) Setback of proposed buildings, parking lots, and loading areas away from the Greenway and Natural Area boundary.**

72.110 Easements for Pedestrian and Bicycle Access. In any portion of the NRPO District, the City may, through the subdivision, partition, conditional use, architectural review, or other applicable development approval process, require that easements for pedestrian and bicycle access and maintenance uses be granted as a condition of approval when said easements are necessary to achieve the purposes of the Parks and Recreation Master Plan, Greenways Development Plan, or Bikeways Plan.

74.310 Greenway, Natural Area, Bike, and Pedestrian Path Dedications and Easements.

- (1) Areas dedicated to the City for Greenway or Natural Area purposes or easements or dedications for bike and pedestrian facilities during the development application process shall be surveyed, staked and marked with a City approved boundary marker prior to acceptance by the City.**

The plans show a proposed greenway trail easement extending from Street "A" east to I-5 meandering south of Heron's Landing Apartments and the Tualatin River and north of the proposed development. No construction of trails, viewing areas, or associated water quality treatment is proposed. The trail easement includes two connections to the south side of Heron's Landing Apartments plus one to the east side and one to the proposed development north of building 1010. The abovementioned trails include a 16-foot easement that allow for future construction of a cross section of 12-foot wide path with additional 2-feet on either side for LIDA water quality treatment. This easement width is acceptable. The plans show a trail connection north of building 1040 to the development that is 6-feet wide without an easement. A 16-foot wide easement for a 12-foot wide path with additional 2-feet on either side for LIDA water quality treatment is needed. The applicant will need to submit revised plans that show a trail connection from the development north of building 1040 that includes a 16-foot wide greenway trail

easement that that allow for future construction of a cross section of a 12-foot wide path with additional 2-feet on either side for LIDA water quality treatment, for review and approval.

A greenway trail connection to the west along the Tualatin River is shown. This is acceptable. The relation to the top of bank is not indicated. In order to connect to the west the trail needs to be within 40-feet of the top of bank. The applicant will need to submit revised plans that show the greenway trail connection to the west along the Tualatin River within 40-feet of the top of bank, for review and approval.

A greenway trail connection to the east along the Tualatin River is shown. This is acceptable.

On the west side of I-5 at the Tualatin River to access future north (south of shared pathway at locations shown on Exhibit M (Transportation Plant) in the Master Plan set. This is not shown on the submitted plans. The applicant will need to submit revised plans that show a greenway trail connection on the west side of I-5 at the Tualatin River to access future north (south of shared pathway at locations shown on Exhibit M (Transportation Plant) in the Master Plan set, for review and approval.

Three greenway trail viewing areas are shown north of the greenway trail north of buildings 1040 and N-100. No construction of the viewing areas or associated water quality treatment is proposed. No easements are shown for the viewing areas. The greenway trail easement needs to include all public areas including viewing areas. The applicant will need to submit revised plans that show a greenway trail easement over the three future viewing areas north of building 1040 and N-100, for review and approval.

The greenway trail, viewing areas, and associated water quality treatment areas are not proposed for construction at this time. Locations of the greenway trail and viewing areas are approved during evaluation, obtaining a Clean Water Services Service Provider Letter, and approval of construction plans. No Clean Water Services Service Provider Letter was submitted to assure a location for construction. To assure that the greenway trail can be constructed within the area north of this development an easement will need to be provided that could allow for the trail to be located either within the area south of Heron's Landing Apartments and the Tualatin River and north of the development or for a specific approved location with an associated Clean Water Services Service Provider Letter. The applicant will need to grant an easement to allow for the trail to be located either within the area south of Heron's Landing Apartments and the Tualatin River and north of the development or for a specific approved location as shown with an associated Clean Water Services Service Provider Letter.

The greenway trail connects to SW Nyberg Road via a 14-foot public shared pathway between buildings 1010 & 1030 and 1040 that connects to the public access easement acting as the Loop Road. This is acceptable. The applicant will need to submit final plans that show a 14-foot public shared pathway from the greenway trail between buildings 1010 & 1030 and 1040 that connects to the public access easement acting as the Loop Road, for review and approval. The applicant will need to grant a 14-foot

easement for a public shared pathway from the greenway trail between buildings 1010 & 1030 and 1040 that connects to the public access easement acting as the Loop Road.

