Schwabe

March 29, 2024

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Development Review Board Panel B
City of Wilsonville
c/o Cindy Luxhoj, Associate Planner
29799 Town Center Loop E
Wilsonville, OR 97070

RE: ***Applicant's Public Comment for AR23-0031***

Dear Members of the Development Review Board:

This office represents The Home Depot, Inc. ("**Home Depot**" or the "**Applicant**"). Home Depot is seeking a Class II Interpretation to confirm that The Home Depot and Fry's Electronics are both commercial retail uses (the "Application"), and that Home Depot is allowed to operate as a lawfully established commercial retail nonconforming use at 29400 SW Town Center Loop W, Wilsonville, OR 97070 (the "**subject property**"). This Class II Application was submitted in conjunction with Home Depot's application for a Class I review[1] to confirm the status of the commercial retail nonconforming use at the subject property. This letter constitutes Home Depot's written comment submitted prior to the April 8, 2024 public hearing for the Class II Application and it addresses the procedural history surrounding Home Depot's applications, as well as several themes to be considered by the Development Review Board ("**DRB**") during the upcoming public hearing.

The Applicant requests that this comment be entered into the record for the Application, provided to the DRB and considered by City of Wilsonville ("**City**") staff in the preparation for the staff report for this matter.

I. BACKGROUND

As the DRB is aware, the Applicant intends to operate a Home Depot within the existing structure at the subject property. To this end, the Applicant sought a Class I director's determination that the commercial retail use that was established as a result of the 1991 development approval (Case File Nos. 91PC43 and 91DR29, hereinafter the "**1991 Decision**" and attached hereto as **Exhibit A**) remained a lawfully established nonconforming use at the subject property. Upon receipt of the Applicant's Class I application, the City attempted to bifurcate Applicant's request to confirm the legality of a nonconforming use at the subject property from Applicant's request for a determination to establish the scope of use at the property. *See attached* ADMN23-0029, Enclosure (**Exhibit B**). The City required the Applicant

[1] Case File No. ADMN23-0029.

to submit two applications – a Class I application to confirm the legality of the nonconforming use, and a Class II application to establish the *actual* nature and scope of the nonconforming use at the subject property. The Applicant's Class II application was submitted to the City on December 15, 2023. On March 19, 2024, the Applicant's Class II request was referred to the DRB for a public hearing rather than a decision being rendered by the Planning Director. *See* AR23-0031; DB24-0003.

Concurrent with the City's processing of Home Depot's Class II application, the City also issued a Director's Determination for Home Depot's Class I application,[2] finding that "Fry's Electronics, on the subject property at 29400 SW Town Center Loop West, is a legally established Non-Conforming Use." *See* ADMN23-0029. Home Depot appealed the Director's Determination to the DRB,[3] who affirmed – but also modified – Planning Director Determination ADMN23-0029 and denied the Applicant's Appeal. *See attached*, DRB Resolution No. 429 (**Exhibit C**). On March 27, 2024, Home Depot filed a Notice of Appeal of the DRB's Decision. *See attached*, **Exhibit D**.

Home Depot has regularly and consistently requested that the City meet to discuss its proposal and how Home Depot might partner with the City to realize the City's goals in its Town Center Plan. The City has denied these requests for a meaningful meeting. We again request such an opportunity so that the City and Home Depot can have reasonable negotiations regarding the use of the property and so that Home Depot might provide investment to achieve the City's goals.

II. ANALYSIS

A. The lawfully established nonconforming use at the subject property is the commercial retail use approved in the 1991 Decision.

The 1991 Decision is the controlling authority for determining the nature and extent of the nonconforming commercial retail use at the property because the 1991 Decision lawfully established the nonconforming use in the first instance. "The purpose of a local government proceeding to determine the existence of a nonconforming use is to determine what use existed on the date restrictive regulations were applied." *Nehoda v. Coos Cnty*., 29 Or LUBA 251, 1995 WL 1773153, at *5 (1995). A nonconforming use is understood to be "one that is contrary to a land use ordinance but that nonetheless is allowed to continue because the use lawfully existed prior to the enactment of the ordinance." *Morgan v. Jackson Cnty.*, 290 Or App 111, 114 (2018) (citing *Rogue Advocates v. Board of Comm. Of Jackson Cnty.*, 277 Or App 651, 654 (2016), *rev. dismissed*, 362 Or 269, 407 (2017)); *see* WDC 4.001.196 (defining a nonconforming use as "a legally established use, which was established prior to the adoption of the zoning use requirements for the site with which it does not conform").

[2] The Planning Director issued their Director's Determination on December 28, 2023. *See* ADMN23-0029.
[3] APPL24-0001.

The commercial retail use at subject property is a lawfully established nonconforming use pursuant to WDC 4.001.196 and *Morgan v. Jackson Cnty.*, 290 Or App 111 (2018). As explained in the Applicant's Class I application materials and throughout the appeal proceeding before the DRB in Case Nos. DB24-0002/APPL24-0001, the City approved a commercial retail use at the subject property on December 9, 1991 with the adoption of the 1991 Decision. Exhibit A, at 3.[4] Specifically, the 1991 Decision approved a 159,400 retail commercial building and associated commercial retail activities on the 14.75 acre subject property. Exhibit A, at 9. At the time, the subject property's Planned Development Commercial ("**PDC**") zoning allowed commercial retail uses of the nature and extent that was approved by the 1991 Decision. Exhibit A, at 9.

The commercial retail use approved by the 1991 Decision was rendered nonconforming on June 5, 2019, when the City adopted its Town Center Plan and rezoned the property Town Center ("**TC**"). This is because the property's present TC zoning prohibits commercial retail uses that exceed 30,000 square feet, unless the commercial retail use is located on more than one story of a multi-story building, and the 1991 Decision approved a 159,400 retail commercial building. WDC 4.132.03(A)(1); Exhibit A, at 9. Although the City's application of the TC zone to the property rendered the ongoing commercial retail use nonconforming, the commercial retail use approved in the 1991 Decision is allowed to continue pursuant to WDC 4.001.196 and *Morgan v. Jackson Cnty.*, 290 Or App 111 (2018).

The DRB's determination within DRB Resolution No. 429 that the nonconforming use allowed to continue at the subject property is "a 159,400 square-foot electronics-related retail store" is contrary to the express language of the 1991 Decision, which is the controlling substantial evidence for the City's nonconforming use analysis *in this case*. Furthermore, the Applicant has reviewed the zoning code in place at the time of the 1991 Decision, and nothing within the zoning code further classified uses or limited commercial retail uses to specific subsets, such as an electronic store or commercial hardware store. The Applicant is also not aware of any state law that makes such a distinction; nor has the City pointed to any state law or code provision applicable at the time. Finally, in regard to the proceedings related to Home Depot's Class I application, the Planning Director and DRB abjectly failed to so much as even *address* the 1991 Decision as it relates to the lawfully established commercial retail nonconforming use at the subject property.

DRB Resolution No. 429's determination that the nonconforming use at the subject property is "a 159,400 square-foot electronics-related retail store" also violates a key tenet of Oregon nonconforming use law, and cannot be applied to the DRB's review of this Class II Application. Determining the nature and extent of a nonconforming use does not depend on the identity of the entity performing the use, but rather on the nature and extent of the nonconforming activities themselves. *ODOT v. City of Mosier*, 36 Or LUBA 666, 678 (1999). In

[4] The Planning Commission's adopting resolution includes findings of fact and conditions of approval, and incorporates all application materials, staff reports, and associated planning exhibits.

making the use determination within DRB Resolution No. 429, the DRB were misled by the fact that Fry's Electronics previously operated at the subject property.

The identity of the party that engaged in the use under review is *not relevant* to an inquiry as to the nature and extent of the nonconforming activities themselves. *City of Mosier*, 36 Or LUBA, at 678. As demonstrated by the 1991 Decision's findings and conditions of approval – as well as the application materials in the record for that decision – the *nature and extent of the use* approved within the 1991 Decision is a commercial retail use, not a "Fry's Electronics" or "a 159,400 square-foot electronics-related retail store." The 1991 Decision is the controlling substantial evidence for determining the nature and extent of the legally established nonconforming use at the subject property, and the 1991 Decision approved a commercial retail use.

The Class II Application currently before the DRB represents an opportunity for the DRB to remedy the flaws of its prior decision in DRB Resolution No. 429 and comply with the City's development code and Oregon law. As such, the Applicant respectfully requests that the DRB approve Home Depot's Class II Application and find that Home Depot is allowed to operate at the subject property under the property's lawfully established commercial retail nonconforming use rights.

B. Home Depot and Fry's Electronics are both commercial retail uses.

Home Depot proposes to continue the same use that Fry's Electronics was employing the subject property for – commercial retail. WDC 4.001.344 defines "use" as "the purpose for which land or a building is arranged, designed or intended, or for which either land or a building is or may be occupied." The "purpose" of the use at the subject property as approved in the 1991 Decision was commercial retail, including the construction and occupancy of the existing structure at the property. As set forth in the 1991 Decision, the existing structure at the property was approved for office, warehouse, manufacturing, service, and retail use. Exhibit A, at 12. Therefore, the commercial retail purpose of the existing structure and subject property will continue through any change in the characteristic of the owner of the property, i.e., whether it is Home Depot or Fry's that operates at the property.

This position is consistent with Oregon's nonconforming use caselaw. In *Vanspeybroeck v. Tillamook County Camden Inns, LLC*, 221 Or App 677 (2008) petitioners challenged a decision of the Tillamook Board of County Commissioners ("Board") that approved alterations to a second floor residence through a minor nonconforming use review. Petitioners argued that the nonconforming use had been abandoned due to a change in the type of occupancy from an owner-occupied unit to non-owner occupied unit. *Id.* at 684. The court examined the definition of "use" in the Tillamook County Land Use Ordinance, which is defined as the "purpose…for which a unit of land is developed, occupied or maintained" and concluded that "the single-family residential purpose of the second-floor occupancy continued through any change in the characteristic of the occupant as owner or renter, and the nonconforming use was not abandoned or discontinued by that change." *Id.* at 686.

Similarly, in *Hendgen v. Clackamas County*, 15 Or App 117 (1992), the court considered whether a proposed business warehouse, which would store produce of an off-site business, was

a continuation of a nonconforming use that used the same buildings to store supplies and inventory with a business located on the same property. The court concluded that the "common nucleus of both activities *is* storage." *Id.* at 120 (emphasis in original). The court went on to state that "LUBA regarded the nature of the businesses that employed the structures to be the decisive inquiry. We think that the more relevant question is whether there is a common use that the various operations share." *Id.* at 121.

Here, the common nucleus in activities for both Home Depot and Fry's Electronics *is commercial retail use*. Just like in *Vanspeybroeck* and *Hendgen*, both Fry's and Home Depot purpose and intent for operating the subject property is the same – commercial retail use. As explained in more detail within Home Depot's application materials, although Fry's and Home Depot stores retail different products, the principal purpose and use for both stores is the retail sale of products displayed and stored in a warehouse format. The fact that Fry's retailed computer and electronics goods and Home Depot retails home improvement and trade goods is not relevant for determining whether Fry's and Home Depot are commercial retail uses allowed under the 1991 Decision.

The Applicant requests that the DRB find that Home Depot and Fry's are commercial retail uses that fall within the ambit of the commercial retail use approved by the 1991 Decision.

C. Home Depot is allowed to operate at the subject property under the property's lawfully established commercial retail nonconforming use rights.

The Applicant proposes to operate a Home Depot at the subject property, which is a commercial retail use consistent with the historic use of the property (by Fry's), as well as the commercial retail use approved in the 1991 Decision. The City has previously found that the subject property possess lawfully established nonconforming use rights, notwithstanding the dispute between Home Depot and the City regarding the nature and extent of these rights. *See* ADMN23-0029; DRB Resolution No. 429. As is clear, Home Depot intends to operate under the subject property's lawfully established nonconforming use rights and has thus requested that the City determine the nature and extent of these rights. The Applicant requests that the DRB find that Home Depot's proposed operations are consistent with the nature and extent of the lawfully established commercial retail nonconforming use at the subject property.

Moreover, the Applicant's proposed operations do not constitute an expansion of the lawfully established commercial retail use, because Home Depot's operations are less impactful than Fry's Electronics historic commercial retail activities at the property. This conclusion is supported by an analysis from Lars Anderson & Associates that details the potential development impacts of Home Depot, in relation to Fry's Electronics (attached hereto as **Exhibit E**). Within this submittal, the Applicant also encloses a Trip Generation Memorandum for Home Depot's use of the subject property, prepared by Transportation Engineering Northwest ("**TENW**") (attached hereto as **Exhibit F)**. TENW's memo demonstrates that Home Depot's use of the subject property will result in less average daily trips than the trips previously generated by Fry's Electronics.

Home Depot's proposed commercial retail use is allowed under Oregon law and the City's own development code, and is not an expansion of the historic commercial retail use that was approved by the 1991 Decision.

III. CONCLUSION

This Application presents an opportunity for the DRB to address the flaws within its prior decision, DRB Resolution No. 429. Although the prospect of a Home Depot operating at the subject property may be inconsistent with the DRB's vision for the subject property, Home Depot is nonetheless allowed to operate as a matter of law. The DRB has an obligation to weigh the facts and evidence in the record and make an unbiased and impartial decision in accordance with relevant provisions of the City's development code and Oregon law. To do otherwise will expose the City to significant liability, and the prospect of an appeal to the Oregon Land Use Board of Appeals ("LUBA").

As such, the Applicant respectfully requests that the DRB uphold the 1991 Decision as the controlling authority for determining the nature and extent of the subject property's nonconforming use rights, and find that the lawfully established nonconforming use at the property is a commercial retail use. Furthermore, the Applicant requests that the DRB find that the common nucleus of activities between Home Depot and Fry's Electronics is commercial retail, and that Home Depot is therefore allowed to operate under the property's lawfully established commercial retail nonconforming use rights.

Home Depot appreciates the DRB's consideration of this letter, and we look forward to discussing this project in more detail at the April 8th public hearing.

Sincerely,

SCHWABE, WILLIAMSON & WYATT, P.C.

J. Kenneth Katzaroff
Keenan Ordon-Bakalian

JKKA/KOB:jmhi
Enclosures

Unique Serial Number: (assigned by dbase) 4808

Department: Planning

Case No: 91PC43 File Creation Date:

Request: Modified Stage I Master Plan and Stage II Phase II site development plans, reconsideration of Condition ofApproval #8 of 90PC15

Action: Approved with conditions

Project Expiration Date:

Property Description: TL 500, 600, 601, 604 Sec. 13 County: C
TL 101, 200, 201, 300, 405 Sec. 14D County: C

Location: Wilsonville Town Center

Street Address:

Project Name(s): **Project Thunder**

Applicant: Capital Realty Corporation

Retention Schedule: Permanent

Location of Microfilm: City Hall Vault

Hard Copies of drawings/plans available? yes

Physical copy of file retained? No

See also Case Files: 89PC50, 90PC15, 90PC15EX, 91DR29, 92DR21

Other name(s) on file:

MAP

SW 10/5/06 Initial/Date

City of
WILSONVILLE
in OREGON
30000 SW Town Center Loop E • PO Box 220
Wilsonville, OR 97070
(503) 682-1011

NOTICE OF DECISION

Project Name: PROJECT THUNDER File No: 91PC43

Applicant / Owner: Capital Realty Corp.

Proposed Action: Modified Stage I Master Plan, Phase II Stage II Site Development Plans and Amending Condition of Approval 8 of Resolution 90PC5

Property Description:

Map No: 13 & 14D Tax Lot No: 101,102,200,201, 300 and 500 Site Size: _____

Address: _____

Location: Wilsonville Town Center - east of Town Center Loop West and northwest of shopping center

On December 9, 1991, at the meeting of the Planning Commission the following decision was made on the above-referenced Proposed Development Action:

_____Approval XX Approval with Conditions _____Denied

This decision has been finalized in written form and placed on file in the City records at the Wilsonville City Hall this 16th day of December, 1991, and is available for public inspection. The date of filing is the date of the decision. Any appeal(s) must be filed with the Planning Department by 5:00 p.m. on December 30, 1991.

XX Written decision is attached

_____ Written decision is on file and available for inspection and/or copying.

This action, if approved, will expire on December 9, 1993 unless development commences prior to the expiration date.

For further information, please contact the Wilsonville Planning Department at City Hall, Community Development, or phone 682-4960.

