



Agenda Bill 2017-12-11-03

Date: December 11, 2017
To: Mayor Axelrod and West Linn City Council
From: John J. Boyd AICP, Planning Manager JB
Through: John R. Williams, Community Development Director *JRW*
Eileen Stein, City Manager
Subject: MISC 17-09/Ordinance No. 1666

Purpose

Council public hearing to consider a proposed Statutory Development Agreement pursuant to ORS 94.504-94.528 for property located at 2410, 2422 and 2444 Tannler Drive. If approved, this proposal would implement a statutory development agreement via a required ordinance. The development agreement is intended to clarify the applicant’s application and infrastructure obligations as part of required future land use applications. The review of these applications will be in the future and is not part of this action.

Question(s) for Council:

The public hearing tonight allows the Council to consider if they wish to approve MISC 17-09 and adopt Ordinance No. 1666 for the statutory development agreement.

Public Hearing Required:

Yes. Notice of the public hearing and workshop was mailed and posted on October 31, 2017 and the notice of the rescheduled workshop was mailed and posted on November 15, 2017. A notice was posted on the site on November 27, 2017.

Background & Discussion:

MISC 17-09 consists of a proposed statutory development agreement. The City of West Linn Community Development Code (CDC) does not contain a process for development agreements and therefore, the process contained in the Oregon Revised Statutes (ORS) was followed. On July 6, 2017, the City and the Applicant entered into a non-binding Letter of Intent that outlines potential obligations the City and the applicant may choose to agree to, if approved by the City Council after a public hearing process.

On September 22, 2017 the applicant requested the City consider approval of the proposed statutory development agreement. The City Council is the review board for two core reasons: first, this policy decision falls under the jurisdiction of the City Council, second, if approved, the agreement must be adopted by ordinance. The City Charter provides only the Council has the power to adopt ordinances.

The City Council held a work session on December 4, 2017 to consider what the purposes a development agreement may serve. That session did not address the specifics of this project or this ordinance, however. The proposal does not consider or review any required land use applications identified in the agreement.

The statutory process identifies the steps the applicant and City must take to complete the development agreement process. If the Council chooses to approve and adopt an ordinance to implement the

agreement, a listing of required future land use actions are listed in the agreement for action by the Planning Commission or by review of the Planning Commission with recommendation to City Council (plan and zone map changes).

By the time of the public hearing 16 written comments were received.

Options:

1. The Council could open the public hearing on MISC 17-09 and continue it to a future date.
2. The Council could open the public hearing on MISC 17-09, take testimony, and continue it to a future date.
3. The Council could approve MISC 17-09 and adopt Ordinance No. 1666 for the development agreement.
4. The Council could approve MISC 17-09 and adopt Ordinance No. 1666 for the development agreement with revisions.
5. The Council could deny MISC 17-09 and take no action on Ordinance No. 1666 for the development agreement.
6. The Council could table action on MISC 17-09 pending future work session discussion.

Staff Recommendation:

Staff concludes that the submitted application meets the process and submittal requirements laid out in the CDC and state law regarding development agreements. However, approval of the application is a policy decision by Council. Staff recommends that the City Council conduct a public hearing and then make a decision regarding File No. MISC 17-09. Approval of the application would not bind the City to any future land use approvals and could provide clarity to both the applicant and community about what process is required for those future land use applications and what infrastructure issues would need to be addressed. Should the Council wish to move forward, it could adopt Ordinance 1666 as proposed or with amendments. Alternately, the Council may request additional information or revised draft language from staff and continue discussion on this topic to future meeting dates.

Potential Motion:

“I move that the Council accept the record for file MISC 17-09, including the findings of fact and conclusions presented in the staff report, and adopt Ordinance No. 1666 (*with the following changes...*)”

Attachments:

1. Staff Report with attached Exhibits



CITY OF
West Linn

**STAFF REPORT
FOR THE CITY COUNCIL**

FILE NUMBER: MISC-17-09

HEARING DATE: December 11, 2017

REQUEST: To consider adoption of proposed Statutory Development Agreement pursuant to ORS 94.504-528 for property located at 2410, 2422 and 2444 Tannler Drive.

**APPROVAL
CRITERIA:** Community Development Code (CDC) Chapters 99 and ORS Chapter 94

**STAFF REPORT
PREPARED BY:** John J. Boyd AICP, Planning Manager

TABLE OF CONTENTS

GENERAL INFORMATION 2

EXECUTIVE SUMMARY..... 3

PUBLIC COMMENTS..... 4

RECOMMENDATION..... 4

ADDENDUM..... 5

APPLICABLE CRITERIA AND ASSOCIATED SUPPLEMENTAL FINDINGS..... 5

EXHIBITS

CC – 1 AFFIDAVIT OF NOTICE AND MAILING PACKET 11

CC – 2 COMPLETENESS LETTER..... 18

CC – 3 APPLICANT’S SUBMITTAL AND COMMUNITY OUTREACH LETTER..... 20

CC – 4 PUBLIC COMMENTS..... 74

CC – 5 PROPOSED DEVELOPMENT AGREEMENT..... 107

CC – 6 ORS 94.508-94.528 DEVELOPMENT AGREEMENTS..... 123

CC – 7 DRAFT ORDINANCE NO. 1666 127

CC - 8 NOVEMBER 7TH MEMORANDUM FROM CITY ATTORNEY TIM RAMIS..... 129

GENERAL INFORMATION

OWNER/ APPLICANT:	Tannler Properties, LLC 1800 Blankenship Road, Suite 325 West Linn, Oregon 97068
CONSULTANT:	Michael C. Robinson, Perkins Coie LLP 1120 NW Couch Street, Tenth Floor Portland, OR 97209
SITE LOCATION:	2410, 2422 and 2444 Tannler Drive
LEGAL DESCRIPTION:	Clackamas County Assessor's Map 21E35C Tax Lots 100, 102 and 200
DESCRIPTION:	A proposal for the City Council to consider adoption of proposed Statutory Development Agreement pursuant to ORS 94.504-528.
SITE SIZE:	11.37 acres
COMPREHENSIVE PLAN DESIGNATION:	Commercial
ZONING	Office Business Center (OBC)
APPROVAL CRITERIA:	Community Development Code (CDC) Chapter 99 provides administrative procedures for public hearings for land use decisions. The applicant has proposed the City Council approve a Statutory Development Agreement pursuant to the Oregon Revised Statutes (ORS) 94.504 – 94.528.
120-DAY RULE:	The application became complete on October 24, 2017. The 120 day maximum application-processing period, ends on February 20, 2018.
PUBLIC NOTICE:	Public Notice was mailed to all neighborhood associations and affected property owners on October 31, 2017. The property was posted with a notice sign on November 27, 2017. The notice was published in the West Linn Tidings on November 15, 2017 and November 30, 2017. The notice requirements of CDC Chapter 99 have been met. In addition, the application was posted on the City's website.

EXECUTIVE SUMMARY

The applicant seeks approval of File No. MISC-17-09, a proposed statutory development agreement with the City of West Linn for an 11.37 acre property identified as 2410, 2444 and 2422 Tannler Drive. On July 6, 2017, the City and the Applicant entered into a non-binding Letter of Intent that outlines potential obligations the city and the applicant may choose to agree to, if approved by the City Council after a public hearing process. On September 22, 2017, an application was submitted requesting the City Council consider a development agreement. The Letter of Intent and the proposed Development Agreement do not provide the applicant with any land use approvals and do not commit the City to any future land use approvals. Rather these documents clarify the process required for the applicant to obtain their desired land use approvals. If approved, the proposed Development Agreement would clarify the applicant's obligations as part of future land use actions related to a road re-alignment, specified traffic studies, easement dedications and road improvements. The development agreement is required by statute to be adopted by ordinance. The agreement identifies a list of land use applications to be submitted by the applicant for future review by the City Council or Planning Commission. To summarize, the development agreement as proposed is intended to clarify the Applicant's and City's obligations for a future project at the designated site, but does not provide any approval or pre-approval for that future project.

The property is located in the Willamette Neighborhood Association west of Tannler Drive and north of Blankenship Road. The zoning of adjacent properties is as follows:

	Zoning
North	R-2.1, R-7, R-10
South	R-2.1, R-10, Commercial, Willamette Neighborhood Mixed Use
East	Office Business Center, R-10
West	Office Business Center, R-2.1, R-4.5

The applicant has requested the city consider approval of the proposed statutory development agreement. The statutory process is applicable since the City has not adopted separate review procedures for development agreements. One requirement is the agreement must be adopted by ordinance.

The project is located at 2410, 2422 and 2444 Tannler Drive. The Council discussed the development agreement process during a work session on December 4, 2017, (rescheduled from the November 20, 2017). The work session discussion focused on the purposes of development agreements and generally outlined the proposed agreement in MISC 17-09 and the goal of Ordinance No. 1666 to adopt the agreement by ordinance. If the Council chooses to approve the agreement and adopt an ordinance to implement the agreement, a number of land use applications listed in the agreement must be completed following that approval. Most applications would be reviewed by the Planning Commission except for two applications that address plan or zone map changes that are reviewed by the Planning Commission with recommendation to City Council.

The statutory process identifies in ORS 94.504 to 94.528 the steps the applicant and city must take to complete the development agreement process. The applicable criteria are the hearings process outlined in CD Chapter 99 and the statutory process provided in ORS 94.504 to 94.528 and briefly described below:

1. ORS 95.504 provides for a development agreements contents, duration and effect on affordable housing covenants;
2. ORS 94.508 provides the development agreement (Agreement) shall be adopted by ordinance and approval of an Agreement is a land use decision under ORS Chapter 197;
3. ORS 94.513 provides that notice and public hearing is required;
4. ORS 94.518 identifies the applicable Comprehensive Plan policies and map and CDC in effect at the them shall be the applicable criteria for the Agreement,
5. ORS 94.522 allows for amendment or cancellation of the Agreement.
6. ORS 94.528 requires recording of the Agreement within ten days of execution.

The Applicants submittal pages 4 – 15 provide responses to the six criteria listed in the statute. The applicant asserts on page 12 of 12 of their Narrative - “For the reasons set forth in their narrative and on the basis of substantial evidence included herewith, the City Council can find that the Agreement will comply with the applicable requirements of ORS 94.504 through 94.528. Accordingly, the City Council can adopt an ordinance approving the agreement.”

PUBLIC COMMENTS

At the time this Staff Report was prepared, the City had received fifteen written comments (Councilor Perry (two submittals), Councilor Sakelik, Rebecca Adams, Patricia Farra, Attorney Peggy Hennessy, Anne McFarlane, Karie Oakes, Pat & Stephen Rushton, Gene Schaffer, Roberta Schwarz, Alan Smith (two submittals), Lucas Solis, and the Willamette Neighborhood Association) on the proposed Statutory Development Agreement related to process, the Community Development Code, review authority and legal issues. The City received one written comment in support of the proposal from Peter Powell. The issues raised in the public testimony related to the CDC and statutory criteria are addressed in this staff report.

RECOMMENDATION

Staff concludes that the submitted application meets the process and submittal requirements laid out in the CMC and state law regarding development agreements. Staff recommends that the City Council conduct a public hearing and then make a policy decision regarding File No. MISC 17-09. Approval of the application would not bind the City to any future land use approvals and could provide clarity to both the applicant and community about what process is required for those future land use applications and what infrastructure issues would need to be addressed. Should the Council wish to move forward, it could adopt Ordinance 1666 as proposed or with amendments. Alternately, the Council may request additional information or revised draft language from staff and continue discussion on this topic to future meeting dates.

**ADDENDUM
CITY COUNCIL STAFF REPORT
December 11, 2017**

APPLICABLE CRITERIA

West Linn Community Development Code

Chapter 99 - Procedures for Decision Making: Quasi Judicial

ORS 94.513(2) and ORS 197.763

Findings: The applicant's submittal (Page 10 of 12) addresses the required hearing process. The City Council may also note the CDC Chapter 99 is consistent with ORS 197.763.

99.030 Application Process: Who May Apply, Pre-Application Conference, Requirements, Refusal Of Application, Fees

Findings: *Who may apply* - The applicant's is the owner of the property. *Pre-application conference* - The applicant type is not subject to a pre application conference. If the Council chooses to approve the development agreement and adopt the proposed ordinance, the following steps require processing the required land use applications. At that time in the future, a pre-application conference will be required for most of the applications listed in the agreement (plan amendment/zone change; design review; land division; street vacation). *Requirements* - The statutory development agreement is not a listed application type for the city. A standard form was used to process information. *Fee's* – Initially a \$100 land use declaration fee was considered however, that was found to be an incorrect application type. A development agreement is not found in the fee schedule nor was the process found in CDC Chapter 99.060 Approval Authority and the \$100 check was returned to the applicant. The agreement identifies a number of future land use applications that will each have a required fee. These applications have a standard process that includes pre-application conference prior to an application submittal. There are standard review processes for submittal, review and land use decision making (including the submittal of fees) will be followed.

CDC 99.040 Duties of Director

1. *Prepare application forms made pursuant to the standards contained in the applicable State law, Comprehensive Plan and implementing ordinance provisions;*
2. *Accept all development applications that comply with the provisions of CDC 99.030;*
3. *After accepting an application pursuant to this chapter:*
 - a. *Determine whether an application is complete, and comply with State statutes governing the completeness determination for applications. The determination of the Director is subject to review by the approval authority in its deliberation on the application;*
 - b. *Give notice as provided by CDC 99.080 and 99.090;*

Findings: The City Of West Linn met with the applicant and suggested they hold a community outreach meeting. On November 1, 2017, the applicant mailed direct notice to adjacent neighbors and invited them to a community outreach meeting held on November 7, 2017. The invitation letter described the development agreement scope and purpose. The type of application did not require a Neighborhood

Association meeting, however the application was encouraged to conduct community outreach and completed the requested outreach.

Findings: The City of West Linn has not adopted a statutory development agreement process and thus the criteria of ORS 94.504 to 94.528 are the applicable criteria for review. The City has an acknowledged plan and implementing ordinances that support the hearing process which is consistent with ORS 197.763. The application was deemed complete on October 24, 2017. Notice of the Council work session on November 20, 2017 (rescheduled to December 4, 2017) and Council hearing on December 11, 2017 was mailed to adjacent property owners and Neighborhood Association on October 31, 2017. In addition, notice was posted on the property site on November 27, 2017. Notice of the hearing was published in the West Linn Tidings twice (once on November 15th and a second posting on November 30, 2017). These activities exceed the minimum notice requirements of the Community Development Code.

- c. Prepare a staff report which shall include findings as to whether or not the application meets the approval criteria of the applicable Community Development Code sections as presented in the application, and whether or not the criteria can be met with conditions;*
- d. Make the application, all documents or evidence relied upon by the applicant and applicable criteria available at least 20 days prior to the hearing or date of the Director's decision. Make the staff report available at least 10 days prior to the scheduled date of the public hearing(s);*
- e. Act on the development application pursuant to CDC 99.060(A) and 99.160 or cause a hearing to be held pursuant to CDC 99.060(B) through (D) and CDC 99.170 through 99.230, unless the applicant has requested or consented to a delay;*
- 4. Administer the hearings process pursuant to CDC 99.170 through 99.230;*
- 5. Maintain a register of all applications that have been filed for a decision. The register shall at all times identify at what stage the application is in the process. The register shall be posted on the City website unless technical problems prevent this;*
- 6. File notice of the final decision in the records of the Community Development Department and mail a copy of the notice of the final decision to the applicant and all parties with standing. The notice of the final decision shall contain the information set forth under CDC 99.130(B);*
- 7. Maintain and preserve the file for each application. The file shall include, as applicable, a list of persons required to be given notice and a copy of the notice given pursuant to CDC 99.080 and the accompanying affidavits; the application and all supporting information; the staff report; the final decision including the findings, conclusions, and conditions, if any; all correspondence; the minutes of any meetings at which the application was considered; and any other exhibit(s), information, or documentation which was considered by the hearing body with respect to the application; and*
- 8. Administer the appeals and review process pursuant to CDC 99.240 through 99.320. (Ord. 1474, 2001; Ord. 1568, 2008; Ord. 1621 § 25, 2014)*

Findings: Since the City has not adopted a development approval process, the statutory development approval process is provided in ORS 94.504 to 94.528. The staff report defers to the applicants submittal to defend the relevant facts and associated analysis for applicable state statutes and rules in support of the approval of the decision and in support of the adoption of the ordinance.

In addition, the applicant submittal has identified portions of West Linn Community Development Code criteria that are not applicable in the statutory development review process and are found in the sections of the Staff Report below. The applicant's submittal can be found in Exhibit CC-3 and the full text of ORS 94.504 to 94.528 can be found in Exhibit CC-6.

Findings: The final staff report was made available ten days in advance of the Council hearing on December 1, 2017. All associated project materials were made available on the completion date October 24, 2017 and were posted on the City's web site. The material was made available 48 days prior to the hearing. The applicable criteria and the applicant's submittal was made available to the public 48 days in advance of the public hearing.

Findings: The West Linn City Council was scheduled to hold the first evidentiary public hearing on December 11, 2017. Notice of that hearing was provided to adjacent property owners, neighborhood associations and effected agencies. Notice of the hearing was posted twice in the West Linn Tidings and a poster was installed on the site on November 27, 2017.

Findings: The requirements to post notice, prepare a staff report and provide information to the public met or exceeded CDC requirements.

99.035 Additional Information required, Waiver of requirements and report required.

99.038 Neighborhood Contact Required For Certain Applications

Findings: *Additional information - Previous findings note that a pre-application conference was not required. In addition it was noted that the application type was not listed in the fee schedule and the check provided was returned to the applicant. If the Agreement is approved by Council, multiple applications will be filed that will provide compensation for the City's efforts in the standard land use review process.*

To assist the public in tracking applicable criteria, a copy of the applicable statute was posted on the project web page and was provided as an exhibit to this report. The City has provided additional notice on the work session and provided two published notices on the paper of record.

Neighborhood Contact - The City encouraged the applicant to complete additional outreach and the applicant took action on that request.

Based on these findings the requirements of this section were met.

99.060 APPROVAL AUTHORITY

This section explains the authority of the Planning Director, Planning Commission, City Council, and Historic Review Board as it relates to quasi-judicial and legislative action.

...

B. Planning Commission authority. The Planning Commission shall have the authority to:

1. Make a recommendation to approve, deny, or approve with conditions to the Council:

a. A quasi-judicial Comprehensive Plan Map amendment (Chapter 105 CDC).

b. A quasi-judicial zone change application pursuant to Chapter 105 CDC, excluding applications requesting the designation or removal of a designation for a historic resource.

2. Approve, deny, or approve with conditions the following applications:

a. A temporary use or structure application (Chapter 35 CDC) for a minimum of 121 days to no more than one year, or an application associated with another land use approval.

b. A conditional use (Chapter 60 CDC).

- c. *Enlargement of a non-conforming use or alteration for a structure containing a non-conforming use (Chapter 66 CDC).*
 - d. *Enlargement or alteration of a non-single-family residential non-conforming use (Chapter 66 CDC).*
 - e. *Class II variance or special waiver (Chapter 75 CDC).*
 - f. *Subdivision (Chapter 85 CDC).*
 - g. *Planned unit development (Chapter 24 CDC).*
 - h. *Design review, Class II (Chapter 55 CDC).*
 - i. *Parks design review, Class II (Chapter 56 CDC).*
 - j. *Any matter not specifically assigned to another approval authority.*
 - k. *Extensions of approval when the Planning Commission acted as the initial decision-making authority.*
3. *Revoke or modify an approval as provided by CDC 99.330 for any application approved by the Planning Commission or Planning Director.*
 4. *Make an unlisted use determination.*
 5. *An appeal of the Planning Director's interpretation of the code pursuant to CDC 01.060.*

Findings: The proposed application is for a development agreement pursuant to state statutes. The primary goal of this process is to obtain policy concurrence on certain infrastructure, dedication, vacation and road re-alignments. This concurrence must be adopted by ordinance. The City Charter restricts adoption of ordinances to the City Council.

The scope of this approval is outside the authority of the Planning Commission and requires action by City Council on two primary areas: policy determination and ordinance adoption.

- C. *City Council authority. The Council shall have the authority to:*
 1. *Approve, deny, or approve with conditions applications for the following development applications:*
 - a. *A quasi-judicial Comprehensive Plan Map amendment (Chapter 105 CDC).*
 - b. *A quasi-judicial zone change application pursuant to Chapter 105 CDC.*
 - c. *Boundary change proposals (Chapter 81 CDC).*
 2. *Consider an appeal or review of a decision made by the Planning Director under the provisions of CDC 99.240(A) and 99.080(B).*
 3. *Consider an appeal or review of a decision made by the Planning Commission or Historic Review Board whether on the Council's own motion, or otherwise as provided by CDC 99.240.*
 4. *Decide an appeal of the Director's interpretation of zoning boundaries as provided by CDC 05.040.*
 5. *Revoke or modify an approval as provided by CDC 99.330 for any application approved by the City Council, including an application approved by the City Council on appeal from another City decision-making authority.*

Findings: The CDC does not address development agreement. ORS 94.508(1) identifies that approval of the development agreement is a land use decision. ORS 94.508(1) also identifies that approval of the

development agreement must be by ordinance. These two points explain address the role of Council in reaching a decision.

The CDC lists authorities for the Director, the Planning Commission and Council for specific application types. In addition, the City Charter provides clear direction that the authority to adopt an ordinance rests solely with Council. The review of the development agreement is an interpretation of policy. The authority to interpret or define policy rests with City Council. The statutory requirement to adopt the agreement by ordinance also requires the Council to review, and consider if the approval criteria were met.

Findings: If the Agreement is approved by Council, the applications listed are subject to the approval period of the agreement and must be submitted for review by the City. Each application will have a fee, the project may be processed concurrently, will require a pre-application conference, a Neighborhood Association meetings, prior to the application submittal and review. The application will be subject to a completeness check, notice and decision following the application submittal. The role of the planning commission is central in these standard land use approval process. Notice of these land use actions will be mailed, the site posted and a notice published in the newspaper as defined in the City's Code.

99.080 NOTICE

99.090 CONTENTS OF NOTICE

99.100 MECHANICS OF GIVING NOTICE AND FAILURE TO RECEIVE NOTICE

Findings: The above findings outline the CDC's silence on development agreements and the statutory authority for Cities to enter into agreements for development and the limitations placed upon this agreement. The agreement provides clarity on a list (outlined in the agreement and not re-produced here) for infrastructure, road re-alignment and traffic studies. The required land use applications are mentioned in the agreement but not processed as part of the agreement. For the development agreement review, the provided outreach and notice meets the requirement of statute and the CDC and therefore meet or exceed the requirements of these sections. Additional notice and opportunities for public testimony will be available when the land use applications listed in the agreement are filed.

Findings: There have been concerns raised by citizens about adequate notice and process. Notice was provided for the workshop, the hearing by direct mail, published in the newspaper and provided with poster board installed at the site. If Council chooses to approve the agreement it will provide direction on the infrastructure issues to the planning commission. In addition, those standard land use applications listed in the agreement will also have the required notice. Concerned citizens will have the ability to comment on issues directly related to the listed applications (land division, design review, plan amendment or zone change). The Planning Commission will have Council direction on utility and other infrastructure questions and therefore may focus their review activities on the criteria for each application and those other planning issues related to the required applications.

Findings: The Agreement will also provide direction to citizens in the area of policy direction from Council. Submitted testimony expressed concerns regarding the amount of information citizens must consider and how changes to that information required additional review by citizens. The development agreement process provides the community a tool for review not previously available. If approved, the outcome of the development agreement will remove some of the uncertainty in land use review related to road location, utilities, road vacation and other items identified in the agreement. Having that level of clarity when the standard land use applications (land division, design review and others) are

submitted should be beneficial by focusing the discussion of community concerns on the clear and objective criteria found in the community development code.