Prior to issuance of a Building Permit:

- *The applicant shall submit revised plans that show a trail connection from the development north of building 1040 that includes a 16-foot wide greenway trail easement that that allow for future construction of a cross section of a 12-foot wide path with additional 2-feet on either side for LIDA water quality treatment, for review and approval.*
- *The applicant shall submit revised plans that show the greenway trail connection to the west along the Tualatin River within 40-feet of the top of bank, for review and approval.*
- *The applicant shall submit revised plans that show a greenway trail connection on the west side of I-5 at the Tualatin River to access future north (south of shared pathway at locations shown on Exhibit M (Transportation Plant) in the Master Plan set, for review and approval.*
- *The applicant shall submit revised plans that show a greenway trail easement over the three future viewing areas north of building 1040 and N-100, for review and approval.*
- *The applicant shall grant an easement to allow for the trail to be located either within the area south of Heron's Landing Apartments and the Tualatin River and north of the development or for a specific approved location as shown with an associated Clean Water Services Service Provider Letter.*
- *The applicant shall submit final plans that show a 14-foot public shared pathway from the greenway trail between buildings 1010 & 1030 and 1040 that connects to the public access easement acting as the Loop Road, for review and approval.*
- *The applicant shall grant a 14-foot easement for a public shared pathway from the greenway trail between buildings 1010 & 1030 and 1040 that connects to the public access easement acting as the Loop Road.*

12. Public Comment

The public comment period for the public facilities portion of this decision was from December 3 to December 17, 2013. Comments related to the public facilities review were submitted:

- Seth J. King, Perkins Coie, Comment Letter, dated December 3, 2013
- Christie White, Rebuttal to Perkins Coie Letter, dated December 9, 2013
- Jan Giunta, Comments Regarding Public Facilities Decision, December 17, 2013
- Seth J. King, Perkins Coie, Comment Letter, dated December 17, 2013

Aspects of the letters that can have a response within the Public Facilities Decision are in the comments below followed by relevant sections of code.

Resolution 5163-13 approved Master Plan 13-01, Nyberg Rivers. This master plan creates the ability to allow development to occur in the direction of the plan. The master plan doesn't create a requirement for development to occur in any specific timeframe.

Seth King's letter dated December 3, 2013 stated:

- The Application does not comply with the Project Master Plan. The City Council approved the Project Master Plan, subject to a finding that the Seneca Street extension between the Project and SW Martinazzi Avenue, including a signal at SW Martinazzi Avenue, was a "needed" transportation improvement.
- The Project does not satisfy TDC 74.140 or TDC 74.420(8) because there is no requirement or assurance that the Seneca Street extension will be constructed prior to issuance of a certificate of occupancy for the Project.

The Public Facilities Report and Decision implements this condition by requiring SW Seneca Street to be constructed. However, per TDC 74.430, the City Engineer has the ability to modify the conditions in certain instances. Construction of SW Seneca Street would require demolition of the existing Council Building. City Council has not made a determination as to the timing of Council Building demolition. Even if the applicant had not proposed the fee-in-lieu condition, pursuant to TDC 74.430, the City would have imposed this condition. The City Engineer has the authority to modify a condition to eliminate impractical or detrimental results. Requiring the Seneca extension against the wishes of the City Council if the City Council decides not to demolish the Council building is both impractical and detrimental. Therefore, modifying the condition to allow for a fee-in-lieu if City Council decides not to demolish the Council building is a proper modification to eliminate an impractical and detrimental result.

- The Master Plan itself is deficient and on appeal to the Land Use Board of Appeals ("LUBA") and thus cannot provide a factual base to support approval of the Application.

Seth King argues that the master plan is on appeal and therefore all subsequent decisions that rely on the master plan must be in effect "stayed" until the resolution of that appeal. The City Council granted the Master Plan approval. Just because the decision has been appealed to LUBA, there are no grounds within the TDC that would support Mr. King's request for a local stay on the decision.

- Because Applicant does not own or control the ODOT Parcel, Applicant cannot demonstrate that it is feasible to complete the development as proposed. Further, Applicant has not demonstrated that it is feasible to complete the development in compliance with applicable standards if the ODOT Parcel is removed.

The City agrees that ODOT has consented to the construction of said improvements to the current ODOT right-of-way. The improvements are required to be constructed prior to issuance of a certificate of occupancy.