FILED 12-16-91

PLANNING COMMISSION
RESOLUTION NO. 91PC43

A RESOLUTION ADOPTING FINDINGS AND CONDITIONS OF APPROVAL FOR A MODIFIED STAGE I MASTER PLAN, PHASE II STAGE II SITE DEVELOPMENT PLANS AND AMENDING CONDITION OF APPROVAL 8 OF RESOLUTION 90PC5 - CAPITAL REALTY CORP., APPLICANT. THE PROPERTY IS IDENTIFIED AS WILSONVILLE TOWN CENTER AND IS LOCATED ON TAX LOTS 101, 102, 200, 201, 300 AND 500, T3S-R1W, SECTIONS 13 AND 14D, CLACKAMAS COUNTY, OREGON

WHEREAS, an application, together with planning exhibits for the above-captioned development, has been submitted in accordance with the procedures set forth in Sections 4.008(4) and 4.139(1), (2) and (3) of the Wilsonville Code, and .

WHEREAS, the Planning staff has prepared a report on the above-captioned subject which is attached hereto as Exhibit A, and

WHEREAS, said planning exhibits and staff report were duly considered by the Planning Commission at a regularly scheduled meeting conducted on December 9, 1991, at which time all exhibits, together with findings and public testimony, were entered into the public record, and

WHEREAS, the Commission has duly considered the subject and the recommendations contained in the staff report, and

WHEREAS, all interested parties have been afforded an opportunity to be heard on the subject.

NOW, THEREFORE, BE IT RESOLVED that the Wilsonville Planning Commission does hereby adopt the staff report attached hereto as Exhibit A, along with the findings, recommendations and Conditions of Approval contained therein. The Wilsonville Planning Director is hereby authorized to issue a Stage I Master Plan and Stage II Site Development Permit for Phase II and a Revised Condition of Approval 8 -Resolution 90PC5 once the prescribed appeal period has expired.

ADOPTED by the Planning Commission of the City of Wilsonville at a regular meeting thereof this 9th day of December, 1991, and filed with the Planning Secretary this same day.

Michael D. Wilson
Chairman, Planning Commission

Attest:
Judee Emison
Judee Emison, Planning Secretary

And to provide an additional finding of fact that says that the traffic signal at the intersection of Town Center Loop West and Wilsonville Road is in process and should be in place by July of 1992, which it appears will alleviate some of the traffic congestion, but the Planning Commission still has significant concerns regarding the traffic at the intersection of Wilsonville Road and Parkway Avenue. (That's a finding of fact and not a Condition of Approval.)

STAGE I MASTER SITE PLAN AND PHASE II STAGE II SITE DEVELOPMENT CONDITIONS OF APPROVAL

1. This approves the subject Stage I Master Plan and Stage II Site Development of Phase II Project Thunder store. Developers shall submit separate applications for Stage II development review and separate applications for Site Design Review for each pad and development phase proposed in the Master Plan.

2. Automotive service stations/centers and automotive wash centers shall not be permitted within the Wilsonville Town Center Master Plan.

3. The owner shall waive right of remonstrance against any local improvement district that may be formed to provide public improvements to serve the subject site.

4. All survey monuments on the subject site shall be protected. If destroyed by the proposed site construction, the applicant shall retain a professional land surveyor to replace the monuments and file a copy of the record survey with the City.

5. The developer shall retain an engineer to provide a detailed drainage analysis of the subject property and prepare a 24" x 36" sheet identifying contributing drainage areas to be included with the final design plans.

6. Storm sewer system shall be designed to pass a 25-year frequency storm. Engineer shall provide detailed drainage computations. Applicant's design engineer shall provide runoff protection to downstream property owners. The design may require a detailed erosion control plan.

7. The developer shall coordinate with the City Engineer in preparing grading plans and in the design and location of all public utilities.

8. The developer shall conform with all requirements of the Tualatin Valley Fire District.

9. The developer shall submit to the Design Review Board a pedestrian sidewalk plan showing connections along the access drives through Phase II to the open space. Construct a five-foot wide concrete sidewalk, off-set five feet from the curb along the entire frontage of Town Center Loop West with Phase II and the adjoining pads. Connect all public sidewalks to the on-site sidewalk system. All sidewalks shall be constructed prior to occupancy of Project Thunder.

10. This approval amends Condition No. 16 of Resolution 89PC50 and Condition No. 8 of Resolution 90PC15 to state as follows:

    The applicant shall dedicate 5.1 acres for a public park before issuance of the Certificate of Occupancy for Phase II unless the applicant and the City Council reach an agreement for a later date. The City and the applicant will work toward resolving the access and timing issues of the public park dedication up to including the time of the Certificate of Occupancy.

11. That an association of owners or tenants shall be established which shall adopt such Articles of Incorporation, By-Laws or other appropriate agreement, and shall adopt and impose such Declaration of Covenants and Restrictions on such common areas (landscaped areas) that are acceptable to the Planning Director. Said association shall be formed and continued for the purpose for maintenance. Such an association may undertake other functions. It shall be created in such a manner that tenants or owners of property shall automatically be members and shall be subject to assessments levied to maintain said common areas for the purposes intended. The period of existence of such association shall be not less than twenty years and it shall continue thereafter until other arrangements are made subject to City approval. This condition of approval does not apply to the open space proposed to be dedicated to the City.

12. All final plans shall be submitted on a 24" x 36" format. A title page will be required with a space left in the lower right-hand corner for an 8-1/2" x 11" information sheet to be provided by the City and to be affixed to the final as-built plans before acceptance. The applicant shall provide 3 mil mylar as-builts to the City which must be submitted and approved by the City before the final punch list inspection will be performed by the City.

13. Final utility design shall meet the following general format:

    A. Sanitary sewer shall be aligned on the north and west side of all street centerlines.

    B. Storm sewer shall be aligned on the south and east side of all street centerlines.

    C. Water line shall be aligned on the south and east side of all street centerlines.

    D. Minimum centerline finish grade shall be no less than 1% and the maximum centerline finish grade shall be no more than 12% for local streets. Minimum centerline finish grade shall be no more than 8% for any street above local street in classification and shall be constructed of concrete.

    E. The top of the curb shall equal centerline finish grade unless offset crown design or curb return transition.

F. Composite utility plan shall be part of the final plan set.

G. Detailed grading plan shall be part of the final plan set.

H. Utilities not in the street area shall provide maintenance access acceptable to the City, and shall be centered in a 15-foot easement to be conveyed to the City of Wilsonville.

I. Final design of the public utilities shall be approved at the time of the City's issuance of a Public Works Construction Permit.

J. All on-and-off-site utilities shall comply with the State of Oregon and the City of Wilsonville requirements and Codes.

K. All cul-de-sacs shall have a minimum 45-foot radius to the face of the curb to allow for adequate turning radius.

L. All public streets shall meet design requirements for sight distance - horizontal, vertical and intersectional.

M. Final design plans shall identify locations for street lighting, gas service, power lines, telephone lines, cable television, street trees and mailbox clusters.

14. All survey monuments on the subject site shall be protected. If destroyed by the proposed site construction, the applicant shall retain a professional land surveyor to replace the monuments and file a copy of the record survey with the City.

15. All power and telephone utilities shall be installed underground.

16. Provide the Planning Director crossover reciprocal easements to adjacent properties for ingress and egress of traffic to cross over drives and private roads.

17. The developer shall designate and construct City of Wilsonville Rapid Area Transport transit stops. Coordinate with Tom Barthel, the City Administrative Analyst, on the number and locations of the transit stops.

18. The minimum parking space dimensions shall be 9' x 18' with 25-foot travel lanes.

19. That Phase II be developed in such a manner that traffic generated by the development can be accommodated safely and without congestion in excess of level service D defined in the Highway Capacity Manual published by the National Highway Research Board on access drives at Town Center Loop West and at the intersection of Town Center Loop West with Wilsonville Road.

20. The Phase II Stage II development shall take access at the prescribed access locations approved in Local Improvement District No. 5 along Town Center Loop West, except for the proposed access drive shown to be relocated at the southwest boundary of Phase II and is subject to the approval of the City Attorney and agreement being reached regarding lining up of the access drives on Town Center Loop West and the propety across the street. The City Attorney is going to review the agreements to make sure that we end up with a full intersection on Town Center Loop West and the access drive to Project Thunder unless the property owner and the City Council reach another agreement.

21. At the time the Design Review Board specifically reviews the applicant's plans regarding the east wall of the large structure in Phase II, the applicant shall insure its compatibility with the proposed park. DRB shall also look at the pathway and sidewalk circulation plan.

22. That all construction workers park on site and not within public streets.

23. Prior to site grading, the developer shall coordinate with the Oregon Division of State Lands to investigate the existing storm water detention pond for possible wetlands.

24. The applicant shall coordinate with the City Engineer to consider on-site detention in its submittal to the City. The applicant shall coordinate with the Engineering Department all storm drainage plans with some consideration toward whether or not on-site detention is feasible and meets the engineering standards of the City.

Chairman Mike Williams moved to accept the staff report with the following amendments:

Revise Condition of Approval Number 10 to provide that instead of at the time building permits are issued at the Phase II Stage II site development, to provide that at the time the Certificate of Occupancy is issued the applicant/property owner shall dedicate 5.1 acres. And to provide another sentence at the end, that the City and the applicant will work toward resolving the access and timing issues of the public park dedication up to including the time of the Certificate of Occupancy.

Provide an additional condition of approval that at the time that the Design Review Board specifically reviews the applicants plans, regarding the east wall of the large structure on Phase II, to insure its compatibility with the proposed park. And to also have the DRB look at the pathway and sidewalk circulation plan. And an additional condition of approval that the applicant consider on-site detention in its submittal to the city. That the applicant coordinate with the engineering department the storm drainage plans with some consideration toward whether or not an on-site detention is feasible and meets the engineering standards of the city. And to provide an additional finding of fact that says that the traffic signal at the intersection of Town Center Loop West and Wilsonville Road is in process and should be in place by July of 1992, which it appears will alleviate some of the traffic congestion but the Planning Commission still has significant concerns regarding the traffic at the intersection of Wilsonville Road and Parkway Avenue. (That's a finding of fact and not a Condition of Approval.)

An additional Condition of approval is subject to the approval of the City Attorney and agreement being reached regarding lining up of the access drives on Town Center Loop West and the property across the street. The City Attorney is going to review the agreements to make sure that we end up with a full intersection on Town Center Loop West and the access drive to the Project Thunder.

(Mike Kohlhoff - Add the phrase, "unless the project owner and the city council reach other agreement")

Condition 10 will read that dedication of 5.1 acres for a public park will be required before issuance of the Certificate of Occupancy unless the applicant and the City Council reach an agreement for a later date.

Motion was seconded by Lew Hendershott and carried 4-2.

PLANNING DEPARTMENT
STAFF REPORT

DATE: December 9, 1991

TO: Planning Commission PREPARED BY: Blaise Edmonds

REQUEST: 91PC43 Modification to Stage I Site Master Plan, reconsider Conditon of Approval 8 of Resolution 90PC15; Stage II Phase II Site Development review for a 159,400 square foot retail commercial building - Project Thunder - Capital Realty Corp., applicant.

SUMMARY

Capital Realty Corporation is representing a retail business with the anonymous name "Project Thunder". The Project Thunder people desire to develop 14.75 acres (Phase II of Wilsonville Town Center) for a 159,400 square foot electronics-related retail store.

The proposed Project Thunder Stage II Site Development Plans has caused Capital Realty Corp. to modify and re-submit the Stage I Wilsonville Town Center Master Plan to reflect an expanded master plan area, reclassify overlay zones associated with Ordinance 55, resdesignate the phasing sequence and to establish approximately 5.4 acres for open space.

Capital Realty Corp. is also seeking reconsideration of Condition 8 of Planning Commission Resolution 90PC15 which imposed certain design and development requirements for the development of the 5.4 acre open space.

All Comprehensive Plan and Zoning Code requirements that apply to this Stage I review are satisfied or can be met. Parking issues, building height and setback, final design, utility placement, and other site specific development requirements are further considered in this application for Stage II Phase II site development of Thunder Project, a 159,400 square foot retail commercial building. The applicant has also submitted conceptual plans showing Project Thunder's architecture, landscaping and a signage program. The Design Review Board is the City's review authority of the project's architecture, landscaping and signage program.

The applicant's traffic report demonstrates that the location, design and uses are such that traffic generated by Project Thunder can be accommodated safely and without congestion in excess of level service D defined in the Highway Capacity Manual at the access drives to Town Center Loop West and at the intersection of Town Center Loop with Parkway Avenue and the intersection with Town Center Loop West with Wilsonville Road. It may also be determined that the location and design of the access drives may be refined to reflect conclusionary findings of the traffic analysis report and of the City Engineering Department. The proposed findings do not take into account traffic impact on the intersection of Wilsonville Road with Parkway Avenue and the Wilsonville interchange from the proposed Phase II development. With respect to the previous statement, the Planning Commission did not analyze traffic congestion levels on the aforementioned intersection in the review of Phase I Wilsonville Town Center. Furthermore, Subsection 4.139(4)(b)WC does not ask the applicant to accommodate traffic safely and without congestion in excess of level service "D" at the Wilsonville Interchange.

Project Thunder can be adequately served by existing or immediately planned public facilities and services.

RECOMMENDATION: **Approve the modified Stage I Wilsonville Town Center Master Plan and Stage II Phase II Site Development Plans with Conditions of Approval attached herein. This recommendation acknowledges the conceptual configuration of a 5.1 acre open space as proposed by the developer.**

FINDINGS: PDC & PDI

The following findings are hereby adopted by the PLANNING COMMISSION and entered into the public record in consideration of the application as submitted in conformance with the City's Comprehensive Plan and Zoning Regulations. "PROJECT THUNDER" STAGE II

NA = NOT APPLICABLE
DRB = DESIGN REVIEW BOARD

	Code Std.	Proposed	Code Compliance Yes	Code Compliance No	Additional Findings
A. Land Use					
Zoning	PDC	PDC	●	○	1 to 7
Comprehensive Plan Designation	COMMERCIAL TOWN CENTER		●	○	1 to 7, 32 to 36
B. Land and Building Improvements	ORD # 55				
1. Lot Size					
a. Total site area (acreage)	NOT SPECIFIED	652,687 SF	●	○	
b. Lot sizes (subdivision)	NA		○	○	NA
Acreage lot size	NA		○	○	NA
2. Lot Coverage					
a. All buildings	NOT SPECIFIED	24% 159,400 SF	●	○	
b. Parking/paved	↓	61% 395,242 SF	●	○	
c. Landscaping	MINIMUM.	15%			
1. total size area (%)	15%	98,045 SF	○	○	DRB
2. parking area (%)	10%	-	○	○	↓
3. screening/buffering	REQ'D	-	○	●	42, 43
4. irrigation system	↓	-	○	○	DRB
3. Building Setbacks					
Front / TOWN CENTER LOOP WEST	0'	445'	●	○	
Right side / NORTH	0'	160'	●	○	
Left side / SOUTH	0'	85'	●	○	
Rear side / EAST	0'	70'	●	○	

	Code Std.	Proposed	Code Compliance Yes	Code Compliance No	Additional Findings
4. Building Use					
a. Office	sq. ft.	9,117 SF	●	○	
b. Warehouse	sq. ft.	39,336 SF	●	○	
c. Manufacturing/SERVICE	sq. ft.	17,276 SF	●	○	
d. Other/RETAIL	sq. ft.	63,914 SF	●	○	
5. Building Specifications					
a. Building Height	35'	-	●	○	44
b. (Sun Exposure Plane)	NA		○	○	NA.
c. Gross Floor area of Building	NO LIMIT	150,400 SF	●	○	
6. Number of Off-Street Parking					
a. Standard 9' X 18'	472	858	●	○	44
b. Compact 8 1/2' X 17' (30% 10 allowed)	OPTIONAL	NOT SHOWN.	●	○	
c. Handicapped 12' X 18' (1 to 50 required)	11	16	●	○	UBC TABLE 31-A
Total	483	872	●	○	46 to 48
d. Truck load berths	2	26	●	○	
7. Access/Egress					
a. Direct access to street	-	3	○	●	17, 18
b. Access provided by easement	NA		○	○	NA
c. Rail Access	NA		○	○	NA.
8. Open Space Slope Protection					
a. Existing vegetation protected	NA		○	○	NA
b. Slopes over 20% to 30% impervious coverage	NA		○	○	NA
c. River and stream corridors protected	NA		○	○	NA
d. Adequate erosion control provided			●	○	EXHIBIT G.4
e. Within greenway	NA		○	○	NA

	Code Std.	Proposed	Code Compliance Yes	Code Compliance No	Additional Findings
C. Other Planning Considerations					
1. Outside storage area provided/ screening	-	-	○	○	DRB
2. Adequate screenage of mechanical equipment	-	-	○	○	DRB
3. Safety/crime prevention					
a. Location of addressing	-	-	○	○	DRB
b. Natural surveillance	-	-	○	○	
c. Type of exterior lighting	-	-	○	○	
D. Bike Paths, Pedestrian Trails, & Equestrian Trails					
1. Pathway Standards					
a. Pathways are provided consistent with pathway master plan and design standards (Section 4.168 W.C.)	REQ'D	HOT SHOWN	○	●	28 10 31

E. Previous Approval actions and applicable conditions or approvals

1. City Council	Yes	No	File No.	See finding	ORD 55
2. DRB	Yes	No	File No.	See finding	90 PC 15 89 PC 50
3. P.C.	Yes	No	File No.	See finding	
4. Other	Yes	No	File No.	See finding	

Inter-agency review comments

Yes	No	See Exhibit No.	