**EXHIBIT CC-1: AFFIDAVIT OF NOTICE
AND MAILING PACKET**

AFFIDAVIT OF NOTICE

We, the undersigned do hereby certify that, in the interest of the party (parties) initiating a proposed land use, the following took place on the dates indicated below:

Notice of Rescheduled Work Session

GENERAL

File No. M156-17-09 Applicant's Name Tanaler Properties

Development Name _____

Scheduled Meeting/ Decision Date Rescheduled from 11/20/17 to 12/4/17

NOTICE: Notices were sent at least 20 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check below)

TYPE A

- A. The applicant (date) 11-15-17 (signed) S. Schroyer
- B. Affected property owners (date) 11-15-17 (signed) S. Schroyer
- C. School District/ Board (date) 11-15-17 (signed) S. Schroyer
- D. Other affected gov't. agencies (date) 11-15-17 (signed) S. Schroyer
- E. Affected neighborhood assns. (date) 11-15-17 (All) (signed) S. Schroyer
- F. All parties to an appeal or review (date) _____ (signed) _____

At least 10 days prior to the scheduled hearing or meeting, notice was published/posted:

Tidings (published date) 11-30-17 (original notice for public hearing only) (signed) S. Schroyer
 City's website (posted date) 11-15-17 (signed) S. Schroyer

SIGN

At least 10 days prior to the scheduled hearing, meeting or decision date, a sign was posted on the property per Section 99.080 of the Community Development Code.

(date) 11/27/17 (signed) [Signature]

NOTICE: Notices were sent at least 14 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check below)

TYPE B _____

- A. The applicant (date) _____ (signed) _____
- B. Affected property owners (date) _____ (signed) _____
- C. School District/ Board (date) _____ (signed) _____
- D. Other affected gov't. agencies (date) _____ (signed) _____
- E. Affected neighborhood assns. (date) _____ (signed) _____

Notice was posted on the City's website at least 10 days prior to the scheduled hearing or meeting.
Date: _____ (signed) _____

STAFF REPORT mailed to applicant, City Council/Planning Commission and any other applicable parties 10 days prior to the scheduled hearing.

(date) _____ (signed) _____

FINAL DECISION notice mailed to applicant, all other parties with standing, and, if zone change, the County surveyor's office.

(date) _____ (signed) _____

**CITY OF WEST LINN
PUBLIC HEARING MISC-17-09**

****WORK SESSION RESCHEDULED****

**TO CONSIDER A REQUEST FOR ADOPTION OF A STATUTORY
DEVELOPMENT AGREEMENT PURSUANT TO
ORS CHAPTER 94 AND CDC CHAPTER 99**

The West Linn City Council will hold a work session on ~~Monday, November 20, 2017, at 6:00 p.m.~~ Monday, December 4, 2017, at 6:00 p.m. and a public hearing on Monday, December 11, 2017, at 6:30 p.m. in the Council Chambers of City Hall, 22500 Salamo Road, West Linn, to consider adoption of Ordinance Number 1666 "An Ordinance relating to a Statutory Development Agreement pursuant to ORS 94.504 – 94.528 for a Property located at 2410, 2922 and 2444 Tannler Drive." The 11.37 acre property located on the northwest corner of Tannler Drive and Blankenship Road is referred to on the Clackamas County Assessor's Map as Tax Lots 100, 102 and 200 of Assessor's Map 21E35C.

The major terms of the development agreement will include: a re-alignment of Tannler Drive and utility relocation, complete Traffic Impact Analysis to determine need for mitigation at adjacent key intersections, granting easements as required and file the appropriate land use applications pursuant to the Community Development Code in effect on the approval date of the agreement.

You have been notified of this proposal because County records indicate that you own property within 500 feet of the subject property (Tax Lot(s) 100, 102 and 200 of Assessor's Map 21E35C), or as otherwise required by Chapter 99 of the CDC. The site is further identified as 2410, 2922 and 2444 Tannler Drive. The complete application for MISC-17-09 is available for inspection at no cost at City Hall or via the City of West Linn website at <http://westlinnoregon.gov/planning/development-agreement-2410-2422-and-2444-tannler-drive>. Printed copies of these documents may be obtained at City Hall for a minimal charge per page.

The criteria applicable to development agreements are found in Oregon Revised Statutes (ORS) 94.504 – 94.528 and are also available on the website. The hearing will be conducted in accordance with the rules of CDC Chapter 99. The decision by the City Council to approve or deny this request will be based upon the applicable criteria. At the hearing, it is important that comments relate specifically to the applicable criteria.

At least 10 days prior to the hearing, a copy of Ordinance 1666 and associated staff report will be available for inspection at no cost or can be obtained for a minimal charge per page. For further information, please contact John Boyd, Planning Manager, at City Hall, 22500 Salamo Road, West Linn, OR 97068, phone (503) 742-6058, or via e-mail at jboyd@westlinnoregon.gov.

The hearing will be conducted in accordance with CDC Chapter 99. Anyone wishing to present written testimony on this proposed action may do so prior to, or at the public hearings. Oral testimony may be presented at the public hearings. At the public hearing, the City Council will receive a staff presentation, and invite both oral and written testimony. The Council may continue the public hearing to another meeting to obtain additional information, leave the record open, or close the public hearing and take action on the proposed agreement as provided by state law. Failure to raise an issue in person or by letter at some point prior to the close of the hearing, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue.

AFFIDAVIT OF NOTICE

We, the undersigned do hereby certify that, in the interest of the party (parties) initiating a proposed land use, the following took place on the dates indicated below:

GENERAL

File No. MISC-17-09 Applicant's Name Tanaker Properties LLC
Development Name _____
Scheduled Meeting/Decision Date 11-20-17 and 12-11-17

NOTICE: Notices were sent at least 20 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check below)

TYPE A

- A. The applicant (date) 10-31-17 (signed) S. Shroyer
- B. Affected property owners (date) 10-31-17 (signed) S. Shroyer
- C. School District/Board (date) 10-31-17 (signed) S. Shroyer
- D. Other affected gov't. agencies (date) 10-31-17 (signed) S. Shroyer
- E. Affected neighborhood assns. (date) 10-31-17 AU (signed) S. Shroyer
- F. All parties to an appeal or review (date) _____ (signed) _____

At least 10 days prior to the scheduled hearing or meeting, notice was published/posted:

Tidings (published date) 11-30-17 (signed) S. Shroyer
City's website (posted date) 10-31-17 (signed) S. Shroyer

SIGN

At least 10 days prior to the scheduled hearing, meeting or decision date, a sign was posted on the property per Section 99.080 of the Community Development Code.

(date) _____ (signed) _____

NOTICE: Notices were sent at least 14 days prior to the scheduled hearing, meeting, or decision date per Section 99.080 of the Community Development Code. (check below)

TYPE B

- A. The applicant (date) _____ (signed) _____
- B. Affected property owners (date) _____ (signed) _____
- C. School District/Board (date) _____ (signed) _____
- D. Other affected gov't. agencies (date) _____ (signed) _____
- E. Affected neighborhood assns. (date) _____ (signed) _____

Notice was posted on the City's website at least 10 days prior to the scheduled hearing or meeting.

Date: _____ (signed) _____

STAFF REPORT mailed to applicant, City Council/Planning Commission and any other applicable parties 10 days prior to the scheduled hearing.

(date) _____ (signed) _____

FINAL DECISION notice mailed to applicant, all other parties with standing, and, if zone change, the County surveyor's office.

(date) _____ (signed) _____

**CITY OF WEST LINN
PUBLIC HEARING MISC-17-09**

**TO CONSIDER A REQUEST FOR ADOPTION OF A STATUTORY
DEVELOPMENT AGREEMENT PURSUANT TO
ORS CHAPTER 94 AND CDC CHAPTER 99**

The West Linn City Council will hold a work session on **Monday, November 20, 2017, at 6:00 p.m.** and a public hearing on **Monday, December 11, 2017, at 6:30 p.m.** in the Council Chambers of City Hall, 22500 Salamo Road, West Linn, to consider adoption of Ordinance Number 1666 "An Ordinance relating to a Statutory Development Agreement pursuant to ORS 94.504 – 94.528 for a Property located at 2410, 2922 and 2444 Tannler Drive." The 11.37 acre property located on the northwest corner of Tannler Drive and Blankenship Road is referred to on the Clackamas County Assessor's Map as Tax Lots 100, 102 and 200 of Assessor's Map 21E35C.

The major terms of the development agreement will include: a re-alignment of Tannler Drive and utility relocation, complete Traffic Impact Analysis to determine need for mitigation at adjacent key intersections, granting easements as required and file the appropriate land use applications pursuant to the Community Development Code in effect on the approval date of the agreement.

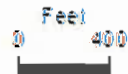
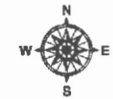
You have been notified of this proposal because County records indicate that you own property within 500 feet of the subject property (Tax Lot(s) 100, 102 and 200 of Assessor's Map 21E35C), or as otherwise required by Chapter 99 of the CDC. The site is further identified as 2410, 2922 and 2444 Tannler Drive. The complete application for MISC-17-09 is available for inspection at no cost at City Hall or via the City of West Linn website at <http://westlinnoregon.gov/planning/development-agreement-2410-2422-and-2444-tannler-drive>. Printed copies of these documents may be obtained at City Hall for a minimal charge per page.

The criteria applicable to development agreements are found in Oregon Revised Statutes (ORS) 94.504 – 94.528 and are also available on the website. The hearing will be conducted in accordance with the rules of CDC Chapter 99. The decision by the City Council to approve or deny this request will be based upon the applicable criteria. At the hearing, it is important that comments relate specifically to the applicable criteria.

At least 10 days prior to the hearing, a copy of Ordinance 1666 and associated staff report will be available for inspection at no cost or can be obtained for a minimal charge per page. For further information, please contact John Boyd, Planning Manager, at City Hall, 22500 Salamo Road, West Linn, OR 97068, phone (503) 742-6058, or via e-mail at jboyd@westlinnoregon.gov.

The hearing will be conducted in accordance with CDC Chapter 99. Anyone wishing to present written testimony on this proposed action may do so prior to, or at the public hearings. Oral testimony may be presented at the public hearings. At the public hearing, the City Council will receive a staff presentation, and invite both oral and written testimony. The Council may continue the public hearing to another meeting to obtain additional information, leave the record open, or close the public hearing and take action on the proposed agreement as provided by state law. Failure to raise an issue in person or by letter at some point prior to the close of the hearing, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue.

2410, 2422, 2444 Tannler Drive Notification Map



Scale 1:9,600 - 1 in = 800 ft
Scale is based on 8-1/2 x 11 paper size



Map created by: SSHROYER
Date Created: 25-Oct-17 03:35 PM

WEST LINN GIS

DISCLAIMER: This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information. Map scale is approximate. Source: West Linn GIS (Geographic Information System) MapOptix.



CITY OF West Linn

CITY OF WEST LINN NOTICE OF UPCOMING CITY COUNCIL WORK SESSION AND MEETING

**PROJECT # MISC-17-09
MAIL: 10/31/17 TIDINGS: 11/30/17**

CITIZEN CONTACT INFORMATION

To lessen the bulk of agenda packets, land use application notice, and to address the worries of some City residents about testimony contact information and online application packets containing their names and addresses as a reflection of the mailing notice area, this sheet substitutes for the photocopy of the testimony forms and/or mailing labels. A copy is available upon request.

EXHIBIT NO. CC- 2: COMPLETENESS LETTER



City of
West Linn

October 25, 2017

Tannler Properties, LLC
1800 Blankenship Road, Suite 325
West Linn, OR 97068

Michael C. Robinson
Perkins Coie LLP
1120 NW Couch Street, Tenth Floor
Portland, OR 97209

RE: **CORRECTED** - Completeness Check Planning File No. MISC 17-09

Dear Mr. Parker and Mr. Robinson:

On September 22, 2017, the Planning Department received the submittal materials. These submittals fulfill the applicable requirements necessary to make a determination that your application packet is complete. The City has 120 days to exhaust all local review; that period ends February 20, 2018.

Please be aware that a determination of a complete application does not guarantee a recommendation of approval from staff for your proposal as submitted – it signals that staff believes you have provided the necessary information for the **City Council** to render a decision on your proposal.

While not required, you had offered to provide information regarding a neighborhood outreach meeting, concept plan and phasing plan. Understanding this is not a requirement, this information would be helpful to decision makers in processing your application.

We have coordinated with our **City Council**, a tentative dates for which to schedule this project for a workshop on November 20, 2017 and a public hearing, December 11, 2017. You will receive written notice of the actual hearing date at least 20 days prior to the hearing.

Please contact me at 503-723-6058, or by email at jboyd@westlinnoregon.gov if you have any questions or comments.

Sincerely

John Boyd
Planning Manager

**EXHIBIT NO. CC-3: APPLICANT'S SUBMITTAL
AND COMMUNITY OUTREACH LETTER**

November 1, 2017

Our Neighbors

Re: Notice of Community Outreach Meeting

Dear Neighbors:

My name is Jeff Parker and I own the vacant property at the northwest corner of Blankenship Road and Tannler Drive. My property is now zoned Office Business Complex ("OBC"). I have submitted a Development Agreement application to the City that outlines a non-binding plan for subsequent applications to realign Tannler Drive so that it intersects Blankenship Road west of its present location and install a traffic signal at the new intersection, if traffic signal warrants are met, and rezone the portion of my property above the realigned Tannler Drive to R-2.1 to allow multi-family dwellings. In addition, I will petition the City to vacate part of Greene Drive, an undeveloped right-of-way adjacent to my property's northern boundary, except for a five-foot wide strip adjacent to the abutting single-family homes, and a portion of Tannler Drive between its present intersection with Blankenship Road on the south and the point where it will be realigned on the north, except for a five-foot wide strip adjacent to the Savannah Oaks Park.

The West Linn Community Development Code does not require a neighborhood meeting for a Development Agreement application. However, I would like to hold a community outreach meeting to provide more information about this project and answer your questions. Please plan on attending the meeting at the West Linn Police Station, 1800 Eighth Avenue, on Tuesday, November 7, 2017 between 6:00pm and 7:00pm.

I look forward to seeing you at the meeting. If you have any questions before the meeting, you may contact my assistant Liz Edmonds at liz@blackhawkd.com.

Very truly yours,



Jeff Parker, Land Owner
Tannler Properties, LLC

Enclosure (Site Map)





SITE

RECEIVED
NOV 6 2017
By

Google

Imagery ©2017 Google

September 22, 2017

Michael C. Robinson
MRobinson@perkinscoie.com
D. +1.503.727.2264
F. +1.503.346.2264

BY MESSENGER

Mr. John Boyd
Planning Manager
West Linn Planning Department
West Linn City Hall
22500 Salamo Road
West Linn, OR 97068

**Re: Proposed Statutory Development Agreement Pursuant to ORS Chapter 94 between
City of West Linn and Tannler Properties, LLC**

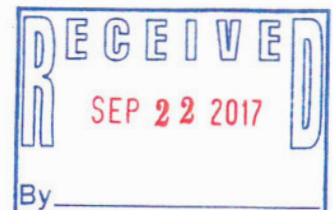
Dear Mr. Boyd:

This office represents Tannler Properties, LLC. Please find enclosed the following documents:

1. A completed City of West Linn land use application form signed by the Managing Member of Tannler Properties, LLC, the property owner.
2. Check number 11732 in the amount of \$100.00 made payable to the City of West Linn from Tannler, LLC as the applicable application fee for the development agreement.
3. Three copies and a disk containing the proposed development agreement and findings addressing the requirements of ORS Chapter 94.

I am the applicant's legal representative. Please copy me, Mr. Parker and Ms. Edmonds on all notices, correspondence and decisions regarding this application.

Pursuant to my discussion with Assistant City Attorney Megan Thornton, my understanding is that the City will process this application for completeness and, upon a determination of completeness, schedule the proposed development agreement for a *quasi-judicial* public hearing before the West Linn City Council. Please provide me, Mr. Parker and Ms. Edmonds with advance notice of the public hearing date. Also, if you find that the application is incomplete, please let me know what additional information is required.



Mr. John Boyd
September 22, 2017
Page 2

We look forward to working with you to a successful conclusion on the development agreement.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael C. Robinson". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping tail.

Michael C. Robinson

MCR:lcr
Enclosures

cc: Mr. Jeff Parker (via email) (w/encls.)
Ms. Liz Edmonds (via email) (w/encls.)
Ms. Megan Thornton (via email) (w/encls.)

DEVELOPMENT REVIEW APPLICATION

For Office Use Only		
STAFF CONTACT <i>John Boyd</i>	PROJECT NO(S): <i>MISC-17-09</i>	
NON-REFUNDABLE FEE(S)	REFUNDABLE DEPOSIT(S)	TOTAL

Type of Review (Please check all that apply):

- | | | |
|--|--|---|
| <input type="checkbox"/> Annexation (ANX)
<input type="checkbox"/> Appeal and Review (AP) *
<input type="checkbox"/> Conditional Use (CUP)
<input type="checkbox"/> Design Review (DR)
<input type="checkbox"/> Easement Vacation
<input type="checkbox"/> Extraterritorial Ext. of Utilities
<input type="checkbox"/> Final Plat or Plan (FP)
<input type="checkbox"/> Flood Management Area
<input type="checkbox"/> Hillside Protection & Erosion Control | <input type="checkbox"/> Historic Review
<input type="checkbox"/> Legislative Plan or Change
<input type="checkbox"/> Lot Line Adjustment (LLA) */**
<input type="checkbox"/> Minor Partition (MIP) (Preliminary Plat or Plan)
<input type="checkbox"/> Non-Conforming Lots, Uses & Structures
<input type="checkbox"/> Planned Unit Development (PUD)
<input type="checkbox"/> Pre-Application Conference (PA) */**
<input type="checkbox"/> Street Vacation | <input type="checkbox"/> Subdivision (SUB)
<input type="checkbox"/> Temporary Uses *
<input type="checkbox"/> Time Extension *
<input type="checkbox"/> Variance (VAR)
<input type="checkbox"/> Water Resource Area Protection/Single Lot (WAP)
<input type="checkbox"/> Water Resource Area Protection/Wetland (WAP)
<input type="checkbox"/> Willamette & Tualatin River Greenway (WRG)
<input type="checkbox"/> Zone Change |
|--|--|---|

Home Occupation, Pre-Application, Sidewalk Use, Sign Review Permit, and Temporary Sign Permit applications require different or additional application forms, available on the City website or at City Hall.

Site Location/Address: 2410, 2922, and 2444 Tannler Drive West Linn, OR 97068	Assessor's Map No.: 21E35C
	Tax Lot(s): 100, 102, and 200
	Total Land Area: 11.37 acres

Brief Description of Proposal:
Adoption of Statutory Development Agreement

Applicant Name: (please print) Tannler Properties, LLC Address: 1800 Blankenship Road, Suite 325 City State Zip: West Linn, OR 97068	Phone: 503-724-1942 Email: Jeff@parkerdev.com
---	--

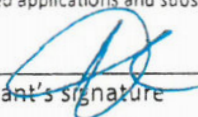
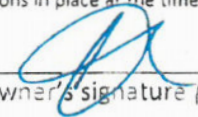

Owner Name (required): (please print) Tannler Properties, LLC Address: 1800 Blankenship Road, Suite 325 City State Zip: West Linn, OR 97068	Phone: 503-724-1942 Email: Jeff@parkerdev.com
--	--

Consultant Name: (please print) Michael C. Robinson, Perkins Coie LLP Address: 1120 NW Couch Street, Tenth Floor City State Zip: Portland, OR 97209	Phone: 503-727-2264 Email: mrobinson@perkinscoie.com
--	---

1. All application fees are non-refundable (excluding deposit). Any overruns to deposit will result in additional billing.
2. The owner/applicant or their representative should be present at all public hearings.
3. A denial or approval may be reversed on appeal. No permit will be in effect until the appeal period has expired.
4. Three (3) complete hard-copy sets (single sided) of application materials must be submitted with this application.
 One (1) complete set of digital application materials must also be submitted on CD in PDF format.
 If large sets of plans are required in application please submit only two sets.

* No CD required / ** Only one hard-copy set needed

The undersigned property owner(s) hereby authorizes the filing of this application, and authorizes on site review by authorized staff. I hereby agree to comply with all code requirements applicable to my application. Acceptance of this application does not infer a complete submittal. All amendments to the Community Development Code and to other regulations adopted after the application is approved shall be enforced where applicable. Approved applications and subsequent development is not vested under the provisions in place at the time of the initial application.

 Applicant's signature	_____ Date	 Owner's signature (required)	 RECEIVED SEP 22 2017 By _____
--	---------------	--	--

**BEFORE THE CITY COUNCIL
OF THE CITY OF WEST LINN, OREGON**

**In the Matter of a Request for
Approval of a Statutory Development
Agreement Pursuant to ORS 94.504-
94.528 for the Property Located at
2410, 2922 and 2444 Tannler Drive.**

**NARRATIVE IN SUPPORT OF THE
APPLICATION FILED BY TANNER
PROPERTIES, LLC**

I. Introduction.

Tannler Properties, LLC (the “Applicant”) submits this application requesting that the City of West Linn (the “City”) adopt a Statutory Development Agreement (the “Agreement”). This narrative describes the proposed Agreement and how it satisfies the applicable procedural and substantive approval criteria in Oregon Revised Statutes (“ORS”) 94.504-94.528. On the basis of this narrative and the referenced evidence, the City Council can adopt an ordinance approving the Agreement.

II. Summary of Request.

A. Description of Property and Surrounding Area.

Applicant holds a fee simple interest in the Property, which contains 11.37 acres and is located at the northwest corner of Tannler Drive and Blankenship Road (**Exhibit 1**). The City classifies Tannler Drive as a “Local Street” and Blankenship Road as a “Collector Street”. The Property is referred to on the Clackamas County Assessor’s Map as Tax Lots 100, 102 and 200 of Assessor’s Map 21E35C. The Property is vacant.

The Property is zoned Office Business Center (“OBC”). The property to the south, across Blankenship Road, is zoned General Commercial and contains a retail shopping center. The Property to the west is zoned OBC and contains an office building. The properties to the north are zoned R-10 and contain single-family homes. The property to the east, across Tannler Drive, is zoned OBC and contains a city open space.

B. Description of Proposed Comprehensive Plan and Agreement.

The Applicant seeks to develop the Property for uses permitted in the OBC zone and, pursuant to a subsequent concurrent *quasi-judicial* Comprehensive Plan and zoning map amendment to change a portion of the Property to the R-2.1 zone, for multi-family uses. In order to further the development proposal, the Applicant and the City Manager entered into a non-binding Letter of Intent (the “LOI”) dated July 6, 2017 (**Exhibit 2**). The LOI sets forth the respective obligations of Applicant and the City for development of the

Property. The LOI and the proposed Agreement state and acknowledge that neither the West Linn Planning Commission or the West Linn City Council are obligated to make a certain decision on the developments actions necessary to implement this Agreement.

As set forth in the Agreement, the Applicant's obligations (the "Applicant Obligations") are as follows:

1. To realign Tannler Drive through the Property so that it intersects with Blankenship Road across from the westerly driveway of the shopping center on the south side of Blankenship Road (the "Tannler Drive Extension").
2. The Applicant shall install a traffic signal, if warrants for a traffic signal are demonstrated pursuant to a Traffic Impact Analysis (the "TIA"), at the intersection of the Tannler Drive Extension and Blankenship Road.
3. The Applicant shall complete a TIA to assess the need for traffic mitigation at the following intersections:
 - a. The intersection of Blankenship Road, 10th Street and Salamo Drive.
 - b. Greene Street and Tannler Drive.
4. The Applicant shall grant the City any necessary public and private utility easements and relocate any public and private utilities at its own expense that are required due to the realignment of Tannler Drive.
5. The Applicant recognizes that any required public and private utilities must remain outside the nearby White Oak Savanna Park, which is a City-owned open space that is protected by the West Linn City Charter from non-authorized uses, such as development activities.
6. The Applicant will file the following applications with the City and will process those applications pursuant to applicable West Linn Community Development Code ("CDC") provisions in effect on the date that this Agreement is approved (the "Required Applications"):
 - a. A concurrent Comprehensive Plan map amendment from "Commercial" to "Medium Density Residential" and a zoning map amendment from "OBC" to "R-2.1" for the portion of the Property north of the Tannler Drive Extension (the "Concurrent Amendment"). Requirements of the R-2.1 zone shall apply only upon the final approval of the Concurrent Amendment.