Christe White's Rebuttal Letter states in part:

- Mr. King argues that Seneca Street must be built before occupancy to meet the master plan conditions of approval. This is not correct. The master plan proceedings reviewed traffic reports from 3 experts, reaching different conclusions based on differing assumptions and methodologies. The applicant's traffic consultant, Kittelson and Associates concluded that the Seneca Street extension was not needed to

maintain an acceptable level of service at the Seneca Street driveway. DKS disagreed with this conclusion. Kittelson rebutted the DKS Report in the master plan hearing before the City Council as well as part of the written record for the Master Plan proceedings. The City concluded in the master plan:

"Based on a review of all of the traffic evidence in the record, the City finds that the best operation and functional transportation environment is achieved with a signalized extension of Seneca Street and the closure of the driveways south of City Hall and south of the Council Building."
(Master Plan Decision at page 11)

The Public Facilities Report and Decision implements this condition by establishing the timing of construction. If the applicant obtains the right-of-way before April 1, 2014, Seneca will be constructed with the Nyberg Rivers project; if it is not, CenterCal will contribute to the improvement consistent with the City's finding on optimal operations.

Lastly, under TDC 74.430, the City Engineer has the authority to modify conditions of approval where the condition or the timing of the condition is detrimental to the City's interests. If the City is not prepared to make a decision on the City facilities within the Seneca Street extension by April 1, 2014, forcing such a decision may be detrimental to the City's interest. Thus, permitting a fee in lieu of the construction equally implements the condition while protecting the City's timing interests.

Further, under TDC 74.410(5) the City Engineer is specifically permitted to require the applicant to participate in the funding of future off-site street extensions, particularly here where the applicant has volunteered such a condition to address the City's timing concerns with the Seneca Street extension. For these reasons, we ask the ARB to reject the arguments presented by Mr. King on Seneca Street.

The City agrees with the sections provided by the applicant above on this issue.

- Mr. King argues that the master plan is on appeal and therefore all subsequent decisions that rely on the master plan must be in effect "stayed" until the resolution of that appeal sometime next year.

There are two problems with this request. First, the TDC does not have this authority. In fact the code requires only that the applicant seek and obtain City approval of a master plan in a master plan area before proceeding with the ARB review. The applicant sought and obtained that approval before proceeding with the ARB.

Mr. King has not filed for or obtained a stay of the master plan before the Land Use Board of Appeals. To do so, he would have to demonstrate:

- (1) (a) A colorable claim of error in the land use decision or limited land use decision under review; and
(b) That the petitioner will suffer irreparable injury if the stay is not granted.

- (2) If the board grants a stay of a quasi judicial land use decision or limited land use decision approving a specific development of land, it shall require the petitioner requesting the stay to give an undertaking in the amount of \$5,000. The undertaking shall be in addition to the filing fee and deposit for costs required under ORS 197.830 (9). ORS 197.845.

Given the traffic evidence in the record and the distance of Mr. King's client from the Seneca Street extension, it is highly unlikely one would be able to prove irreparable injury to Mr. King's client or a colorable claim of error.

Thus there are no grounds within the TDC that would support Mr. King's request for a local stay on the decision.

The City agrees with the sections provided by the applicant above on this issue.

- The record adequately demonstrates that the applicant can meet the condition of approval that requires the applicant to construct the Nyberg Road improvements. The area of improvement is currently owned by ODOT. As the record demonstrates, ODOT consented to the application, approved the design for the additional turn lanes, bike lane and pedestrian improvements and consented to the closure of 75th Avenue. The ODOT right-of-way at issue is not subject to the open bidding process. ODOT is currently having the right-of-way appraised and the applicant and ODOT are scheduled to close on the transaction by the end of 2013 or the first month of 2014. The facts demonstrate that it is very feasible to implement the Nyberg Road improvements and such improvements will be constructed prior to the final certificate of occupancy of the center.

The City is permitted to impose reasonable conditions of approval for off-site improvements. Here the condition is both reasonable and feasible to implement. It is the applicant's burden to demonstrate compliance with the condition, which the applicant will do before the certificate of occupancy is issued.

The City agrees that ODOT has consented to the construction of said improvements to the current ODOT right-of-way. The improvements are required to be constructed prior to issuance of a certificate of occupancy.

Jan Giunta letter dated December 17, 2013 included four areas of concern:

- Jan Giunta requested to not include on-street parking within the SW Seneca Street cross-section. Requirements for development are created within the land use decision. Within the land use decision the City Engineer has opportunity to review proposed development and create requirements to mitigate impacts of the development. This enables requirements to be shaped more appropriately for nonstandard situations. One such decision was to not include on-street parking within the SW Seneca Street cross-section as it is inconsistent with the character of the neighborhood, would cause conflicts with queues, and create concerns for public safety in an active area.

