



CITY OF West Linn

TANNER STAFF SUPPLEMENTAL FINDINGS - MEMORANDUM

Date: August 10, 2026

To: Planning Commission Chair Schulte-Hillen
West Linn Planning Commission

From: Ashleigh Dougill, Special Legal Counsel
Steve Koper, Community Development Director

The purpose of this memo is to provide supplemental findings and recommended conditions of approval for Planning Commission consideration for the Tanner Drive Class 2 Design Review and Property Line Adjustment project (File No. DR-25-04/LLA-25-02).



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1. **Constitutionality of HB 4037 and SB 1537.** Several parties have identified the potential unconstitutionality of HB 4037 and SB 1537 as a threshold issue that should be addressed prior to reviewing an application subject to their requirements. Opponents of this application argue that any statutory provisions that remove the ability to locally appeal or to appeal to the Land Use Board of Appeals are unconstitutional. Applicant's legal counsel responds that there is no statutory requirement under Oregon law to require local appeal opportunities for land use decisions. State statute (ORS 34.020) provides an avenue for writ of review when LUBA jurisdiction is unavailable, and circuit courts retain jurisdiction to review ministerial decisions regulated solely by clear and objective standards, as is the case here. Therefore, HB 4037 and SB 1537 do not violate constitutional due process requirements.
2. **Mandatory Adjustments under SB 1537.** In order to seek a mandatory adjustment pursuant to SB 1537 (2024), the applicant must demonstrate that at least one of the criteria in Section 38(2)(g) apply. Applicant notes that the additional building height and adding ground-floor residential will allow an increase in the number of units that would otherwise not be possible but for the waiver in compliance with Section 38(2)(g)(A). Reducing the amount of bicycle parking, eliminating façade articulation, reducing the total façade glazing requirements, building orientation and eliminating balconies and porches will reduce the cost of providing housing in compliance with Section 38(2)(g)(C). Therefore, applicant complies with the requirements to apply for a mandatory adjustment under SB 1537, and the City must grant up to ten requested adjustments that fall within the categories of Section 38(4).

Several parties have suggested that the applicant may not apply for mandatory adjustments under SB 1537 because the bill section does not permit adjustments that allow use of property not otherwise permissible under applicable zoning requirements. Here, opponents argue, the OBC zone requires ground floor commercial to allow residential development in this zone, and therefore a building that is entirely residential is not a permitted use. However, the plain language of SB 1537 Section 38(4)(g) dispenses with this argument.

SB 1537 Section 38(4)(g) states "A local government shall grant an adjustment to the following development standards:...(D) Prohibitions, for the ground floor of a mixed-use building, against: (i) Residential uses except for one face of the building that faces the street and is within 20 feet of the street." Therefore, the City must allow ground floor residential where standards would otherwise require ground-floor commercial, except for those areas that are facing and within 20 feet of the street. Within the OBC zone, a "mixed use" building is created only by virtue of the ground-floor commercial. CDC 21.050(2). SB 1537 allows the elimination of this ground-floor commercial as a mandatory adjustment, resulting in some of the buildings are entirely residential. How much of a use



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(commercial space) a building must contain in the OBC zone is a development standard. The mandatory adjustment standards found in SB 1537 serve to eliminate the local requirement such as building height, windows, materials, and ground-floor commercial. In all of these cases, just like the ground-floor Commercial, the development would not meet the regulation unless it is waived as is unambiguously required by SB 1537. Therefore, it is clear that a mandatory adjustment allowing for ground-floor residential is a development standard and not a use, which the applicant permissibly sought pursuant to SB 1537.

Lastly, several parties have provided testimony stating that the City may not grant a SB 1537 mandatory adjustment to the development standards of CDC 92 because CDC 92.010(1) states in part that “unless the applicant requests an exception as part of a discretionary review,” adjustment to the requirements of CDC chapter 92 cannot be made. However, SB 1537, a state law, expressly preempts any local development code requirement. SB 1537 Section 48 states that the City *shall* grant an adjustment to certain development standards, if the applicant meets the criteria identified in Section 48(2). The application has demonstrated compliance with Section 48(2); therefore, the City must grant up to ten adjustments that meet the requirements of Section 48(4), notwithstanding the language of CDC 92.010(1).