Inter-agency review comments (Written Only)

City Engineer	Yes	No	See Exhibit No.	D
Parks & Recreat.	Yes	No	See Exhibit No.	
Traffic Safety	Yes	No	See Exhibit No.	
Building Dept.	Yes	No	See Exhibit No.	E
Tualatin Fire Dept.	Yes	No	See Exhibit No.	
Sheriff	Yes	No	See Exhibit No.	

MODIFIED STAGE I MASTER PLAN AND STAGE II PHASE II SITE DEVELOPMENT PLANS AND RECONSIDERATION OF CONDITION OF APPROVAL 8 OF 90PC15
PLANNING COMMISSION FINDINGS

Property Owner:	Capitol Realty Corporation
Project:	Project Thunder
Developer:	Project Thunder
Architects:	Stage I Master Plan revision - JKS Architects Stage II Phase II - Design Forum Architects
Traffic Engineer:	Kittelson & Associates, Inc.

Property Description:

The subject master plan area comprises 59.79 acres for retail commercial/office development more specifically described as Tax Lots 500, 600, 601 and 604 of Section 13 and Tax Lots 101, 200, 201, 300 and 405 of Section 14D, T3S-R1W, Clackamas County, Wilsonville Oregon. Approximately 114 acres comprise the Town Center Master Plan as recognized in Ordinance No. 55. Wilsonville Town Center, the name of Capital Realty Corporation's commercial retail development, has the same name of a retail district identified in Ordinance No. 55. For clarification, the applicant's Stage I Master Plan will be identified as the Wilsonville Town Center and the City's Master Plan of the district will be identified as Ordinance No. 55.

For years the interior area of Town Center Loop was in agricultural use with farm exemption tax status. It wasn't until the last eight years that the area experienced rapid residential and commercial growth with the development of Park Center Apartments, Town Center Mercantile, Wilsonville Market Place, Phase I Wilsonville Town Center, Clackamas Community College and various office and retail developments. It is apparent that the remaining undeveloped property has become very desirable as reflected by this application for a 159,400 square foot commercial retail store. Capital Realty forecasted commercial growth trends in Town Center and have subsequently purchased additional property to accommodate their plans to develop the Wilsonville Town Center Master Plan. Thus, the overall master plan area will increase from 53.39 acres to 59.79 acres. This adjustment will also create a new development phase in the overall Master Plan. With respect to Project Thunder, the relatively level site is easily accessible to Town Center Loop, Parkway Court and Wilsonville Road. The proposed Project Thunder site is also highly visible to I-5 and Town Center Loop West.

LAND USE

Project Data
Stage I - 89PC50

1. Building Area

Phase I	24.08 acres	170,900 square feet
Phase II	6.52 acres	61,000 square feet
Phase III	22.79 acres	179,000 square feet
Total	53.39 acres	

Building Area

Phase I	207,130 square feet
Open Space	5.62 acres

Project Data
Stage I Modification:

2.

Phase I	22.96 acres (Existing Wilsonville Town Center commercial dev.)
Phase II	14.75 acres (Proposed Project Thunder)
Phase III	22.08 acres (Undeveloped property)
Total	59.79 acres

Building Area

Phase I	207, 130 sq.ft.
Phase II	159, 400 sq.ft.

3. The Master Plan amendment also seeks to amend the current overlay zones in Ordinance No. 55 to reflect modifications proposed in Stage I Wilsonville Town Center. Essentially, the amendments would replace the Motor Hotel (MH), Office Professional (OP), Service Commercial (SC) and Residential (R) use designations with Central Commercial (CC).

Plan Designation and Zoning

4. The subject site is designated "Commercial" on the Comprehensive Plan map and zoned "Planned Development Commercial" (PDC) on the zoning map. The site is also situated within an area identified as Town Center Master Plan area (Ordinance No. 254). Ordinance No. 254 identifies the property in the following overlay zones; Service Commercial (SC), Office Professional (OP), Central Commercial (CC), Motor Hotel (MH), Residential (R) and within an area designated for a Lake or Open Space.

5. Within the Comprehensive Plan, a number of goal and policy statements address the commercial planning designation and development review which apply to the subject property. The applicable criteria for Stage I Master Plan review is found in Section 4.139(2) of the Wilsonville Code. Recommended uses for development within the Town Center Master Plan are embodied in Chapter 4 of the Wilsonville Code. In brief, the combined review criteria are the following:

The Most Applicable Comprehensive Plan Goals, Policies and Objectives

Goal 1.1	Citizen Involvement Goal
Objective 3.1	Public Facilities Availability
Policy 3.3.1	Street System Master Plan
Policy 3.3.1(b)	Street System Master Plan
Policy 3.3.1(c)	Street System Master Plan
Policy 3.3.2(a)	Arterial and Collector Streets
Policy 3.3.5(b)	Private Owner Responsibility to Build Streets
Policy 3.3.8(a)	Transportation Impact Analysis
Policy 3.3.8(c)	Traffic Trip Reduction
Policy 3.3.8(d)	Consolidation of Vehicle Trips
Policy 3.3.8(e)	Mass Transit
Policy 3.3.14	Major Street Improvements Required
Policy 3.3.3	Street Standard and Dedication
Policy 3.3.11	Bikeways and Pathways
Policy 3.3.12	Pathway Construction
Policy 3.8.3	Open Space
Policy 4.2.3	Site Plan Information Requirements
Policy 4.2.5	Development Coincide with Public Facilities

Applicable Zoning Ordinance Provisions

Section 4.123	This Section provides the requirements of the PDC zone which are governed by Section 4.130 to 4.140.
Section 4.138(4)	Stage I Master Plan compliance
Section 4.139(4)	Criteria for approval of a planned development including subsections a, b and c

Town Center Master Plan

Ordinance Nos. 55 and 254.

Goal 1.1 - Citizen Involvement

6. The Planning Commission will be conducting the Stage I Master Plan as a public hearing and all notification requirements have been met.

CONCLUSIONARY FINDING

7. The proposed uses, both separtely and as a whole, are consistent with the Comprehensive Plan and can be made consistent with Ordinance No. 55.

PUBLIC FACILITIES

Objective 3.1

8. The City Engineering Department has provided detailed comments regarding public facilities improvements required to serve the site. These findings and recommendations are listed on Exhibit D.

Sanitary Sewer

9. Three sanitary sewer lines serve the site. An eight-inch line is located on the west side of the site which extends south through Citizens Drive to a trunkline in Wilsonville Road. A 15-inch line is located in the center of the site and a 10-inch line traverses the site originating from the Courtside Estates subdivision. This line was relocated to accommodate Phase I development. Approximately 1,500 linear feet of a sanitary sewer line was constructed along the northerly right-of-way of Wilsonville Road. This finding is also applicable to Stage II site development.

Storm Drainage

10. The subject site is located within two storm drainage basins. Phase I site grading recontoured the site Master Plan to divert storm water to a piped system in the easterly basin that out falls to an existing 48-inch pipe on the southeast corner of Phase I site. This diversion helps relieve the westerly storm basin from the storm drainage system that out falls to constricted culvert under I-5. Phase II development will remove the existing storm detention pond located on the west side of the site and be replaced with storm pipes to connect with the improved Phase I storm system. The City requires detailed storm drainage plans designed to pass a 25-year storm frequency. The detention pond has not been investigated with the Oregon Division of State Lands for wetlands status.

Water

11. Existing 12-inch waterlines located in Wilsonville Road and Town Center Loop East and West have adequate flow to serve full buildout of the site. This finding is also applicable to Stage II site developement.

Police

12. Police protection is provided to the City by the Clackamas County Sheriff's Department. This department has a headquarters in Wilsonville City Hall which is near the subject property.

Fire/Emergency

13. The Tualatin Valley Consolidated Fire and Rescue District provides fire protection to this site. The City is served by two fire stations strategically located in the City that can provide adequate fire protection services to the proposed development.

CONCLUSIONARY FINDING

14. That the location, design and uses are such that the retail commercial center will be adequately served by existing or immediately planned facilities and services.

STREETS and TRAFFIC

Policy 3.3.1(a) - Street System Master Plan

15. The Street System Master Plan identifies design standards and conceptual locations for arterials and major collectors. Wilsonville Road and Town Center Loop are classified as major arterial streets. The Master Street System and Functional Classification Map does not identify or classify any internal streets within the Town Center Loop. In the case of the proposed retail development, private drives will be constructed and connected to an internal drive/road system. This finding is also applicable to Phase II Stage II site development.

16. The design standards for Wilsonville Road show an approximate 94-foot right-of-way with a median planter island. The standards for the Town Center Loop show a 72-foot right-of-way with a median planter island. This finding is also applicable to Stage II site development.

17. The proposed development will construct driveway connections within Town Center Loop, but not in the same alignments as shown on the pictorial map representing the Town Center Master Plan. This finding is also applicable to Stage II site development.

18. Though the proposed access drive located near the northwest corner of the site is shown at a location supported by the Town Center Master Plan, this access is situated along a radius of Town Center Loop West that may position it in an unsafe location for egress and ingress.

Policy 3.3.2(a) - Dedication of Arterial and Collector Streets and Control or Consolidation of Access Drives.

19. The dedication of additional right-of-way and half-street improvements along Wilsonville Road and Town Center Loop East were accomplished in Phase I Stage II site development. This finding is also applicable to Stage II site development.

20. The Wilsonville Town Center Master Plan shows ten access drives at arterials. The full access drive shown near the northwest corner of Phase III at Town Center Loop West should be analyzed for safe vision clearance.

21. The proposed access drive to Project Thunder, shown at the southwest corner of the site, does not align with the location of the existing curb cut approved to the site in Local Improvement District No. 5. This access drive would further create a staggered intersection with access drives constructed on the opposite side of Town Center Loop West. This access drive also deviates from the access drive shown on the Town Center Master Plan approved in 89PC50. The Planning Commission cannot change the locations of access drives approved in LID No. 5 without first obtaining approval from the City Council. This finding is also applicable to Stage II site Development.

22. It appears from the re-submitted Stage I Master Plan that access is not proposed at Parkway Court which would have encouraged through traffic from Wilsonville Road and Town Center Loop to the Parkway Court.

Policy 3.3.3

23. Policy 3.3.3 requires the City to establish minimum street standards and dedication of adequate right-of-way prior to actual site development. It further provides that if proposed development exceeds minimum service capacity, then appropriate improvements shall be required prior to occupancy of the completed development. With respect to Project Thunder, the arterials servicing the site, Town Center Loop West and Wilsonville Road are already constructed to the Public Works standards. Phase I of Wilsonville Town Center is required to install a traffic signal to comply with minimum service capacity levels.

24. Section 4.139(4) stipulates that a Planned Development Permit may be granted by the Planning Commission only if it is found that the development conforms to subsections 4.139(4)(a),(b) and (c) and Sections 4.130 to 4.140. Section 4.139(4)(b) states:

> "That the location, design, size and uses are such that traffic generated by the development can be accommodated safely and without congestion in excess of level service D defined in the Highway Capacity Manual published by the National Highway Research Board on existing or immediately planned arterial or collector streets and will, in the case of commercial or industrial developments, avoid traversing local streets."

25. The applicant has provided an updated transportation analysis prepared by Kittelson & Associates, Inc. for Project Thunder. Wayne Kittelson's updated report is labeled Exhibit G-7. The report recommends that a traffic signal be installed at the intersection of Town Center Loop West with Wilsonville Road at the time of occupancy of Phase II. However, Capital Realty was conditioned in Phase I Stage II development (Resolution 90PC15) to install the subject traffic signal as determined by the City Engineering Department. This requires that the State of Oregon Department of Transportation warrant the signal. This finding is also applicable to Stage II site development.

- All of the intersections within the study area, with the exception of Wilsonville Road/Parkway Avenue, are currently operating within acceptable level of service limits.

- Under projected 1991 total traffic conditions and with the addition of site-generated Phase I traffic, the minor street left-turn movements at the Town Center Loop West/Wilsonville Road intersection are projected to experience an "E" Level of Service. While a traffic signal would improve the level of service for the 45 vehicles making this movement, it would also cause an overall increase in intersection delay and is not considered appropriate in view of the surrounding street system, the traffic circulation patterns and the projected operational characteristics of this intersection.

- By 1995, the projected background traffic volume conditions, without Phases II and III, will warrant the installation of a traffic signal at the intersections of Wilsonville Road/Town Center Loop West and Wilsonville Road/Town Center Loop East. It is therefore recommended that traffic operations at both the Town Center Loop intersections with Wilsonville Road be monitored on a regular basis. Traffic signals should be installed only when one or more MUTCD signal warrants are met and the operational and/or safety characteristics dictate a need for a traffic signal.

- The number of access drives included in the Site Plan will be adequate to serve the proposed retail development. These access drives will disperse the site-generated traffic sufficiently to minimize the overall effect of the retail center on the capacity and quality of service provided by the adjacent arterial street system. At the same time, they are sufficiently separated from each other and from adjacent intersections to avoid significant operational, stacking and safety problems.

- By 1995, the projected background traffic volume will, by itself, exceed the existing capacity of Wilsonville Road in the vicinity of the Wilsonville Road/I-5 interchange. The proposed ODOT improvement project at the interchange would add sufficient capacity to accommodate both the 1995 background traffic, as well as the additional traffic from Phases II and III of the proposed development.

Kittleson and Associates has also provided additional findings and recommendations found in their letter of October 16, 1991, labeled Exhibit G, which are as follows:

- The key unsignalized intersections within the study area are currently operating at an acceptable LOS during weekday evening peak hour conditions.

- Upon completion of the development, the site driveways and key off-site intersections, with the exception of Wilsonville/Town Center Loop West, will operate within acceptable level of service limits during the evening peak-hour time period.

- A traffic signal is warranted to accommodate projected 1992 traffic volumes at the Wilsonville Road/Town Center Loop West intersection. It is therefore recommended that a traffic signal be installed at this location upon completion of the proposed development.

Policies 3.3.8(a)-(e)

26. These policies address traffic impacts and congestion.

As noted in the previous findings responding to Policy 3.3.3, the applicant has provided a detailed traffic analysis that responds to Policies 3.3.8(a)-(e) and Section 4.139(4) of the Wilsonville Code.

CONCLUSIONARY FINDING

27. The applicant's traffic report demonstrates that the location, design and uses are such that traffic generated by Project Thunder can be accommodated safely and without congestion in excess of level service D defined in the Highway Capacity Manual at the access drives to Town Center Loop West, and at the intersection of Town Center Loop with Parkway Avenue and the intersection with Town Center Loop West with Wilsonville Road. It may also be determined that the location and design of the access drives may be refined to reflect conclusionary findings of the traffic analysis report and of the City Engineering Department. These findings do not take into account traffic impact on the intersection of Wilsonville Road with Parkway Avenue and the Wilsonville interchange from the proposed Phase II development. With respect to the previous statement, the Planning Commission did not analyze traffic congestion levels on the aforementioned intersection in the review of Phase I Wilsonville Town Center. Furthermore, Subsection 4.139(4)(b)WC does not ask the applicant to accommodate traffic safely and without congestion in excess of level service "D" at the Wilsonville Interchange.

TRANSIT FEATURES, SIDEWALKS AND BIKEWAYS

28. Specific transit features such as transit stop locations and right-of-way fixtures for transit uses should be provided in the Stage II Site Development Plan. These findings are also applicable to Stage II site development.

Policies 3.3.11, 3.3.12, 3.3.13 and 3.3.13(b)

29. These policies addresses pathways and bikeways. Written comments received by Myers/Kroker (the architectural firm responsible for master planning Town Center) in case file 90PC15, have the following observations concerning pedestrian pathways:

> "There will need to be a landscape design study of the public right-of-way system defining the nature of plant materials, berm forms, ground cover, public walk systems and street light systems. Design definition of pedestrian overpasses would be developed within the recommended 'Design Review Parameter Study'."

30. The modified Stage I Master Plan shows a bikeway through Phase I to extend through Phase III and connect with the future park. A shoulder-side bikeway is required on the Comprehensive Plan to occur on the south side of Wilsonville Road.

31. The Phase II Stage II submittal plans do not indicate sidewalks along Town Center Loop West as required by Ordinance No. 55 and by Section 4.168 and Subsection 4.167(1)(b) of the Wilsonville Code. Regarding Project Thunder, a five-foot wide concrete sidewalk is required along Town Center Loop West to be off-set five feet from the curb. In order to provide for safe pedestrian access around and on the Phase II site, pedestrian walkways should be extended from Town Center Loop West via the central access drives up to Project Thunder's storefront. It also appears that the applicant has not considered pedestrian sidewalks to link the site with the future park and adjoining businesses.