- b. A Design Review application for the OBC zoned portion of the Property south of the Tannler Drive Extension for commercial, retail, or office uses, pursuant to CDC Chapter 55.
- c. A Design Review application for the R-2.1 zoned portion of the Property north of the Tannler Drive Extension for multi-family uses pursuant to CDC Chapter 55 (the “R-2.1 Amendment”).
- d. A tentative land division, subject to CDC Chapter 85, or a property line adjustment, subject to CDC Section 85.210, as appropriate, to create a lot or lots south of the Tannler Drive Extension for commercial, retail and offices uses and one lot north of the Tannler Drive Extension for multi-family uses.
- e. Record a final plat for a land subdivision application, or a property line adjustment approval, as appropriate, pursuant to CDC Chapter 89.
- f. The Required Applications shall be submitted to the City within ninety days of the effective date of the Agreement.
- g. The Applicant shall submit to two (2) street vacations as follows:
 - i. For the portion of Tannler Drive below the Tannler Drive Extension to Tannler Drive’s present intersection with Blankenship Road, except for a five foot strip of the existing right-of-way separating the proposed vacation area from the White Oak Savanna Park westerly boundary.
 - ii. The vacation of Greene Street, an undeveloped public right-of-way, on the north end of the Property, except for a five foot strip of the undeveloped right-of-way between the portion proposed to be vacated and the existing single family dwelling lots to the north.

The City’s obligations shall be as follows:

1. To process the above land use applications and petitions pursuant to the applicable requirements of ORS 197.763 and CDC Chapter 99 within the 120-day time period as provided for in ORS 227.178(1), unless extended or waived in writing by the Applicant.
2. The City shall grant the Applicant 100% of available System Development Charge (“SDC”) credits for qualified public improvements in accordance with the West Linn Municipal Code. The City agrees to, in good faith, consider an amendment to any plans or West Linn Municipal Code provisions necessary to implement this requirement. This requirement expressly applies to the dedication of right-of-way for the Tannler Drive Extension, the installation of a traffic signal at the intersection of the Tannler Drive Extension and

Blankenship Road and other traffic mitigation measures, if eligible for SDC credits, at the intersection of Blankenship Road, 10th Street and Salamo Drive, and Greene Street and Tannler Drive.

3. The City shall process the two (2) streets vacations pursuant to ORS Chapter 271.
4. The City agrees to sign either of the two (2) street vacations as necessary as an abutting property owner pursuant to ORS 271.080(2) but by doing so does not commit to an outcome on the street vacation petitions. The City agrees that the vacated right-of-way of Tannler Drive and Greene Street may be included by Applicant for purposes of calculation of density or intensity of uses, setbacks, floor area requirements and other relevant CDC dimensional requirements.
5. The City agrees to consider the conveyance of 100% of the vacated Greene Street and Tannler Drive rights-of-way to Applicant.

III. Applicable Approval Criteria and Procedures.

The City has not adopted separate local review procedures and approval criteria applicable to development agreements. Therefore, ORS 94.508 *et seq.* establishes the applicable substantive and procedural approval criteria. As explained below, the proposed Agreement satisfies these provisions. Because the City has no separate local review procedures and approval criteria applicable to development agreements, the City agrees that a neighborhood meeting prior to the submittal of this application pursuant to CDC 99.038 is not required. Additionally, the City has reviewed the CDC and determined that the West Linn Planning Commission may not review the development agreement. Local review of the development agreement is solely by the West Linn City Council. The Applicant was not required to conduct a formal pre-application meeting pursuant to CDC 99.030 but conducted an informal pre-application meeting with City staff on June 26, 2017 for this Application.

A. Oregon Revised Statutes.

94.504 Development agreements; contents; duration; effect on affordable housing covenants. (1) A city or county may enter into a development agreement as provided in ORS 94.504 to 94.528 with any person having a legal or equitable interest in real property for the development of that property.

RESPONSE: Applicant is the fee simple owner of the Property and thus has a legal ownership interest in the Property.

Therefore, the City can enter into the Agreement with Applicant pertaining to the Property.

(2) A development agreement shall specify:

(a) The duration of the agreement;

RESPONSE: The Agreement provides that the duration of the Agreement will be fifteen (15) years, the maximum duration allowed.

The City Council can find that the Agreement specifies its duration.

(b) The permitted uses of the property;

RESPONSE: The Agreement provides that the permitted uses of the Property are those allowed as permitted and conditional uses and their accessory uses in the OBC zone south of the Tannler Drive Extension (**Exhibit 3**) and multi-family uses and their accessory uses in the R-2.1 zone north of the Tannler Drive Extension, subject to final approval of the Concurrent Amendment. (**Exhibit 4**).

The City Council can find that the Agreement specifies the permitted uses of the Property.

(c) The density or intensity of use;

RESPONSE: The density or intensity of uses allowed under the Agreement shall not exceed that allowed in the OBC zone south of the Tannler Drive Extension and shall not exceed that allowed in the R-2.1 zone north of the Tannler Drive Extension.

The City Council can find that the Agreement specifies the density of the use.

(d) The maximum height and size of proposed structures;

RESPONSE: The maximum height and size of the proposed structures shall be as follows. The Agreement provides that the maximum height and size of proposed structures in the OBC zoned portion of the Property shall be that contained in CDC Section 21.070. The maximum height and size of proposed structures in the portion of the Property subject to the Concurrent Amendment shall be that contained in CDC Section 16.070.

The City Council can find that the Agreement specifies the maximum height and size of proposed structures.

(e) Provisions for reservation or dedication of land for public purposes;

RESPONSE: The Agreement provides that the Applicant shall dedicate necessary right-of-way to the City for the Tannler Drive Extension. Such dedication shall be effective only upon recording of a final plat as specified in Section 4.4 of the Agreement. Further, the Applicant shall provide required dedication for any other land for public purposes

pursuant to a final land use decision, limited land use decision or expedited land division as provided for in relevant CDC provisions.

The City Council can find that the Agreement specifies provisions for reservation or dedication of land for public purposes.

(f) A schedule of fees and charges;

RESPONSE: The fees charged by the City for review of the Required Applications to develop the Property shall be the same as the City's fees as shown in the City's "Master Fee and Charges Document" adopted June 19, 2017, effective July 1, 2017 (**Exhibit 5**).

The City Council can find that the Agreement specifies a schedule of fees and charges.

(g) A schedule and procedure for compliance review;

RESPONSE: The City Council can find that the Agreement provides a schedule and procedure for compliance review by requiring that Applicant obtain approval of the Required Applications: The City Council can find that the schedule and procedure for compliance review is that the Applicant shall submit the Required Applications no later than ninety (90) days after the effective date of this ordinance and the City shall process the applications within the 120-day period provided for in ORS 227.178(1), unless the 120-day period is extended or waived in writing by the Applicant.

The City Council can find that the Agreement specifies a schedule and procedure for compliance review.

(h) Responsibility for providing infrastructure and services;

RESPONSE: The City Council can find that the Applicant is responsible, at Applicant's expense, for constructing all of the required infrastructure and services, subject to available SDC credits. The Applicant shall not be precluded from seeking advance financing of public improvements pursuant to West Linn Municipal Code Sections 3.150-3.210 for eligible improvements.

The City Council can find that the Agreement specifies responsibility for providing infrastructure and services needed to serve the proposed development.

(i) The effect on the agreement when changes in regional policy or federal or state law or rules render compliance with the agreement impossible, unlawful or inconsistent with such laws, rules or policy;

RESPONSE: The City Council can find that the Agreement specifies the effect on the Agreement when changes in regional policy, federal, or state law, or rules thereunder render compliance with the Agreement impossible, unlawful, or inconsistent with such

laws, rules, or policy. The City Council can find that the Agreement shall be construed to effectuate changes in federal or state law not constituting land use regulations but otherwise the City shall comply with ORS 92.040(2) as to the land division application.

The City Council can find that the Agreement specifies the effect on the Agreement when changes in regional policy or federal or state law or rules render compliance with the Agreement impossible, unlawful, or inconsistent with such laws, rules, or policy.

(j) Remedies available to the parties upon a breach of the agreement;

RESPONSE: The City Council can find that the Agreement provides that each party has all available remedies at law or in equity to recover damages and compel performance of the other party in the event of a default that is not cured in accordance with Section 7 of the Agreement.

The City Council can find that the Agreement specifies remedies available to the parties upon a breach of the Agreement.

(k) The extent to which the agreement is assignable; and

RESPONSE: The City Council can find that the Agreement provides that the Agreement is not assignable by Applicant without the City's written consent, which consent cannot be unreasonably withheld.

The City Council can find that the Agreement specifies the extent to which it is assignable.

(L) The effect on the applicability or implementation of the agreement when a city annexes all or part of the property subject to a development agreement.

RESPONSE: This provision is not applicable because the Property is currently within the City.

(3) A development agreement shall set forth all future discretionary approvals required for the development specified in the agreement and shall specify the conditions, terms, restrictions and requirements for those discretionary approvals.

RESPONSE: The Applicant shall apply for and receive approval required for the development. The discretionary approvals (the "Required Approvals") are set forth in Section 2.1 of this Agreement. The conditions, terms, restrictions and requirements for those discretionary approvals shall be set forth in the discretionary approvals.

The City Council can find that the Agreement satisfies this requirement.

(4) A development agreement shall also provide that construction shall be commenced within a specified period of time and that the entire project or any phase of the project be completed by a specified time.

RESPONSE: The City Council can find the Agreement provides the construction commencement and completion dates.

The City Council can find that the Agreement satisfies this requirement.

(5) A development agreement shall contain a provision that makes all city or county obligations to expend moneys under the development agreement contingent upon future appropriations as part of the local budget process. The development agreement shall further provide that nothing in the agreement requires a city or county to appropriate any such moneys.

RESPONSE: The City Council can find that the Agreement provides that all City obligations to expend money under the Agreement are contingent upon future appropriations by the City as part of the local budget process.

The City Council can find that the Agreement satisfies this requirement.

(6) A development agreement must state the assumptions underlying the agreement that relate to the ability of the city or county to serve the development. The development agreement must also specify the procedures to be followed when there is a change in circumstances that affects compliance with the agreement.

RESPONSE: The Agreement states the assumptions underlying the Agreement that relate to the ability of the City to serve the development. Specifically, the Agreement provides that, upon Applicant's provision of the public facilities in Section 4.1, at Applicant's expense, there will be adequate public facilities and services to serve the development described in this Agreement.

The Agreement also specifies the procedures to be followed when there is a change in circumstances that affects compliance with the Agreement. Specifically, Section 9.15 provides that, in the event a change in regional policy or federal or state law renders compliance with the agreement impossible or unlawful, the parties are to give effect to the remainder of the Agreement if such effect does not prejudice the substantial rights of either party. If doing so prejudices the rights of either party, the parties are to negotiate in good faith to revise the Agreement to give effect to its original intent to vest allowed uses and limitations on development conditions and fees and charges. If a change in law, policy, or circumstance causes the Agreement to fail of its original purpose, the parties are to be placed into their original position to the extent practical.

Further, Section 9.15 provides that no party will be in default where delay or default is due to various circumstances that affect compliance with the Agreement, including war, insurrection, strikes, weather issues, changes in law, and litigation.

The City Council can find that the Agreement satisfies this requirement.

(7) A development agreement is binding upon a city or county pursuant to its terms and for the duration specified in the agreement.

RESPONSE: Section 9.19 of the Agreement includes a warranty and representation by the City that the Agreement is a legal, valid, and binding obligation of the City. Section 1.1 of the Agreement specifies that the Agreement shall continue in effect for a period of fifteen (15) years after its effective date. Section 9 of the Agreement provides for a potential earlier termination of the Agreement upon mutual consent of the Parties. As such, it is binding upon the City by its terms and for the applicable term of the Agreement, not to exceed fifteen (15) years.

The City Council can find that the Agreement satisfies this requirement.

(8) The maximum duration of a development agreement entered into with:
(a) A city is 15 years; and
(b) A county is seven years.

RESPONSE: As stated above, Section 1.1 provides that the maximum duration of the Agreement is fifteen (15) years.

The City Council can find that the Agreement satisfies this requirement.

(9) ORS 94.504 to 94.528 do not limit the authority of a city or county to take action pursuant to ORS 456.270 to 456.295.

RESPONSE: The Agreement does not expressly or implicitly limit the authority of a city or county to take action pursuant to ORS 456.270 to 456.295 pertaining to affordable housing covenants.

The City Council can find that the Agreement satisfies this requirement.

94.508 Approval by governing body; findings; adoption. (1) A development agreement shall not be approved by the governing body of a city or county unless the governing body finds that the agreement is consistent with local regulations then in place for the city or county.

RESPONSE: The City Council can find that the Agreement is in compliance with the current version of the CDC.

The City Council can find that the Agreement satisfies this requirement.

(2) The governing body of a city or county shall approve a development agreement or amend a development agreement by adoption of an ordinance declaring approval or setting forth the amendments to the agreement. Notwithstanding ORS 197.015 (10)(b), the approval or amendment of a development agreement is a land use decision under ORS chapter 197.

RESPONSE: The City Council can notice and conduct a public hearing for the application consistent with ORS 94.513(2) and ORS 197.763. The City Council can then adopt an ordinance approving and setting forth the Agreement. Finally, the City Council can provide notice of the right to appeal the City's final decision to the Land Use Board of Appeals.

Upon compliance with these procedures, the City Council can find that it has complied with the requirements of this subsection.

94.513 Procedures on consideration and approval. (1) A city or county may, by ordinance, establish procedures and requirements for the consideration of development agreements upon application by, or on behalf of, the owner of property on which development is sought or another person having a legal or equitable interest in that property.

RESPONSE: The City has not established specific procedures and requirements for the consideration of development agreements. Therefore, the City Council can find that this provision is not applicable to the Agreement.

(2) Approval of a development agreement requires compliance with local regulations and the approval of the city or county governing body after notice and hearing. The notice of the hearing shall, in addition to any other requirements, state the time and place of the public hearing and contain a brief statement of the major terms of the proposed development agreement, including a description of the area within the city or county that will be affected by the proposed development agreement.

RESPONSE: As explained in response to ORS 94.508(1), the Agreement complies with applicable requirements of the CDC. Further, the City Council can provide notice and conduct a hearing for the Agreement in accordance with this subsection. Upon doing so, the City Council can find that the Agreement satisfies this requirement.

94.518 Application of local government law and policies to agreement. Unless otherwise provided by the development agreement, the comprehensive plan, zoning ordinances and other rules and policies of the jurisdiction governing permitted uses of land, density and design applicable to the development of the property subject to

a development agreement shall be the comprehensive plan and those ordinances, rules and policies of the jurisdiction in effect at the time of approval of the development agreement.

RESPONSE: The City Council can find that, as provided for in Section 5 of the Agreement, the comprehensive plan, zoning ordinances and other rules and policies of the City governing permitted uses of land, density, and design applicable to the development of the Property under the Agreement are those in effect at the time of approval of the Agreement.

The City Council can find that the Agreement satisfies this requirement.

94.522 Amendment or cancellation of agreement; enforceability. (1) A development agreement may be amended or canceled by mutual consent of the parties to the agreement or their successors in interest. The governing body of a city or county shall amend or cancel a development agreement by adoption of an ordinance declaring cancellation of the agreement or setting forth the amendments to the agreement.

(2) Until a development agreement is canceled under this section, the terms of the development agreement are enforceable by any party to the agreement.

RESPONSE: Section 8 of the Agreement provides that the Agreement may only be amended or terminated by the mutual consent of the parties or their successors in accordance with this statutory section. The City Council can find that the terms of the Agreement are consistent with this requirement.

94.528 Recording. Not later than 10 days after the execution of a development agreement under ORS 94.504 to 94.528, the governing body of the city or county shall cause the development agreement to be presented for recording in the office of the county clerk of the county in which the property subject to the agreement is situated. In addition to other provisions required by ORS 94.504 to 94.528, the development agreement shall contain a legal description of the property subject to the agreement.

RESPONSE: The Agreement can be recorded in the Deed Records of Clackamas County following approval. Section 9.20 of the Agreement requires that the City cause the Agreement to be recorded in accordance with ORS 94.528. **Exhibit 5** of the Agreement contains a legal description of the Property. As needed, the City can impose a condition of approval requiring the recording of the Agreement.

The City Council can find that the Agreement satisfies this requirement.

IV. Conclusion.

For the reasons set forth in this narrative and on the basis of substantial evidence included herewith, the City Council can find that the Agreement will comply with the applicable requirements of ORS 94.504 through 94.528. Accordingly, the City Council can adopt an ordinance approving the Agreement.

EXHIBITS

- | | |
|-----------|--|
| Exhibit 1 | Property |
| Exhibit 2 | Executed Letter of Intent dated July 6, 2017 |
| Exhibit 3 | OBC Zone Allowed Uses |
| Exhibit 4 | R-2.1 Zone Allowed Uses |
| Exhibit 5 | Planning Fees Contained in the City of West Linn Master Fee and Charges Document, Effective July 1, 2017 |



Re-Zone R-2.1
Multi-family

OBC Zone
Commercial Frontage

West Linn / Tannler Road

06-03-2014

LETTER OF INTENT

July 6, 2017

The purpose of this Letter is to set forth certain nonbinding understandings between Developer and the City with respect to Tannler West Development (the "Development").

PARTIES:

This Letter of Intent (this "Letter") is between the City of West Linn (the "City"), and Tannler Properties, LLC ("Developer").

BACKGROUND:

The City acknowledges that signing this Letter provides the Developer with an opportunity to pursue a development that provides various benefits to the City such as:

1. Realigning Tannler Drive through the property to a lighted traffic signal, which is in the 2016 Transportation System Plan, but is not required by the current land use approval applicable to the property.
2. Securing lead commercial tenants to provide services and amenities that are beneficial to the residents of West Linn.
3. Aiding in the redevelopment of the general commercial property located at the corner of Blankenship and 10th Street in West Linn.
4. Reviewing the Development property's Office Business Center ("OBC") zone to determine if any Council action is necessary to "enhance the City's opportunities for economic development in the business districts," which is one of the City Council's 2017 goals.

LETTER OF INTENT:

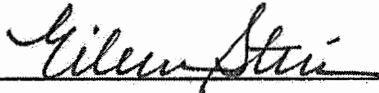
The following provisions reflect the mutual understanding of the matters related to the Developer's proposal. Each party acknowledges and agrees that the basic terms below are not intended to create or constitute any legally binding obligation between Developer and the City. If the City decides to enter into a binding agreement that is mutually executed between Developer and the City (the "Development Agreement"), then the Development Agreement terms would be binding. This Letter is not a prejudgment or commitment by the Planning Commission or City Council as to a particular outcome.

- I. **Basic Terms of Agreements of the City and Developer**
 - A. **Developer to realign Tannler Drive through the property.**
 - B. **Developer to complete a traffic study to assess the need for traffic mitigation at:**
 - a. **The intersection of Blankenship, 10th Street, and Salamo; and**
 - b. **Greene Street and Tannler Drive.**

- C. Developer to grant City any necessary utility easements and relocate any utilities at its own expense that are required due to the street vacation in subsection D.
- D. Developer recognizes that any required utilities must remain outside of the nearby White Oak Savanna Park, which is City owned open space that is protected by the City Charter from nonauthorized uses, such as development activities.
- E. City to process a request to vacate unused portion of Tannler Drive and consider conveyance of 100% of vacated right-of-way to Developer.
- F. City shall credit Developer with 100% of SDC credits for qualified public improvements in accordance with City code.
- G. Developer will file an application and the City will process an application to rezone the northern half of property from OBC to Residential 2.1. The lower portion would remain OBC. The zone change is subject to a final discretionary approval by the City Council based on the standards and criteria in the Community Development Code.

This Letter of Intent signed by:

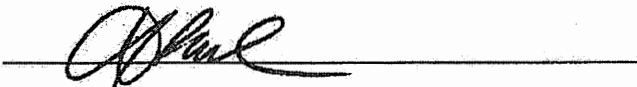
City of West Linn



Eileen Stein, City Manager

Date: 7-6-17

Developer: Tannler Properties, LLC



Jeff Parker, Managing Member

Date: 7/6/17

Chapter 21
OFFICE BUSINESS CENTER, OBC

Sections:

- 21.010 PURPOSE
- 21.020 PROCEDURES AND APPROVAL PROCESS
- 21.030 PERMITTED USES
- 21.040 *REPEALED*
- 21.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS
- 21.060 CONDITIONAL USES
- 21.070 DIMENSIONAL REQUIREMENTS, USES PERMITTED OUTRIGHT AND USES PERMITTED UNDER PRESCRIBED CONDITIONS
- 21.080 DIMENSIONAL REQUIREMENTS, CONDITIONAL USES
- 21.090 OTHER APPLICABLE DEVELOPMENT STANDARDS

21.010 PURPOSE

The purpose of this zone is to provide for groups of business and offices in centers, to accommodate the location of intermediate uses between residential districts and areas of more intense development, to provide opportunities for employment and for business and professional services in close proximity to residential neighborhoods and major transportation facilities, to expand the City's economic potential, to provide a range of compatible and supportive uses, and to locate office employment where it can support other commercial uses. The trade area will vary and may extend outside the community. This zone is intended to implement the policies and criteria set forth in the Comprehensive Plan.

21.020 PROCEDURES AND APPROVAL PROCESS

A. A use permitted outright, CDC 21.030, is a use that requires no approval under the provisions of this code. If a use is not listed as a use permitted outright, it may be held to be a similar unlisted use under the provisions of Chapter 80 CDC.

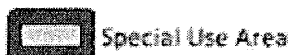
B. A use permitted under prescribed conditions, CDC 21.050, is a use for which approval will be granted provided all conditions are satisfied, and:

1. The Planning Director shall make the decision in the manner provided by CDC 99.060(A)(2), Administrative Procedures, except that no notice shall be required; and
 2. The decision may be appealed by the applicant to the Planning Commission as provided by CDC 99.240(A).
- C. The approval of a conditional use (CDC 21.060) is discretionary with the Planning Commission. The approval process and criteria for approval are set forth in Chapter 60 CDC, Conditional Uses. If a use is not listed as a conditional use, it may be held to be a similar unlisted use under the provisions of Chapter 80 CDC.
- D. The following code provisions may be applicable in certain situations:
1. Chapter 65 CDC, Non-conforming Uses Involving a Structure.
 2. Chapter 66 CDC, Non-conforming Structures.
 3. Chapter 67 CDC, Non-conforming Uses of Land.
 4. Chapter 68 CDC, Non-conforming Lots, Lots of Record.
 5. Chapter 75 CDC, Variance. (Ord. 1463, 2000)

21.030 PERMITTED USES

The following uses are permitted outright in this zone:

1. Business equipment sales and services.
2. Business support services.
3. Communications services.
4. Cultural exhibits and library services.
5. Family day care.
6. Financial, insurance and real estate services.
7. Hotel/motel, including those operating as extended hour businesses.
8. Medical and dental services.
9. Parking facilities.

Legend

Special Use Area



Tax Lot Lines

(Ord. 1226, 1988; Ord. 1401, 1997; Ord. 1590 § 1, 2009; Ord. 1622 § 23, 2014; Ord. 1660 § 1, 2017)

21.040 ACCESSORY USES

Repealed by Ord. 1622.