3. **Development Feasibility.** Several parties have questioned the sufficiency of the applicant’s engineering and geologic evidence and suggested it improperly defers to a later time determinations that must be decided now. In *Meyer v. City of Portland*, LUBA and the Court of Appeals considered a city-imposed condition of approval requiring that the applicant submit satisfactory evidence that development would not create geological hazards and that satisfactory drainage consistent with the city’s adopted standards. 7 Or LUBA 184, 196 (1983), *aff’d*, 67 Or App 274, 678 P2 741, 276, 297 Or 82 (1984). In affirming the approval, LUBA reasoned that while the feasibility of the planned development must be shown at the preliminary plan stage, technical matters that require expert evaluation may be deferred to administrative review and approval. *Id at 280*. With respect to the required geotechnical information, LUBA held that the city properly concluded, based on information in the record, including geotechnical studies, that the project was geotechnically feasible and that detailed geotechnical information for individual building sites was not required at the preliminary plan stage. *Meyer*, 7 Or LUBA 184, 197. In affirming LUBA’s decision, the court clarified: “[B]y ‘feasibility’ LUBA means more than feasibility from a technical engineering perspective. It means that substantial evidence supports findings that solutions to certain problems (for example, landslide potential) posed by a project are possible, likely and reasonably certain to succeed.” The applicant has provided civil-engineer designed development plans and geologic engineering evaluation that demonstrates compliance with the City’s standards are feasible. Further, state housing law (ORS 197A.402(3)) requires the applicant be given an opportunity to offer reasonable conditions of approval that will satisfy the standard



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before making any decision to deny the project. In that case, the City may extend the time limitation under ORS 227.178 for final action by the governing body of a city on an application for needed housing and may set forth a new time limitation for final action on the consideration of future amendments or proposals.

Applicant's civil and geotechnical engineers provided extensive rebuttal, including:

- Nearly 900 hours of engineering labor completed;
- Survey-based grading plan meeting CDC 55.110(B) and 55.130(A)–(B);
- Driveway grades $\leq 15\%$ and fire marshal confirmation;
- Preliminary stormwater reports meeting City standards;
- Detailed geotechnical report addressing rock cuts, retaining walls, and deep foundations.

Consistent with *Meyer v. City of Portland*, preliminary feasibility, not full engineering, is required at land use stage. Technical refinement may be deferred to conditions of approval. The City finds feasibility is demonstrated and conditions of approval ensure compliance.

4. **Clear and Objective Requirements.** Land use regulations are ambiguous where they “can plausibly be interpreted in more than one way.” See *Richmond Neighbors v. City of Portland*, 66 Or LUBA 464, 466 (2012) (citing *Tirumali v. City of Portland*, 169 Or App 241, 246, 7 P3d 761 (2000), rev den, 331 Or 674, 21 P3d 96 (2001)). The applicant has identified several criteria within CDC 55.105 (Approval Standards – Class II Design Review – Residential/Clear and Objective) that do not meet the clear and objective requirements of state law because they require the exercise of judgment in interpreting whether they are met, including terms like “safe for development,” where no applicable safety standard is defined, or “sufficient factual data,” where no sufficiency metric exists. These standards include CDC 55.105(N)(2) and CDC 55.130(C) and (E). The City finds these standards are not clear and objective and cannot be applied to this housing application under ORS 197A.400.

In addition, because the overall building form (height, massing, articulation, glazing, orientation, circulation) is driven primarily by the residential units within the mixed-use buildings, several design criteria that appear in CDC 55.100 effectively regulate shared architectural elements that are dictated by the residential component. For those shared form-based features, the clear and objective standard (CDC 55.105) applies even when the criteria appear within sections addressing commercial design. Purely commercial features remain subject to discretionary review; however, where a discretionary commercial criterion cannot be meaningfully applied to the residential portion because the code provides no workable method to separate residential and commercial impacts, that criterion is inapplicable and cannot serve as a basis for denial. In short, clear and objective standards govern those portions of the building and site design that are shaped



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by the residential development, while discretionary standards apply only to elements uniquely associated with commercial use.