OPEN SPACE

Policy 3.8.3

32. This policy addresses open space. The proposal, as presented, will have a major impact on the location, size and configuration of the area designated by Ordinance No. 55 shown as lake or open space. Approximately 8.5 acres of lake or open space is conceptually shown on the Town Center Master Plan. The open space depicted on the modified Town Center Master Plan or Ordinance No. 55 does not have the same configuration as shown for the Primary Open Space area depicted on the Comprehensive Plan Map.

33. The modified Stage I Master Plan shows 5.1 acres in open space to be reconfigured to satisfy Capital Realty's site development program, and hopefully, for the City's benefit to develop the property as a public park. The application does not propose a specific open space plan with uses, nor is the applicant proposing a development development schedule. In this regard, the Planning Commission had previously conditioned the applicant in Resolution 90PC15 to perform the following:

Condition No. 8:

> "At Phase II Stage II site development, which shall be the next phase presented, applicant shall submit to the Planning Commission and the Design Review Board a detailed open space plan and development schedule for the development of the 5.4 acre open space shown on the Stage I Master Plan."

With respect to the above issues, the applicant is requesting the Planning Commission to reconsider Condition No. 8 as follows:

"1. Develop a design for the conceptual Wilsonville Town Center open space that allows for the participation of the appropriate City staff and commissions.

2. To formulate a development plan and time frame consistent with the development of Phases II and III of the balance of the Wilsonville Town Center property, and

3. Determine Capital Realty's financial obligation and any credits related thereto."

34. Ordinance No. 55 depicts an open space or lake with a centralized location in Town Center with surrounding development to be oriented and related with it. One can compare this relationship to be similar with the concept of a public square of a small European city or even with an Early American town square. Those kind of public spaces create a sense of place and encourage a community gathering place within an urban context. It also creates a city center environment that involves the pedestrian in its function and design that is not found in retail strip developments designed around automobiles.

35. The proposal, as presented, shows approximately 5.1 acres in open space. The City will require that the open space be dedicated for development of a City park. At issue is the proposed configuration of the open space. In this regard, the proposed open space has a spacial composition that positively responds to the open space concept in Ordinance No. 55. The proposed Master Plan is an assembly of properties that make up a reasonable configuration for future park development. Conversely, the surrounding development plan represents an augmentation of the more traditional strip retail commercial center showing buildings oriented to major collectors and arterials together with large storefront parking areas. Truck delivery activities are then generally found on the sides or at the rear of the stores which attract outside storage of palettes, boxes etc. The applicant has modified the original submittal drawings designed to lessen the impact of Project Thunder's building mass on the proposed open space. Buffering can be accomplished by reducing the mass of Project Thunder with siting a smaller intervening building between Project Thunder and the open space. The revised plan also re-positioned potential building sites to open up the view of the open space to Town Center Loop West.

36. The proposed 5.1 acre open space, combined with approximately 3 acres in open space created for Town Center Park Apartments and Clackamas Community College, will provide a generous area for a future public park.

Policy 4.2.3 and Section 4.139(2)(a) and (b)

37. This policy and zoning section identify the information which must be included in the Site Plan. The information set forth has been submitted in compliance with the Comprehensive Plan and Zoning Ordinance. Landscape and Architectural Plans will be reviewed by the Design Review Board.

Policy 4.2.5

38. This policy requires that development coincide with the provision of public streets, water, sanitary sewer and storm drainage facilities. Such facilities are currently available at the site. Sewer and water are located within the abutting roads. Storm drainage is provided at the eastern portion of the site. The extension of these services will be coordinated with site construction and facilities and will be designed to meet City public works standards.

Sections 4.130 to 4.140

39. The proposed use is authorized by, and consistent with, the Comprehensive Plan and the official City Zoning Map. The proposed commercial/office uses are permitted in overlay zones as part of the Town Center Master Plan. An approval of this Master Plan, however, will amend overlay zones of Ordinance No. 55.

40. Ordinance No. 55 is a conceptual plan intended to list recommended uses prescribed by commercial overlay zones. The Ordinance further allows the Planning Commission flexibility to change the plan to reflect changes of community needs, shopping habits, transportation and in social economic needs. Such is the case in this application with proposed changes in building orientation, driveway location, reclassifed uses and reconfigured open space.

41. Condition No. 2 of the Stage I Master Plan approval requires separate Stage II land development applications for review of each pad. Therefore, the buildings proposed on the pads are not part of this application.

BUFFERING and SCREENING

42. Section 4.163 of the Wilsonville Code requires:

    A. All outdoor storage and garbage collection areas shall be screened from off-site view with fencing and/or landscaping.

    B. Activity areas on commercial and industrial sites shall be buffered and screened from adjacent residential areas. Multi-family developments shall be screened and buffered from single-family areas.

43. The Site Plan illustrates an area between the truck loading area and proposed open space. This site arrangement orientes the massive and mundane backside of Project Thunder to Parkway Court and the proposed open space. The impact can be lessened, as proposed in Finding No. 35, together with innovative design utilizing landscaping, screenage, murals etc.

BUILDING HEIGHT

44. Definition no. 12 of Chapter 4 of the Wilsonville Code (Building of Structural Height) is defined by the following:

> "The term 'height of building' shall be deemed to mean the perpendicular distance from the average elevation of the adjoining ground to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the middle height gable between the eaves and ridge of a pitch or hip roof. If a building is divided into units by means of masonry division walls, each unit shall be considered separately in calculation for height of building."

45. In order to distinguish Project Thunder to the public, the applicant proposes to construct a dome and flag pole atop the main entrance of the store. Section 4.172(1) exempts domes and flag poles from the height limits of the PDC zone. However, the flag pole can only fly the United States and the State of Oregon flags. Just for general information, the top of the dome is shown approximately 55 feet above grade level. The top of the flag pole is approximately 81 feet above grade level.

PARKING ANALYSIS

46. Section 4.150WC:

"Commercial:

Commercial retail, 1,501 square feet or more	1 space/200 sq.ft. @ 63,914 sq. ft. of floor area
Service or repair shops	1 space/200 sq.ft. @ 17,276 sq. ft. of floor area
Eating or drinking establishments	1 space/200 sq.ft. @ 6,096 sq. ft. of floor area
Storage warehouse, wholesale establishment, rail or trucking freight terminal	1 space/2,000 sq.ft. @ 39,336 sq.ft. of floor area up to 40,000 sq.ft.; 1 space/4,000 sq. ft. thereafter
Office	1 space/250 sq.ft. @ 9,117 sq.ft.

These calculations do not include employee lunch rooms, restrooms, HVAC roooms, cat walks, etc.

Building Area - Phase II **Minimum Parking Required:**

Project Thunder approximate floor areas:

Retail Commercial	63,914 / 200 = 320 spaces
Service	17,276 / 200 = 86 spaces
Office	9,117 / 250 = 36 spaces
Restaurant	6,096 / 200 = 31 spaces
Storage	39,336 / 4000 = 10 spaces
Mimimum parking :	**483 spaces**

47. Though the proposed off-street parking count shows 16 handicapped and 856 standard parking spaces for a total of 872 parking spaces, the proposed parking is almost twice the minimum requirement of the Code. This figure does not include parking for the future pads. Those parking areas will not be constructed until each pad is developed.

48. The parking plan specifies dimensions for a typical standard parking space at 9' x 18' with 25'-0" drive aisles. The Zoning Code has a minimum 9' x 18' standard parking space dimension. Compact parking spaces are not proposed and are optional by the Zoning Code.

And to provide an additional finding of fact that says that the traffic signal at the intersection of Town Center Loop West and Wilsonville Road is in process and should be in place by July of 1992, which it appears will alleviate some of the traffic congestion, but the Planning Commission still has significant concerns regarding the traffic at the intersection of Wilsonville Road and Parkway Avenue. (That's a finding of fact and not a Condition of Approval.)

STAGE I MASTER SITE PLAN AND PHASE II STAGE II SITE DEVELOPMENT CONDITIONS OF APPROVAL

1. This approves the subject Stage I Master Plan and Stage II Site Development of Phase II Project Thunder store. Developers shall submit separate applications for Stage II development review and separate applications for Site Design Review for each pad and development phase proposed in the Master Plan.

2. Automotive service stations/centers and automotive wash centers shall not be permitted within the Wilsonville Town Center Master Plan.

3. The owner shall waive right of remonstrance against any local improvement district that may be formed to provide public improvements to serve the subject site.

4. All survey monuments on the subject site shall be protected. If destroyed by the proposed site construction, the applicant shall retain a professional land surveyor to replace the monuments and file a copy of the record survey with the City.

5. The developer shall retain an engineer to provide a detailed drainage analysis of the subject property and prepare a 24" x 36" sheet identifying contributing drainage areas to be included with the final design plans.

6. Storm sewer system shall be designed to pass a 25-year frequency storm. Engineer shall provide detailed drainage computations. Applicant's design engineer shall provide runoff protection to downstream property owners. The design may require a detailed erosion control plan.

7. The developer shall coordinate with the City Engineer in preparing grading plans and in the design and location of all public utilities.

8. The developer shall conform with all requirements of the Tualatin Valley Fire District.

9. The developer shall submit to the Design Review Board a pedestrian sidewalk plan showing connections along the access drives through Phase II to the open space. Construct a five-foot wide concrete sidewalk, off-set five feet from the curb along the entire frontage of Town Center Loop West with Phase II and the adjoining pads. Connect all public sidewalks to the on-site sidewalk system. All sidewalks shall be constructed prior to occupancy of Project Thunder.

10. This approval amends Condition No. 16 of Resolution 89PC50 and Condition No. 8 of Resolution 90PC15 to state as follows:

    The applicant shall dedicate 5.1 acres for a public park before issuance of the Certificate of Occupancy for Phase II unless the applicant and the City Council reach an agreement for a later date. The City and the applicant will work toward resolving the access and timing issues of the public park dedication up to including the time of the Certificate of Occupancy.

11. That an association of owners or tenants shall be established which shall adopt such Articles of Incorporation, By-Laws or other appropriate agreement, and shall adopt and impose such Declaration of Covenants and Restrictions on such common areas (landscaped areas) that are acceptable to the Planning Director. Said association shall be formed and continued for the purpose for maintenance. Such an association may undertake other functions. It shall be created in such a manner that tenants or owners of property shall automatically be members and shall be subject to assessments levied to maintain said common areas for the purposes intended. The period of existence of such association shall be not less than twenty years and it shall continue thereafter until other arrangements are made subject to City approval. This condition of approval does not apply to the open space proposed to be dedicated to the City.

12. All final plans shall be submitted on a 24" x 36" format. A title page will be required with a space left in the lower right-hand corner for an 8-1/2" x 11" information sheet to be provided by the City and to be affixed to the final as-built plans before acceptance. The applicant shall provide 3 mil mylar as-builts to the City which must be submitted and approved by the City before the final punch list inspection will be performed by the City.

13. Final utility design shall meet the following general format:

    A. Sanitary sewer shall be aligned on the north and west side of all street centerlines.

    B. Storm sewer shall be aligned on the south and east side of all street centerlines.

    C. Water line shall be aligned on the south and east side of all street centerlines.

    D. Minimum centerline finish grade shall be no less than 1% and the maximum centerline finish grade shall be no more than 12% for local streets. Minimum centerline finish grade shall be no more than 8% for any street above local street in classification and shall be constructed of concrete.

    E. The top of the curb shall equal centerline finish grade unless offset crown design or curb return transition.

F. Composite utility plan shall be part of the final plan set.

G. Detailed grading plan shall be part of the final plan set.

H. Utilities not in the street area shall provide maintenance access acceptable to the City, and shall be centered in a 15-foot easement to be conveyed to the City of Wilsonville.

I. Final design of the public utilities shall be approved at the time of the City's issuance of a Public Works Construction Permit.

J. All on-and-off-site utilities shall comply with the State of Oregon and the City of Wilsonville requirements and Codes.

K. All cul-de-sacs shall have a minimum 45-foot radius to the face of the curb to allow for adequate turning radius.

L. All public streets shall meet design requirements for sight distance - horizontal, vertical and intersectional.

M. Final design plans shall identify locations for street lighting, gas service, power lines, telephone lines, cable television, street trees and mailbox clusters.

14. All survey monuments on the subject site shall be protected. If destroyed by the proposed site construction, the applicant shall retain a professional land surveyor to replace the monuments and file a copy of the record survey with the City.

15. All power and telephone utilities shall be installed underground.

16. Provide the Planning Director crossover reciprocal easements to adjacent properties for ingress and egress of traffic to cross over drives and private roads.

17. The developer shall designate and construct City of Wilsonville Rapid Area Transport transit stops. Coordinate with Tom Barthel, the City Administrative Analyst, on the number and locations of the transit stops.

18. The minimum parking space dimensions shall be 9' x 18' with 25-foot travel lanes.

19. That Phase II be developed in such a manner that traffic generated by the development can be accommodated safely and without congestion in excess of level service D defined in the Highway Capacity Manual published by the National Highway Research Board on access drives at Town Center Loop West and at the intersection of Town Center Loop West with Wilsonville Road.

20. The Phase II Stage II development shall take access at the prescribed access locations approved in Local Improvement District No. 5 along Town Center Loop West, except for the proposed access drive shown to be relocated at the southwest boundary of Phase II and is subject to the approval of the City Attorney and agreement being reached regarding lining up of the access drives on Town Center Loop West and the propety across the street. The City Attorney is going to review the agreements to make sure that we end up with a full intersection on Town Center Loop West and the access drive to Project Thunder unless the property owner and the City Council reach another agreement.

21. At the time the Design Review Board specifically reviews the applicant's plans regarding the east wall of the large structure in Phase II, the applicant shall insure its compatibility with the proposed park. DRB shall also look at the pathway and sidewalk circulation plan.

22. That all construction workers park on site and not within public streets.

23. Prior to site grading, the developer shall coordinate with the Oregon Division of State Lands to investigate the existing storm water detention pond for possible wetlands.

24. The applicant shall coordinate with the City Engineer to consider on-site detention in its submittal to the City. The applicant shall coordinate with the Engineering Department all storm drainage plans with some consideration toward whether or not on-site detention is feasible and meets the engineering standards of the City.

EXHIBITS

The following Exhibits are hereby entered into the public record by the Planning Commission as confirmation of its consideration of the application as submitted.

A. Findings and Conditions of Approval
B. City of Wilsonville Comprehensive Plan
C. Chapter 4 of the Wilsonville Code
D. City Engineering Department Report
E. City Building Official's Report
F. Town Center Master Plan
G. Applicant's submittal documents:
    1. Revised Stage I Master Plan and Master Utilities Plan
    2. Phase II Site Plan
    3. Phase II Exterior Elevations
    4. Phase II Grading Plan and Erosion Control Plan
    5. Phase II Utilities Plan
    6. Phase II Preliminary Landscape Plan
    7. Traffic Report by Wayne Kittelson and addendum letter
    8. Request for Modification of Condition No. 8 of 90PC15
    9. Stage I Master Plan Re-submittal
    10. Phase II Stage II narrative
    11. Alternative Open Space Concept

H. Original Stage I Master Plan - 89PC50.

I. Ordinance no. 55

91PC 43

City of
WILSONVILLE
in OREGON

30000 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax
(503) 682-0843 TDD

August 16, 1999

Gary M. Graumann
Lumberjack, L.P.
PO Box 7458
Menlo Park, California 94026

Re: 29400 SW Town Center Loop

Dear Mr. Graumann:

Mr. Lashbrook, Wilsonville Planning Director, has asked me to answer your request for a zoning compliance letter. You will find the information you requested as follows:

1. Zoning Classification Code:
   Planned Development Commercial (PDC) (Town Center)

2. Property Owner's Name and Lender's Name
   Lumberjack, L.P. (owner)
   PO Box 7458
   Menlo Park, CA 94026

   GE Capital Business Asset Funding Corp.
   10900 NE 4th St., Suite 500
   Bellevue WA 98004

3. Address of the Property:
   29400 SW Town Center Loop, Wilsonville, Oregon

4. Type of Permitted Use:
   Commercial (Planned Development)

5. Expiration Dated Copy of Conditions or Restrictions of Use:
   Case File 91PC43 approved 12/9/91
   Case File 91DR29 approved 1/27/92
   Case File 92DR21 motion revising condition

N:\annex\plng\hoffman\bh81699graumann\sh

I have researched our records and find that in receiving final occupancy the city found that the development had complied with all plan proposals and conditions of approval. However, the project is now almost seven years old and is beginning to show some wear and deferred maintenance. About a year ago, Mr. Blaise Edmonds wrote you about broken curbs and destroyed landscaping where vehicles have driven over the curb. This is at a major entrance area (Southwest entry drive, between the rug dealer and McDonalds.) This problem area still requires attention.