21.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS

The following uses are allowed in this zone under prescribed conditions:

1. Animal sales and services: veterinary (small animals) as prescribed with no exterior runs or storage.
2. Multiple-family units only above the first floor of the structure, as a mixed use in conjunction with commercial development that utilizes the entire first floor.
3. Signs, subject to the provisions of Chapter 52 CDC.
4. Temporary use, subject to the provisions of Chapter 35 CDC.
5. Home occupation, subject to provisions of Chapter 37 CDC.
6. Wireless communication facilities, subject to the provisions of Chapter 57 CDC.
7. Eating and drinking establishments that do not constitute more than 20 percent of the total floor area of the building in which it is located.
(Ord. 1226, 1988; Ord. 1408, 1998; Ord. 1442, 1999; Ord. 1565, 2008; Ord. 1647 § 2, 2016; Ord. 1655 § 3, 2016)

21.060 CONDITIONAL USES

The following uses are conditional uses which may be allowed in this zone subject to the provisions of Chapter 60 CDC, Conditional Use:

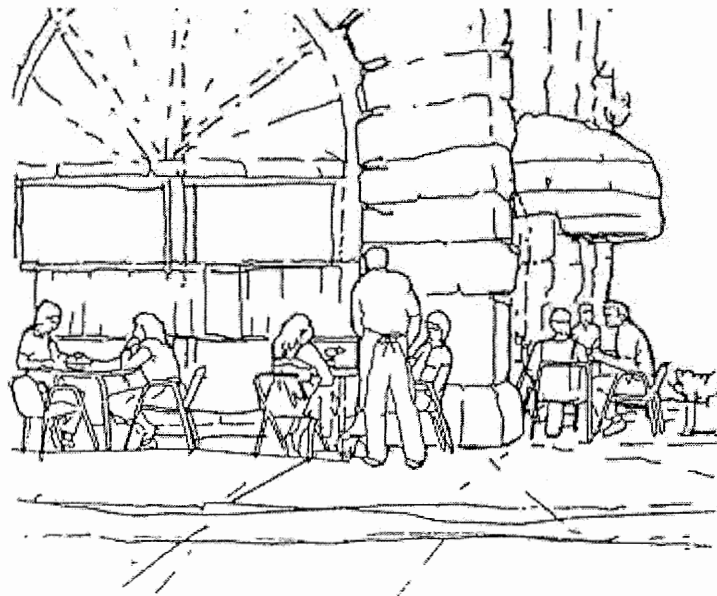
1. Children's day care center.
2. Convenience sales and personal services.
3. Food and beverage retail sales.
4. Heliports.
5. Research services.
6. *Repealed by Ord. 1622.*
7. Utilities, major.
8. Vehicle fuel sales.
9. Single-family homes, which were non-conforming structures and were damaged, whereby the cost of rebuilding the damaged portions would exceed 50 percent of the then current replacement cost of the entire building. Determination of rebuilding costs shall be per CDC 66.070(A).
10. Postal services.
11. Public safety facilities.
12. Public support facilities.
13. Transportation facilities (Type II). See CDC 60.090 for additional approval criteria. (Ord. 1172, 1985; Ord. 1401, 1997; Ord. 1590 § 1, 2009; Ord. 1604 § 18, 2011; Ord. 1622 § 23, 2014)

21.070 DIMENSIONAL REQUIREMENTS, USES PERMITTED OUTRIGHT AND USES PERMITTED UNDER PRESCRIBED CONDITIONS

A. Except as may be otherwise provided by the provisions of this code, the following are requirements for uses within this zone:

1. The minimum front lot line length or the minimum lot width at the front lot line shall be 35 feet.
2. The average minimum lot width shall be 35 feet.
3. *Repealed by Ord. 1622.*

4. The yard dimensions or building setback area from the lot line shall be:
 - a. Interior side yard, a minimum of seven and one-half feet.
 - b. Side yard abutting a street, no minimum.
 - c. Rear yard, a minimum of 25 feet.
 - d. Front yard, no minimum and a 20-foot maximum. The front setback area between the street and the building line shall consist of landscaping or a combination of non-vehicular hardscape areas (covered with impervious surfaces) and landscaped areas. If there are not street trees within the public right-of-way, the front setback area shall include such trees per the requirements of the City Arborist.



5. The maximum lot coverage shall be 50 percent.
 6. The maximum building height shall be two and one-half stories or 35 feet for any structure located within 50 feet of a low or medium density residential zone and three and one-half stories or 45 feet for any structure located 50 feet or more from a low or medium density residential area.
- B. The requirements of subsections (A)(1) through (4) of this section may be modified for developments under the planned unit development provisions of Chapter 24 CDC. (Ord. 1425, 1998; Ord. 1622 § 24, 2014)

21.080 DIMENSIONAL REQUIREMENTS, CONDITIONAL USES

Except as may otherwise be established by this code, the appropriate lot or parcel size for a conditional use shall be determined by the approval authority at the time of consideration of the application based upon criteria set forth in CDC 60.070(A) and (B). (Ord. 1636 § 16, 2014)

21.090 OTHER APPLICABLE DEVELOPMENT STANDARDS

A. The following standards apply to all development including permitted uses:

1. Chapter 34 CDC, Accessory Structures, Accessory Dwelling Units, and Accessory Uses.
2. Chapter 35 CDC, Temporary Structures and Uses.
3. Chapter 38 CDC, Additional Yard Area Required; Exceptions to Yard Requirements; Storage in Yards; Projections into Yards.
4. Chapter 40 CDC, Building Height Limitations, Exceptions.
5. Chapter 42 CDC, Clear Vision Areas.
6. Chapter 44 CDC, Fences.
7. Chapter 46 CDC, Off-Street Parking, Loading and Reservoir Areas.
8. Chapter 48 CDC, Access, Egress and Circulation.
9. Chapter 52 CDC, Signs.
10. Chapter 54 CDC, Landscaping.

B. The provisions of Chapter 55 CDC, Design Review, apply to all uses except detached single-family dwellings. (Ord. 1590 § 1, 2009)

The West Linn Community Development Code is current through Ordinance 1655, passed December 12, 2016.
Disclaimer: The City Recorder's Office has the official version of the West Linn Community Development Code. Users should contact the City Recorder's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://westlinnoregon.gov/>
(<http://westlinnoregon.gov/>)
City Telephone: (503) 657-0331
Code Publishing Company
(<http://www.codepublishing.com/>)

Chapter 16
SINGLE-FAMILY AND MULTIPLE-FAMILY RESIDENTIAL, R-2.1

Sections:

- 16.010 PURPOSE
- 16.020 PROCEDURES AND APPROVAL PROCESS
- 16.030 PERMITTED USES
- 16.040 ACCESSORY USES
- 16.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS
- 16.060 CONDITIONAL USES
- 16.070 DIMENSIONAL REQUIREMENTS, USES PERMITTED OUTRIGHT AND USES PERMITTED UNDER PRESCRIBED CONDITIONS
- 16.080 DIMENSIONAL REQUIREMENTS, CONDITIONAL USES
- 16.090 OTHER APPLICABLE DEVELOPMENT STANDARDS

16.010 PURPOSE

The purpose of this zone is to provide for urban development at levels which relate to the site development limitations, proximity to commercial development and public facilities and public transportation, and to the surrounding development pattern. This zone is intended to carry out the intent of the Comprehensive Plan which is to provide for a choice in housing types and is intended to implement the policies and locational criteria in the Comprehensive Plan for high density residential housing.

16.020 PROCEDURES AND APPROVAL PROCESS

- A. A use permitted outright, CDC 16.030, is a use which requires no approval under the provisions of this code. If a use is not listed as a use permitted outright, it may be held to be a similar unlisted use under the provisions of Chapter 80 CDC.
- B. A use permitted under prescribed conditions, CDC 16.050, is a use for which approval will be granted provided all conditions are satisfied, and:
1. The Planning Director shall make the decision in the manner provided by CDC 99.060(A)(2), Administrative Procedures, except that no notice shall be required; and

2. The decision may be appealed by the applicant to the Planning Commission as provided by CDC 99.240(A).
- C. The approval of a conditional use (CDC 16.060) is discretionary with the Planning Commission. The approval process and criteria for approval are set forth in Chapter 60 CDC, Conditional Uses. If a use is not listed as a conditional use, it may be held to be a similar unlisted use under the provisions of Chapter 80 CDC.
- D. The following code provisions may be applicable in certain situations:
1. Chapter 65 CDC, Non-conforming Uses Involving a Structure.
 2. Chapter 66 CDC, Non-conforming Structures.
 3. Chapter 67 CDC, Non-conforming Uses of Land.
 4. Chapter 68 CDC, Non-conforming Lots, Lots of Record.
 5. Chapter 75 CDC, Variance.

16.030 PERMITTED USES

The following are uses permitted outright in this zoning district:)

1. Community recreation.
2. Duplex residential unit.
3. Family day care.
4. Group residential units.
5. Multiple-family residential unit.
6. Residential home.
7. Single-family attached residential units.
8. Utilities, minor.
9. Transportation facilities (Type I). (Ord. 1226, 1988; Ord. 1248, 1989; Ord. 1276, 1990; Ord. 1584, 2008)

16.040 ACCESSORY USES

Accessory uses are allowed in this zone as provided by Chapter 34 CDC.

16.050 USES AND DEVELOPMENT PERMITTED UNDER PRESCRIBED CONDITIONS

The following uses are allowed in this zone under prescribed conditions:

1. Home occupations, subject to the provisions of Chapter 37 CDC.
2. Signs, subject to the provisions of Chapter 52 CDC.
3. Temporary uses, subject to the provisions of Chapter 35 CDC.
4. Water-dependent uses, subject to the provisions of Chapters 28 and 34 CDC.
5. Wireless communication facilities, subject to the provisions of Chapter 57 CDC. (Ord. 1276, 1990; Ord. 1408, 1998; Ord. 1565, 2008)

16.060 CONDITIONAL USES

The following are conditional uses which may be allowed in this zoning district subject to the provisions of Chapter 60 CDC, Conditional Uses:

1. Children's day care center.
2. Convenience sales and personal services.
3. Cultural exhibits and library services.
4. Lodge, fraternal, community center and civic assembly.
5. Medical and dental offices or clinic.
6. Nursing home.
7. Postal services.
8. Professional and administrative services.
9. Public safety facilities.
10. Public support facilities.
11. Recycle collection center.
12. Religious institution.
13. Residential facility.

14. Schools.
15. Single-family detached residential unit.
16. Utilities, major.
17. Senior citizen/handicapped housing facilities with a maximum number of units 50 percent above the allowed density for the property; provided, that in addition to the provisions of Chapter 60 CDC the following conditions shall apply:
 - a. Facilities intended for senior citizens shall be restricted to persons 60 years and older. In the case of couples, one member of the couple shall be 60 years or older.
 - b. Building height restrictions shall be the same as the subject zoning district.
 - c. Community space and related equipment shall be required to provide social and recreational opportunities for project occupants. Included may be such facilities as game rooms, meeting rooms, music or craft rooms. At least one community room within a project shall include a service area with a kitchen sink, counter top and storage cabinets, and shall have easy access to a storage area sized to store tables, chairs and janitorial supplies. All complexes shall have a minimum of 15 square feet of community space per occupant, based on one person per bedroom.
 - d. Congregate dining facilities providing regular daily meals for residents shall be provided.
 - e. A minimum of 10 square feet of general storage area other than regular kitchen, bedroom and linen storage shall be provided within each unit. Complexes which do not include laundry facilities in the units shall have adequate laundry facilities accessible to all tenants.
 - f. The maximum number of units allowed in a senior citizens or handicapped housing facility shall be as follows:
 - 1) Medium high density district (R-2.1). The base density shall be 50 percent above the allowed density for the property.
 - 2) Medium density district (R-4.5). The density shall be 50 percent above the allowed density for the property.

g. The design of the building(s) and the site and landscaping plans shall be subject to design review, Chapter 55 CDC. Special considerations for this use are the following:

- 1) Structures shall be compatible in style, color, materials, and scale with the general character of the neighborhood.
- 2) The building design and site layout shall define recognizable semi-public, semi-private and private spaces; ensure a sense of protection and community identity; and minimize barriers to handicapped or elderly persons.
- 3) A minimum of 25 percent of the property shall be in landscaping. The landscaping shall include areas for outdoor recreation, pedestrian access and amenities, and adequate visual and sound buffering of adjacent properties.
- 4) No more than 25 percent of the total number of units may be used for nursing care patients.
- 5) Minimum front, rear and side yard setbacks shall be the same as the underlying district unless the approval authority finds that a greater setback is indicated by uses and structures on surrounding properties or unique circumstances of the site.

18. Senior center.

19. Manufactured housing.

20. Transportation facilities (Type II). See CDC 60.090 for additional approval criteria. (Ord. 1172, 1985; Ord. 1276, 1990; Ord. 1354, 1994; Ord. 1377, 1995; Ord. 1378, 1995; Ord. 1411, 1998; Ord. 1500, 2003; Ord. 1584, 2008; Ord. 1604 §§ 14, 15, 2011)

16.070 DIMENSIONAL REQUIREMENTS, USES PERMITTED OUTRIGHT AND USES PERMITTED UNDER PRESCRIBED CONDITIONS

Except as may be otherwise provided by the provisions of this code, the following are requirements for uses within this zone:

A. The minimum lot size shall be:

1. For a single-family detached unit, 4,000 square feet.
2. For each attached single-family unit, 2,700 square feet.

3. For a duplex, 7,000 square feet, or 3,500 square feet for each unit.
 4. For a boarding, lodging or rooming house, 7,000 square feet.
 5. For each multiple-family dwelling unit, 2,100 square feet. A multiple-family dwelling unit is limited to three and one-half stories in height.
- B. The minimum front lot line length or the minimum lot width at the front lot line shall be 35 feet.
- C. The average minimum lot width shall be 35 feet.
- D. *Repealed by Ord. 1622.*
- E. The minimum yard dimensions or minimum building setback area from the lot line shall be:
1. For a front yard, 20 feet; except for steeply sloped lots where the provisions of CDC 41.010 shall apply.
 2. For an interior side yard, five feet.
 3. For a side yard abutting a street, 15 feet.
 4. For a rear yard, 20 feet, except that in the case of an apartment structure in this district, an additional yard area may be required between the structure in this district and any adjacent low density residential uses.
- F. The maximum building height shall be:
1. Thirty-five feet for a garden apartment low rise unit, single-family unit, attached single-family unit, duplex unit or boarding house, except for steeply sloped lots when the provisions of Chapter 41 CDC shall apply.
 2. Three and one-half stories or 45 feet for a garden apartment medium rise unit.
- G. The maximum lot coverage shall be 50 percent.
- H. The floor area ratio for single-family homes shall be 0.45. Type I and II lands shall not be counted toward lot area when determining allowable floor area ratio, except that a minimum floor area ratio of 0.30 shall be allowed regardless of the classification of lands within the property. That 30 percent shall be based upon the entire property including Type I and II lands. Existing residences in excess of this standard may be replaced to their prior

dimensions when damaged without the requirement that the homeowner obtain a non-conforming structures permit under Chapter 66 CDC.

I. The sidewall provisions of Chapter 43 CDC shall apply. (Ord. 1538, 2006; Ord. 1622 § 24, 2014)

16.080 DIMENSIONAL REQUIREMENTS, CONDITIONAL USES

Except as may otherwise be established by this code, the appropriate lot or parcel size for a conditional use shall be determined by the approval authority at the time of consideration of the application, based upon the criteria set forth in CDC 60.070(A) and (B). (Ord. 1636 § 14, 2014)

16.090 OTHER APPLICABLE DEVELOPMENT STANDARDS

A. The following standards apply to all development including permitted uses:

1. Chapter 34 CDC, Accessory Structures, Accessory Dwelling Units, and Accessory Uses.
2. Chapter 35 CDC, Temporary Structures and Uses.
3. Chapter 38 CDC, Additional Yard Area Required; Exceptions to Yard Requirements; Storage in Yards; Projections into Yards.
4. Chapter 40 CDC, Building Height Limitations, Exceptions.
5. Chapter 41 CDC, Structures on Steep Lots, Exceptions.
6. Chapter 42 CDC, Clear Vision Areas.
7. Chapter 44 CDC, Fences.
8. Chapter 46 CDC, Off-Street Parking, Loading and Reservoir Areas.
9. Chapter 48 CDC, Access, Egress and Circulation.
10. Chapter 52 CDC, Signs.
11. Chapter 54 CDC, Landscaping.

B. The provisions of Chapter 55 CDC, Design Review, apply to all uses except detached single-family dwellings. (Ord. 1590 § 1, 2009)

The West Linn Community Development Code is current through Ordinance 1655, passed December 12, 2016.

Disclaimer: The City Recorder's Office has the official version of the West Linn Community Development Code. Users should contact the City Recorder's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://westlinnoregon.gov/>
(<http://westlinnoregon.gov/>)
City Telephone: (503) 657-0331
Code Publishing Company
(<http://www.codepublishing.com/>)

9. Planning Fees

9.1. Annexation (excludes election costs)	<u>Fee</u> \$15,000 + \$1,000 per acre up to a maximum of \$20,000
9.2. Appeal	<u>Fee</u>
Planning Director decision	\$ 400
Expedite partition/subdivision to Hearing Officer	400
Planning Commission decision	400
Appeal fee through Neighborhood Association	no charge
9.3. Code Interpretation	<u>Fee</u> \$ 850
9.4. Conditional Use Permit	<u>Deposit/Fee</u>
Deposit	\$ 4,500
Inspection Fee	200
9.5. Design Review	<u>Fee</u>
Class I	\$ 2,100
	<u>Deposit /Fee</u>
Class II Based on Construction Value (CV):	
Less than \$100,000 of CV	4% of CV (\$2,000 minimum deposit)
\$100,000 < \$500,000 of CV	4% of CV (\$8,000 maximum deposit)
\$500,000+ of CV	\$4,000 plus 4% of CV (\$20,000 maximum deposit)
Inspection Fee	\$ 300
9.6. Enlarge/Alter Non-conforming Use/ Structure	<u>Fee</u>
Single family residence	\$ 1,000
Other	\$ 3,000
9.7. Environmental Overlay Zones	<u>Fee</u>
Drainage /Wetland Protection Single Dwelling	\$ 2,600
Re-vegetation Plan/Inspection	\$ 250
Other Drainage/Wetland Protection determined by the Planning Director and Engineering to be:	<u>Deposit</u>
Less than \$5,000 in value	\$ 1,000
In excess of \$5,000 in value	1,850
Flood Plain	1,050
Tualatin River	1,700
Willamette River Greenway	1,700
9.8. Historic Review	<u>Fee</u>
Minor alterations and maintenance (subject to Section 25.100 or 26.060B)	no charge
Residential minor/major remodel or alteration (subject to Section 25.070 or 26.060C)	100
Residential new construction	1,500
Commercial minor alteration	250
Commercial major alteration	500

Commercial new construction	see design review fees
Demolition (less than 500 sq. ft.)	250
Demolition (greater than 500 sq. ft.)	600
Landmark or District Designation	no charge
9.9. Land Division	<u>Deposit /Fee</u>
Lot Line Adjustment	\$ 800
Final Plats Lot Line Adjustment	200 Fee
Partition (includes expedited review)	\$2,800 deposit
Subdivision	\$4,200 plus \$200 per lot
Inspection	500 Fee
Expedited Subdivision	\$4,000 plus \$300 per lot plus referee costs
Modification to approval	50% original deposit
Planned Unit Development (PUD)	\$4,200 plus \$400 AC deposit
Inspection	500 Fee
9.10. Pre-Application Conference	<u>Fee</u>
Level I (Planning review only)	\$ 350
Level II (City-wide departmental review)	1,000
Historic Review	no charge
9.11. Sidewalk Use Permit (Café)	<u>Fee</u>
Fee	\$ 100
9.12. Sign Review	<u>Fee</u>
Face change	\$ 50
Temporary	50
Permanent	250
9.13. Street Name Change	<u>Fee</u>
Deposit	\$ 940
9.14. Temporary Use Permit	<u>Fee</u>
Administrative	\$ 280
Commission/Council	3,500
9.15. Vacations	<u>Fee</u>
Street	\$ 6,000
Tree Easement	1,000
9.16. Variance	<u>Fee</u>
Class I	\$ 825
Class II	2,900
After the initial charge for the first variance, subsequent variances will be charged one-half the fee when processed as one application.	
9.17. Zone Change	<u>Deposit</u>
Plan Map Amendment	\$ 3,000
9.18. Land Use Declaration	<u>Fee</u>
Responding to land use information requests	\$ 100

After recording return to:

Michael C. Robinson
Perkins Coie LLP
1120 NW Couch Street, Tenth Floor
Portland, OR 97209-4128

This space reserved for recorder's use.

**DEVELOPMENT AGREEMENT
BETWEEN
CITY OF WEST LINN, OREGON, AND TANGLER PROPERTIES, LLC**

This Development Agreement (the "Agreement") is made and entered into this ___ day of _____, 2017 by and between the **CITY OF WEST LINN**, a municipal corporation of the State of Oregon (the "City"), and **TANGLER PROPERTIES, LLC**, an Oregon limited liability company ("Developer"), and its assigns, pursuant to ORS 94.504 to 94.528. The City and Developer may be referred to jointly in this Agreement as the "Parties" and individually as a "Party."

RECITALS

A. Developer is the legal owner of approximately 11.37 acres of real property (the "Property") located in the City at the northwest corner of Tangler Drive and Blankenship Road and shown in **Exhibit 1**, attached hereto (the "Property").

B. The Property consists of three lots of record, and is zoned Office Business Center ("OBC").

C. Developer intends to develop the Property in two zoning districts, separated by an extension of Tangler Drive (the "Tangler Drive Extension"). The south portion of the Property will be developed in the existing OBC zone with commercial, office, and retail uses and their accessory uses. The north portion of the

Property, subject to a concurrent amendment to the Comprehensive Plan map from “Commercial” to “Medium Density Residential” and a zoning map amendment from OBC to R-2.1 (“the Concurrent Amendment”), will be developed with up to the maximum number of multi-family dwelling units permitted by the R-2.1 zone, and their accessory uses.

D. Development of the Property as described above is contingent upon the Concurrent Amendment and other discretionary land use and limited land use appeals. This Agreement does not bind the West Linn City Council to a particular outcome on future discretionary land use application.

E. As set forth in the Agreement, the Applicant’s obligations (the “Applicant Obligations”) are as follows:

1. To realign Tannler Drive through the Property so that it intersects with Blankenship Road across from the westerly driveway of the shopping center on the south side of Blankenship Road (the “Tannler Drive Extension”).

2. The Applicant shall install a traffic signal, if warrants for a traffic signal are demonstrated pursuant to a Traffic Impact Analysis (the “TIA”), at the intersection of the Tannler Drive Extension and Blankenship Road.

3. The Applicant shall complete a TIA to assess the need for traffic mitigation at the following intersections:

- a. The intersection of Blankenship Road, 10th Street and Salamo Drive.
- b. Greene Street and Tannler Drive.

4. The Applicant shall grant the City any necessary public and private utility easements and relocate any public and private utilities at its own expense that are required due to the realignment of Tannler Drive.

5. The Applicant recognizes that any required public and private utilities must remain outside the nearby White Oak Savanna Park, which is a City-owned open space that is protected by the West Linn City Charter from non-authorized uses, such as development activities.

6. The Applicant will file the following applications with the City and will process those applications pursuant to applicable West Linn Community Development Code (“CDC”) provisions in effect on the date that this Agreement is approved (the “Required Applications”):

- a. A concurrent Comprehensive Plan map amendment from “Commercial” to “Medium Density Residential” and a zoning map amendment

from “OBC” to “R-2.1” for the portion of the Property north of the Tannler Drive Extension (the “Concurrent Amendment”). Requirements of the R-2.1 zone shall apply only upon the final approval of the Concurrent Amendment.

b. A Design Review application for the OBC zoned portion of the Property south of the Tannler Drive Extension for commercial, retail, or office uses, pursuant to CDC Chapter 55.

c. A Design Review application for the R-2.1 zoned portion of the Property north of the Tannler Drive Extension for multi-family uses pursuant to CDC Chapter 55 (the “R-2.1 Amendment”).

d. A tentative land division, subject to CDC Chapter 85, or a property line adjustment, subject to CDC Section 85.210, as appropriate, to create a lot or lots south of the Tannler Drive Extension for commercial, retail and offices uses and one lot north of the Tannler Drive Extension for multi-family uses.

e. Record a final plat for a land subdivision application, or a property line adjustment approval, as appropriate, pursuant to CDC Chapter 89.

f. The Required Applications shall be submitted to the City within ninety days of the effective date of the Agreement.

g. The Applicant shall submit to two (2) street vacations as follows:

i. For the portion of Tannler Drive below the Tannler Drive Extension to Tannler Drive’s present intersection with Blankenship Road, except for a five foot strip of the existing right-of-way separating the proposed vacation area from the White Oak Savanna Park westerly boundary.

ii. The vacation of Greene Street, an undeveloped public right-of-way, on the north end of the Property, except for a five foot strip of the undeveloped right-of-way between the portion proposed to be vacated and the existing single family dwelling lots to the north.

G. In order to provide certainty for the Developer and City regarding the proposed development, and to ensure the construction and orderly provision of adequate public facilities to the development, Developer and City desire to enter into this Agreement.