4. **Street Vacation.** The applicant has stated in a letter dated August 5, 2026, that the application does not include, nor does it require, the vacation of any portion of Tannler Drive. Rather, the existing Tannler Drive will be rebuilt within the existing right-of-way and rerouted at the lower portion. The applicant cannot cause the closure of or otherwise regulate use of this public road and as such, no public benefit is constrained. The newly improved Tannler right-of-way will terminate just short of the current intersection with Blankenship. Should the applicant wish to use the right of-way in the future, recommended Condition of Approval 19 is warranted: "19. Right-of-way Encroachment. The final design shall locate all private improvements outside of the public right-of-way or obtain an encroachment agreement from the City."
5. **General Code Compliance.** Several parties have raised concerns regarding the proposal's compliance with CDC provisions related to natural resource protection, tree removal and preservation, West Linn Parks Master Plan, landscaping, stormwater management, noise and lighting, ecological impacts, and required buffering between the proposed development and adjacent single-family homes, construction impacts, and compliance with Chapter 96 (Street Improvement Construction). Absent the identification of specific issues or code sections that these parties believe apply and are not met or cannot be met through the imposition of conditions of approval, the City finds there is not enough substantive evidence to address these concerns.
6. **Transportation Impact Analysis Requirements.** Because the application includes new dwelling units, discretionary TIA criteria under CDC 85.170(g) do not apply. Only CDC 85.170(h) governs: mitigation must be limited to ensuring compliance with City LOS standards and ODOT mobility standards. Applicant's TIA demonstrates compliance with these standards. CDC 85.170(B)(2)(d) does not apply because the applicant did not elect the alternative discretionary TIA review. Staff finds applicant's TIA meets applicable standards.

Because the application proposes new dwelling units and does not elect to use the alternative review process, the approval criteria for a TIA are limited to 85.170(h), despite several parties raising concerns regarding public interest and similar topics. These approval criteria limit mitigations to those which are necessary to comply with the City's level-of-service and average daily traffic standards and the Oregon Department of Transportation's mobility standard, based on City-approved trip generation, assignment, and distribution calculations and that the proposed traffic and circulation design and facilities for all transportation modes, including any mitigation measures, comply with applicable requirements of the City of West Linn Community Development Code.



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7. **Street Improvements.** CDC 55.105(N)(1)(d) requires streets and sidewalks meeting CDC 85.200 standards unless an exception is granted. Applicant requested an exception under CDC 85.200(A)(6–7) to protect steep slopes, supported by CDC 85.170(C) grading documentation. Based on applicant engineering, a feasible street profile meeting maximum grade limits is achievable, subject to recommended Condition of Approval 18. “18. xxx requires final verification.”
8. **Nexus and Proportionality.** The applicant asserts that the City must make nexus and rough proportionality findings to support the required frontage improvements and the realignment of Tannler Drive, and they reference their Traffic Impact Analysis (TIA) dated June 12, 2026. The City agrees that such findings are required under Nollan (essential nexus) and Dolan (rough proportionality), and also under Sheetz, which clarifies that even legislatively authorized exactions must satisfy individualized nexus and proportionality requirements.

Essential Nexus. The existing Tannler Drive/Blankenship Road intersection currently operates at Level of Service (LOS) F during the PM peak hour. The proposed development will generate approximately 2,178 new daily trips, and peak PM hour turning movements associated with the development substantially contribute to the operational failure of the existing intersection. Realignment and signalization are identified in the City’s Transportation System and Capital Improvement Plans and directly address the safety and operational deficiencies present today. The TIA shows that the realigned and signalized intersection will operate at LOS C in the PM peak hour. These improvements therefore serve a legitimate public purpose directly related to traffic impacts attributable to the development. Accordingly, the City finds an essential nexus between the required improvements and the development’s traffic impacts.