- Jan Giunta requested that the SW Seneca Street extension obtain the designation of a “No Truck” route. The applicant has indicated that SW Seneca Street will not be used for truck traffic.
- Jan Giunta requested that the crosswalk across SW Seneca Street be raised and lighted. The details of construction will be finalized within the Public Works Permit submittal in accordance with the Public Works Construction Code. Raised crosswalks are allowed under Public Works Construction Code. The possibility of lighting the crosswalk will be evaluated.
- Jan Giunta requested clarification as to the crosswalk planned in the area of SW Boones Ferry Road and SW Street “A” and was concerned that it would cross SW Boones Ferry Road. No crosswalks are proposed or required for construction to cross over SW Boones Ferry Road at the intersection with SW Street “A”. The crosswalk shown on the plan and required for construction is to cross over the entrance of SW Street “A” south of SW Boones Ferry Road as shown on the submitted plans.

Seth King’s letter dated December 17, 2013 included these areas of concern:

- The application does not comply with the Project Master Plan. The City Council approved the Project Master Plan, subject to a finding that the Seneca Street extension was a needed transportation improvement.
- The project does not satisfy TDC 74.140 or TDC 74.420(8) because there is no requirement or assurance that the Seneca Street extension will be constructed prior to issuance of a certificate of occupancy for the Project.

The Public Facilities Report and Decision implements the conditions of the Master Plan by requiring SW Seneca Street to be constructed.

74.420 Street Improvements.

(16) The City Engineer may determine that, although concurrent construction and placement of the improvements in (14) and (15) of this section, either individually or collectively, are impractical at the time of development, the improvements will be necessary at some future date. In such a case, the applicant shall sign a written agreement guaranteeing future performance by the applicant and any successors in interest of the property being developed. The agreement shall be subject to the City's approval.

74.430 Streets, Modifications of Requirements in Cases of Unusual Conditions.

When, in the opinion of the City Engineer, the construction of street improvements in accordance with TDC 74.420 would result in the creation of a hazard, or would be impractical, or would be detrimental to the City, the City Engineer may modify the scope of the required improvement to eliminate such hazardous, impractical, or detrimental results. Examples of conditions requiring modifications to improvement requirements include but are not limited to horizontal alignment, vertical alignment, significant stands of trees, fish and wildlife habitat areas, the amount of traffic generated by the proposed development, timing of the development or other conditions creating hazards for

pedestrian, bicycle or motor vehicle traffic. The City Engineer may determine that, although an improvement may be impractical at the time of development, it will be necessary at some future date. In such cases, a written agreement guaranteeing future performance by the applicant in installing the required improvements must be signed by the applicant and approved by the City.

Construction of SW Seneca Street would require demolition of the existing Council Building. City Council has not made a determination as to the timing of Council Building demolition. Even if the applicant had not proposed the fee-in-lieu condition, pursuant to TDC 74.430, the City would have imposed this condition. The City Engineer has the authority to modify a condition to eliminate impractical or detrimental results. Requiring the Seneca extension against the wishes of the City Council if the City Council decides not to demolish the Council building is both impractical and detrimental. Therefore, modifying the condition to allow for a fee-in-lieu if City Council decides not to demolish the Council building is a proper modification to eliminate an impractical and detrimental result.

- The Master Plan itself is deficient and on appeal to the Land Use Board of Appeals and thus cannot provide a factual base to support approval of the Application.

Seth King argues that the master plan is on appeal and therefore all subsequent decisions that rely on the master plan must be in effect “stayed” until the resolution of that appeal. There are two problems with this request. First, the TDC contains no such authority. In fact the code requires only that the applicant obtain City approval of a master plan in a master plan area before proceeding with the review. The applicant received City approval of the Master Plan. Additionally, Seth King has not filed for or obtained a stay of the master plan before the Land Use Board of Appeals. Thus there are no grounds within the TDC that would support Mr. King’s request for a local stay on the decision.

- Because Applicant does not own or control the ODOT parcel, Applicant cannot demonstrate that it is feasible to complete the development as proposed. Further, the Applicant has not demonstrated that it is feasible to complete the development in compliance with applicable standards if the ODOT parcel is removed.

The City is permitted to impose reasonable conditions of approval for off-site improvements. Here the condition is both reasonable and feasible to implement. The record and application demonstrates that the applicant can meet the condition of approval to construct the SW Nyberg Road improvements. As the record demonstrates, ODOT consented to the application, approved the design for the additional turn improvements and consented to the closure of SW 75th Avenue. The facts demonstrate that it is very feasible to implement SW Nyberg Road improvements and such improvements will be constructed prior to a certificate of occupancy of the center. It is the applicant’s burden to demonstrate compliance with the condition, which the applicant will do before the certificate of occupancy is issued.