Sincerely,

Robert G. Hoffman AICP

Robert G. Hoffman AICP
Manager of Current Planning

Attachment: Decision and Conditions of Approval
98PC43
91DR29

RGH:sh

N:annex\plng\hoffman\bh81699graumann\sh

BOB

LUMBERJACK, L.P.
P.O. BOX 7458
MENLO PARK, CALIFORNIA 94026
(650)813-9100 FAX(650)813-9190

August 5, 1999

Mr. Stephan Lashbrook
Planning Director
CITY OF WILSONVILLE
30000 SW Town Center Loop E
Wilsonville, OR 97070

Dear Mr. Lashbrook:

Thank you very much for returning my call with respect to revisions to the Development Codes. I look forward to reviewing the changes and will provide any comments that I may have.

We also discussed the following outline that my lender has requested that I obtain from the city. I have provided the information for items 2) and 3). If you could have someone on your staff complete the rest of the requirements requested by the lender it would be greatly appreciated.

I would like to receive a compliance letter from your office within the next 10 days. Should you have any questions please feel free to call me at the number listed above.

Once again, thank you for your attention to this matter.

Sincerely,

Gary M. Graumann

ZONING COMPLIANCE LETTER REQUIREMENTS

This item should be obtained from the City Planner's, County Clerk's, or Zoning Department's office and should contain the following information:

1) Zoning Classification Code — Planning Development Commercial (PDC (Town Center)

2) Property Owner's Name and Lender's Name

3) Address of the Property

4) Type of Permitted Use. — Commercial (Planned Development)

5) Expiration Dated Copy of Conditions or Restrictions of Use.

91PC43 - Appr. 12-9-91
91DR29 - Appr 1-27-92
92DR21 - Appr 6-22-92

2) Lumberjack, L.P. (owner)
P.O. Box 7458
MENLO PARK, CA 94026

GE Capital Business Asset Funding Corp.
10900 NE 4th St., Suite 500
Bellevue, Wa 98004

3) 29400 SW Town Center Loop
Wilsonville, Or.

Incredible Universe 23 9/PL93

Aetna's local presence shrinks after loss of key large clients

Continued from page 1

er away from the Portland market.

Despite a strong national presence, Aetna's local client base has eroded as

market is already dominated by strong HMO players that have left little room for carriers like Aetna.

Stone said the downsizing was planned a national restructuring effort, and not nply because of the lost clients in Portid. Many who watch insurance activis nationally agree. The change reflects nilar strategies by nationwide carriers. tna wants to consolidate offices, rece overhead and gain efficiencies in increasingly competitive health inrance market.

'It is definitely consistent with the nd that we've seen in this industry," id Post. Improvements in electronic tims handling and standardization ross offices have made such changes ssible and even advantageous, he said, gain efficiencies.

'Insurance in general has become more d more of a commodity market," said iss Poll, an insurance analyst with The licago Corp., a Chicago-based investent bank that tracks insurance companies. "Insurance companies, especially the big guys, have a big expense burden. They tend to be big and clumsy."

In Aetna's case, said Poll, the national carrier's life and health business has been its strongest asset. Hartford, Conn.-based Aetna is the third-largest U.S.-based property and casualty insurer, according to Value Line's December 1993 investment survey. Aetna, a public company traded on the New York Stock Exchange, also has been subject to large market fluctuations.

Aetna "peaked" on Nov. 1, 1993, with a per-share price of $60.75, said Poll. The stock closed at $47.75 per share on Oct. 18.

Aetna Health Plans reported $4.5 million in insurance premiums in Oregon during 1993, down from $12.7 million in premiums it wrote in 1991, according to reports filed with the state. It covers an estimated 40,000 enrollees.

Aetna handles about 4.9 million Medicare claims representing some $250 million annually out of the Portland office.

Blaise
Pam
Sally

Incredible Universe building sold, leased

Tandy Corp. has sold off its Incredible Universe building in Wilsonville and leased back the facility from the new owner.

Tandy sold the 166,495-square-foot retail property to Pier Set Inc., a Delaware corporation, for $13.5 million, according to a Clackamas County sale deed.

Pier Set is a subsidiary of London-based NatWest bank, said Bill Bousquette, chief financial officer of Fort Worth, Texas-based Tandy.

Tandy also sold three other Incredible Universe buildings to the bank. The four properties sold for about $60 million, Bousquette said.

Selling off store facilities to outside investors is common among large retailers. "We have no interest in tying up our capital in real estate," Bousquette said.

File 91PC 43

City of Wilsonville
Community Development Department
30000 S.W. Town Center Loop East
Wilsonville, Oregon 97070
(503) 682-4960
Fax 682-7025

FAX COVER SHEET

DATE: 11-29-93

TO: Mark Whitlow FAX: 721-3666

FROM: Mike Kohlhoff / Wayne Lorenson

SUBJECT: Project - Thunder

NUMBER OF PAGES IN THIS TRANSMITTAL (INCLUDING COVER SHEET) 20

COMMENTS:

City of
WILSONVILLE
in OREGON

30000 SW Town Center Loop E
Wilsonville, Oregon 97070
FAX (503) 682-1015
(503) 682-1011

September 29, 1993

Mr. Bryan L. Spain, CSM
Assistant Director State/Local Taxation
Tandy Tax Service
Tandy Corporation
P.O. Box 1643
Fort Worth TX 76101

91PC43

Re: Systems Development Credit - Wilsonville Incredible Universe

Dear Mr. Spain:

The purpose of this letter is to formally close action on an appeal of the discretionary decision concerning the amount of the street systems development charge for the Incredible Universe. Prior to his departure from Tandy Tax Service, Mr. Bryan L. Spain, CSM, had formally appealed the discretionary decision.

On December 7, 1992, I provided an interim response in which we provided a comparison of a number of different calculations of the street systems development charge and in all cases they came very close to the amount that was charged based on the number of employees. Subsequently, on March 2, 1992, I extended the time for submission of any additional data concerning the street systems development charge to April 15, 1993.

Later telephone conversations indicated that you were not going to submit any additional data. Based on the information that has been received, your appeal of the discretionary decision has not been favorably considered. I would like to inform you that we will be using most of the systems development charge for streets that you paid to install an asphalt overlay on Town Center Loop West to increase the structural strength of the road. This should significantly delay deterioration of the street.

I apologize for the delay in providing a formal response; however, other higher priority projects have interfered with a more timely response. Your understanding is appreciated.

Sincerely,

Eldon R. Johansen
Community Development Director

pc: Arlene Loble, City Manager
Mike Kohlhoff, City Attorney
Tom Jowaiszas, Finance Director
Wayne Sorensen, Planning Director
Mike Stone, City Engineer
Martin Brown, Building Official

Info —
Pam
Blaise
Sally
file 91PC43

City of
WILSONVILLE
in OREGON

30000 SW Town Center Loop E
Wilsonville, Oregon 97070
FAX (503) 682-1015
(503) 682-1011

December 4, 1992

Mr. Wayne Kittelson
Kittelson & Associates, Inc.
610 SW Alder, Suite 700
Portland OR 97205

Re: Incredible Universe Traffic Issues

Dear Mr. Kittelson:

You provided me with a copy of your letter dated October 27, 1992, to Mr. Wayne Sorensen, Planning Director, concerning the above subject. I appreciate receiving a copy of your letter since it provides an excellent background from the consultant and the developer's perspective.

Your letter addresses several transportation topics which are of current interest to staff and council. Your letter included a copy to Councilor Carter and copies have also been provided to the Mayor and other Councilors to ensure that they all have the same background concerning this topic.

Your letter indicated that you are troubled by several comments in the October 22 issue of the Oregonian, entitled "Traffic Count Zooms at Electronic Store". I also am troubled by several of the statements in your letter of October 27, 1992, and would like to explain my concerns with your letter. Prior to explaining my concerns, I will review the overall traffic information that was provided to the Planning Commission prior to its decision. The Transportation Impact Analysis for the Wilsonville Town Center, dated April, 1990, was submitted to the Planning Commission as background for approval of the Master Plans for Phase I, Phase II and Phase III of the Wilsonville Town Center. Subsequently, the letter dated October 16, 1991, subject Traffic Analysis for Wilsonville Town Center - Phase II was submitted to the Planning Commission prior to approval of the plan for Project Thunder, which subsequently was changed in name to the Incredible Universe. When Project Thunder was approved, the Traffic Impact Analysis Report for the Wilsonville Town Center, dated April, 1990, was not provided to the Planning Commission at the time of the hearing.

Specific sections of your letter which are troublesome to me as well as comments on these sections are as follows:

"Contrary to Mr. Johansen's statements in the article, our engineers did investigate the intersection of I-5 and Wilsonville Road as part of this study. As early as 1990, in fact, they predicted the capacity deficiencies that were just recently experienced. At the time that this original traffic impact analysis report was submitted, (April 1990), our engineers pointed out to city staff that the intersections of I-5 and Wilsonville Road were already operating near capacity under weekday peak-hour conditions, and would continue to operate at or above capacity until planned (but as yet unfunded) interchange improvements are made by ODOT. The following excerpt from the original traffic impact analysis report confirms this observation:

> 'As shown in Table 9, all of the intersections within the study area, with the exception of the I-5 northbound and southbound intersection, are anticipated to operate at an acceptable level of service [under projected 1995 peak-hour conditions]. The projected demand at both of the I-5 ramp intersections will result in an over-capacity condition.'"

The April 1990 Traffic Impact Analysis for Wilsonville Town Center has several tables which give the existing and predicted level of services for the southbound and northbound I-5/Wilsonville Road interchanges. Table 5 on Page 16 gives an existing level of service for both intersections of "B". Table 8 indicates level of service "C" for both intersections for the 1991 total traffic level of service results. These levels of service do not support your statement that the intersections were already operating near peak capacity.

The Project Thunder update, which was included in your October 16, 1991 letter concerning traffic analysis for Wilsonville Town Center Phase II, could be read as you state, "that this update included the I-5 northbound and southbound intersections with Wilsonville Road". If I read it that way, then I concur that the significant findings and recommendations of the October 16, 1991 report state: "Upon completion of the development, the site driveways and key off-site intersections, with the exception of Wilsonville Road/Town Center Loop West will operate within acceptable level of service limits during the evening peak-hour time period." This would be contrary to your dire predictions of intersection failure.

On the other hand, I have looked at the October 16, 1991 letter and have found no specific updates for the traffic analysis for Wilsonville Town Center Phase II concerning the I-5 intersections with Wilsonville Road. It was this lack of any data concerning the I-5 northbound and southbound intersections with Wilsonville Road that led me to conclude that the traffic impact analysis for the Incredible Universe did not include information on the I-5 intersections with Wilsonville Road. If I had read the October 16, 1991 report to accept at face value the statement that "the key off-site intersections, with the exception of Wilsonville Road/Town Center Loop West will operate within acceptable level of service limits during the evening peak-hour time period", then I would have concluded that you covered the interchange; however, I would have also felt that your coverage was inaccurate.

"Initial planning for the Incredible Universe Store began in late 1991 and was completed in 1992. It is important to note that throughout the planning and traffic impact analysis effort, the Incredible Universe store was known as Project Thunder. City staff will recall that, because the Tandy Corporation wanted to keep the details of the development secret, no specific description of Project Thunder was given; our

engineers knew only that it was to be a retail development. By their own choice, city staff elected to allow the Tandy Corporation to keep the details of Project Thunder a secret. Such a decision is entirely at the discretion of city staff and the developer, and without knowing the details of the discussions we cannot question the prudence of this decision. However, at least one effect of this decision should have been obvious even at the time that city staff made this decision; for the purposes of the traffic analysis, our engineers had no additional basis for any more refined assumptions regarding the type of planned retail development other than those used in the original 1990 analysis. In other words, we had no basis on which to forecast the special event nature of Project Thunder, which has to date been the primary cause of the interchange-related congestion."

The April 1990 Traffic Impact Analysis includes three pages to describe the site-generated traffic volume and also a special study by Kittelson & Associates, Inc. to better define the probable breakdown of site-generated vehicle trips among the category of drop-in trips, diverted trips and new trips. There is nothing in the April 1990 report or the October 16, 1991 update to forewarn staff, the Planning Commission or Council that there could be unusual special event nature retail activities which could have a different impact on traffic volumes than is predicted by the transportation impact analysis and the October 16, 1991 update for Wilsonville Town Center Phase II. This lack of information concerning a potential problem area leaves the city staff responsible for prediction of traffic problems which should be left to traffic experts. I also would think that a plan for a commercial building with 160,000 square feet of floor space in a city with less than 10,000 residents would at least cause a question in the mind of the traffic engineer concerning drop-ins of 40%.

"Even if we had known about the actual retail activity likely to be associated with Project Thunder, it is doubtful that much more could have been done at the traffic impact analysis level. This is not to say that very little was done: in fact, we identified a number of major roadway improvement needs, and Capital Realty expended nearly $650,000 in capital improvements to the city's transportation system in order to mitigate the traffic impacts we identified. Further, the Incredible Universe store contributed $250,000 in system development charges for transportation-related improvements. The October 22 newspaper article seems to confirm the effectiveness of these investments; it points out that the congestion on Grand Opening Day was caused by the failure of the Wilsonville Road/I-5 interchange. All other intersections and road segments in the area functioned in an acceptable manner, because they were designed and upgraded by Capital Realty to meet the anticipated travel demand needs."

The newspaper article states in reference to the I-5 and Wilsonville Road interchange "It was that intersection that clogged up at the Incredible Universe opening, September 17, 1992, and caused traffic to back up for miles in both directions." The expenditures by Capital Realty did nothing to improve the intersection of Wilsonville Road and Parkway, and the improvements proved inadequate to handle the traffic at the intersection of Wilsonville Road and Town Center Loop West. The city had county sheriff's deputies available and Tandy Corporation had private security guards. These individuals directed traffic at the Town Center Loop West and Wilsonville Road intersection as well as at the intersection of Wilsonville Road and Parkway during much of the Grand Opening weekend so that traffic was able to get through these intersections. By no stretch of anyone's imagination could the expenditures and improvements by Capital Realty be

considered to be adequate to allow the traffic to freely flow through these intersections at level of service D or better.

"Had we known of the special event nature of the project during its first few weeks, then it would have been both logical and relatively simple to develop a traffic control plan to minimize vehicle disruption and delay. But it should also be recognized that the Grand Opening effects of a new store, which can extend for three to six months beyond the initial store opening, are only temporary and eventually dissipate. Our traffic impact analyses are based on the long-term equilibrium conditions that develop after the Grand Opening effects have dissipated. This is a reasonable and standard principle of traffic engineering."

Upon reflection, this comment contains a good suggestion in that the city should require a traffic control plan to minimize vehicle disruption and delay during the initial opening of a new store of significant size. We will incorporate this in to our plans review efforts and into our recommended conditions of development for future stores with a major traffic impact.

"In summary, then, the traffic congestion problem that was reported upon in the October 22 newspaper article stemmed from a previously identified capacity deficiency at the I-5/Wilsonville Road interchange. This capacity deficiency has been known to city staff since early 1990 at least."

Your October 16, 1991 letter deleted the concerns for the I-5/Wilsonville Road interchange in the third subparagraph under the significant findings and recommendations which reads as follows:

> "Upon completion of the development, the site driveways and key off-site intersections, with the exception of Wilsonville Road/Town Center Loop West will operate within acceptable level of service limits during the evening peak-hour time period."

Based on my reading of a level of service "C" for 1991, and this particular paragraph, I had assumed that we, initially, on the opening of the Incredible Universe would not have any major problems with the I-5 and Wilsonville Road interchange and would not anticipate problems until later. In summary on this particular item, it appears that your April 1990 report did indicate that by 1995 there would be problems; however, the October 16, 1991 report alleviated the concern for these problems.

"Since that time and through all subsequent development reviews, city staff, planning official, and policy makers have had three options available to them:

a) **Require that the capacity deficiency be mitigated as part of any development proposal in which additional traffic is projected to travel on Wilsonville Road in the vicinity of I-5;**

b) **Place a moratorium on all new development proposals that add traffic volume to Wilsonville Road in the vicinity of I-5 until after the ODOT interchange improvement project is completed (viz., on or after 1996); or**

c) Accept the fact that the interchange's operating characteristics will be considered unacceptable very soon, and will continue to get worse through the time that the ODOT improvement project is completed.

The City of Wilsonville has, in its review and approval of new development projects extending beyond Project Thunder, consciously adopted option c). The effects of the Incredible Universe store during its Grand Opening were the first physical confirmation of this decision."

It may well be a viable option to consider your suggestion of placing a moratorium on all new development proposals that add traffic volume to Wilsonville Road in the vicinity of I-5; however, staff feels that it would be premature to present this option to Council at this time. In addition with the October 16, 1991 letter from your organization, subject: Traffic Analysis for Wilsonville Town Center Phase II, including the following significant finding and recommendation:

"Upon completion of the development, the site driveways and key off-site intersections, with the exception of Wilsonville Road/Town Center Loop West, will operate within acceptable level of service limits during the evening peak-hour time period.".