Rough Proportionality. Under Dolan, the City must make an individualized determination that the extent of the required improvements is roughly proportional to the impacts of the development, or else must assure that the applicant is fairly compensated for any improvements beyond what is roughly proportionate. The applicant’s TIA attributes 57.5 percent of PM peak hour traffic at the realigned intersection in 2029 to the proposed development (increase from 348 to 548 PM peak hour trips). This percentage measures the development’s share of operational demand at the impacted intersection and therefore provides a reasonable basis for determining proportionality. This percentage represents the City’s rough assessment of the applicant’s proportionate share of the cost of these improvements; however, the City desires to further refine this proportionate share amount within a development agreement between the City and applicant.

The City acknowledges that alternative methodologies exist for calculating proportionate share. One such approach relies on “site-generated trips,” comparing only the number of new trips produced by the development against total projected corridor volumes north of



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Blankenship. While site-generated trips can be useful for estimating trip production, they do not measure how the development's traffic interacts with and stresses the Tannler/Blankenship intersection. Commercial development typically generates intensive PM peak hour turning movements, queue formation, conflict points, and circulation demands that drive the need for geometric redesign and signalization. Because the site-generated trip method does not capture these intersection-specific operational effects, particularly the concentrated PM peak hour demand that necessitates the realignment, this approach understates the development's true impact on the improvement.

Dolan requires an individualized proportionality assessment tied specifically to the development's actual impact on the public improvement, and Sheetz reaffirms that proportionality must be tied to the particular effects of the proposed land use regardless of whether the improvement is programmatic or legislatively identified. The City therefore finds that the intersection-specific PM peak hour demand identified in the TIA most accurately measures the development's operational impact on the transportation system rather than a site-generated-trip methodology. For these reasons, the City rejects alternative allocation methodologies in favor of the individualized PM peak hour proportionate share supported by the TIA.

Applicant's Unique Benefit from the Required Improvements. In addition to mitigating traffic impacts, the realignment of Tannler Drive confers a substantial special benefit to the applicant's commercial development:

- The new alignment brings vehicles directly past the commercial frontage, increasing visibility and customer access.
- The applicant is permitted on-street parking that is part of the public improvement but functionally serves the commercial center.
- These design changes enhance circulation and site access in ways that materially increase the financial value and market viability of the commercial portion of the project.

Under Dolan, the City may consider the nature and extent of both mitigation and benefit when assessing proportionality. Because the applicant receives a disproportionate benefit from the realignment, which is well beyond what a percentage-of-traffic model captures, the use of the PM peak hour trip percentage (57.5 percent) already represents a conservative estimate of fair proportionality. The applicant's final proportionality percentage must accordingly be higher and take these additional benefits into account, less any applicable SDC credits available under WLMC Section 4.452.

Nexus and Proportionality Conclusion. The City therefore relies on the applicant's PM peak hour trip attribution (57.5 percent) as the appropriate preliminary measure of rough proportionality for determining the applicant's share of the cost of the realigned Tannler



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Drive and associated signal system. However, because the applicant receives substantial special benefits from the realignment, including improved commercial access, visibility, circulation, and on-street parking directly serving the development, the final proportionate share must reflect both the project's operational impact and these additional benefits, less any applicable SDC credits under WLMC Section 4.452. The City estimates that the applicant's final proportionate share will be equal to the full value of the identified improvements less applicable SDC credits provided by the City. The City will further refine the final proportionate share through the negotiation and execution of a development agreement.

Therefore, the applicant shall execute a Development Agreement with the City prior to issuance of public improvement permits that includes the proportionate cost share of the realigned street improvements and the signalized intersection improvements pursuant to Condition of Approval 15.