- The extension of Street A does not obviate the need for the Seneca Street extension.

The City agrees with Mr. King that Street A does not alleviate the need to construct SW Seneca Street.

- Zian will be adversely affected by the Project.

He notes that traffic traveling between I-5 and Zian's property must travel through the same interchange and some of the same intersections that the project's traffic must travel through. The applicant is mitigating the impacts of the traffic generated by their development with improvements to Tualatin-Sherwood Road between I-5 and the site entrance along with the other required transportation improvements. With these improvements, the intersections will operate at an acceptable level of service. In fact, the Level of Service will not decrease over background conditions.

PUBLIC FACILITIES REQUIREMENTS

The following are the Public Facilities requirements for AR 13-07, Nyberg Rivers:

PRIOR TO ISSUANCE OF A WATER QUALITY PERMIT:

- PFR-1 The applicant shall grant a public stormwater facility easement for the public stormwater facility.
- PFR-2 The applicant shall submit revised plans that show all private stormwater treatment facilities and lines including the filter vault at the intersection of the private access easement acting as the Loop Road is shown within SW Nyberg Street to be located on private property, for review and approval.
- PFR-3 The applicant shall submit final plans that show three LIDA planters within parking landscaping south of building 1030 and east of building 1040, for review and approval.
- PFR-4 The applicant shall submit revised plans that do not show the LIDA rain garden over public easements, for review and approval.
- PFR-5 The applicant shall submit revised plans that show access easements to the public stormwater facility and manholes, for review and approval.
- PFR-6 The applicant shall grant a public access easement to the public stormwater facility and manholes.
- PFR-7 The applicant shall submit revised plans that include a complete and connected stormwater treatment and conveyance system for the parking lot north of the City offices, for review and approval.
- PFR-8 The applicant shall submit final plans that show mechanical filters treating the public Street "A" and future SW Seneca Street, for review and approval.

PFR-9 The applicant shall submit final plans that comply with the Service Provider Letter conditions and Clean Water Services Memorandum comments, for review and approval.

PFR-10 The applicant shall obtain a Stormwater Connection Permit.

PRIOR TO ISSUANCE OF A PUBLIC WORKS PERMIT:

PFR-11 The applicant shall submit revised plans that show the existing public fire hydrant at the northwest corner of building D-130 labeled as public.

PFR-12 The applicant shall submit revised plans of SW Boones Ferry Road that include a median on the north side of the eastbound travel lane in order to restrict Street "A" to right-in/right-out movement, for review and approval.

PFR-13 The applicant shall submit revised plans that show a crosswalk at the intersection of SW Boones Ferry Road and Street "A" that includes material that is visually different and possibly raised, for review and approval.

PFR-14 The applicant shall submit revised plans that show SW Seneca Street from SW Martinazzi Avenue connecting to the Nyberg Rivers site for construction up to the requirements stated in Resolution 5163-13, without on-street parking, with signalization at SW Seneca Street & SW Martinazzi Avenue, for review and approval.

PFR-15 The applicant shall submit a copy of the ODOT Permit and Washington County Facility Permit for construction of SW Nyberg Street from I-5 to SW Tualatin Sherwood Road to add a 5-foot bike lane, a 15-foot westbound right-turn lane, a 4-foot planter strip with curb, streetlights, and trees, a 7-foot sidewalk, and a 2-foot landscape strip and a retaining wall with a hand rail on top and close SW 75th Avenue's access.

PFR-16 The applicant shall submit final plans for SW Nyberg Street from SW Martinazzi Avenue to SW Tualatin-Sherwood Road that include two 11-foot westbound travel lanes, a 6-foot bike lane, a varied width 5- to 6-foot curb tight sidewalk with streetlights, and a varied width 4- to 6-foot planter strip with trees in compliance with Resolution 5163-13, for review and approval.

PFR-17 The applicant shall grant a public sidewalk easement from right-of-way to back of sidewalk adjacent to SW Nyberg Street.

PFR-18 The applicant shall submit revised plans for the Loop Road from the SW Nyberg Street main intersection north to the south side of building 1010 that includes the City's standard 5'x5' tree wells within the 14-foot wide shared path, for review and approval.