The record does not reflect a conscious adoption of option c). It reflects that intersections will operate within an acceptable level of service limits.

"We value our reputation for honest, objective, and technically valid analysis very highly, and so it is important to us that this matter be resolved to everyone's satisfaction."

In the comments which staff made at the council meeting, and also in subsequent responses to questions from newspaper reporters, we were careful not to be judgmental concerning particular consulting firms and kept from placing blame on any of the consultants which were involved. I have reread the article which you quoted and still feel that we adhered to the above and avoided incorrectly placing blame.

"If you believe it would be appropriate, we would be happy to meet with you personally at a time and location convenient to you in order to further discuss this matter."

Your letter very eloquently describes your position with regard to the impact of the Incredible Universe on traffic. I have come to a somewhat different conclusion from reading the applicable reports. Although I would be very happy to meet with you to discuss this issue, it appears that this may be one subject in which we probably will continue to have different opinions which may never be fully resolved. If you do desire

to meet with myself or other members of the Community Development staff on this subject, please contact the undersigned.

Sincerely,

Eldon R. Johansen
Community Development Director

erj:mld

pc: Kim Beach, Capital Realty
Mayor & City Council
Transportation Advisory Commission
Arlene Loble, City Manager
Mike Kohlhoff, City Attorney
Mike Stone, City Engineer
Wayne Sorensen, Planning Director
Steve Starner, Public Works Director

KITTELSON & ASSOCIATES, INC.
TRANSPORTATION PLANNING/TRAFFIC ENGINEERING
610 S.W. ALDER, SUITE 700 • PORTLAND, OR 97205 • (503) 228-5230 • FAX (503) 273-8169

STAFF
Pam
Blaine
Sally

Project file
11/PC 4/3

OCT 29

October 27, 1992

Project No.: P10.00

Mr. Wayne Sorensen
Planning Director
City of Wilsonville
P.O. Box 220
Wilsonville, Oregon 97070

SUBJECT: Incredible Universe Traffic Issues

Dear Wayne,

I read with some concern an article in the October 22 issue of *The Oregonian* titled, "Traffic Count Zooms at Electronic Store". I am enclosing a copy of the article for your information in case you missed it.

I was troubled by several comments in the article which seemed to suggest that, in the eyes of some high-level City officials, our traffic analysis had misled City officials:

> "The traffic analysis prepared by Capital Realty and the Incredible Universe's traffic consultants, Kittelson and Associates, has greatly underestimated the traffic impacts", said Arlene Loble, city manager.
>
> The Incredible Universe study analyzed traffic flows through the adjoining intersection, at Town Center Loop West and Wilsonville Road. But it did not reach to the next intersection to the west, at Wilsonville Road and Interstate 5...If the study were being done today, the city would insist that engineers look at one more intersection down the road, [Eldon Johansen] said.
>
> [Eldon Johansen] said three things went wrong with the Incredible Universe traffic study. First, the predictions were made as if the city's Transportation Plan was already in place, but many roads are yet to be built. Second, the study assumed that 40 percent of the flow into the Incredible Universe would be "drop-in" traffic...Finally, the traffic study did not account for the success of the store's marketing effort.

I would like to take this opportunity to clarify the analytic process we followed and the directions we received. Hopefully, this clarification will allow you, Ms. Loble, Mr. Johansen, and other City staff to more confidently and accurately respond should this issue arise again.

The transportation impact analysis that we performed for Capital Realty was begun in 1990 and completed in 1991. The site development plans called for construction of a shopping center containing 450,000 gross square feet of floor area. Given this information, the trip generation rates that we used were entirely appropriate, as was the estimate that 40 percent of the site-generated trips would be drop-in traffic. This is evidenced by the fact that the first phase of the shopping center development, which has already been completed, operates very close to the estimates that we provided.

Contrary to Mr. Johansen's statements in the article, our engineers did investigate the intersections of I-5 and Wilsonville Road as part of this study. As early as 1990, in fact, they predicted the capacity deficiencies that were just recently experienced. At the time that this original traffic impact analysis report was submitted (April 1990), our engineers pointed out to City staff that the intersections of I-5 and Wilsonville Road were already operating near capacity under weekday peak hour conditions, and would continue to operate at or above capacity until planned (but as yet unfunded) interchange improvements are made by ODOT. The following excerpt from the original traffic impact analysis report confirms this observation:

> "As shown in Table 9, all of the intersections within the study area, with the exception of the I-5 northbound and southbound intersections, are anticipated to operate at an acceptable level of service [under projected 1995 peak our conditions]. The projected demand at both of the I-5 ramp intersections will result in an over-capacity condition."

The current best estimate, by the way, is that these improvements will not be completed before 1996. Further, it should be noted that, even at this early date, City staff did not rely solely upon the findings of Kittelson & Associates, who were retained by the applicant. Instead, the City retained its own independent traffic engineering consultant to review the traffic impact analysis report and to critique the analysis assumptions, methodology, and findings. This independent traffic engineering consultant performed the requested review and confirmed every essential element of the report, including the projected capacity deficiency at the I-5/Wilsonville interchange area.

In personal discussions, City staff were informed of this finding of a future capacity deficiency, and were asked to interpret the City's requirement that a level of service equal to or better than "D" be provided at all intersections. City staff informed our engineers that, because the I-5/Wilsonville Road intersections are actually controlled by ODOT and, further, because ODOT has already established plans to improve the interchange and increase the capacity of these intersections, the finding of a capacity deficiency at the interchange would not be considered a fatal flaw. This conclusion by City staff is confirmed by the fact that the project was ultimately recommended for approval, even with the report's recognition of capacity deficiencies on Wilsonville Road near I-5 as noted above. It should also be pointed out that City staff's position was not unique to this project, but has also been recently applied to projects in the vicinity of the Stafford Road interchange.

On this basis, the transportation impact analysis was completed, all other on-site and off-site traffic-related deficiencies were identified, considerable mitigation projects were undertaken, and the necessary approvals were obtained.

Initial planning for the Incredible Universe store began in late 1991, and was completed in 1992. It is important to note that, throughout the planning and traffic impact analysis effort, the Incredible Universe store was known as Project Thunder. City staff will recall that, because the Tandy Corporation wanted to keep the details of the development secret, no specific description of Project Thunder was given; our engineers knew only that it was to be a retail development. By their own choice, City staff elected to allow the Tandy Corporation to keep the details of Project Thunder a secret. Such a decision is entirely at the discretion of City staff and the developer, and without knowing the details of the discussions we cannot question the prudence of this decision. However, at least one effect of this decision should have been obvious even at the time that City staff made this decision: for the purposes of the traffic analysis, our engineers had no additional basis for any more refined assumptions regarding the type of planned retail development other than those used in the original 1990 analysis. In other words, we had no basis on which to forecast the special event nature of Project Thunder, which has to date been the primary cause of the interchange-related congestion.

Even if we had known about the actual retail activity likely to be associated with Project Thunder, it is doubtful that much more could have been done at the traffic impact analysis level. This is not to say that very little was done: in fact, we identified a number of major roadway improvement needs, and Capital Realty expended nearly $650,000 in capital improvements to the City's transportation system in order to mitigate the traffic impacts we

identified. Further, the Incredible Universe store contributed $250,000 in System Development charges for transportation-related improvements. The October 22 newspaper article seems to confirm the effectiveness of these investments: it points out that the congestion on Grand Opening Day was caused by the failure of the Wilsonville Road/I-5 interchange. All other intersections and road segments in the area functioned in an acceptable manner, because they were designed and upgraded by Capital Realty to meet the anticipated travel demand needs.

Had we known of the special event nature of the project during its first few weeks, then it would have been both logical and relatively simple to develop a traffic control plan to minimize vehicle disruption and delay. But it should also be recognized that the Grand Opening effects of a new store, which can extend for three to six months beyond the initial store opening, are only temporary and eventually dissipate. Our traffic impact analyses are based on the long-term equilibrium conditions that develop after the Grand Opening effects have dissipated. This is a reasonable and standard principle of traffic engineering.

In summary, then, the traffic congestion problem that was reported upon in the October 22 newspaper article stemmed from a previously identified capacity deficiency at the I-5/Wilsonville Road interchange. This capacity deficiency has been known to City staff since early 1990 at least. Since that time and through all subsequent development reviews, City staff, planning officials, and policy makers have had three options available to them:

a) Require that the capacity deficiency be mitigated as part of any development proposal in which additional traffic is projected to travel on Wilsonville Road in the vicinity of I-5;

b) Place a moratorium on all new development proposals that add traffic volume to Wilsonville Road in the vicinity of I-5 until after the ODOT interchange improvement project is completed (viz., on or after 1996); or

c) Accept the fact that the interchange's operating characteristics will be considered unacceptable very soon, and will continue to get worse through the time that the ODOT improvement project is completed.

The City of Wilsonville has, in its review and approval of new development projects extending beyond Project Thunder, consciously adopted option c). The effects of the Incredible Universe store during its Grand Opening were the first physical confirmation of this decision. These

effects were temporary in that they will most likely die away after the Christmas season and as the store's novelty begins to fade. Additionally, these effects were exaggerated by the special event nature of the Grand Opening, which did not give patrons a chance to adjust their arrival time or choice of route. Therefore, it is unlikely that the City will again experience extended periods of mile-plus queues caused by the failure of the I-5/Wilsonville Road interchange. Even so, City staff and policy makers should recognize that less visible daily failures of the interchange are already programmed to occur: several already-approved residential and commercial projects have not yet been completed, and the combined future traffic effects of these projects virtually assure periods of peak-hour failure of the interchange during most typical weekdays. Thus, the City no longer has control over *whether* peak hour congestion and failures will occur at the interchange (they will), although future land use decisions can still affect the *duration* of these failures.

We have no quarrel with the prudence of the City's conscious decision to adopt option c) above. We are, however, disappointed that the City would suggest to the public, through articles such as the one published on October 22, that the congestion was not anticipated and that the fault for this lies with the traffic impact analysis process.

If you have any questions, please call me. We value our reputation for honest, objective, and technically valid analyses very highly, and so it is important to us that this matter be resolved to everyone's satisfaction. If you believe it would be appropriate, we would be happy to meet with you personally at a time and location convenient to you in order to further discuss this matter.

Sincerely,

Wayne K. Kittelson

Wayne K. Kittelson, P.E.
Principal

cc: Arlene Loble
Eldon Johansen
Greg Carter
Kim Beach

CITY OF WILSONVILLE
P.O. Box 220
30000 S.W. Town Center Loop East
WILSONVILLE, OREGON 97070

(503) 682-1011

LETTER OF TRANSMITTAL

TO _____

DATE	JOB NO.
10/1/92	
ATTENTION: Arlene Loble	
RE: Inner Belt Universe	
Copy of letter or decision, and attachments	
file copy of Transportation Impact Analysis prepared by Kittelson & Assoc	

WE ARE SENDING YOU ☐ Attached ☐ Under separate cover via _____ the following items:

☐ Shop drawings ☐ Prints ☐ Plans ☐ Samples ☐ Specifications
☐ Copy of letter ☐ Change order ☐ _____

COPIES	DATE	NO.	DESCRIPTION

THESE ARE TRANSMITTED as checked below:

☐ For approval ☐ Approved as submitted ☐ Resubmit _____ copies for approval
☐ For your use ☐ Approved as noted ☐ Submit _____ copies for distribution
☐ As requested ☐ Returned for corrections ☐ Return _____ corrected prints
☐ For review and comment ☐ _____
☐ FOR BIDS DUE _____ 19_____ ☐ PRINTS RETURNED AFTER LOAN TO US

REMARKS _____

COPY TO _____

SIGNED: Wayne Sorensen

JUN - 1 1992

City of
WILSONVILLE
in OREGON

30000 SW Town Center Loop E
Wilsonville, Oregon 97070
FAX (503) 682-1015
(503) 682-1011

May 28, 1992

Mr. Rich Hollander
Vice President
Tandy Name Brands
P.O. Box 1643
Fort Worth, TX 76101

Ms. Kim Beach
Capital Realty
101 S.W. Main St. Ste. 905
Portland, OR 97204

Re: Tandy Name Brands dba Project Thunder

Dear Mr. Hollander & Ms. Beach:

The purpose of this letter is to summarize the current status of ongoing actions which must be completed prior to opening the facilities which were previously known as Project Thunder and currently known as the Incredible Universe. An additional purpose is to solicit your continuing assistance in resolving the remaining points of difference so that when the construction is completed, there will be no outstanding actions which would preclude issuance of the Certificate of Occupancy.

Primary items of concern are as follows:

Street Systems Development Charge

On March 2, 1992, Council adopted Resolution No. 902 authorizing deferral of the Systems Development Charges for streets from time of issuance of building permit to time of issuance of occupancy permit for Tandy Name Brand Retail Group. Resolution No. 902 contained an estimate for the Street Systems Development Charges in the amount of approximately $370,880.00. This was based on a total of 160 employees at the site. On March 6, 1992, Mr. Brian L. Spain, Assistant Tax Manager, for Tandy Tax Service, forwarded a check in the amount of $124,592.15 for the Street Systems Development charge. I am concerned that use of peak hour employees is irrelevant to peak hour traffic generation and will correspond directly with Mr. Spain to resolve differences.

Traffic Signal - Town Center Loop West and Wilsonville Road

One of the conditions that was placed on this development was that the signal at the intersection of Wilsonville Road and Town Center Loop West must be installed prior to the occupancy of the Project Thunder site. Plans have recently been received at the Community Development Department for a second review.

Kim Beach, Capital Realty, is pushing to insure that the signal is in place prior to occupancy of the Project Thunder site.

Detention Facility

The Project Thunder site was conditioned to be designed for the 25 year storm. Detailed calculations indicate detention could be deferred until development of the property just north of the Project Thunder site. The condition would appear not to allow staff to administratively transfer the detention requirement to another property. Staff is again working with Capitol Realty to insure that this is resolved.

Construction as Included in the Public Works Permit

The City requires that the Punch List for Public Works items be completed prior to issuance of a Temporary Occupancy Permit.

Maintenance Bond

The City will require a 10% Maintenance Bond for twelve months following acceptance of the work included in the Public Works Permit.

Repair of Town Center Loop West Road

The City has contacted S.D. Deacon, General Contractor, concerning the street repairs to Town Center Loop West Road. Mr. Art L. Bush, Project Manager, has informed the City that S.D. Deacon Corporation will not be held responsible for any road repairs or replacement to existing condition of either north or southbound lanes of Town Center Loop West Road at the conclusion of this project. The contractor has removed the curb along the east side of Town Center Loop West and the asphalt has substantially failed wherever the curb has been removed. The City has no intention of accepting the project until such time as damages caused by the contractor are repaired.

Modification of Median - Town Center Loop West

We have received construction plans for modification of the median. We will be submitting those plans to Council for approval. It appears that this work is necessary prior to having adequate access to parking.

Abandonment of Right-of-Way

The City has received documentation requesting abandonment of right-of-way that was part of the former Parkway Avenue. This is being processed to insure abandonment by August 1, 1992.

As you no doubt realize, I did not begin work in Wilsonville until April 6, 1992, after this project was well under way. My concern is that if we do not keep our attentions focused on resolving all outstanding issues, we will reach a point where the building will have been completed and you will have hired employees to open the facility and will be unable to issue a Certificate of Occupancy because of failure to resolve the above items. Your continued assistance and cooperation will be appreciated.

Sincerely,

Eldon R. Johansen

Eldon R. Johansen
Community Development Director

ej/js

pc: Arlene Loble, City Manager
Michael Kohlhoff, City Attorney
Steve Starner, Public Works Director
Martin Brown, Building Official
Wayne Sorensen, Planning Director

Creative Solutions ... Superior Service

W&H PACIFIC
8405 S.W. Nimbus Ave.
P.O. Box 80040
Portland, OR 97280

(503) 626-0455
Fax (503) 526-0775

• Planning • Surveying • Environmental Services
• Engineering • Landscape Architecture

To: ELDON JOHANSEN
CITY OF WILSONVILLE

Date: 5-7-92
Project Number: 755-0202
Project Name: THUNDER
Regarding: TEMP. DETENTION AREA

PLEASE NOTIFY US IMMEDIATELY AT (503) 626-0455 IF THERE ARE ANY PROBLEMS RECEIVING THIS TRANSMISSION

We Are Sending:
- ☐ Attached
- ☒ Facsimile
- 3 Number Of Pages Including Cover
- ☒ 682-7025

These Are Transmitted:
- ☐ For Your Info/File
- ☐ As Requested
- ☒ For Review And Comment

Copied To:
KIRK BEACH W/O ENCL
FAX 223-0200

Copies	Description
1	ADD'L STORM CALCS.