AGREEMENT

In consideration of the mutual promises and performance obligations of each Party set out in this Agreement, the City and Developer hereby agree to the

following terms and conditions, including one exhibit, attached hereto and incorporated as referenced herein.

1. Effective Date and Term of Agreement; Submittal of Required Applications.

1.1 This Agreement shall be effective upon the later of (1) adoption of an ordinance by the City approving this Agreement pursuant to ORS 94.508, (2) execution of this Agreement by both Parties, and (3) approval of the discretionary comprehensive plan map and zoning map amendment changing the north portion of the Property from the OBC zone to R-2.1 zone and approval of the two street vacations wherein developer obtains 100% of the vacated right-of-way. As used herein, “adoption of an ordinance by the City,” means the date upon which the ordinance becomes effective. The Agreement shall continue in effect for a period of fifteen (15) years after its effective date, unless it is terminated in accordance with Section 10 of this Agreement.

1.2 Developer shall submit Required Applications set forth in Section 2.1 within ninety (90) days of the execution of this agreement.

2. Description of Development Authorized and Required by this Development Agreement.

2.1 Applicant’s Required Obligations. As set forth in the Agreement, the Applicant’s obligations (the “Applicant Obligations”) are as follows:

1. To realign Tannler Drive through the Property so that it intersects with Blankenship Road across from the westerly driveway of the shopping center on the south side of Blankenship Road (the “Tannler Drive Extension”).
2. The Applicant shall install a traffic signal, if warrants for a traffic signal are demonstrated pursuant to a Traffic Impact Analysis (the “TIA”), at the intersection of the Tannler Drive Extension and Blankenship Road.
3. The Applicant shall complete a TIA to assess the need for traffic mitigation at the following intersections:
 - a. The intersection of Blankenship Road, 10th Street and Salamo Drive.
 - b. Greene Street and Tannler Drive.
4. The Applicant shall grant the City any necessary public and private utility easements and relocate any public and private utilities at its own expense that are required due to the realignment of Tannler Drive.

5. The Applicant recognizes that any required public and private utilities must remain outside the nearby White Oak Savanna Park, which is a City-owned open space that is protected by the West Linn City Charter from non-authorized uses, such as development activities.
6. The Applicant will file the following applications with the City and will process those applications pursuant to applicable West Linn Community Development Code (“CDC”) provisions in effect on the date that this Agreement is approved (the “Required Applications”):
 - a. A concurrent Comprehensive Plan map amendment from “Commercial” to “Medium Density Residential” and a zoning map amendment from “OBC” to “R-2.1” for the portion of the Property north of the Tannler Drive Extension (the “Concurrent Amendment”). Requirements of the R-2.1 zone shall apply only upon the final approval of the Concurrent Amendment.
 - b. A Design Review application for the OBC zoned portion of the Property south of the Tannler Drive Extension for commercial, retail, or office uses, pursuant to CDC Chapter 55.
 - c. A Design Review application for the R-2.1 zoned portion of the Property north of the Tannler Drive Extension for multi-family uses pursuant to CDC Chapter 55 (the “R-2.1 Amendment”).
 - d. A tentative land division, subject to CDC Chapter 85, or a property line adjustment, subject to CDC Section 85.210, as appropriate, to create a lot or lots south of the Tannler Drive Extension for commercial, retail and offices uses and one lot north of the Tannler Drive Extension for multi-family uses.
 - e. Record a final plat for a land subdivision application, or a property line adjustment approval, as appropriate, pursuant to CDC Chapter 89.
 - f. The Required Applications shall be submitted to the City within ninety days of the effective date of the Agreement.
 - g. The Applicant shall submit to two (2) street vacations as follows:
 - i. For the portion of Tannler Drive below the Tannler Drive Extension to Tannler Drive’s present intersection with Blankenship Road, except for a five foot strip of the existing right-of-way separating the proposed vacation area from the White Oak Savanna Park westerly boundary.

ii. The vacation of Greene Street, an undeveloped public right-of-way, on the north end of the Property, except for a five foot strip of the undeveloped right-of-way between the portion proposed to be vacated and the existing single family dwelling lots to the north.

2.2 Permitted and Conditional Uses. The permitted and conditional uses in the OBC zone are those currently permitted by CDC 21.030, 21.050, and 21.060. The permitted and conditional uses permitted in the R-2.1 zone, subject to final approval of the Concurrent Amendment, are those currently permitted by CDC Section 16.030 and 16.060.

2.3 Accessory Uses. Accessory uses in the OBC and R-2.1 zones are those allowed by CDC Chapter 34.

2.4 Design Review. Design review shall be subject to approval pursuant to CDC Chapter 55.

2.5 Conditional Uses. Conditional uses shall be subject to approval pursuant to CDC Chapter 60.

2.6 Density. The maximum density for the R-2.1 zoned portion of the Property will be that allowed under the R-2.1 zone as provided for in CDC Section 16.070. The maximum intensity of development allowed in the OBC zoned portion of the Property will be that allowed in the OBC zone as provided for in CDC Section 21.070.

2.7 Height and Size of Structures. The maximum structure height will be determined pursuant to the CDC standards and criteria for each applicable zoning district as they exist on the effective date of this Agreement. The maximum size of structures shall be determined pursuant to the CDC standards for setback, lot coverage, and floor area ratio in the applicable zoning district, as these standards exist on the effective date of this Agreement.

3. City's Obligations.

3.1 The City shall process the above land use applications and petitions pursuant to the applicable requirements of ORS 197.763 and CDC Chapter 99 within the 120-day time period as provided for in ORS 227.178(1), unless extended or waived in writing by the Applicant.

3.2 City agrees to provide 100% of available System Development Charge credits ("SDC") for the development of the Tannler Drive Extension consistent with existing City plans and ordinance, or to in good consider amendments to the its relevant ordnances to provide for City SDC credits for the Tannler Drive Extension right-of-way. Further, City agrees to provide SDC credits

consistent with its existing documents or to consider amendments to its existing documents for the traffic signal intersection of the Tannler Drive Extension and Blankenship Road. This development agreement implements the non-binding letter of intent signed between developer and City of July 6, 2017.

3.2.1 The Applicant shall not be precluded from seeking advance financing of public improvements pursuant to West Linn Municipal Code Sections 3.150-3.210 for eligible improvements.

3.3 The City shall process the two (2) streets vacations pursuant to ORS Chapter 271.

3.4 The City agrees to sign either of the two (2) street vacations as necessary as an abutting property owner pursuant to ORS 271.080(2) but by doing so does not commit to an outcome on the street vacation petitions. The City agrees that the vacated right-of-way of Tannler Drive and Greene Street may be included by Applicant for purposes of calculation of density or intensity of uses, setbacks, floor area requirements and other relevant CDC dimensional requirements.

3.5 The City agrees to consider the conveyance of 100% of the vacated Greene Street and Tannler Drive rights-of-way to Applicant.

4. Public Facilities, Services, and Dedications.

4.1 The Developer shall be responsible, at Developer's expense, for construction of all of the required public facilities and services and dedications. Upon installation of all public infrastructure improvements and dedications, City warrants that there will be adequate public facilities and services to serve the Property as proposed to be developed.

4.2 Developer shall construct the Tannler Drive Extension as a "Local Street" consistent with the applicable City standards for such streets as they exist on the effective date of this Agreement.

4.3 Developer shall install a traffic signal if a Traffic Impact Analysis ("TIA") demonstrates that warrants for a traffic signal at the intersection of Tannler Drive Extension and Blankenship Road are met.

4.4 Developer shall record a final plat(s) as required.

5. Applicable Approval Criteria.

For purposes of the Required Applications as set forth in Section 2.1 of this Agreement, the applicable Comprehensive Plan, zoning ordinances and other City rules and policies shall be those in effect on the date that the Agreement is approved as provided for in ORS 94.518.

6. Continuing Effect of Agreement.

6.1 In the case of any change in regional policy or federal or state law or other change in circumstance which renders compliance with this Agreement impossible or unlawful, the Parties will attempt to give effect to the remainder of this Agreement, but only if such effect does not prejudice the substantial rights of either Party under this Agreement. If the substantial rights of either Party are prejudiced by giving effect to the remainder of this Agreement, then the Parties shall negotiate in good faith to revise this Agreement to give effect to its original intent. If, because of a change in policy, law or circumstance, this Agreement fails of its essential purpose (vesting of allowed uses and limitations on development conditions and fees and charges) then the Parties shall be placed into their original position to the extent practical. It is the intent of this Agreement to vest development rights and conditions, including but not limited to the permitted uses, density and intensity of uses, infrastructure improvements and fees and charges as set forth in this Agreement, notwithstanding any change in local ordinance or policy.

6.2 The Property is within the City limits of the City of West Linn. The requirements of ORS 94.504(2)(L) are not applicable to this Agreement.

7. Default; Remedy.

7.1 Default/Cure. The following shall constitute defaults on the part of a Party:

7.1.1 A breach of a material provision of this Agreement, whether by action or inaction of a Party which continues and is not remedied within sixty (60) days after the other Party has given notice specifying the breach; provided that if the non-breaching Party determines that such breach cannot with due diligence be cured within a period of sixty (60) days, the non-breaching Party may allow the breaching Party a longer period of time to cure the breach, and in such event the breach shall not constitute a default so long as the breaching Party diligently proceeds to affect a cure and the cure is accomplished within the longer period of time granted by the non-breaching Party; or

7.1.2 Any assignment by a Party for the benefit of creditors, or adjudication as a bankrupt, or appointment of a receiver, trustee or creditor's committee over a Party.

7.2 Remedies. Each Party shall have all available remedies at law or in equity to recover damages and compel the performance of the other Party pursuant to this Agreement. The rights and remedies afforded under this Agreement are not exclusive and shall be in addition to and cumulative with any and all rights

otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other Party, including, without limitation, the right to compel specific performance.

8. Amendment or Termination of Agreement.

This Agreement may only be amended or terminated by the mutual consent of the Parties, or their successors in interest, pursuant to ORS 94.522.

9. Miscellaneous Provisions.

9.1 Notice. A notice or communication under this Agreement by either Party shall be in writing and shall be dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by either personal delivery or nationally-recognized overnight courier (such as UPS or Federal Express) or by facsimile transmission, and

9.1.1 In the case of a notice or communication to Developer, addressed as follows:

Jeff Parker
Tannler Properties, LLC
1800 Blankenship Road, #200
West Linn, OR 97068

With copy to: Michael C. Robinson
Perkins Coie LLP
1120 NW Couch Street, Tenth Floor
Portland, Oregon 97209-4128

9.1.2 In the case of a notice or communication to City, addressed as follows:

City of West Linn
ATTN: Eileen Stein, City Manager
West Linn City Hall
22500 Salamo Road
West Linn, OR 97068

With copy to: Tim Ramis, West Linn City Attorney
Jordan Ramis
2 Centerpointe Drive, #600
Lake Oswego, OR 97035

or addressed in such other way in respect to a Party as that Party may, from time to time; designate in writing dispatched as provided in this section.

9.2 Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

9.3 Counterparts. In the event this Agreement is executed in two (2) or more counterparts, each counterpart shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Waivers. No waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver. No waiver by City or Developer of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing; and no such waiver shall be construed to be a continuing waiver.

9.5 Attorneys' Fees. In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing Party shall be entitled to recover from the losing Party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law. In the event the prevailing Party is represented by "in-house" counsel, the prevailing Party shall nevertheless be entitled to recover reasonable attorney fees based upon the reasonable time incurred and the attorney fee rates and charges reasonably and generally accepted in the metropolitan Portland, Oregon, area for the type of legal services performed.

9.6 Time of the Essence. Time is of the essence under this Agreement.

9.7 Choice of Law. This Agreement shall be interpreted under the laws of the State of Oregon.

9.8 Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State

of Oregon, the period shall be extended to include the next day which is not a Saturday, Sunday, or such a holiday.

9.9 Construction. In construing this Agreement, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require.

9.10 Severability. Consistent with Section 7 above, if any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

9.11 Place of Enforcement. Any action or suit to enforce or construe any provision of this Agreement by any Party shall be brought in the Circuit Court of the State of Oregon for Clackamas County, or the United States District Court for the District of Oregon.

9.12 Good Faith and Reasonableness. The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of a Party being given “sole discretion” or being allowed to make a decision in its “sole judgment.”

9.13 Condition of City Obligations. All City obligations pursuant to this Agreement which require the expenditure of funds are contingent upon future appropriations by the City as part of the local budget process. Nothing in this Agreement implies an obligation on the City to appropriate any such monies.

9.14 Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties agree to cooperate in defending such action.

9.15 Enforced Delay, Extension of Times of Performance. In addition to the specific provisions of this Agreement, performance by any Party shall not be in default where delay or default is due to war; insurrection, strikes, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the City, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance which is not within reasonable control of the Party to be excused; provided, however, that

the Parties agree to proceed in accordance with Section 7 in the event of the occurrence of any of the foregoing events also described in Section 7.

9.16 Other Necessary Acts. Each Party shall execute and deliver to the other all such further instruments and documents and take such additional acts (which, in the case of the City, shall require adopting necessary ordinances and resolutions) as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other Parties the full and complete enjoyment of rights and privileges hereunder.

9.17 Entire Agreement. This Agreement constitutes the entire agreement between the Parties as to the subject matter covered by this Agreement.

9.18 Interpretation of Agreement. This Agreement is the result of arm's length negotiations between the Parties and shall not be construed against any Party by reason of its preparation of this Agreement.

9.19 Capacity to Execute; Mutual Representations. The Parties each warrant and represent to the other that this Agreement constitutes a legal, valid, and binding obligation of that Party. Without limiting the generality of the foregoing, each Party represents that its governing authority has authorized the execution, delivery, and performance of this Agreement by it. The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they purport to be acting. Each Party represents to the other that neither the execution nor delivery of this Agreement, nor performance of the obligations under this Agreement will conflict with, result in a breach of, or constitute a default under, any other agreement to which it is a Party or by which it is bound.

9.20 Recording. City shall cause this Agreement to be recorded pursuant to ORS 94.528.

9.21 Form of Agreement; Exhibits. This Agreement consists of eight pages and one exhibit. The exhibit is identified as follows: **Exhibit 1** (Legal Description of Property).

9.22 Fees. The fee charged for the review of the Required Applications to develop the Property shall be the same as the fees as shown in the City's "Master Fee and Charges Document" adopted June 19, 2017, effective July 1, 2017.

Executed as of the day and year first above written.

JEFF PARKER

By: _____
Printed Name: Jeff Parker
Managing Member, Tannler Properties,
LLC

STATE OF OREGON)
) ss.
County of Clackamas)

The foregoing instrument was acknowledged before me this __ day of _____ 2017, by Jeff Parker as Member-Representative Tannler Properties, LLC, an Oregon limited liability company, on behalf of said company.

Notary Public for Oregon
My Commission Expires: _____

**CITY OF WEST LINN,
AN OREGON MUNICIPAL
CORPORATION**

By: _____
Russ Axelrod, Mayor of City of
West Linn

EXHIBIT “1”

LEGAL DESCRIPTION OF PROPERTY

(INSERT)



Re-Zone R-2.1
Multi-family

OBC Zone
Commercial Frontage

West Linn / Tannler Road

06-03-2014

EXHIBIT NO. CC-4: PUBLIC COMMENTS

Shroyer, Shauna

From: Perry, Brenda
Sent: Wednesday, November 29, 2017 10:15 AM
To: Lucas Solis; Boyd, John
Cc: City Council
Subject: Re: PLEASE ADD AS PUBLIC TESTIMONY TO THE PACKET OF WRITTEN TESTIMONY FOR THE HEARING REGARDING MISC-17-09 (Development Agreement for 2410, 2422, and 2444 Tannler Driver)

Dear Mr. Solis

The meeting on December 4th where the Development Agreement process is scheduled is to provide information on the process and public testimony will be welcomed. The Blankenship/Tannler proposal will not be part of this discussion and no promises have been made to Mr. Parker by either the City Manager or the Council. In fact he was asked to put his proposals to the NAs for their support before coming back with any sort of final plan.

You are correct that we have denied both a zoning change and a high density development plan in the past and so I am surprised that anyone at the Savanna Oaks NA would think that we would pass anything through without a stringent review. Many of the points you mention were considerations in these denials.

Thank you for your interest and please do not hesitate to contact me with any further questions or concerns.

Warm Regards,

Brenda

503-568-2781

From: Lucas Solis <lsolis@pureseed.com>
Sent: Monday, November 27, 2017 12:17 PM
To: Boyd, John
Cc: City Council
Subject: PLEASE ADD AS PUBLIC TESTIMONY TO THE PACKET OF WRITTEN TESTIMONY FOR THE HEARING REGARDING MISC-17-09 (Development Agreement for 2410, 2422, and 2444 Tannler Driver)

Dear Mr. Boyd and City Council:

Our family is new to the Savanna Oaks Neighborhood. This past September we purchased a house on Falcon Drive which borders Mr. Parker's property VIA the Greene Dr. Right-of-Way. We fell in love with West Linn's neighborhoods, community, schools, and ultimately decided to purchase in West Linn because of the quality of living the city offers. These types of proposed projects are what will destroy the fabric of what makes West Linn such a great place to live. Needless to say, we are disappointed, and would not have purchased the property if we knew there was a possibility of Mr. Parker's land being rezoned residential. We were told the rezoning had been rejected twice before and with high confidence WOULD NOT be rezoned residential in the future.

Our family is against the proposed rezone—below are a few of our concerns:

- **Traffic:** Tannler Dr. is already a busy street with a dangerous intersections. We purchased our home on Falcon Dr. this past September, and already notice it is used as a by-way between Tannler and Bland Cir. For sure, adding this proposed development will increase traffic. **As we have a 1 yr. old daughter, this gravely concerns us and her safety as she gets older.**
- **Decrease in Property Value:** Without a doubt, this project will reduce the property value of the home we just purchased, as it will increase congestion, noise, obstruct view, etc., etc.
- **Increased probability of crime**
- **Increased congestion to schools, parks, and other public facilities**
- **Mr. Parker's proposal for the city to vacate all but 5 feet of Greene Dr. Right-of-Way and decreasing access to Savanna Oak Park.**

As a member of the community, this Development Agreement does not propose benefits—alternative, it proposes detractors to the community.

My best,

Lucas Solis
Homeowner – Falcon Dr.
Email: lucasasolis@gmail.com

Shroyer, Shauna

From: Perry, Brenda
Sent: Wednesday, November 29, 2017 10:09 AM
To: Stephen Rushton; City Council; Boyd, John
Subject: Re: Development of Property at Corner of Blankenship Road and Tannler Drive

Dear Mr. Rushton;

I concur with Councilor Sakelik regarding our information meeting on December 4th where the Development Agreement process is scheduled to be discussed and public testimony will be welcomed. The Blankenship/Tannler proposal will not be part of this discussion and no promises have been made to Mr. Parker by either the City Manager or the Council. In fact he was asked to put his proposals to the NAs for their support before coming back with any sort of final plan.

You are correct that we have denied both a zoning change and a high density development plan in the past and so I am surprised that anyone at the Savanna Oaks NA would think that we would pass anything through without a stringent review. Many of the points you mention were considerations in these denials.

Thank you for your interest and please do not hesitate to contact me with any further questions or concerns.

Warm Regards,

Brenda

503-568-2781

From: Stephen Rushton <snmirush@gmail.com>
Sent: Sunday, November 26, 2017 10:27 AM
To: City Council; Boyd, John
Subject: Development of Property at Corner of Blankenship Road and Tannler Drive

Please consider the attached in your deliberations over the proposed development of the above property.
Thank you.
Stephen Rushton

Shroyer, Shauna

From: Sakelik, Richard
Sent: Sunday, November 26, 2017 12:49 PM
To: Stephen Rushton
Cc: City Council; Boyd, John
Subject: Re: Development of Property at Corner of Blankenship Road and Tannler Drive

Stephen,

Thanks for your inputs..I won't comment on them as that wouldn't be appropriate in this forum but please understand the 12/4 work session is only for learning about development agreements and we will not be discussing the specific MISC 17-09 application. This will be a learning work session taught by Mr. Ramis our City Attorney. Come to it or watch online as we will all be learning what they are.

Thanks again for sharing your opinions, etc.

Rich

Richard Sakelik
West Linn City Councilor

On Nov 26, 2017, at 10:27 AM, Stephen Rushton <snmirush@gmail.com> wrote:

Please consider the attached in your deliberations over the proposed development of the above property.
Thank you.
Stephen Rushton

Boyd, John

From: Lucas Solis <lsolis@pureseed.com>
Sent: Monday, November 27, 2017 12:17 PM
To: Boyd, John
Cc: City Council
Subject: PLEASE ADD AS PUBLIC TESTIMONY TO THE PACKET OF WRITTEN TESTIMONY FOR THE HEARING REGARDING MISC-17-09 (Development Agreement for 2410, 2422, and 2444 Tannler Driver)

Dear Mr. Boyd and City Council:

Our family is new to the Savanna Oaks Neighborhood. This past September we purchased a house on Falcon Drive which borders Mr. Parker's property VIA the Greene Dr. Right-of-Way. We fell in love with West Linn's neighborhoods, community, schools, and ultimately decided to purchase in West Linn because of the quality of living the city offers. These types of proposed projects are what will destroy the fabric of what makes West Linn such a great place to live. Needless to say, we are disappointed, and would not have purchased the property if we knew there was a possibility of Mr. Parker's land being rezoned residential. We were told the rezoning had been rejected twice before and with high confidence WOULD NOT be rezoned residential in the future.

Our family is against the proposed rezone—below are a few of our concerns:

- **Traffic:** Tannler Dr. is already a busy street with a dangerous intersections. We purchased our home on Falcon Dr. this past September, and already notice it is used as a by-way between Tannler and Bland Cir. For sure, adding this proposed development will increase traffic. **As we have a 1 yr. old daughter, this gravely concerns us and her safety as she gets older.**
- **Decrease in Property Value:** Without a doubt, this project will reduce the property value of the home we just purchased, as it will increase congestion, noise, obstruct view, etc., etc.
- **Increased probability of crime**
- **Increased congestion to schools, parks, and other public facilities**
- **Mr. Parker's proposal for the city to vacate all but 5 feet of Greene Dr. Right-of-Way and decreasing access to Savanna Oak Park.**

As a member of the community, this Development Agreement does not propose benefits—alternative, it proposes detractors to the community.

My best,

Lucas Solis
Homeowner – Falcon Dr.
Email: lucasasolis@gmail.com

November 24, 2017

To: West Linn City Council & John Boyd

We wanted to submit to you the following comments and questions for the upcoming December 4th council meeting concerning the proposed development by Tannler Properties, LLC ('TP') of the land at the corner of Tannler Drive and Blankenship Road:

1) Application Process:

Much has already been said and written about the rather abnormal development application process being used; i.e. a non-binding Letter of Intent and a Development Agreement, as well as the totally inadequate information sharing performance by the City to our neighborhood. We will not add to what has already been said, but our question is:

WHY DID THE CITY DECIDE TO EMBARK ON THIS ABNORMAL APPLICATION PROCESS?

2) Rejection of ConAm's 2015 Development Proposal:

We understand that the ConAm proposal contained some similarities to the current TP proposal; i.e. a zone change to allow building of 180 high density apartments, similar to TP's 168 units. Our questions are:

- i) WHAT FACTORS HAVE CHANGED REGARDING THE POTENTIAL DEVELOPMENT OF THIS PROPERTY SINCE THE 2015 REJECTION OF THE CONAM APPLICATION?
- ii) WHAT IS SUFFICIENTLY ATTRACTIVE IN THE CURRENT TP APPLICATION COMPARED TO THE PREVIOUS CONAM PROPOSAL, WHICH JUSTIFIES THE CITY'S USE OF THE CURRENT ABNORMAL APPLICATION PROCESS?

3) Other Considerations:

i. TP's Offer To Pay For The Re-Routing Of Tannler Drive & New Traffic Light:

Obviously, adding 168 apartments on the property would have a major traffic impact on the Tannler/ Blankenship intersection, hence TP has little choice but to try to solve this potential objection to their development proposal. Offering to pay for the re-routing of Tannler Drive is not surprising, given that the site will undergo major road excavations anyway to accommodate access to the buildings and apartments, so we wonder what is the real extra cost of the Tannler Drive re-routing to TP, both in terms of dollars and land?