- PFR-19 The applicant shall submit final plans from the south side of building 1010 west to the south side of building D-120 that include two 13-foot travel lanes, a 12-foot pedestrian walkway on the north side with tree wells, a 6-foot planter and 5-foot sidewalk on the south side, for review and approval.
- PFR-20 The applicant shall submit final plans that show along the west side of buildings D-120, D-125, and D-130 two 14-foot travel lanes, two 17.5-foot angled parking aisles, a 10-foot wide pedestrian walkway on the east side, trees planted in the parking buffers, a 4-foot sloped landscape area on the west side, and a 12-foot multi-use path on the west side, for review and approval.
- PFR-21 The applicant shall submit final plans that show two 12-foot travel lanes with a pork chop at the intersection of Boones Ferry Road that will be mountable for emergency vehicles, 4-foot planter strips with curbs, streetlights, and trees, a 6-foot bike lane and 5-foot sidewalk on the east side, and a 12-foot multi-use path on the west side.
- PFR-22 The applicant shall submit revised plans that show a raised crosswalk at the intersection of the greenway trail and Street "A", for review and approval.
- PFR-23 The applicant shall grant a maintenance agreement to City standards for all cross-sections of the Loop Road.
- PFR-24 The applicant shall grant a public access easement over all cross-sections of the Loop Road.
- PFR-25 The applicant shall submit revised plans that show an approved street name in place of Street "A", for review and approval.
- PFR-26 The applicant shall submit revised plans that show a 32-foot wide access to the City's back parking lot approximately 140 feet south of SW Boones Ferry Road without requiring relocation of existing structures, for review and approval.
- PFR-27 The applicant shall submit revised plans that show the Heron's Landing Apartments driveway cut to be a minimum of 32-foot wide with associated 40-foot private access easement and located opposite the City parking lot access approximately 140 feet south of SW Boones Ferry Road, for review and approval.
- PFR-28 The applicant shall submit a copy of the private access easement allowing Heron's Landing Apartments access to Street "A", for review and approval.
- PFR-29 The applicant shall submit revised plans that show private access easements for the lots with buildings E-100, F-100, G-100, and H-100 to allow circulation from the intersection of the public access easement acting as the Loop Road from SW Nyberg Street through the east parking area to south of building 1010, for review and approval.

- PFR-30 The applicant shall submit copies of the recorded documents that show private access easements for the lots with buildings E-100, F-100, G-100, and H-100 to allow circulation from the intersection of the public access easement acting as the Loop Road from SW Nyberg Street through the east parking area to south of building 1010, for review and approval.
- PFR-31 The applicant shall submit a copy of the private access easement from TLID 2S124B002000 through TLID 2S124B001602 to a public right-of-way, for review and approval.
- PFR-32 The applicant shall submit final water system plans, for review and approval.
- PFR-33 The applicant shall grant a 15-foot wide public water line easement over proposed public water lines.
- PFR-34 The applicant shall submit revised plans that show access easements to public water lines, for review and approval.
- PFR-35 The applicant shall grant an access easement to public water lines.
- PFR-36 The applicant shall submit copies of private water line easements.
- PFR-37 The applicant shall submit revised plans that minimize private water lines crossing public utility easements and only cross perpendicular to the public lines, for review and approval.
- PFR-38 The applicant shall submit revised plans that show trees located outside public water line easements, for review and approval.
- PFR-39 The applicant shall submit revised plans that show the public water line south of the City Offices will need to be relocated to within SW Seneca Street, for review and approval.
- PFR-40 The applicant shall construct a public irrigation line to the irrigation system serving the City maintained plantings along I-5 and in the median of SW Tualatin-Sherwood with associated water meter and backflow prevention.
- PFR-41 The applicant shall submit sanitary sewer system plans, for review and approval.
- PFR-42 The applicant shall grant a 15-foot wide public sanitary sewer line easement over proposed public water lines.
- PFR-43 The applicant shall submit revised plans that show access easements to public sanitary sewer manholes, for review and approval.