Margo 5/7
Orig to Angel Thunder file
Copy to Wayne myself
Eldon

Comments

ELDON,
JIM LENGKEEK HAS PREPARED ADD'L STORM RUNOFF CALCS WHICH SHOW THAT A TEMPORARY DETENTION AREA WILL NOT BE REQUIRED UNTIL PHASE III AREA DEVELOPS. PLEASE REVIEW & COMMENT — CONTACT JIM DIRECTLY IF YOU HAVE QUESTIONS.

Signed Rick Martin

W&H PACIFIC
8405 S.W. Nimbus Avenue
P.O. Box 80040
Portland, OR 97280
(503) 626-0455
Fax (503) 526-0775

Creative Solutions . . . Superior Service

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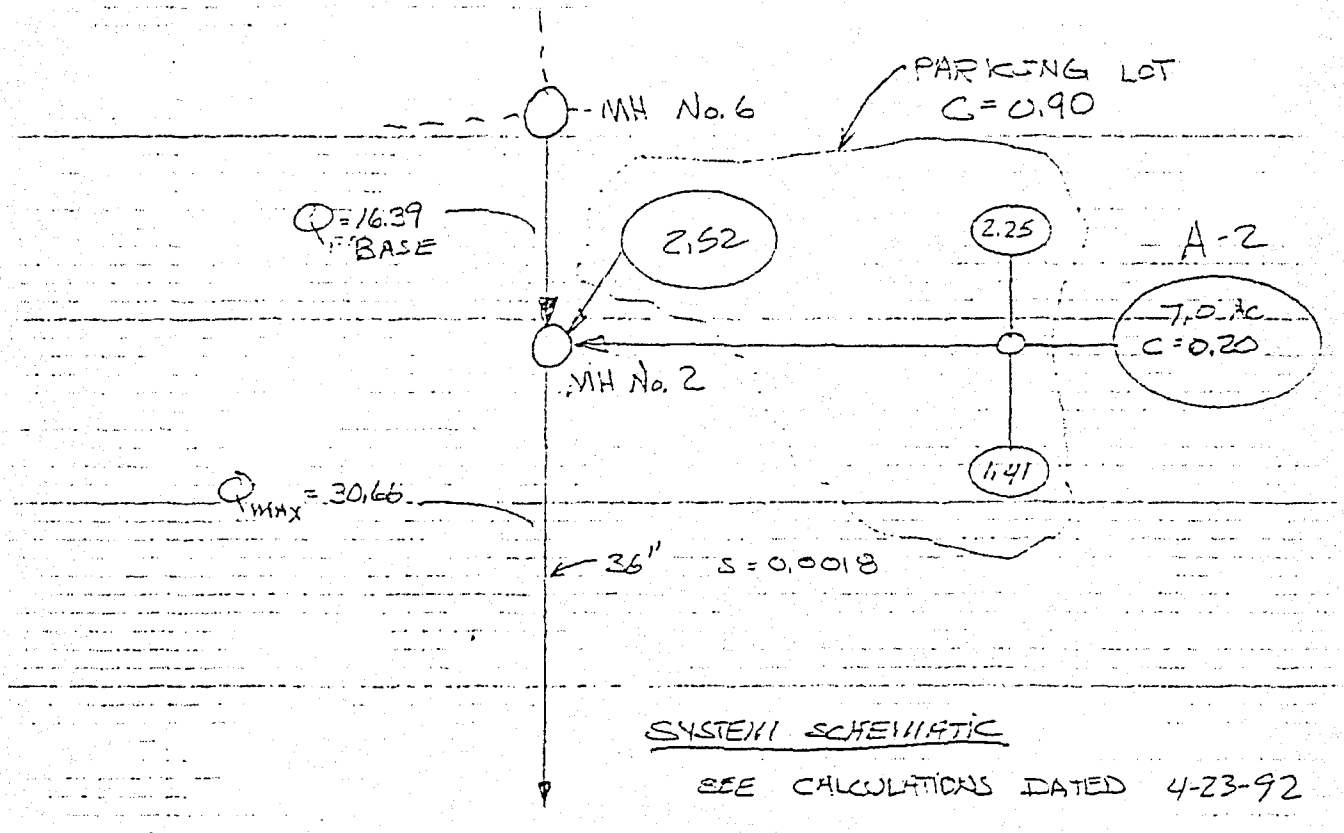
DETENTION REQUIREMENTS FOR A-2 IN HN UNDEVELOPED CONDITION.



SYSTEM SCHEMATIC

SEE CALCULATIONS DATED 4-23-92

ASSUME WORST CASE SCENARIO

1.) FLOW FROM MH. No 6 TO MH No 2 is MAXIMUM DUE TO UPSTREAM STORAGE, Q_{BASE} = 16.39 CFS

2.) ASSUME GRASSED AREA FOR A-2 with C = 0.20

3.) ASSUME 550 FEET OVERLAND TRAVEL FROM A-2

1ST 200 FEET = 20 MINUTES

REMAINDER 350' = 4 MINUTES. (SLOPE = 1%)
IN CHANNEL

t_c = 24 MINUTES

Project: DETENTION TRENCH Date: 5-5-92 Sheet No. 1 of 2

Prepared by: [illegible] Checked by: Job No. [illegible]

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8405 S.W. Nimbus Ave.
P.O. Box 80040
Portland, OR 97280
(503) 626-0455
Fax (503) 526-0775
• Planning • Surveying • Environmental Services
• Engineering • Landscape Architecture

To: ELDON JOHANSEN
CITY OF WILSONVILLE

Date: 5-7-92
Project Number: 755-0202
Project Name: THUNDER
Regarding: TEMP. DETENTION AREA

PLEASE NOTIFY US IMMEDIATELY AT (503) 626-0455 IF THERE ARE ANY PROBLEMS RECEIVING THIS TRANSMISSION

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- ☐ As Requested
- ☒ For Review And Comment
- ☐

Copied To:
KARL BEACH W/O ENCL
FAX 223-0200

Copies	Description
1	ADD'L STORM CALCS.

Comments

ELDON,

JIM LENHART HAS PREPARED ADD'L STORM RUNOFF CALCS WHICH SHOW THAT A TEMPORARY DETENTION AREA WILL NOT BE REQUIRED UNTIL PHASE III AREA DEVELOPS. PLEASE REVIEW & COMMENT — CONTACT JIM DIRECTLY IF YOU HAVE QUESTIONS.

PARKING DETENTION IS POSSIBLE IN PIT III OR EITHER PROPERTY NORTH OF TANDY.

Signed Rick Martin

PACIFIC
8405 S.W. Nimbus Avenue
P.O. Box 80040
Portland, OR 97280
(503) 626-0455
Fax (503) 526-0775
• Planning
• Engineering
• Surveying
• Landscape Architecture
• Environmental Services

i_{25} @ 24 MINUTES = 1.6 in/hour.

$Q_{PEAK} = i \Sigma CA_i = (0.2)(7.0\ AC)(1.6) = 2.24$

$(0.9)(6.18)(1.6) = 11.33$

13.57 CFS.

$Q_{ALLOWABLE\ IN\ PIPE} = Q_{MAX} - Q_{BASE} = 30.66 - 16.39$

$Q_{ALLOWABLE} = 14.27$ CFS.

SINCE Q_{PEAK} (13.57) < $Q_{allowable}$

NO DETENTION IS REQUIRED

NOTE! THIS CALCULATION IS FOR UNDEVELOPED CONDITIONS ONLY.

Project: PROJECT THUNDER Date: 5-5-92 Sheet No. 7 of 2

Prepared by: CLL Checked by: Job No. 4657.03-04-7!

W&H PACIFIC
Creative Solutions ... Superior Service
1099 S.W. Columbia Street
Portland, Oregon 97201
(503) 227-0455
Fax (503) 274-4607
• Planning • Engineering • Surveying • Landscape Architecture • Environmental Services

To: William L. Parks
Division of State Lands
1600 State Street
Salem, OR 97310

Date: 12-16-91
Project Number: 4-755-0202
Project Name: Project Thunder
Regarding:

PLEASE NOTIFY US IMMEDIATELY AT (503) 227-0455 IF THERE ARE ANY PROBLEMS RECEIVING THIS TRANSMISSION

We Are Sending:
- [X] Attached
- [ ] Facsimile
- Number Of Pages Including Cover: [ ]

These Are Transmitted:
- [ ] For Your Info/File
- [ ] As Requested
- [X] For Review And Comment

Copied To:

Copies	Description	
1	Vicinity Map	8½×11
1	Site Map	11×17

X No Jurisdiction 10 YR 5/4
A/O Hydrology - Ann Dutton
by Phone

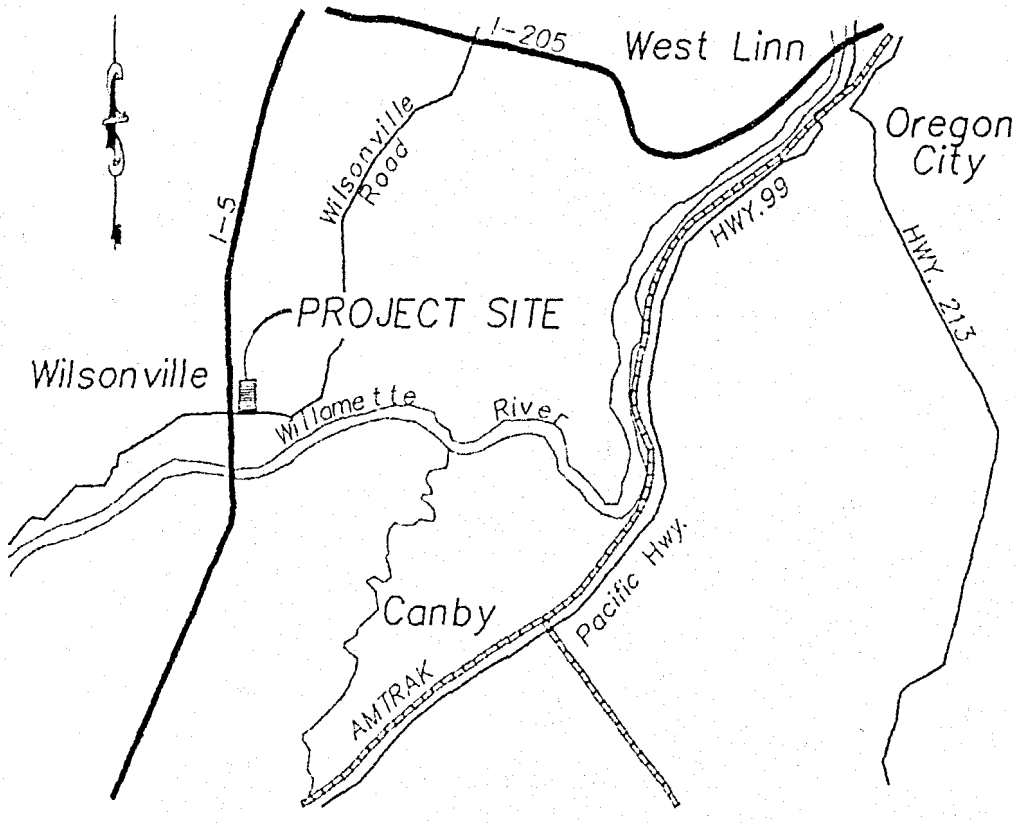
Comments

Bill,

Please make a determination whether or not the existing detention pond is a "wetland" as defined by DSL.

I prefer a response as soon as possible, but no later than January 3, 1992. If this presents a problem, please call me at your earliest.

Signed thanks, Rick Martin



VICINITY MAP

NTS

- EXIT I-5 NORTH @ WILSONVILLE RD
- TURN LEFT @ TOWN CENTER LOOP RD WEST (PORTLANDIA PIZZA ON CORNER)
- SITE IS ± 1/4 MILE NORTH OR RIGHT.

CAPITAL REALTY
CORPORATION

December 30, 1991

Mr. Mike Kohlhoff
City Attorney
City of Wilsonville
30000 S.W. Town Ctr. Loop E.
Wilsonville, OR 97070

Please submit the following language for approval by the City Council at the January 6, 1992 regularly scheduled meeting, to clarify Condition #10 of Resolution 91PC43:

The 5.1 acre public park dedication will be required the earlier of the issuance of a builiding permit for Phase III or May 31, 1994. The City and the applicant will work toward resolving the related access issues prior to the land dedication. The applicant will be involved in the Town Center park development planning in an advisory capacity but will not be required to make any financial outlay for the park planning process or its actual development.

For your information I have also enclosed a master site plan, color coded by original ownership. If you have any questions or require additional information please contact me. Thank you in advance for your prompt attention to this matter as we need to resolve this issue by January 7, 1992 to proceed with our contract with Thunder.

Very truly yours,

Kim Beach

Kimberly J. Beach
Vice President

cc. Ms. Arlene Loble (with enclosure)
Mr. Wayne Sorenson (with enclosure)

DIVISION OF STATE LANDS
Environmental Planning and Permits
775 Summer Street, NE
Salem, OR 97310
503/378-3805

RECEIVED
DEC 30 1991
CITY OF WILSONVILLE ANNEX

WETLAND DETERMINATION REPORT

At the request of the landowner or agent, Division staff have conducted an offsite or onsite wetland determination on the property described below.

COUNTY Clac CITY
LOCATION Exit I-5 @ Wilsonville TR. left @ Centaloop R West ¼ mile
T 3S R 1W S 23 TAX LOT(S)
OWNER/AGENT: Rick Martin W&H Pacific
ADDRESS: 1099 S.W. Columbia St. Portland, OR
DATE OF ONSITE INVESTIGATION: 12-19-91

☒ There are no jurisdictional wetlands or waterways on the property. Therefore, no removal-fill permit is required.
Notes: No Hydrology present - soil 10YR 3/4

☐ There are wetlands and/or waterways on the property. Those areas are subject to the State Removal-Fill Law. A permit is required for 50 cubic yards or more of fill, removal, or alteration of substrate.
Notes:

☐ A wetland delineation will be needed to locate and stake the wetland/non-wetland boundary. A list of consultants can be obtained from the Division.
Notes:

☐ A removal-fill permit will be required for

☐ No removal-fill permit will be required for _____ because/if

☐ A permit may be required by the Army Corps of Engineers (326-6995)

Comments:

Determination by: William Parks Date: 12-23-91

Response Copy To:
☒ Owner/Applicant ☒ Enclosures: Request, Site Plan Map
☒ City of Wilsonville Planning Department
☐ _____, Corps of Engineers
☒ DSL file copy
☒ Reading file copy - TO LORNA no Tues.

City of
WILSONVILLE
in OREGON
30000 SW Town Center Loop E • ~~PO Box 220~~
Wilsonville, OR 97070
(503) 682-1011

December 30, 1991

Mr. Jim Faulkner
Design Forum Architects
3484 Far Hills Avenue
Dayton, OH 45429

Dear Jim:

I appreciated you, Rich Hollander and Jared Chaney taking the time to meet with Blaise and me regarding Project Thunder. I hope that we will be able to find an acceptable compromise in the design of the Incredible Universe project.

Enclosed is a copy of my notes which generally outline the basic issues we discussed at the December 23rd meeting. I am also enclosing material to provide additional insight into our planning process for the Town Center:

1. A copy of the legal opinion prepared by Michael Kohlhoff, City Attorney, that was furnished to the Wilsonville Design Review Board during the hearings on the Les Schwab Tire Center which will also be located in Town Center;

2. Variance criteria contained in our City Code which must be fully met before the DRB can approve a variance request.

I want to assure you that the City will do everything we can to accommodate your schedule, but I want to be sure you understand the legal limitations to fast tracking the review process.

Once again, it was a pleasure to meet with you. I appreciate your cooperation in finding an acceptable design alternative that will do justice to the Town Center, including the future Town Center Park, and still meet your client's needs. If you have any questions, please feel free to contact either Blaise or me at (503) 682-4960.

Sincerely,

Wayne C. Sorensen

Wayne C. Sorensen
Planning Director

wcs:dp
Enclosure

TO: Honorable Mayor and City Council

FROM: Arlene Loble
City Manager

RE: City Manager's Business

DATE: December 12, 1991

SUBJECT: PROJECT THUNDER DEDICATION OF PARK LAND

Project Thunder, which is Phase II of the Town Center development, was approved by the Planning Commission and now goes before the Design Review Board. I have attached a copy of their proposed design and their request for variances from the sign code. I bring it to your attention because it seems so entirely inconsistent with what has been previously approved in Town Center and the architectural proposal was not before Planning Commission for review. They have not seen the design proposals that dealt solely with the land use issues.

There are a couple conditions of approval that need to be brought to Council's attention. One of the conditions of approval requires the dedication of a 5.4 acre public park. The dedication would be required at the time occupancy permits are issued unless the City Council and the applicant agree to a later date. The value of the property to be dedicated is at least $1,000,000, and the developers would like to be involved in the planning for park development but because of the value of the land are not willing to pay for any of the associated development costs. It is my understanding that at Phase I approval one of the conditions included not only the land dedication but financial responsibility for development of the park. That condition has now been removed because of the cost of the park land.