We understand that a traffic light has previously been considered for the Tannler/Blankenship intersection, but was rejected due to its proximity to Interstate 205 and other traffic lights nearby. In our experience over the last 18 months, patience is sometimes needed at the intersection, but unless the City

has received numerous complaints, it seems that residents, and certainly we, find the status quo tolerable. So is a Tannler/Blankenship traffic light still an issue for the city, or is it only an issue for TP in order to gain approval for their 168 apartments?

ii. Tannler Land Trade-offs:

In return for funding the Tannler re-routing and the associated 'loss' of land to accommodate the new route, TP expects the City to approve a zone change to R2.1 ('High Density Housing) which will have a significant negative impact on the residential nature of the neighborhood. In addition, in order to compensate TP for the above 'loss' of land, the City would also be required to vacate and give to TP the lower end of Tannler Drive. This vacation would severely limit access to, and parking for the City's new White Savanna Oaks Park investment. Why is this 'trade off' necessary or even reasonable, particularly when Tannler Drive rerouting would be required anyway if TP's proposal were to be approved? We believe that Tannler re-routing costs should reasonably be paid by TP, that the vacation of lower Tannler should not occur, and that the land trade off proposal is unreasonable.

iii. Impact on Schools:

In considering the TP proposal, the City will no doubt take into account the impact of 168 new apartments on West Linn's already overcrowded schools. We understand that in Oregon, the cost of a possible new school would be borne by the City and therefore by its citizens and not by the developer.

iv. Impact on River Falls Shopping Center:

It could be argued that 168 new apartments and a large fitness center nearby would help to re-vitalize the River Falls Shopping Center following the loss of its supermarket 'anchor'. Can the City please comment on any studies that have been/ are being conducted on how to attract investors into the Center, and whether the 168 new apartments would be pivotal to its re-vitalization?

In conclusion, based on what we know so far, we are struggling to see why TP's proposal would be attractive either for the City or for the neighborhood.

Thanks for your consideration

Pat & Stephen Rushton

REEVES, KAHN, HENNESSY & ELKINS

ATTORNEYS AT LAW

P.O. BOX 86100
PORTLAND, OREGON 97286-0100

Please Reply To P.O. Box

TELEPHONE (503) 777-5473
FAX (503) 777-8566

direct e-mail:
phennessy@rke-law.com

H PHILIP EIDER (1927-2004)
TIFFANY A ELKINS*
J MICHAEL HARRIS
PEGGY HENNESSY*
GARY K KAHN*
MARTIN W REEVES*

*Also Admitted in Washington

November 20, 2017

Honorable Russ Axelrod
and members of the West Linn City Council
22500 Salamo Road
West Linn OR 97068

Re: Tannler Properties, LLC Proposed Development Agreement

Dear Mr. Mayor and Members of the West Linn City Council:

Our office represents a group of concerned citizens living in various West Linn neighborhoods ("Concerned Citizens") with respect to their opposition to Tannler Properties, LLC's proposed development agreement with the City of West Linn. The proposal sets the stage for rezoning the property from Office Business Center ("OBC") to Single Family and Multiple Family Residential ("R-2.1"). The Concerned Citizens believe that the subject property was properly zoned for OBC use and the City should not enter into this agreement to convert it to high density residential use.

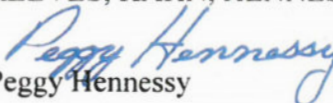
Statutory development agreements under ORS 94.504 are completely voluntary. Neither the City nor the developer has a "statutory right" to enter into the agreement. The statute was "designed to create a wholly optional opportunity for local governments to enter into long-term, multiphase land development agreements with property owners." *Povey vs. City of Mosier*, 20 Or App 552, 555, 188 P3d 321, 323 (2008). In the legislative history, Jon Chandler stated that "[t]here is no requirement that anybody do it. We hope it will be used * * * Nothing in this bill requires local governments to change existing systems. HB 3045 simply provides a means for local governments and developers to work together * * * ." Testimony, House Committee on General Government, Subcommittee on Government, HB 3045, May 5, 1993, Ex F (statement of Jon Chandler).

Statutory development agreements may be an effective tool to provide some level of certainty for long range development plans. However, those long range plans must be in the best interest of the City, too. Here, the Concerned Citizens urge the City to exercise its discretion to deny this proposed development agreement because it is inconsistent with the City's own plan for the area and will adversely affect surrounding properties.

Thank you for your consideration.

Sincerely,

REEVES, KAHN, HENNESSY & ELKINS


Peggy Hennessy

PH/blb

cc: Client
Timothy Ramis (City Attorney)
Megan K Thornton (Assistant City Attorney)

Shroyer, Shauna

From: Alan Smith <aalansmith57@gmail.com>
Sent: Sunday, November 19, 2017 4:57 PM
To: Boyd, John; Steve Miesen
Subject: PUBLIC HEARING MISC -17-09 notification

Hello Mr. Boyd,

Just read the mailing. Thank you for informing me. I have a question and an observation.

I have read a lot of Development Agreements, but none of them were headed with the adjective Statutory. Can you please explain to me why the city chose to use Statutory Development Agreement?

Is the city suggesting that all other land use proposals are NOT statutory? Or that because this particular one is based in ORS it "somehow" sets it apart from other city-received land use applications or proposals? I just don't remember seeing that in other notifications of like topics.

I think the city also forgot to mention the zoning change in the list of the major terms of the agreement. Or is a zoning change not identified in the "Statutory" Development Agreement?

Looking forward to your answer.

Sincerely,
Alan Smith
Bolton VP

Shroyer, Shauna

From: Mollusky, Kathy
Sent: Monday, November 20, 2017 8:07 AM
To: Boyd, John
Subject: FW: Parker proposal

FYI -

From: Patricia Farra [mailto:bellagora@comcast.net]
Sent: Monday, November 13, 2017 11:37 AM
To: City Council <citycouncil@westlinnoregon.gov>
Subject: Parker proposal

Having lived in West Linn for a total of 30 years and having a business here I feel the need to voice my opinion this latest proposal. I feel it will greatly impact our Willamette and Savanna oaks communities. Everything about this is not good for our area. I do not need to take your valuable time to mention all that is involved.

This area is already rated as one of the worst traffic intersections in West Linn. Our neighborhoods are mostly family homes. High- density housing would not be in our best interest. There are too many issues to deal with, of which includes the Savanna Oaks natural park play area. Would we need new schools? Are we willing to pay?

*Bellagora
Patricia Farra
4800 Summerlinn Way
West Linn, OR 97068
503-804-2002*

Shroyer, Shauna

From: Boyd, John
Sent: Friday, November 17, 2017 7:08 PM
To: Shroyer, Shauna; Mollusky, Kathy
Subject: FW: Proposed Development at Tannler/Blankenship Roads

Sent from my mobile device
John J. Boyd AICP, CFM
Planning Manager
(503) 656-4211

-----Original Message-----

From: Anne McFarlane [primrose4646@gmail.com]
Received: Friday, 17 Nov 2017, 6:36PM
To: Boyd, John [jboyd@westlinnoregon.gov]; City Council [citycouncil@westlinnoregon.gov]
CC: RonnMcFarlane [ronnmcfarlane@gmail.com]
Subject: Proposed Development at Tannler/Blankenship Roads

Dear Mr. Boyd and Members of the West Linn City Council,

My husband, child and I have resided in the Madison Heights condominiums for approximately 11 years. It is a lovely and peaceful community, and we wish for it to remain so!

We are extremely upset that the West Linn City Council would even consider Mr. Jeff Parker's proposal, especially as the wonderful citizens of this community have turned down such development of this property on 3 former occasions.

With the beautiful addition of the White Oak Savannah across Tannler Road, it is of even more importance to allow a space for vegetation and wildlife to flourish. In addition, the nightmare of traffic which would result is inconceivable!

PLEASE, PLEASE, PLEASE choose the "High Road" and maintain West Linn as a greenspace community which cares more about its citizens as well as the protection of its beautiful and verdant land...

Sincerely,
Anne McFarlane

Sent from my iPad

Shroyer, Shauna

From: Mollusky, Kathy
Sent: Monday, November 20, 2017 8:25 AM
To: Boyd, John
Subject: FW: Tannler Property Development

FYI -

From: Gene Schaffer [mailto:yellowstone58@msn.com]
Sent: Friday, November 17, 2017 2:18 PM
To: City Council <citycouncil@westlinnoregon.gov>
Subject: Tannler Property Development

For the record, I am open to having the 11 acres developed into apartments and homes. The property needs to be developed with proper planning.

I am upset with all the folks in West Linn who are anti development. It is not their property to dictate what it will be used for.

Let's move on.

Yours Truly,

Gene Schaffer
1741 Timothy Lane
West Linn, Oregon 97068
Almost 40 year resident

Sent from [Mail](#) for Windows 10

[Subscribe](#)

[Past Issues](#)

[Trans](#)

[View this email in your browser](#)



If you would like to make a difference on the proposed development Agreement you have been hearing about please come to the important **City Council Work Session on December 4th at 6:00 pm at City Hall on the Parker proposal which includes the rezoning of his land to R 2.1 (which will be apartments in a rare BUSINESS LAND in WEST LINN) the current zoning is OBC (Office Business Commercial) and then building approximately 168 high density apartments (scroll down to see detailed information below) and **please send in written testimony** before then, too.**

Please see Rebecca's below.

Write your own testimony including what you

think. Look at the detailed flier when you scroll down below on this email. The email addresses for where to send the testimony are the following:

John Boyd jboyd@westlinnoregon.gov, and
City Council citycouncil@westlinnoregon.gov

Please come and take a seat, it is the quality of life in our nearby neighborhoods that is on the line.

Thanks so much.

Roberta

PLEASE ADD AS PUBLIC TESTIMONY TO THE PACKET OF WRITTEN TESTIMONY FOR THE HEARING REGARDING MISC-17-09 (Development Agreement for 2410, 2422, and [2444 Tannler Driver](#)

Dear City Council,

For the moment I will restrict my comments to what is so unusual about Mr. Parker's proposal because the Development Agreement process by which his proposal is coming before Council turns much of West Linn's land-use procedures on end, and this barbarizing of process must be named for what it is. Since the State Regulations appear to show no actual procedure for this, one can only guess that staff is just mapping out the procedure as we go.

There are good reasons, hearkening back to Goal 1 and the concept of fair play, why Zone Changes and Comprehensive Plan changes are subject to rigorous public noticing requirements and extensive due process including appeal opportunities at *progressively higher* appeal bodies. Of course this is not the actual zone change, just an elaborate Agreement to try to deliver a later Zone Change and Comp Plan Change in exchange for some public works . No Agreement should be made before the full airing of facts and perspectives provided by the normal extensive and properly noticed hearing process.

The Committee for Citizen Involvement (CCI) has been working for over a year directly to improve the citizen engagement portion of our land-use process. So it is astonishing that that staff have simultaneously opened this unusual

opportunity for Mr. Parker to reduce engagement and skip over many of the public process pieces via a "Development Agreement." This can only be described as a request for a short notice "open-air backroom deal" which would lay the expectations for a future reverse-engineered set of hearings eventually legitimizing the initial decision. The City Manager's signature already on this agreement is quite troubling because it lends an air of legitimacy to it. I hope you will find a way to not add one shred of legitimacy to this, but rather to redirect this to the proper channels.


It is possible that somewhere there is an example where a Development Agreement makes sense, however as a policy this is not the time nor the place for dramatic departure from the normal way of providing for citizen engagement. So, in challenge to this procedure, I say let's weigh against it the entirety of our Chapter 99, the entirety of the hours citizens and staff have devoted to CCI efforts, and the entirety of community's expectation that land-use procedures and outcomes reflect timely notice and meaningful engagement. As the policy makers of this city, I hope you will resist the temptation to allow yourself to be led by staff backwards into this labyrinth.

There's just no estimating the degree of damage to the public process and public relations incurred by deciding a matter first, nor the perils of reversing logical steps, and going through hoops to legitimize premature decisions. We could call that kind of damage the Arch Bridge Effect, but better yet, let's forget the past and hold tight to the dictates of local code, respect for home rule, and commitment to due process. These are the principles that will serve the community come rain or shine.

I appreciate your consideration of these ideas,

Rebecca Adams
Address on record

Important Notice of a Potential Building Proposal by Jeff Parker to rezone his property at the Corner of Tannler Dr and Blankenship Rd. and put up approximately 168 high-density apartments. This will have an impact for our Neighbors in Savanna Oaks, Willamette, Barrington Heights, and other Neighborhood Associations in West Linn

 A close up of a map

Mr. Jeff Parker is proposing

Description generated with high confidence

approximately 168 high-density apartments be built

on his property which will require that the City of West Linn grant him a **rezoning** from OBC (Office Business Commercial) to R 2.1 (Residential -- 1 unit for every 2100 sq. ft.) along with an approximately 35,000 sq. ft. fitness center). The community problems include:

Traffic - this area is already rated as one of the worst traffic intersections in West Linn. This will probably force people to use Greene St to get to Salamo. Barrington Heights through Sunset may very well become a pass-through to get to the freeway as well.

Detrimental Effect on the Neighborhood Character - our neighborhoods currently have mostly single-family homes as outlined in our NA Plans. This would lead to high density.

Vacating the Current Tannler Dr - giving Mr. Parker the bottom part of Tannler Dr if he gives up some of the property he owns to make a street that will run through his property and become the new bottom of Tannler Dr. This new street will end on Blankenship directly across from the second of the former Albertson's/Haggen's driveways. There may or may not be a light there depending on what the traffic engineers require.

Limited Access to the White Oak Savanna - the city has paid \$333,000 to help to buy this park and is now investing another \$600,000 for a Natural Play Area there. Check the conceptual drawing which is included. The current access to the park will be limited if Mr. Parker is given part of the existing Tannler Dr. There will be less on-street Savanna parking for the park and new Natural Play Area which will be attracting more people.

Existing Health Clubs, Yoga Studios, and Trainers will be at Risk of Losing Their Businesses - when a mega fitness studio of approximately 35,000 sq. ft. comes to town.

New Schools May be Required to be Built - here in Oregon it is the citizens who pay for building new schools (unlike Washington and California where the developers pay half).

Please come to the City Council's Work Session on December 4th at 6:00 at West Linn City Hall to hear how this proposed "Agreement" between the City and Mr. Parker for the rezoning of Mr. Parker's land (across the street from the White Oak Savanna) will impact you and your neighbors. Please read the information on the City's website by going to the link:

<https://westlinnoregon.gov/planning/development-agreement-2410-2422-and->

[2444-tannler-drive](#)

Thanks so much!

Gail Holmes
WNA President



Copyright © 2017 Willamette Neighborhood Association, All rights reserved.

Want to change how you receive these emails?

You can [update your preferences](#) or [unsubscribe from this list](#).

MailChimp

Shroyer, Shauna

From: Alan Smith <aalansmith57@gmail.com>
Sent: Thursday, November 16, 2017 8:03 PM
To: City Council; Boyd, John
Subject: Testimony for MISC 17-09, Tannler West Development

Dear Mr. Boyd,

I include you in this email to the council. This is testimony for inclusion in the record of MISC-17-09. As I understand from city policy, you are the gatekeeper deciding when Council may receive written testimony. I ask that you please give Council this testimony immediately, so they may consider it in preparation for the work session on November 20 2017.

I request that you immediately post this testimony and any and all other public testimonies you have received. You have already posted the testimony in support of the application from Peter Powell of Powell Development. All members of the public have a right to equal opportunity.

Sincerely,
Alan Smith

Dear Mayor Axelrod and Councilors Perry, Martin, Sakelik and Cummings:

This land-use application must be denied because it subverts citizen participation and any opportunity for local review of the Council decision. Oregon citizens have the right to determine how the communities in which they live are built.

Did the city manager inform you, the council, before she signed the letter of intent? Apparently not as was brought to light in the presentation by Parker before the citizens. The assistant city attorney has experience with these development agreements. Are you aware that these types of agreements are usually reserved for massive reclamation projects such as envisioned for the West Linn Waterfront? Not residential developments that benefit just one citizen.

Timeline of proceedings for the proposed Development Agreement:

1. **June 26-** City staff met privately with the applicant in "an informal pre-application meeting" conducted by the applicant ([Applicant Submittal](#), page 4, para 5)
2. **July 6-** City Manager signed a Letter of Intent (Applicant Submittal, Exhibit 2)
3. **Sept. 22-** Development Agreement application was received by the City (Applicant Submittal, pg. 1)
4. **Oct. 24-** Application deemed complete by [letter to applicant](#). ([Corrected letter, dated Oct. 25](#))
5. **Oct. 25-** City notified applicant of the hearing and work session dates. (Corrected letter, para 4)
6. **Oct. 31-** City mailed required [notice of hearing](#) and work session date

7. **Nov. 6**, or about- Some property owners (presumably within 500 ft of the subject property) received notice of a meeting with the applicant ([Community Outreach Meeting Letter](#), time and date stamped recieved).
8. **Nov. 7, 6pm** Meeting with applicant and invited members of the public.

The details of this project remain private and the staff report to Council for this application should provide information about the background and proceedings of the project. I request Mayor Axelrod to ask staff to answer my following questions during Council Work Session, if staff does not provide sufficient detail to answer them in the staff report. It falls upon the City to be transparent in working together to put the citizens first:

1. **Why** isn't the Planning Commission the authority for the application? [CDC 99.060\(B\)\(4\)](#) provides the PC shall decide any application not listed under the authority of the PC.
2. **How** did the City and applicant begin pursuit of an agreement for development and **who's** idea was it?
3. **Who** provided support/advice toward the Letter of Intent and the Development Agreement?
4. **Who** is the City's lead attorney for this project? Evidence in the record shows the City Manager's attorney for the City was in discussion with the applicant. (Applicant Submittal, pg. 1, last para, "Pursuant to my discussion with Assistant City Attorney, Megan Thornton..") **Are citizens afforded the same opportunity to discuss the application with Ms. Thornton?** Additional evidence shows the applicant copied Ms. Thornton on his letter to Mr. Boyd, presumably because Ms. Thornton is the lead attorney for the City. ([Applicants response to Outreach, Concept Plan and Phasing](#))
5. **When** will the legal advice provided to the City Manager, staff and applicant be publicized as allowed by law, so the public may similarly benefit from it?
6. **Who** provided Council with legal advice up to now? **When** will it be publicized as the law allows?
7. **What** authorizes the City Manager, as the administrative head of City government, to sign a letter of intent agreeing to how the applicant's property should be developed?
8. **Why** did the City Manager sign the Letter of Intent when she was not required to? ([ORS 94.504](#))
9. **The Letter of Intent claims** Council review of the prescribed zoning change from OBC to R-2.1 benefits the City and supports Council goal to "review zoning to enhance the City's opportunity for economic development in business districts." However, the Planning Docket updated Nov. 6, lists a limited review of Mixed Use Transitional Zones in Willamette Main ST district as the initial project towards this goal and sets aside a comprehensive review of commercial districts until staff scopes it. **Does Council review of zoning for the applicant give the applicant special consideration and circumvent a comprehensive review** of citywide zoning by a citizen work-group and or Planning Commission

to make recommendations to Council? **Isn't the City Manager confusing this land-use decision with a legislative decision** necessary toward the Council goal?

10. **Why** wasn't the Letter of Intent publicized from the onset?
11. **How and when** did the City Manager inform Council of her work toward the project? [City Charter Section 23\(c\)](#) mandates the City Manager "to keep the Council advised at all times of the affairs and needs of the City" and [Ms. Stein's employment agreement](#) does as well.
12. **Is it fair and reasonable to expect the public to** constantly monitor the City's directory of projects webpage for development agreement applications in order to have reasonable notice? Presumably, staff added the project to the webpage on or about Oct. 24 when the application was deemed complete. There was no advance public notice of the application because a pre-application meeting and a neighborhood meeting was not required.
13. **Why** didn't the Community Planning Director require a pre-application conference as he is authorized to do when "the potential development is of significant complexity or magnitude to merit a pre-application conference"? [CDC 99.030\(B\)](#)
14. **How** does the application comply with the applicable policies and recommended action measures of Goal 1 of the City Comprehensive Plan for Citizen Involvement?
15. **Why** hasn't the City adopted local review procedures and approval criteria for development agreements as allowed by [ORS 94.513](#)?
16. Since the CDC does not provide procedures for development agreements, **who** is determining how to proceed? It is unusual to have a work session prior to a hearing for a land-use decision.
17. Will the record of the work session be included in the record of the application?
18. The Agreement sets forth that all codes, rules, policies and fees existing at the time of signing the Agreement will apply to all development applications necessary to implement the terms of the Agreement for 15 years, the maximum time allowed. **How** does this benefit the City?
19. **How** will the SDC fees be determined for 15 years? Are they frozen as well?
20. **How** was the \$100 application fee calculated to defray the total expenses of the administrative process, as required by [CDC 99.033](#)? The City Master Fees and Schedule does not include a fee for a development agreement application (Applicant's Submittal, Exhibit 5).
21. Has the City previously received a development agreement application(s) and **what** was the outcome(s)?
22. **What** is the City Manager's experience with development agreements and letters of intent in other Cities?

Council, I am confident you will find evidence enough to support denying this Development Agreement application. It appears the applicant has chosen to disregard City policy of early community engagement and to ignore past suggestions from the neighborhood and citizens of types of development that would benefit both the developer and the community.

Mayor Axelrod, thank you in advance for advancing my questions at the Council work session for the application. It would help bring transparency to the project and help to mitigate what appears to be blatant disregard for citizens.

Sincerely,
Alan Smith
Buck Street

Boyd, John

From: Roberta Schwarz <roberta.schwarz@comcast.net>
Sent: Thursday, November 09, 2017 8:07 PM
To: 'Rebecca Adams'
Cc: Boyd, John
Subject: RE: Important Notice of a Potential Building Proposal

Hi Rebecca,

jboyd@westlinnoregon.gov

How will we know if he receives any emails?

Roberta

From: Rebecca Adams [mailto:radams014@gmail.com]
Sent: Thursday, November 9, 2017 7:57 PM
To: Roberta Schwarz <roberta.schwarz@comcast.net>
Subject: Re: Important Notice of a Potential Building Proposal

but should Robinson's post include the email? if so do you have Boyd's email off hand?

I could submit one right away saying this proposal is operating outside of the normal land-use protocols of the city and detailing why it should follow the correct procedure...

On Thu, Nov 9, 2017 at 7:47 PM, Roberta Schwarz <roberta.schwarz@comcast.net> wrote:

Excellent idea, Rebecca. Let's wait until I send this out again. I don't like to overwhelm the masses with too many emails too close together.

You ROCK!

Roberta

From: Rebecca Adams [mailto:radams014@gmail.com]
Sent: Thursday, November 9, 2017 7:43 PM
To: Roberta Schwarz <roberta.schwarz@comcast.net>; Robinson Foster <Fosterr@comcast.net>
Subject: Re: Important Notice of a Potential Building Proposal

Guys,

I got a new idea...this link goes to the whole document page for the project where people can see public testimony such as Mr Powell's who supports Parker.

What if we say " Or send emails to Mr John Boyd at this email (.....) to be added to the public record if you wish.

On Thu, Nov 9, 2017 at 7:23 PM, Rebecca Adams <radams014@gmail.com> wrote:

Hi Roberta and Robinson,

Here's a possible condensation of the flyer that could be a NextDoor post.

Robinson , let's see if Roberta likes this. I took her phone number off, by the way.

Roberta what do you think?