- PFR-44 The applicant shall grant an access easement to public sanitary sewer manholes.
- PFR-45 The applicant shall submit revised plans that minimize private sanitary sewer lines crossing public utility easements and only cross perpendicular to the public lines, for review and approval.
- PFR-46 The applicant shall submit revised plans that show trees located outside public sanitary sewer line easements, for review and approval.
- PFR-47 The applicant shall submit revised plans that show the public sanitary sewer line south of the City Offices will need to be relocated to within SW Seneca Street, for review and approval.
- PFR-48 The applicant shall submit revised stormwater system plans that include the public stormwater treatment facility within a public stormwater easement outside of the public water line easement, for review and approval.
- PFR-49 The applicant shall submit revised plans that minimize private stormwater lines crossing public utility easements and only cross perpendicular to the public lines and private facilities and structures located outside of public easements, for review and approval.
- PFR-50 The applicant shall submit revised plans that show trees located outside public stormwater line easements, for review and approval.
- PFR-51 The applicant shall submit revised plans that show access easements to public stormwater manholes, for review and approval.
- PFR-52 The applicant shall grant an access easement to public stormwater manholes.
- PFR-53 The applicant shall submit revised plans that show the public stormwater line south of the City Offices will need to be relocated to within SW Seneca Street, for review and approval.

PRIOR TO ISSUANCE OF A BUILDING PERMIT:

- PFR-54 The applicant shall submit plans that comply with fire protection requirements as determined through the Building Division and Tualatin Valley Fire & Rescue (TVF&R).
- PFR-55 The applicant shall obtain all Public Works and Water Quality Permits needed for this development.

- PFR-56 The applicant shall obtain a Public Works Permit for all cross-sections of the Loop Road.
- PFR-57 The applicant shall obtain a City of Tualatin erosion control permit that includes the entire site area to be disturbed.
- PFR-58 The applicant shall submit an amended 1200-C for the remainder of the site, for review and approval.
- PFR-59 The applicant shall submit a completed FHADP application with a plan showing the balanced cut and fill and a 1st survey.
- PFR-60 The applicant shall submit revised plans that show a trail connection from the development north of building 1040 that includes a 16-foot wide greenway trail easement that that allow for future construction of a cross section of a 12-foot wide path with additional 2-feet on either side for LIDA water quality treatment, for review and approval.
- PFR-61 The applicant shall submit revised plans that show the greenway trail connection to the west along the Tualatin River within 40-feet of the top of bank, for review and approval.
- PFR-62 The applicant shall submit revised plans that show a greenway trail connection on the west side of I-5 at the Tualatin River to access future north (south of shared pathway at locations shown on Exhibit M (Transportation Plant) in the Master Plan set, for review and approval.
- PFR-63 The applicant shall submit revised plans that show a greenway trail easement over the three future viewing areas north of building 1040 and N-100, for review and approval.
- PFR-64 The applicant shall grant an easement to allow for the trail to be located either within the area south of Heron's Landing Apartments and the Tualatin River and north of the development or for a specific approved location as shown with an associated Clean Water Services Service Provider Letter.
- PFR-65 The applicant shall submit final plans that show a 14-foot public shared pathway from the greenway trail between buildings 1010 & 1030 and 1040 that connects to the public access easement acting as the Loop Road, for review and approval.
- PFR-66 The applicant shall grant a 14-foot easement for a public shared pathway from the greenway trail between buildings 1010 & 1030 and 1040 that connects to the public access easement acting as the Loop Road.

PRIOR TO A FRAMING INSPECTION:

PFR-67 The applicant shall submit a 2nd survey for the Flood Hazard Area Development Permit.

PRIOR TO ISSUANCE OF A CERTIFICATE OF OCCUPANCY:

PFR-68 The applicant shall construct SW Boones Ferry Road that include a median on the north side of the eastbound travel lane in order to restrict Street "A" to right-in/right-out movement as part of the Public Works Permit.

PFR-69 The applicant shall construct a crosswalk at the intersection of SW Boones Ferry Road and Street "A" that includes material that is visually different and possibly raised.

PFR-70 If the applicant obtains the right-of-way for the Seneca Street extension and traffic signal by April 1, 2014, the applicant will design and construct the Seneca Street extension along with a new signal at the SW Martinazzi Avenue/SW Seneca Street intersection per the Public Works Construction Code under a public works permit or if the applicant is unable to obtain the right-of-way by April 1, 2014, the applicant will provide a fee in lieu of the Seneca Street construction to the City in the amount of \$360,000, which accounts for the applicant's share of the improvements.

PFR-71 If the east extension of SW Seneca Street is constructed, the applicant will need to extinguish the private access easement, Washington County recorded document 8295, Book 773, Page 873, exists over City owned TLID 2S124B001900.

PFR-72 The applicant shall construct SW Nyberg Street from I-5 to SW Tualatin Sherwood Road to add a 5-foot bike lane, a 15-foot westbound right-turn lane, a 4-foot planter strip with curb, streetlights, and trees, a 7-foot sidewalk, and a 2-foot landscape strip prior to a hand rail on top of a retaining wall and close SW 75th Avenue's access.