9. **Storm water geologic hazards.** Applicant's preliminary stormwater report demonstrates compliance with the Stormwater Management Manual. Slopes greater than 20% allow an exception to infiltration standards. Further, the applicant provides geotechnical evidence supporting design feasibility. CDC 55.105(N)(2) requires all proposed storm detention and treatment facilities to comply with the standards for the improvement of public and private drainage systems located in the West Linn Public Works Design Standards. This section also states that per the submittals required by CDC 55.130(E), the applicant must demonstrate that the proposed methods of rendering known or potential hazard sites safe for development, including proposed geotechnical remediation, are feasible and adequate to prevent landslides or other damage to property and safety. As noted above, this language is not "clear and objective" and cannot be applied. Further, this section contains submittal requirements, which are not criteria for approval. Per Section 1.6.3 of the West Linn Stormwater Management Manual, Streets and Public Infrastructure All development projects that create new public streets or public infrastructure shall prioritize green infrastructure (i.e., swales, planters, or raingardens) at the most localized scale to the maximum extent practicable (MEP). MEP is met by sizing swales/raingardens at 7% for a 4 ft. bottom width or 8% for a 2 ft. bottom width, or planters at 5% of the contributing impervious area, adhering to infiltration, water quality, and flow control standards. Each proposed stormwater management facility must be sited to ensure they receive the drainage they are sized to receive. Further, infiltration of the water quality design storm is required to meet the infiltration performance standard unless infiltration infeasibility criteria apply (Section 1.4.3). The applicant has identified the following criteria as providing a justification for an exception to infiltration "Sites on slopes >20% or with slope stability concerns. A geotechnical engineering or geologist report is required to establish recommended setbacks from slopes, if stormwater management facilities are proposed on or at the top of slopes between 10 and 20%. Such setbacks are subject to City approval," providing substantial evidence that the proposed stormwater design can



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be designed consistent with an exception to the default infiltration requirements. Section 1.1 is identified as the Background section of the Manual and is implemented through the specific standards in other sections of the plan. Therefore, recommended Condition of Approval 18 is warranted. "18. The final stormwater design shall demonstrate that the MEP of Section 1.6.3 and the Infiltration Infeasibility Criteria of Section 1.43 of the City of West Lin Stormwater Management Manual are met." In addition, Condition of Approval Number 12 is recommended to be amended (added language in **bold underline** and deleted language in ~~striketrough~~). "12. Final Geotechnical Report. The applicant shall submit a final geotechnical report for review prior to issuance of public improvement permits and building permits **This Final Geotechnical Report will respond to the items identified in the Preliminary Report for further study, including an evaluation of over-steepened rock cuts and retaining wall options and design parameters, and where physical improvements are identified, incorporate them as part of the development.**"

10. **Access and Circulation.** As noted in the letter from Julia Kuhn, PE; Jackson Lynch, PE; & Chris Brehmer, PE dated August 5, 2026, Each of the eight proposed accesses satisfy City of West Linn (City) minimum standard access spacing requirements for a neighborhood route (50 feet minimum). Plans (HHPR Sheet C200) and Staff Report Finding 71 confirm compliance with collector spacing standards. Proposed motor vehicle access points are configured in a tiered arrangement reflective of the site topography and provide a minimum of two points of ingress/egress for each building on site. In addition, Condition of Approval Number 16 is recommended to be added. "16. Reciprocal Easement. Prior to obtaining occupancy permits, the Applicant shall record a reciprocal easement providing access from / to the Willamette 205 commercial development to the subject property." Concerns have been raised suggesting that per CDC 48.030(E)(5) there was not sufficient engineering documentation to support the proposed development. Based on a review of the applicant's site plans, there is sufficient evidence that the maximum grade is 15 percent and that it is feasible to have maximum average grades of not more than 10 percent. Accordingly, Condition of Approval 18 is recommended. "18. Engineering Documentation. The applicant shall submit verification that the final design complies the maximum grate requirements with CDC 48.040(E)(5) prior to Building Permit approval."
11. **Parking.** Several parties have raised concerns regarding the sufficiency of proposed vehicle parking, including CDC 46.090 and 46.120 and whether the application meets the submittal requirements of CDC 46.030. CDC 46.090 contains maximum parking standards and does not require minimums. Several comments suggest that CDC 46.120 is applicable ("school or other meeting place"). This standard is ambiguous and lacks clear and objective applicability to the proposed private clubhouses or pools that is associated with the residential development. Condition of Approval 17 is recommended. "17. Off-Street Parking Area Design. The applicant shall demonstrate compliance with CDC 46.150 prior to Building Permit approval. "