-Rebecca

Tannler and Blankenship Zone Change



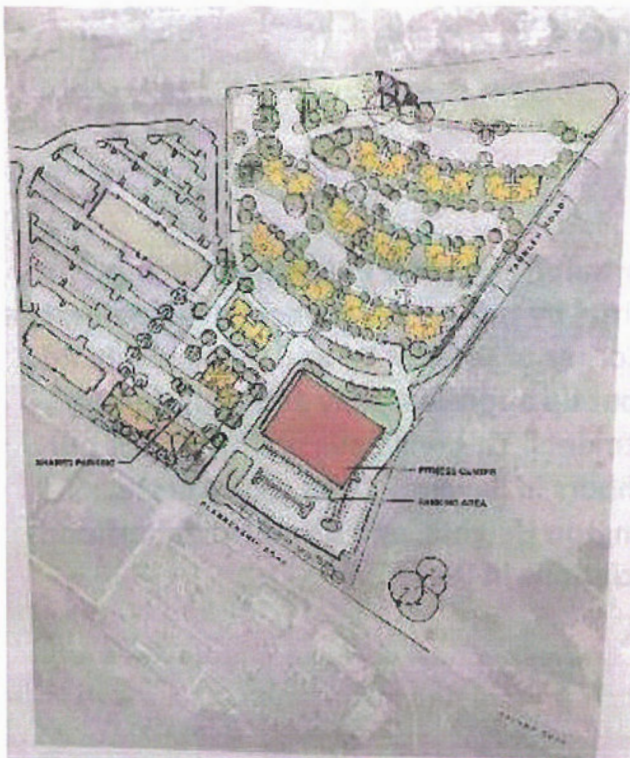
Important Notice of a Potential Building Proposal by Jeff Parker to rezone his property at the Corner of Tannler Dr and Blankenship Rd. and put up approximately 168 high-density apartments. This will have an impact for our Neighbors in Savanna Oaks, Willamette, Barrington Heights, and other Neighborhood Associations in West Linn

Please come to the City Council's Work Session on December 4th at 6:00 at West Linn City Hall to hear how this proposed "Agreement" between the City and Mr. Parker for the rezoning of Mr. Parker's land (across the street from the White Oak Savanna) will impact you and your neighbors. You may review the proposed development agreement on the City's website by going to the link:

<https://westlinnoregon.gov/planning/development-agreement-2410-2422-and-2444-tannler-drive>

On Thu, Nov 9, 2017 at 7:09 PM, Roberta Schwarz <roberta.schwarz@comcast.net> wrote:

Important Notice of a Potential Building Proposal by Jeff Parker to rezone his property at the Corner of Tannler Dr and Blankenship Rd. and put up approximately 168 high-density apartments. This will have an impact for our Neighbors in Savanna Oaks, Willamette, Barrington Heights, and other Neighborhood Associations in West Linn



Mr. Jeff Parker is proposing approximately 168 high-density apartments be built on his property which will require that the City of West Linn grant him a **rezoning** from OBC (Office Business Commercial) to R 2.1 (Residential -- 1 unit for every 2100 sq. ft.) along with an approximately 35,000 sq. ft. fitness center). The community problems include:

Traffic - this area is already rated as one of the worst traffic intersections in West Linn. This will probably force people to use Greene St to get to Salamo. Barrington Heights through Sunset may very well become a pass-through to get to the freeway as well.

Detrimental Effect on the Neighborhood Character - our neighborhoods currently have mostly single-family homes as outlined in our NA Plans. This would lead to high density.

Vacating the Current Tanner Dr - giving Mr. Parker the bottom part of Tanner Dr if he gives up some of the property he owns to make a street that will run through his property and become the new bottom of Tanner Dr.

This new street will end on Blankenship directly across from the second of the former Albertson's/Haggen's driveways. There may or may not be a light there depending on what the traffic engineers require.

Limited Access to the White Oak Savanna - the city has paid \$333,000 to help to buy this park and is now investing another \$600,000 for a Natural Play Area there. Check the conceptual drawing which is included. The current access to the park will be limited if Mr. Parker is given part of the existing Tanner Dr. There will be less on-street Savanna parking for the park and new Natural Play Area which will be attracting more people.

Existing Health Clubs, Yoga Studios, and Trainers will be at Risk of Losing Their Businesses - when a mega fitness studio of approximately 35,000 sq. ft. comes to town.

New Schools May be Required to be Built - here in Oregon it is the citizens who pay for building new schools (unlike Washington and California where the developers pay half).

Please come to the City Council's Work Session on December 4th at 6:00 at West Linn City Hall to hear how this proposed "Agreement" between the City and Mr. Parker for the rezoning of Mr. Parker's land (across the street from the White Oak Savanna) will impact you and your neighbors. Please read the information on the City's website by going to the link:

<https://westlinnoregon.gov/planning/development-agreement-2410-2422-and-2444-tanner-drive>

Call [503 723 5015](tel:5037235015) to learn how you can help to retain our fine neighborhood character and to help to get the word out.

Shroyer, Shauna

From: Karie Oakes <karieokee@aol.com>
Sent: Wednesday, November 15, 2017 12:55 PM
To: Boyd, John
Cc: City Council
Subject: Fwd: Testimony for MISC 17-09, Tannler West Development

Dear Mr. Boyd,

I am forwarding this email to you with my testimony for inclusion in the record of MISC-17-09. As I understand from city policy, you are the gatekeeper deciding when Council may receive written testimony. I ask that you please give Council my testimony immediately, so they may consider it in preparation for the work session on November 20 2017.

It is also my understanding that you are the gatekeeper deciding when to publish public testimony on the project page of the City website for this application. I request that you immediately post my testimony and any and all other public testimonies you have received. You have already posted the testimony in support of the application from Peter Powell of Powell Development. All members of the public have a right to equal opportunity.

Please let me know how you intend to proceed. Thank you.

Sincerely,

Karie Oakes

-----Original Message-----

From: Karie Oakes <karieokee@aol.com>
To: citycouncil <citycouncil@westlinnoregon.gov>
Sent: Wed, Nov 15, 2017 12:22 pm
Subject: Testimony for MISC 17-09, Tannler West Development

Dear Mayor Axelrod and Councilors Perry, Martin, Sakelik and Cummings:

This land-use application must be denied because it bastardizes the land-use process by subverting citizen participation and any opportunity for local review of the Council decision. Oregon citizens have the right to determine how the communities in which they live are built.

Whatever possessed the City Manager to agree to the specific development in this application, as if **she** represented citizens and their plans for the City? **It's ironic that this project comes to light just days following the resounding defeat of Ballot Measure 3-524.** This project serves as a perfect example of how the current legal structure of the City fails and why Council must respect the Office of the City Attorney as the chief legal office for the City as authorized by City Charter and return all legal services to the Office or other legal counsel as appointed by the City Council.

Timeline of proceedings for the proposed Development Agreement:

1. **June 26-** City staff met privately with the applicant in "an informal pre-application meeting" conducted by the applicant ([Applicant Submittal](#), page 4, para 5)
2. **July 6-** City Manager signed a Letter of Intent (Applicant Submittal, Exhibit 2)
3. **Sept. 22-** Development Agreement application was received by the City (Applicant Submittal, pg. 1)

4. **Oct. 24-** Application deemed complete by [letter to applicant](#). ([Corrected letter, dated Oct. 25](#))
5. **Oct. 25-** City notified applicant of the hearing and work session dates. (Corrected letter, para 4)
6. **Oct. 31-** City mailed required [notice of hearing](#) and work session date
7. **Nov. 6,** or about- Some property owners (presumably within 500 ft of the subject property) received notice of a meeting with the applicant ([Community Outreach Meeting Letter](#), time and date stamped recieved).
8. **Nov. 7, 6pm** Meeting with applicant and invited members of the public.

The details of this project remain private and the staff report to Council for this application should provide information about the background and proceedings of the project. I request Mayor Axelrod to ask staff to answer my following questions during Council Work Session, if staff does not provide sufficient detail to answer them in the staff report. There's a (expletive) load of **Who, What, When, Where, Why and Hows**

to be answered- at least 22. I would apologize for the number, but it falls upon the City to be transparent.

1. **Why** isn't the Planning Commission the authority for the application? [CDC 99.060\(B\)\(4\)](#) provides the PC shall decide any application not listed under the authority of the PC.
2. **How** did the City and applicant begin pursuit of an agreement for development and **who's** idea was it?
3. **Who** provided support/advice toward the Letter of Intent and the Development Agreement?
4. **Who** is the City's lead attorney for this project? Evidence in the record shows the City Manager's attorney for the City was in discussion with the applicant. (Applicant Submittal, pg. 1, last para, "Pursuant to my discussion with Assistant City Attorney, Megan Thornton..") **Are citizens afforded the same opportunity to discuss the application with Ms. Thornton?** Additional evidence shows the applicant copied Ms. Thornton on his letter to Mr. Boyd, presumably because Ms. Thornton is the lead attorney for the City. ([Applicants response to Outreach, Concept Plan and Phasing](#))
5. **When** will the legal advice provided to the City Manager, staff and applicant be publicized as allowed by law, so the public may similarly benefit from it?
6. **Who** provided Council with legal advice up to now? **When** will it be publicized as the law allows?
7. **What** authorizes the City Manager, as the administrative head of City government, to sign a letter of intent agreeing to how the applicant's property should be developed?
8. **Why** did the City Manager sign the Letter of Intent when she was not required to? ([ORS 94.504](#))
9. **The Letter of Intent claims** Council review of the prescribed zoning change from OBC to R-2.1 benefits the City and supports Council goal to "review zoning to enhance the City's opportunity for economic development in business districts." However, the Planning Docket updated Nov. 6, lists a limited review of Mixed Use Transitional Zones in Willamette Main ST district as the initial project towards this goal and sets aside a comprehensive review of commercial districts until staff scopes it. **Does Council review of zoning for the applicant give the applicant special consideration and circumvent a comprehensive review of citywide zoning by a citizen work-group and or Planning Commission to make recommendations to Council? Isn't the City Manager confusing this land-use decision with a legislative decision** necessary toward the Council goal?
10. **Why** wasn't the Letter of Intent publicized from the onset?
11. **How and when** did the City Manager inform Council of her work toward the project? [City Charter Section 23\(c\)](#) mandates the City Manager "to keep the Council advised at all times of the affairs and needs of the City" and [Ms. Stein's employment agreement](#) does as well.

12. **Is it fair and reasonable to expect the public to** constantly monitor the City's directory of projects webpage for development agreement applications in order to have reasonable notice? Presumably, staff added the project to the webpage on or about Oct. 24 when the application was deemed complete. There was no advance public notice of the application because a pre-application meeting and a neighborhood meeting was not required.
13. **Why** didn't the Community Planning Director require a pre-application conference as he is authorized to do when "the potential development is of significant complexity or magnitude to merit a pre-application conference"? [CDC 99.030\(B\)](#)
14. **How** does the application comply with the applicable policies and recommended action measures of Goal 1 of the City Comprehensive Plan for Citizen Involvement?
15. **Why** hasn't the City adopted local review procedures and approval criteria for development agreements as allowed by [ORS 94.513](#)?
16. Since the CDC does not provide procedures for development agreements, **who** is determining how to proceed? It is unusual to have a work session prior to a hearing for a land-use decision.
17. Will the record of the work session be included in the record of the application?
18. The Agreement sets forth that all codes, rules, policies and fees existing at the time of signing the Agreement will apply to all development applications necessary to implement the terms of the Agreement for 15 years, the maximum time allowed. **How** does this benefit the City?
19. **How** will the SDC fees be determined for 15 years? Are they frozen as well?
20. **How** was the \$100 application fee calculated to defray the total expenses of the administrative process, as required by [CDC 99.033](#)? The City Master Fees and Schedule does not include a fee for a development agreement application (Applicant's Submittal, Exhibit 5).
21. Has the City previously received a development agreement application(s) and **what** was the outcome(s)?
22. **What** is the City Manager's experience with development agreements and letters of intent in other Cities?

Council, I am confident you will find evidence enough to support denying this Development Agreement application. It appears the applicant has chosen to disregard City policy of early community engagement and to ignore past suggestions from the neighborhood and citizens of types of development that would benefit both the developer and the community.

Mayor Axelrod, thank you in advance for advancing my questions at the Council work session for the application. It would help bring transparency to the project and help to mitigate what appears to be blatant disregard for citizens.

Council, thank you for considering my questions.

Sincerely,

Karie Oakes

Shroyer, Shauna

From: Rebecca Adams <radams014@gmail.com>
Sent: Thursday, November 09, 2017 11:26 PM
To: Boyd, John; City Council
Subject: PUBLIC TESTIMONY FOR MISC-17-09 Development Agreement

PLEASE ADD AS PUBLIC TESTIMONY TO THE PACKET OF WRITTEN TESTIMONY FOR THE HEARING REGARDING MISC-17-09 (Development Agreement for 2410, 2422, and 2444 Tannler Driver

Dear City Council,

For the moment I will restrict my comments to what is so unusual about Mr. Parker's proposal because the Development Agreement process by which his proposal is coming before Council turns much of West Linn's land-use procedures on end, and this barbarizing of process must be named for what it is. Since the State Regulations appear to show no actual procedure for this, one can only guess that staff is just mapping out the procedure as we go.

There are good reasons, hearkening back to Goal 1 and the concept of fair play, why Zone Changes and Comprehensive Plan changes are subject to rigorous public noticing requirements and extensive due process including appeal opportunities at *progressively higher* appeal bodies. Of course this is not the actual zone change, just an elaborate Agreement to try to deliver a later Zone Change and Comp Plan Change in exchange for some public works. No Agreement should be made before the full airing of facts and perspectives provided by the normal extensive and properly noticed hearing process.

The Committee for Citizen Involvement (CCI) has been working for over a year directly to improve the citizen engagement portion of our land-use process. So it is astonishing that that staff have simultaneously opened this unusual opportunity for Mr. Parker to reduce engagement and skip over many of the public process pieces via a "Development Agreement." This can only be described as a request for a short notice "open-air backroom deal" which would lay the expectations for a future reverse-engineered set of hearings eventually legitimizing the initial decision. The City Manager's signature already on this agreement is quite troubling because it lends an air of legitimacy to it. I hope you will find a way to not add one shred of legitimacy to this, but rather to redirect this to the proper channels.

It is possible that somewhere there is an example where a Development Agreement makes sense, however as a policy this is not the time nor the place for dramatic departure from the normal way of providing for citizen engagement. So, in challenge to this procedure, I say let's weigh against it the entirety of our Chapter 99, the entirety of the hours citizens and staff have devoted to CCI efforts, and the entirety of community's expectation that land-use procedures and outcomes reflect timely notice and meaningful engagement. As the policy makers of this city, I hope you will resist the temptation to allow yourself to be led by staff backwards into this labyrinth.

There's just no estimating the degree of damage to the public process and public relations incurred by deciding a matter first, nor the perils of reversing logical steps, and going through hoops to legitimize premature decisions. We could call that kind of damage the Arch Bridge Effect, but better yet, let's forget the past and hold tight to the dictates of local code, respect for home rule, and commitment to due process. These are the principles that will serve the community come rain or shine.

I appreciate your consideration of these ideas,

Rebecca Adams
Address on record

Shroyer, Shauna

From: Robinson, Michael C. (Perkins Coie) <MRobinson@perkinscoie.com>
Sent: Tuesday, November 07, 2017 6:25 PM
To: Boyd, John
Cc: Thornton, Megan; Jeff Parker; Liz Edmonds; King, Seth J. (Perkins Coie)
Subject: Fwd: West Linn - Potential Development
Attachments: Notice of Community Outreach Meeting - Tannler Properties, LLC.pdf; ATT00001.htm; City of West Linn Website Information.pdf; ATT00002.htm

John, attached is an email from Peter Powell. Powell Development owns the shopping center on the other side of Blankenship. Would you please place this email in the City Council packet for the November 20 Work Session?

Thanks.

Sent from my iPhone

Begin forwarded message:

From: "Peter Powell" <pwpowell@powelldev.com>
To: "Robinson, Michael C. (POR)" <MRobinson@perkinscoie.com>
Cc: "Lauren Powell" <Lauren@powelldev.com>, "Karisa Freeman" <karisa@powelldev.com>
Subject: West Linn - Potential Development

Mike,

Attached is the Notice of Community Outreach that we received today from Jeff Parker, owner of the land across Blankenship from our project. The application shows you represent Mr. Parker on this application to realign Tannler Drive with the City of West Linn. Our understanding is that the developer is hoping to build multi-family dwellings across the street from our center and realign Tannler Drive so that it intersects Blankenship Road west of its present location, in line with our driveway in front of the previous Albertson's building. Further, we understand that a traffic signal would be installed at the new intersection at the developers sole cost and expense, if traffic signal warrants are met and the realigning is permitted.

Please let the City of West Linn and the developer know that, based on the information we have at this time, we support the realignment of Tannler Drive.

Cheers

Peter W Powell

Powell Development Co.
2625 Northup Way
Bellevue, WA 98004

O – (425) 828-4444

F – (425) 822-8297

CONFIDENTIALITY NOTE: This email and any attachments are confidential and may be protected by legal privilege. If you are not the intended recipient, be aware that any disclosure, copying, distribution

or use of this email or any attachment is prohibited. If you have received this email in error, please notify us immediately by returning it to the sender and delete this copy from your system. Thank you for your cooperation.

NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

**EXHIBIT NO. CC-5: PROPOSED
DEVELOPMENT AGREEMENT**

After recording return to:

Michael C. Robinson
Perkins Coie LLP
1120 NW Couch Street, Tenth Floor
Portland, OR 97209-4128

This space reserved for recorder's use.

**DEVELOPMENT AGREEMENT
BETWEEN
CITY OF WEST LINN, OREGON, AND TANLER PROPERTIES, LLC**

This Development Agreement (the "Agreement") is made and entered into this ___ day of _____, 2017 by and between the **CITY OF WEST LINN**, a municipal corporation of the State of Oregon (the "City"), and **TANLER PROPERTIES, LLC**, an Oregon limited liability company ("Developer"), and its assigns, pursuant to ORS 94.504 to 94.528. The City and Developer may be referred to jointly in this Agreement as the "Parties" and individually as a "Party."

RECITALS

A. Developer is the legal owner of approximately 11.37 acres of real property (the "Property") located in the City at the northwest corner of Tannler Drive and Blankenship Road and shown in **Exhibit 1**, attached hereto (the "Property").

B. The Property consists of three lots of record, and is zoned Office Business Center ("OBC").

C. Developer intends to develop the Property in two zoning districts, separated by an extension of Tannler Drive (the "Tannler Drive Extension"). The south portion of the Property will be developed in the existing OBC zone with commercial, office, and retail uses and their accessory uses. The north portion of the

Property, subject to a concurrent amendment to the Comprehensive Plan map from “Commercial” to “Medium Density Residential” and a zoning map amendment from OBC to R-2.1 (“the Concurrent Amendment”), will be developed with up to the maximum number of multi-family dwelling units permitted by the R-2.1 zone, and their accessory uses.

D. Development of the Property as described above is contingent upon the Concurrent Amendment and other discretionary land use and limited land use appeals. This Agreement does not bind the West Linn City Council to a particular outcome on future discretionary land use application.

E. As set forth in the Agreement, the Applicant’s obligations (the “Applicant Obligations”) are as follows:

1. To realign Tannler Drive through the Property so that it intersects with Blankenship Road across from the westerly driveway of the shopping center on the south side of Blankenship Road (the “Tannler Drive Extension”).

2. The Applicant shall install a traffic signal, if warrants for a traffic signal are demonstrated pursuant to a Traffic Impact Analysis (the “TIA”), at the intersection of the Tannler Drive Extension and Blankenship Road.

3. The Applicant shall complete a TIA to assess the need for traffic mitigation at the following intersections:

- a. The intersection of Blankenship Road, 10th Street and Salamo Drive.
- b. Greene Street and Tannler Drive.

4. The Applicant shall grant the City any necessary public and private utility easements and relocate any public and private utilities at its own expense that are required due to the realignment of Tannler Drive.

5. The Applicant recognizes that any required public and private utilities must remain outside the nearby White Oak Savanna Park, which is a City-owned open space that is protected by the West Linn City Charter from non-authorized uses, such as development activities.

6. The Applicant will file the following applications with the City and will process those applications pursuant to applicable West Linn Community Development Code (“CDC”) provisions in effect on the date that this Agreement is approved (the “Required Applications”):

- a. A concurrent Comprehensive Plan map amendment from “Commercial” to “Medium Density Residential” and a zoning map amendment

from “OBC” to “R-2.1” for the portion of the Property north of the Tannler Drive Extension (the “Concurrent Amendment”). Requirements of the R-2.1 zone shall apply only upon the final approval of the Concurrent Amendment.

b. A Design Review application for the OBC zoned portion of the Property south of the Tannler Drive Extension for commercial, retail, or office uses, pursuant to CDC Chapter 55.

c. A Design Review application for the R-2.1 zoned portion of the Property north of the Tannler Drive Extension for multi-family uses pursuant to CDC Chapter 55 (the “R-2.1 Amendment”).

d. A tentative land division, subject to CDC Chapter 85, or a property line adjustment, subject to CDC Section 85.210, as appropriate, to create a lot or lots south of the Tannler Drive Extension for commercial, retail and offices uses and one lot north of the Tannler Drive Extension for multi-family uses.

e. Record a final plat for a land subdivision application, or a property line adjustment approval, as appropriate, pursuant to CDC Chapter 89.

f. The Required Applications shall be submitted to the City within ninety days of the effective date of the Agreement.

g. The Applicant shall submit to two (2) street vacations as follows:

i. For the portion of Tannler Drive below the Tannler Drive Extension to Tannler Drive’s present intersection with Blankenship Road, except for a five foot strip of the existing right-of-way separating the proposed vacation area from the White Oak Savanna Park westerly boundary.

ii. The vacation of Greene Street, an undeveloped public right-of-way, on the north end of the Property, except for a five foot strip of the undeveloped right-of-way between the portion proposed to be vacated and the existing single family dwelling lots to the north.

G. In order to provide certainty for the Developer and City regarding the proposed development, and to ensure the construction and orderly provision of adequate public facilities to the development, Developer and City desire to enter into this Agreement.

AGREEMENT

In consideration of the mutual promises and performance obligations of each Party set out in this Agreement, the City and Developer hereby agree to the

following terms and conditions, including one exhibit, attached hereto and incorporated as referenced herein.

1. Effective Date and Term of Agreement; Submittal of Required Applications.

1.1 This Agreement shall be effective upon the later of (1) adoption of an ordinance by the City approving this Agreement pursuant to ORS 94.508, (2) execution of this Agreement by both Parties, and (3) approval of the discretionary comprehensive plan map and zoning map amendment changing the north portion of the Property from the OBC zone to R-2.1 zone and approval of the two street vacations wherein developer obtains 100% of the vacated right-of-way. As used herein, “adoption of an ordinance by the City,” means the date upon which the ordinance becomes effective. The Agreement shall continue in effect for a period of fifteen (15) years after its effective date, unless it is terminated in accordance with Section 10 of this Agreement.

1.2 Developer shall submit Required Applications set forth in Section 2.1 within ninety (90) days of the execution of this agreement.

2. Description of Development Authorized and Required by this Development Agreement.

2.1 Applicant’s Required Obligations. As set forth in the Agreement, the Applicant’s obligations (the “Applicant Obligations”) are as follows:

1. To realign Tannler Drive through the Property so that it intersects with Blankenship Road across from the westerly driveway of the shopping center on the south side of Blankenship Road (the “Tannler Drive Extension”).
2. The Applicant shall install a traffic signal, if warrants for a traffic signal are demonstrated pursuant to a Traffic Impact Analysis (the “TIA”), at the intersection of the Tannler Drive Extension and Blankenship Road.
3. The Applicant shall complete a TIA to assess the need for traffic mitigation at the following intersections:
 - a. The intersection of Blankenship Road, 10th Street and Salamo Drive.
 - b. Greene Street and Tannler Drive.
4. The Applicant shall grant the City any necessary public and private utility easements and relocate any public and private utilities at its own expense that are required due to the realignment of Tannler Drive.