PFR-73 The applicant shall construct SW Nyberg Street from SW Martinazzi Avenue to SW Tualatin-Sherwood Road that include two 11-foot westbound travel lanes, a 6-foot bike lane, a varied width 5- to 6-foot curb tight sidewalk with streetlights, and a varied width 4- to 6-foot planter strip with trees in compliance with Resolution 5163-13.

PFR-74 The applicant shall construct Loop Road from the SW Nyberg Street main intersection north to the south side of building 1010 that includes the City's standard 5'x5' tree wells within the 14-foot wide shared path.

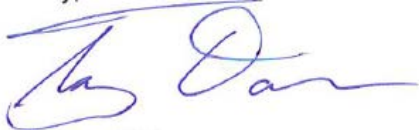
PFR-75 The applicant shall construct a cross-section from the south side of building 1010 west to the south side of building D-120 that include two 13-foot travel lanes, a 12-foot pedestrian walkway on the north side with tree wells, a 6-foot planter and 5-foot sidewalk on the south side.

- PFR-76 The applicant shall construct along the west side of buildings D-120, D-125, and D-130 two 14-foot travel lanes, two 17.5-foot angled parking aisles, a 10-foot wide pedestrian walkway on the east side, trees planted in the parking buffers, a 4-foot sloped landscape area on the west side, and a 12-foot multi-use path on the west side.
- PFR-77 The applicant shall construct two 12-foot travel lanes with a pork chop at the intersection of Boones Ferry Road will be mountable for emergency vehicles, 4-foot planter strips with curbs, streetlights, and trees, a 6-foot bike lane and 5-foot sidewalk on the east side, and a 12-foot multi-use path on the west side.
- PFR-78 The applicant shall construct a raised crosswalk at the intersection of the greenway trail and Street "A."
- PFR-79 The applicant shall complete all the public improvements and private water quality facilities and have them accepted by the City.
- PFR-80 The applicant shall construct the public water system.
- PFR-81 The applicant shall construct a public irrigation line to the irrigation system serving the City maintained plantings along I-5 and in the median of SW Tualatin-Sherwood with associated water meter and backflow prevention.
- PFR-82 The applicant shall complete all the public water improvements and have them accepted by the City.
- PFR-83 The applicant shall construct the public sanitary sewer system.
- PFR-84 The applicant shall complete all the public sanitary sewer improvements and have them accepted by the City.
- PFR-85 The applicant shall construct the public stormwater system.
- PFR-86 The applicant shall complete all the public stormwater improvements and have them accepted by the City.
- PFR-87 The applicant shall submit a 3rd survey for the Flood Hazard Area Development Permit.

APPEAL

The Public Facilities Review portion of this decision is final after the expiration of 14 calendar days from the date of this decision, unless a written appeal is received on or before 5:00 p.m., on January 3, 2014 by the Engineering Division at 18880 SW Martinazzi Avenue, Tualatin, Oregon 97062. The appeal must be signed by the appellant, contain the information required by TDC 31.078 on the City appeal form, and contain the \$135 appeal filing fee. The plans and appeal forms are available at the Tualatin Library and at the City offices. Public Facilities appeals are reviewed by City Council.

Typed on behalf of the City Engineer,



Tony Doran, EIT
Engineering Associate

The record includes the following which can be downloaded from the City of Tualatin's webpage or viewed at the City's Planning Counter:

1. Clean Water Services Memorandum
2. Oregon Department Of Transportation Response to Local Land Use Notification
3. Washington County Required Conditions of Approval
4. Washington County Traffic Staff Report
5. Tualatin Valley Fire and Rescue
6. City Council Resolution 5163-13
7. Kittelson & Associates Letter Dated November 25, 2013
8. Seth J. King, Perkins Coie comment letter dated December 3, 2013
9. Christie White, Rebuttal letter dated December 9, 2013
10. Jan Giunta, Comments Regarding Public Facilities Decision, December 17, 2013
11. Seth J. King, Perkins Coie comment letter dated December 17, 2013
12. ARB Submittals, 9/16/2013 – 12/10/2013
13. DKS Traffic Submittals dated December 18, 2013 and July 11, 2013

C: Christie White, White, Radler, Parks, and Alexander, LLP
Jan Giunta
Kathy Newcomb
Michael Cerbone, Cardno
Michael Kirk, Centercal Properties
Seth J. King, Perkins Coie