5. The Applicant recognizes that any required public and private utilities must remain outside the nearby White Oak Savanna Park, which is a City-owned open space that is protected by the West Linn City Charter from non-authorized uses, such as development activities.
6. The Applicant will file the following applications with the City and will process those applications pursuant to applicable West Linn Community Development Code (“CDC”) provisions in effect on the date that this Agreement is approved (the “Required Applications”):
 - a. A concurrent Comprehensive Plan map amendment from “Commercial” to “Medium Density Residential” and a zoning map amendment from “OBC” to “R-2.1” for the portion of the Property north of the Tannler Drive Extension (the “Concurrent Amendment”). Requirements of the R-2.1 zone shall apply only upon the final approval of the Concurrent Amendment.
 - b. A Design Review application for the OBC zoned portion of the Property south of the Tannler Drive Extension for commercial, retail, or office uses, pursuant to CDC Chapter 55.
 - c. A Design Review application for the R-2.1 zoned portion of the Property north of the Tannler Drive Extension for multi-family uses pursuant to CDC Chapter 55 (the “R-2.1 Amendment”).
 - d. A tentative land division, subject to CDC Chapter 85, or a property line adjustment, subject to CDC Section 85.210, as appropriate, to create a lot or lots south of the Tannler Drive Extension for commercial, retail and offices uses and one lot north of the Tannler Drive Extension for multi-family uses.
 - e. Record a final plat for a land subdivision application, or a property line adjustment approval, as appropriate, pursuant to CDC Chapter 89.
 - f. The Required Applications shall be submitted to the City within ninety days of the effective date of the Agreement.
 - g. The Applicant shall submit to two (2) street vacations as follows:
 - i. For the portion of Tannler Drive below the Tannler Drive Extension to Tannler Drive’s present intersection with Blankenship Road, except for a five foot strip of the existing right-of-way separating the proposed vacation area from the White Oak Savanna Park westerly boundary.

ii. The vacation of Greene Street, an undeveloped public right-of-way, on the north end of the Property, except for a five foot strip of the undeveloped right-of-way between the portion proposed to be vacated and the existing single family dwelling lots to the north.

2.2 Permitted and Conditional Uses. The permitted and conditional uses in the OBC zone are those currently permitted by CDC 21.030, 21.050, and 21.060. The permitted and conditional uses permitted in the R-2.1 zone, subject to final approval of the Concurrent Amendment, are those currently permitted by CDC Section 16.030 and 16.060.

2.3 Accessory Uses. Accessory uses in the OBC and R-2.1 zones are those allowed by CDC Chapter 34.

2.4 Design Review. Design review shall be subject to approval pursuant to CDC Chapter 55.

2.5 Conditional Uses. Conditional uses shall be subject to approval pursuant to CDC Chapter 60.

2.6 Density. The maximum density for the R-2.1 zoned portion of the Property will be that allowed under the R-2.1 zone as provided for in CDC Section 16.070. The maximum intensity of development allowed in the OBC zoned portion of the Property will be that allowed in the OBC zone as provided for in CDC Section 21.070.

2.7 Height and Size of Structures. The maximum structure height will be determined pursuant to the CDC standards and criteria for each applicable zoning district as they exist on the effective date of this Agreement. The maximum size of structures shall be determined pursuant to the CDC standards for setback, lot coverage, and floor area ratio in the applicable zoning district, as these standards exist on the effective date of this Agreement.

3. City's Obligations.

3.1 The City shall process the above land use applications and petitions pursuant to the applicable requirements of ORS 197.763 and CDC Chapter 99 within the 120-day time period as provided for in ORS 227.178(1), unless extended or waived in writing by the Applicant.

3.2 City agrees to provide 100% of available System Development Charge credits ("SDC") for the development of the Tannler Drive Extension consistent with existing City plans and ordinance, or to in good consider amendments to the its relevant ordnances to provide for City SDC credits for the Tannler Drive Extension right-of-way. Further, City agrees to provide SDC credits

consistent with its existing documents or to consider amendments to its existing documents for the traffic signal intersection of the Tannler Drive Extension and Blankenship Road. This development agreement implements the non-binding letter of intent signed between developer and City of July 6, 2017.

3.2.1 The Applicant shall not be precluded from seeking advance financing of public improvements pursuant to West Linn Municipal Code Sections 3.150-3.210 for eligible improvements.

3.3 The City shall process the two (2) streets vacations pursuant to ORS Chapter 271.

3.4 The City agrees to sign either of the two (2) street vacations as necessary as an abutting property owner pursuant to ORS 271.080(2) but by doing so does not commit to an outcome on the street vacation petitions. The City agrees that the vacated right-of-way of Tannler Drive and Greene Street may be included by Applicant for purposes of calculation of density or intensity of uses, setbacks, floor area requirements and other relevant CDC dimensional requirements.

3.5 The City agrees to consider the conveyance of 100% of the vacated Greene Street and Tannler Drive rights-of-way to Applicant.

4. Public Facilities, Services, and Dedications.

4.1 The Developer shall be responsible, at Developer's expense, for construction of all of the required public facilities and services and dedications. Upon installation of all public infrastructure improvements and dedications, City warrants that there will be adequate public facilities and services to serve the Property as proposed to be developed.

4.2 Developer shall construct the Tannler Drive Extension as a "Local Street" consistent with the applicable City standards for such streets as they exist on the effective date of this Agreement.

4.3 Developer shall install a traffic signal if a Traffic Impact Analysis ("TIA") demonstrates that warrants for a traffic signal at the intersection of Tannler Drive Extension and Blankenship Road are met.

4.4 Developer shall record a final plat(s) as required.

5. Applicable Approval Criteria.

For purposes of the Required Applications as set forth in Section 2.1 of this Agreement, the applicable Comprehensive Plan, zoning ordinances and other City rules and policies shall be those in effect on the date that the Agreement is approved as provided for in ORS 94.518.

6. Continuing Effect of Agreement.

6.1 In the case of any change in regional policy or federal or state law or other change in circumstance which renders compliance with this Agreement impossible or unlawful, the Parties will attempt to give effect to the remainder of this Agreement, but only if such effect does not prejudice the substantial rights of either Party under this Agreement. If the substantial rights of either Party are prejudiced by giving effect to the remainder of this Agreement, then the Parties shall negotiate in good faith to revise this Agreement to give effect to its original intent. If, because of a change in policy, law or circumstance, this Agreement fails of its essential purpose (vesting of allowed uses and limitations on development conditions and fees and charges) then the Parties shall be placed into their original position to the extent practical. It is the intent of this Agreement to vest development rights and conditions, including but not limited to the permitted uses, density and intensity of uses, infrastructure improvements and fees and charges as set forth in this Agreement, notwithstanding any change in local ordinance or policy.

6.2 The Property is within the City limits of the City of West Linn. The requirements of ORS 94.504(2)(L) are not applicable to this Agreement.

7. Default; Remedy.

7.1 Default/Cure. The following shall constitute defaults on the part of a Party:

7.1.1 A breach of a material provision of this Agreement, whether by action or inaction of a Party which continues and is not remedied within sixty (60) days after the other Party has given notice specifying the breach; provided that if the non-breaching Party determines that such breach cannot with due diligence be cured within a period of sixty (60) days, the non-breaching Party may allow the breaching Party a longer period of time to cure the breach, and in such event the breach shall not constitute a default so long as the breaching Party diligently proceeds to affect a cure and the cure is accomplished within the longer period of time granted by the non-breaching Party; or

7.1.2 Any assignment by a Party for the benefit of creditors, or adjudication as a bankrupt, or appointment of a receiver, trustee or creditor's committee over a Party.

7.2 Remedies. Each Party shall have all available remedies at law or in equity to recover damages and compel the performance of the other Party pursuant to this Agreement. The rights and remedies afforded under this Agreement are not exclusive and shall be in addition to and cumulative with any and all rights

otherwise available at law or in equity. The exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different time, of any other such remedy for the same default or breach or of any of its remedies for any other default or breach by the other Party, including, without limitation, the right to compel specific performance.

8. Amendment or Termination of Agreement.

This Agreement may only be amended or terminated by the mutual consent of the Parties, or their successors in interest, pursuant to ORS 94.522.

9. Miscellaneous Provisions.

9.1 Notice. A notice or communication under this Agreement by either Party shall be in writing and shall be dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by either personal delivery or nationally-recognized overnight courier (such as UPS or Federal Express) or by facsimile transmission, and

9.1.1 In the case of a notice or communication to Developer, addressed as follows:

Jeff Parker
Tannler Properties, LLC
1800 Blankenship Road, #200
West Linn, OR 97068

With copy to: Michael C. Robinson
Perkins Coie LLP
1120 NW Couch Street, Tenth Floor
Portland, Oregon 97209-4128

9.1.2 In the case of a notice or communication to City, addressed as follows:

City of West Linn
ATTN: Eileen Stein, City Manager
West Linn City Hall
22500 Salamo Road
West Linn, OR 97068

With copy to: Tim Ramis, West Linn City Attorney
Jordan Ramis
2 Centerpointe Drive, #600
Lake Oswego, OR 97035

or addressed in such other way in respect to a Party as that Party may, from time to time; designate in writing dispatched as provided in this section.

9.2 Headings. Any titles of the sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

9.3 Counterparts. In the event this Agreement is executed in two (2) or more counterparts, each counterpart shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Waivers. No waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition inuring to its benefit under this Agreement shall be considered a waiver of any other rights of the Party making the waiver. No waiver by City or Developer of any provision of this Agreement or any breach thereof shall be of any force or effect unless in writing; and no such waiver shall be construed to be a continuing waiver.

9.5 Attorneys' Fees. In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing Party shall be entitled to recover from the losing Party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law. In the event the prevailing Party is represented by "in-house" counsel, the prevailing Party shall nevertheless be entitled to recover reasonable attorney fees based upon the reasonable time incurred and the attorney fee rates and charges reasonably and generally accepted in the metropolitan Portland, Oregon, area for the type of legal services performed.

9.6 Time of the Essence. Time is of the essence under this Agreement.

9.7 Choice of Law. This Agreement shall be interpreted under the laws of the State of Oregon.

9.8 Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State

of Oregon, the period shall be extended to include the next day which is not a Saturday, Sunday, or such a holiday.

9.9 Construction. In construing this Agreement, singular pronouns shall be taken to mean and include the plural and the masculine pronoun shall be taken to mean and include the feminine and the neuter, as the context may require.

9.10 Severability. Consistent with Section 7 above, if any clause, sentence or any other portion of the terms and conditions of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law.

9.11 Place of Enforcement. Any action or suit to enforce or construe any provision of this Agreement by any Party shall be brought in the Circuit Court of the State of Oregon for Clackamas County, or the United States District Court for the District of Oregon.

9.12 Good Faith and Reasonableness. The Parties intend that the obligations of good faith and fair dealing apply to this Agreement generally and that no negative inferences be drawn by the absence of an explicit obligation to be reasonable in any portion of this Agreement. The obligation to be reasonable shall only be negated if arbitrariness is clearly and explicitly permitted as to the specific item in question, such as in the case of a Party being given “sole discretion” or being allowed to make a decision in its “sole judgment.”

9.13 Condition of City Obligations. All City obligations pursuant to this Agreement which require the expenditure of funds are contingent upon future appropriations by the City as part of the local budget process. Nothing in this Agreement implies an obligation on the City to appropriate any such monies.

9.14 Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties agree to cooperate in defending such action.

9.15 Enforced Delay, Extension of Times of Performance. In addition to the specific provisions of this Agreement, performance by any Party shall not be in default where delay or default is due to war; insurrection, strikes, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the City, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance which is not within reasonable control of the Party to be excused; provided, however, that

the Parties agree to proceed in accordance with Section 7 in the event of the occurrence of any of the foregoing events also described in Section 7.

9.16 Other Necessary Acts. Each Party shall execute and deliver to the other all such further instruments and documents and take such additional acts (which, in the case of the City, shall require adopting necessary ordinances and resolutions) as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other Parties the full and complete enjoyment of rights and privileges hereunder.

9.17 Entire Agreement. This Agreement constitutes the entire agreement between the Parties as to the subject matter covered by this Agreement.

9.18 Interpretation of Agreement. This Agreement is the result of arm's length negotiations between the Parties and shall not be construed against any Party by reason of its preparation of this Agreement.

9.19 Capacity to Execute; Mutual Representations. The Parties each warrant and represent to the other that this Agreement constitutes a legal, valid, and binding obligation of that Party. Without limiting the generality of the foregoing, each Party represents that its governing authority has authorized the execution, delivery, and performance of this Agreement by it. The individuals executing this Agreement warrant that they have full authority to execute this Agreement on behalf of the entity for whom they purport to be acting. Each Party represents to the other that neither the execution nor delivery of this Agreement, nor performance of the obligations under this Agreement will conflict with, result in a breach of, or constitute a default under, any other agreement to which it is a Party or by which it is bound.

9.20 Recording. City shall cause this Agreement to be recorded pursuant to ORS 94.528.

9.21 Form of Agreement; Exhibits. This Agreement consists of eight pages and one exhibit. The exhibit is identified as follows: **Exhibit 1** (Legal Description of Property).

9.22 Fees. The fee charged for the review of the Required Applications to develop the Property shall be the same as the fees as shown in the City's "Master Fee and Charges Document" adopted June 19, 2017, effective July 1, 2017.

Executed as of the day and year first above written.

JEFF PARKER

By: _____
Printed Name: Jeff Parker
Managing Member, Tannler Properties,
LLC

STATE OF OREGON)
) ss.
County of Clackamas)

The foregoing instrument was acknowledged before me this ___ day of _____ 2017, by Jeff Parker as Member-Representative Tannler Properties, LLC, an Oregon limited liability company, on behalf of said company.

Notary Public for Oregon
My Commission Expires: _____

**CITY OF WEST LINN,
AN OREGON MUNICIPAL
CORPORATION**

By: _____
Russ Axelrod, Mayor of City of
West Linn

EXHIBIT "1"
LEGAL DESCRIPTION OF PROPERTY
(INSERT)



Re-Zone R-2.1
Multi-family

OBC Zone
Commercial Frontage

West Linn / Tanner Road

06-03-2014

EXHIBIT NO. CC-6: ORS 94.504 – 94.528

DEVELOPMENT AGREEMENTS

94.504 Development agreements; contents; duration; effect on affordable housing covenants. (1) A city or county may enter into a development agreement as provided in ORS 94.504 to 94.528 with any person having a legal or equitable interest in real property for the development of that property.

(2) A development agreement shall specify:

(a) The duration of the agreement;

(b) The permitted uses of the property;

(c) The density or intensity of use;

(d) The maximum height and size of proposed structures;

(e) Provisions for reservation or dedication of land for public purposes;

(f) A schedule of fees and charges;

(g) A schedule and procedure for compliance review;

(h) Responsibility for providing infrastructure and services;

(i) The effect on the agreement when changes in regional policy or federal or state law or rules render compliance with the agreement impossible, unlawful or inconsistent with such laws, rules or policy;

(j) Remedies available to the parties upon a breach of the agreement;

(k) The extent to which the agreement is assignable; and

(l) The effect on the applicability or implementation of the agreement when a city annexes all or part of the property subject to a development agreement.

(3) A development agreement shall set forth all future discretionary approvals required for the development specified in the agreement and shall specify the conditions, terms, restrictions and requirements for those discretionary approvals.

(4) A development agreement shall also provide that construction shall be commenced within a specified period of time and that the entire project or any phase of the project be completed by a specified time.

(5) A development agreement shall contain a provision that makes all city or county obligations to expend moneys under the development agreement contingent upon future appropriations as part of the local budget process. The development agreement shall further provide that nothing in the agreement requires a city or county to appropriate any such moneys.

(6) A development agreement must state the assumptions underlying the agreement that relate to the ability of the city or county to serve the development. The development agreement must also specify the procedures to be followed when there is a change in circumstances that affects compliance with the agreement.

(7) A development agreement is binding upon a city or county pursuant to its terms and for the duration specified in the agreement.

(8) The maximum duration of a development agreement entered into with:

(a) A city is 15 years; and

(b) A county is seven years.

(9) ORS 94.504 to 94.528 do not limit the authority of a city or county to take action pursuant to ORS 456.270 to 456.295. [1993 c.780 §1; 2005 c.315 §1; 2007 c.691 §7]

Note: 94.504 to 94.528 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 94 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

94.505 [Repealed by 1971 c.478 §1]

94.508 Approval by governing body; findings; adoption. (1) A development agreement shall not be approved by the governing body of a city or county unless the governing body finds that the agreement is consistent with local regulations then in place for the city or county.

(2) The governing body of a city or county shall approve a development agreement or amend a development agreement by adoption of an ordinance declaring approval or setting forth the amendments to the agreement. Notwithstanding ORS 197.015 (10)(b), the approval or amendment of a development agreement is a land use decision under ORS chapter 197. [1993 c.780 §2; 2005 c.22 §74; 2007 c.354 §27]

Note: See note under 94.504.

94.510 [Repealed by 1971 c.478 §1]

94.513 Procedures on consideration and approval. (1) A city or county may, by ordinance, establish procedures and requirements for the consideration of development agreements upon application by, or on behalf of, the owner of property on which development is sought or another person having a legal or equitable interest in that property.

(2) Approval of a development agreement requires compliance with local regulations and the approval of the city or county governing body after notice and hearing. The notice of the hearing shall, in addition to any other requirements, state the time and place of the public hearing and contain a brief statement of the major terms of the proposed development agreement, including a description of the area within the city or county that will be affected by the proposed development agreement. [1993 c.780 §3]

Note: See note under 94.504.

94.515 [Repealed by 1971 c.478 §1]

94.518 Application of local government law and policies to agreement. Unless otherwise provided by the development agreement, the comprehensive plan, zoning ordinances and other rules and policies of the jurisdiction governing permitted uses of land, density and design applicable to the development of the property subject to a development agreement shall be the comprehensive plan and those ordinances, rules and policies of the jurisdiction in effect at the time of approval of the development agreement. [1993 c.780 §4]

Note: See note under 94.504.

94.520 [Repealed by 1971 c.478 §1]

94.522 Amendment or cancellation of agreement; enforceability. (1) A development agreement may be amended or canceled by mutual consent of the parties to the agreement or their successors in interest. The governing body of a city or county shall amend or cancel a development agreement by adoption of an ordinance declaring cancellation of the agreement or setting forth the amendments to the agreement.

(2) Until a development agreement is canceled under this section, the terms of the development agreement are enforceable by any party to the agreement. [1993 c.780 §5]

Note: See note under 94.504.

94.525 [Repealed by 1971 c.478 §1]

94.528 Recording. Not later than 10 days after the execution of a development agreement under ORS 94.504 to 94.528, the governing body of the city or county shall cause the development agreement to be presented for recording in the office of the county clerk of the county in which the property subject to the agreement is situated. In addition to other provisions required by ORS 94.504 to 94.528, the development agreement shall contain a legal description of the property subject to the agreement. [1993 c.780 §6]

EXHIBIT NO. CC-7:
DRAFT ORDINANCE NO. 1666

ORDINANCE NO. 1666

AN ORDINANCE APPROVING A STATUTORY DEVELOPMENT AGREEMENT WITH TANNER PROPERTIES, LLC FOR THE PROPERTIES LOCATED AT 2410, 2922 AND 2444 TANNER DRIVE; ADOPTING FINDINGS; AND AUTHORIZING EXECUTION OF THE AGREEMENT

WHEREAS, Tanner Properties, LLC (the “Applicant”) owns the properties located at 2410, 2922, and 2444 Tanner Drive (“Properties”);

WHEREAS, the City can enter into a statutory development agreement pursuant to Oregon law with any person that has a legal or equitable interest in real property for the development of that property;

WHEREAS, the Applicant submitted an application for the adoption of a statutory development agreement (“Agreement”) for the Properties;

WHEREAS, the Applicant held a community outreach meeting on November 7, 2017;

WHEREAS, the City had a noticed work session on development agreements on December 4, 2017, at which it took public comment;

WHEREAS, the City held a public hearing on December 11, 2017; and

WHEREAS, [the City Council continued the public hearing to _____, 2017] OR [the City Council voted to approve the development agreement];

NOW, THEREFORE, THE CITY OF WEST LINN ORDAINS AS FOLLOWS:

SECTION 1. Quasi-judicial Process. The City Council finds that it has properly noticed and conducted the required hearing to adopt this Agreement pursuant Oregon law, including specifically ORS 94.513.

SECTION 2. Agreement. The City Council approves and enters into the Agreement for the Properties attached and incorporated as Exhibit A.

SECTION 3. Findings. The City Council finds that the Agreement is consistent with all City land use regulations, and it adopts the findings, attached and incorporated as Exhibit B, as support for the approval of this Agreement.

SECTION 4. Execution of Agreement. The City Manager is authorized and directed to execute the Agreement on behalf of the City.

SECTION 3. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 4. Effective Date. This ordinance shall take effect on the 30th day after its passage.

The foregoing ordinance was first read by title only in accordance with Chapter VIII, Section 33(c) of the City Charter on the _____ day of _____, 2017, and duly PASSED and ADOPTED this _____ day of _____, 2017.

RUSSELL B. AXELROD, MAYOR

KATHY MOLLUSKY, CITY RECORDER

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT NO. CC-8:
NOVEMBER 7th MEMORANDUM FROM
CITY ATTORNEY TIM RAMIS



Lake Oswego
Two Centerpointe Dr., 6th Floor
Lake Oswego, OR 97035
503-598-7070
www.jordanramis.com

Vancouver
1499 SE Tech Center Pl., #380
Vancouver, WA 98683
360-567-3900

Bend
360 SW Bond St., Suite 510
Bend, OR 97702
541-550-7900

LEGAL MEMORANDUM

TO: West Linn City Council

FROM: Tim Ramis, City Attorney

DATE: November 7, 2017

RE: **Proposed Development Agreement**
File No. 50015-36842

The City Council will be considering approval of a proposed Development Agreement affecting properties on Tannler Drive. This memorandum will summarize for the Council key aspects of ORS 94.504-.528 which is the law authorizing cities and counties to enter into agreements with property owners for the development of land.

Purpose

Development Agreements are authorized to provide for certainty for the City and the owner in cases involving complex development proposals. From the property owner's perspective, such an agreement can be beneficial because it may vest development rights for an agreed time period, determine the specifics of the approval process, define infrastructure financing responsibilities and clarify land dedication obligations. It can be beneficial from the City's perspective because it can set timing requirements for development, limit permitted uses, control density and transportation impacts and commit land for public purposes.

These things can of course be achieved without a Development Agreement, but the statutes provide this tool as one means of organizing the development process and structuring negotiated agreements between local government and property owners on matters of land development.

Approval Process

Development Agreements must be approved by a City Council adopted ordinance after a hearing meeting the requirements for a land use hearing. The process must include meeting the City's land use notice requirements and conducting a hearing at which interested parties are given the opportunity to testify. The notice must describe the area of the City affected by the agreement and must summarize the major terms of the proposed agreement.

Criteria Governing Approval

As a basic matter, the Agreement should clearly set forth the performance obligations of the land owner and the City. The purpose of the document is to memorialize agreed requirements and therefore the agreed upon responsibilities should be clearly described.

The City Council is not under an obligation to approve an agreement, and in considering approval, must make findings of compliance with criteria identified in the statute. As a starting point, the agreement must be consistent with the comprehensive plan and zoning code. The agreement may

November 7, 2017

Page 2

satisfy the requirement by providing that the property owner will make future applications seeking land use approvals and that the outcomes of those applications will determine compliance. Where this approach is taken, the Agreement must be found to set forth all future discretionary approvals required for approval of the proposed development.

The Agreement must also be found to contain certain statutorily required elements. These are:

1. The duration of the agreement;
2. The permitted uses of the property;
3. The density or intensity of use;
4. The maximum height and size of proposed structures;
5. Provisions for reservation or dedication of land or public purposes;
6. A schedule of fees and charges;
7. A schedule and procedure for compliance review;
8. Responsibility for providing infrastructure and services;
9. The effect on the agreement when changes in regional policy or federal or state law or rules render compliance with the agreement impossible, unlawful or inconsistent with such laws, rules or policy;
10. Remedies available to the parties upon a breach of the agreement;
11. The extent to which the agreement is assignable; and
12. The effect on the applicability or implementation of the agreement when a city annexes all or part of the property subject to a development agreement.

The statute also requires that the Agreement must contain certain statements:

1. A provision that makes all City obligations to spend money contingent upon future appropriations approved as part of the local budget process;
2. A statement describing the assumptions regarding the ability of the city to serve the development;
3. A description of the procedures that must be followed when there is a change in circumstances that affects compliance; and
4. The maximum duration of the Agreement not to exceed 15 years.

To assist in the review of the agreement, the property owner will typically submit a statement describing how the proposed agreement satisfies these requirements. It is the burden of the property owner to establish that the requirements have been satisfied.

Conclusion

We will be available at the hearing to respond to questions about the adoption process and the purposes potentially served by a Development Agreement.