Leaving aside for the moment the inappropriateness of the design of the project, you can see from the attached exhibit that shows the location of the open space and the proposed building pads. This $1,000,000 park is really located in the backyard of the proposed development. Because of the type of business which is some sort of high tech retail, the rear of the building, which faces the park, doesn't even include any windows - just a large expansive blank wall. To help offset that, a smaller building to be developed at a future Phase III has been placed on the property in such a way that it could front into the city park. The development that has already occurred in Phase I, the shopping center, also faces its least attractive areas into the proposed park site. If the open space actually is worth $1,000,000, it will take at least that, in terms of the City's financial commitment, to improve the park. To put that kind of money into something that is really more of an after thought than a planned part of the development seems to me to be a big mistake. This is a

good example of something coming to Council's attention so late in the planning process that you have not had any meaningful input and yet now the City will be asked to make a substantial financial commitment. If the land is to be dedicated the developers justifiably want to know that the property will be developed in the future. What should be a wonderful design feature is really just an after thought. I don't know what, if anything, can be done at this stage, but I wanted to bring it to your attention as we will need to begin negotiations over the actual dedication of the property. Do you want a park in this location under these circumstances?

Another condition of approval that I would like to bring to your attention deals with the handling of storm drainage. Once again, this looks like we could be creating future problems because we have not had an engineer on staff and the project has probably not received the level of review from an engineering perspective that is necessary. So, the Planning Commission has added a requirement that storm sewer plans need to be coordinated with the City Engineer with a possibility of exploring the feasibility of onsight retention. As proposed by the developer, they would be eliminating the existing detention area and paving it over for additional parking. I don't know how this impact as a wetland but the staff report also brings that issue to your attention. Since the detailed engineering won't be done until or unless the plan is approved, we won't know until we get further into it how the developer's engineer plans to handle storm drainage. It is possible that they will actually need to relocate water and sewer lines that have been installed in Phase I in order to accommodate the proposed storm drainage plans for Phase II. Again, this is an area where we truly need the assistance of a City Engineer.

91PC43

City of
WILSONVILLE
in OREGON
30000 SW Town Center Loop E • PO Box 220
Wilsonville, OR 97070
(503) 682-1011

MEMORANDUM

TO: Wayne Sorensen, Planning Director
FROM: Steve Starner, Community Development Director
DATE: December 9, 1991
RE: Project Thunder

In keeping with our usual land use process, the engineers associated with the development team for this project have submitted detailed studies to quantify the impacts of traffic volume and storm sewer capacities. Although their conclusions demonstrate compliance with Wilsovnille's development criteria, I am concerned about some of the practical issues raised in the staff report.

A. Traffic - Wilsonville Road/Parkway Avenue intersection

The Wilsonville Code does not require Project Thunder to demonstrate compliance with level of service "D" at the above-referenced intersection. However, for any motorist currently using the intersection during peak hours, it is obvious vehicle congestion is reducing existing traffic management functions to an unacceptable quality. Especially for motorists attempting to enter Wilsonville Road from Parkway Avenue, the City is exploring the following:

1. Increasing the visability of the "Do Not Block Intersection" signage.

2. Placing a pavement stop bar on Wilsonville Road which corresponds with the intersection signage.

3. Controlling ingress and egress to Parkway Avenue north of Wilsonville Road.

4. Investigate the installation of an intersection traffic signal which would operate in sequence with the interchange traffic controls.

5. Investigate the construction elements involved with a new roadway joining Parkway Avenue and Town Center Loop West.

Ultimately, traffic congestion adjacent to the Wilsonville interchange (from Town Center Loop West to Kinsman Road) will only be relieved when ODOT completes the construction of the expanded interchange design.

B. Storm Sewer - Memorial Part

As I understand it, Project Thunder storm drainage will flow into the I-5 storm sewer system. At peak flows, excess water will be diverted into the Phase I (Thriftway/Payless development) storm sewer which flows past the Library and into Memorial Park. In order to accommodate the anti-cipated flows, the following park storm drainage improvements are underway:

November - December, 1991	Surge basin, stilling basin and water quality swale design
January - February, 1992	Complete design
March	Construction bidding
April	Award construction contract
May	Begin construction
September	Complete construction

The estimated cost of this project is $124,420 and is scheduled to be funded in conjunction with Memorial Park improvements. Approximately 52 per cent of the total project cost may be recovered from a payback when the Teufel and Boozier properties develop.

Also, the City will soon be undertaking a City-wide storm sewer Master Plan study in order to identify and plan for infrastructure needs. Under the current storm sewer SDC program, Project Thunder will generate approximately $16,640 to be applied directly against the cost of the new Storm Sewer Master Plan.

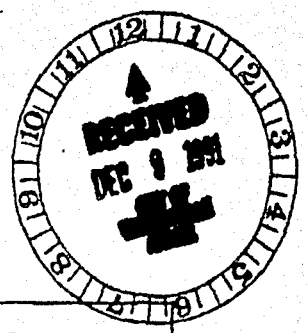
I hope this information is helpful.

ss:jme

PROJECT THUNDER

PEOPLE IN ATTENDANCE

MEETING: PLANNING COMMISSION
DATE: 9 DEC 91



NAME	ADDRESS
Ian Lentz	233 SE Washington St Hillsboro OR 97123
Loyal L Craiens	JRS ARCHITECT 1611 SW TAYLOR PORTLAND 97205
JIM FAULKNER	3484 FAR HILLS AV DAYTON, OH 45429 DESIGN FORUM ARCHITECTS
Chris Tope	29025 S.W. town center Loop Wilsonville OR
TOM JONES	1099 SW COLUMBIA PDX 97201
RICK MARTIN	1099 SW COLUMBIA PDX 97201
KIM Beach	101 SW Main Suite 1500 Portland OR 97204
DON MALIN	8755 SW CITIZENS DRIVE WILSONVILLE
VADIC VANDEHEY	610 SW Alder Suite 700 PDX 97205
BOB LAMB	13890 SW BULL MT ROAD TIGARD OR 97224

W&H PACIFIC
Creative Solutions ... Superior Service
1099 S.W. Columbia Street
Portland, Oregon 97201
(503) 227-0455
Fax (503) 274-4607
• Planning • Engineering • Surveying • Landscape Architecture • Environmental Services

To: Blaise Edmonds
City of Wilsonville Annex
30470 SW Parkway
Wilsonville, OR.

Date: Dec. 2, 1991
Project Number: 467-0301
Project Name: Wilsonville Town Center
Regarding: Open Space Alternative Concept Plan

PLEASE NOTIFY US IMMEDIATELY AT (503) 227-0455 IF THERE ARE ANY PROBLEMS RECEIVING THIS TRANSMISSION

We Are Sending:	These Are Transmitted:	Copied To:
X Attached	For Your Info/File	KIM BEACH
Facsimile	X As Requested	LOGAN CRAVEN
Number Of Pages Including Cover	For Review And Comment	

Copies	Description
10	FOLDED FULL SIZE REVISED MASTER PLAN (SHT. #1)
1	PMT (8½"x11") OF ABOVE
1	ORIGINAL (8½"x11"): ALTERNATIVE OPEN SPACE CONCEPT.

Comments

Blaise:

Please enclose the attached materials w/in your staff report.

s - again for all your help !!!

Yours,

W&H PACIFIC
1099 S.W. Columbia Street
Portland, Oregon 97201

November 26, 1991

Mr. Blaise Edmonds
Associate Planner
City of Wilsonville
8445 SW Elligsen Road
Wilsonville, Oregon 97070

RE: PROJECT THUNDER
DESIGN REVIEW SUBMITTAL
JOB NO. 4-755-0102

Dear Blaise:

Thank you again for taking time this morning to discuss Project Thunder. As per our discussion, the following items were discussed and agreed upon:

1. Approval of Drawing Scales:

   A. Design Review Submittal at 50 scale.

   B. Construction Document Submittal at 30 scale.

2. Approval to omit irrigation design for Design Review Submittal. Notes will be provided.

3. Design Review Submittal will be 50 scale landscape plan showing tree, plant and lawn layout. Plant lists and details will be provided as per City of Wilsonville's Design Review Criteria.

4. W&H Pacific will have 100% complete construction documents by December 27, 1991. We will submit to the City a set of complete drawings for additional information. These drawings will include complete landscape and irrigation plans and can be included for the January 27, 1992 Design Review meeting.

If you have any questions or comments, please give me a call.

Sincerely,

W&H PACIFIC

Matthew P. Simpson, A.S.L.A.
Project Landscape Architect

MPS/kal

STORAGE

6208
9600
22,892
420
216
39,336

SERVICE

4700
900
1020
640
1952
5016
2048
1008
17,276

RETAIL

47,879
2,240
5,880
7,920
63,919

REST

572
1024
4500
6,096

OFFICE

18156
200
50
5,294
288
912
240
149
128
9,117

EXHIBIT "A"

City of
WILSONVILLE
in OREGON

30000 SW Town Center Loop E • PO Box 220
Wilsonville, OR 97070
(503) 682-1011

ADMINISTRATION DEPARTMENT
MEMORANDUM

DATE: OCTOBER 9, 1990

TO: DESIGN REVIEW BOARD

THROUGH: WAYNE SORENSEN, PLANNING DIRECTOR

FROM: MICHAEL E. KOHLHOFF, CITY ATTORNEY

SUBJECT: REQUESTED OPINION FOR LES SCHWAB TIRE CENTER

INTRODUCTION

At the City of Wilsonville's Design Review Board meeting of September 24, 1990, applicant, Les Schwab Tire Centers (Les Schwab), filed three legal objections to the planning staff's recommendations for revisions to the Les Schwab site plan applications as conditions of approval: violation of U.S. Constitution and Oregon Constitution free speech rights, lack of authority, and arbitrariness. The Design Review Board has requested my review of these objections, which are discussed below. The application was continued for decision only until the next regularly scheduled meeting in October.

The recommended revisions were to proposed material and color to the exterior of the tire center building. The site plan submitted by Les Schwab called for the building to be constructed of concrete block, with a metal roof and metal mansard. The proposed exterior colors of the building were red and white. The revisions recommend the use of red-colored brick instead of the red painted block on the south, east and west elevations, with the north elevation to be painted white. Also, the metal roof trim and mansard were recommended to be repainted with an earth tone color.

BACKGROUND

The City of Wilsonville was incorporated in 1969. Pursuant to state statute it adopted and had acknowledgment by the state its city-wide Comprehensive Land Use Plan and implementing Zoning Ordinance in 1982. As a newly developing city it has placed its emphasis on planning in the form of "planned development" for commercial, industrial and residential uses. In the area of commercial development, the City's Zoning Code provides:

"4.136 (1) (c). Planned Development Commercial shall be planned in the form of centers or complexes as follows:

a. The Town Center
b. Service Centers
c. Office complexes.
d. Commercial recreation.
e. Neighborhood commercial."

The Town Center was zoned and master planned. The Wilsonville Town Center Plan drawing was placed into the Zoning Code at 4.136 (1) (c) (12). The Town Center Plan drawing conceptually locates functional use areas of central commercial, service commercial (includes tire sales and service), food and sundries, fast foods service, office professional, offices for general use, and high density apartments. The zoning text provides for permitted and accessory uses within each of the designated functional use areas.

The purpose of this zone is stated under 4.136 (l) (c) (12) (a).

> "Purpose: (i) The purpose of this zoning is to permit and encourage a City Center, adhering to planned commercial and planned development concepts, including provision for commercial services, sales of goods and wares, business and professional offices, department stores, shopping centers and other customer-oriented uses to meet the needs of the Wilsonville community as well as to meet the general shopping and service needs of an area-wide basis, together with such multiple family residential facilities, open space, recreational and park areas, and public uses facilities as may be approved as part of the City Center compatible with the Comprehensive Plan of the City."

The location of the Les Schwab property application is in the northwest corner of the Town Center commercial area adjacent to Interstate 5. The Town Center is planned as the City's focal center. The property's location is a major viewing point of the City's focal center and identity. Development has occurred in the area with appropriate uses, high quality materials and design, which has provided the city center with uniform and harmonious developments with an aesthetically pleasing visual environment. This development has been and is overseen by the City's Planning Commission and its Design Review Board, pursuant to the city's zoning code.

The Les Schwab application has duly gone through the Planning Commission Planned Development Approval process and is located appropriately in the service commercial area of Town Center Master Plan. Its use approval adheres to the planned commercial/planned development concepts for Town Center. It comes before the Design Review Board for site development approval.

LEGAL REVIEW

"Comprehensive planning is clearly recognized as a proper exercise of municipal police power, often seen as a safeguarding of property values on a broad public basis. The conservation of property values is a very common consideration in comprehensive zoning, ordinarily required by state zoning acts, incorporated in ordinances and sustained by the courts (footnote omitted). Likewise, regulations as to the height and mode of construction

of buildings have been sustained on the ground of the 'safety, comfort and convenience of the people and for the benefit of property owners generally'" (footnote omitted). McQuillan Mun. Corp., § 24.14 (3rd. Ed.)

As also stated in McQuillan Mun. Corp., § 24.10:

"It is well said that the police power is based chiefly on the Latin maxums, salus populi suprema est lex - the welfare of the people is the first law (footnote omitted) and sic utere tuo ut alienum non laedas - so use your property as not to injure the rights of another (footnote omitted). As stated by the United States Supreme Court, the police power 'has its foundation in the maxim of all well-ordered society which requires everyone to use his own property so as not to injure the equal enjoyment of others having equal rights of property'". (*Slaughter House Cases, 16 Wall 36, 21 L. Ed. 394).

However, the power of municipal government in this respect is not unlimited. It is limited by federal and state constitutional guarantees.

Applicant raises issues pertaining to federal and state constitutional rights to free speech, arguing that the proposed color revisions invade its rights to advertise as it chooses. Applicant also raises due process issues which prohibit the unreasonable, arbitrary use of such powers claiming the Design Review Board does not have the authority to limit materials and colors (unreasonable) and is without standards and criteria (arbitrary) to do so.

As previously stated, public necessity and protection of the public welfare forms the basis for the exercise of police power; that every person ought to so use his or her property so as to not injure one's neighbors. The unavoidable consequence of the need to exercise the police power in this regard results in the restriction on the use of property. It should also be noted that the police power is of a dynamic nature. McQuillan Mun. Corp., § 24.08 (3rd ed.) states, "Like equity jurisprudence, the police power has a dynamic or progressive capacity to be applied to new subjects or to be exercised by new or revised measures as economic and social changes require."

Wilsonville adopted its zoning code as an exercise of its police power. The presence of its Design Review Board is an example of the progressive capacity which was brought about by the public necessity and modern day quality of life concerns. Wilsonville as part of its general zoning regulations provides in 4.151 General regulations - signs for signage regulation.

The public necessity to regulate signage in terms of time, place and manner so that the signage chosen is not abusive of the rights of others is clearly recognized. See cases cited in McQuillan Mun. Corp., § 24.384 (footnotes 1-10). Within these general regulations, 4.151 (3) applies to commercial use within the Wilsonville Town Center as follows:

> "(a) The Wilsonville Town Center, as designated in the Wilsonville Code, Section 4.136 et seq., is well suited for the institution of a coordinated signing program because of its geographic unity, focal location, and the fact that it is in the early stage of development. The purpose of Section 4.151(3) of this chapter is to provide the Town Center with a program of coordinated signing which is both functional and aesthetic, and to provide a method of administration which will insure continuity and enforcement. In this manner, the framework will be provided for a comprehensive balanced system of street graphics which provide a clear and pleasant communication between people and their environment..."

"In regulating the use of street graphics and building signage, the following design criteria shall be applied in conjunction with the provisions of this Code: That street graphics and building signage be:

1. Appropriate to the type of activity to which they pertain.

2. Expressive of the identity of the individual proprietors and the Wilsonville Town Center as a whole.

3. Legible in the circumstances in which they are seen.

4. Functional as they relate to other graphics and signage."

Wilsonville Code 4.001 (70) defines "sign" as "***painting...or other device that is designed, used or intended for advertising purposes, or to inform or to attract the attention of the public, and includes where applicable...display surfaces and all components of the sign***".

Wilsonville Code 4.151 (3) (b) (2) provides the following definition: "Building Graphics. Signs that are not located within the first 15 feet of a property line that abut a public right-of-way. Building graphics are signs that include building-mounted and roof-mounted signs."

Wilsonville Code 4.151 (3) (d) (3) a. provides for Building Graphics Signage: "The total square foot of all signs except the single address sign and the street graphics sign shall not exceed the width of the building occupied by the use advertised. The width of a building is to be measured as the longest dimension of the width or depth of the building."

Wilsonville Code 4.151 (3) (c) (2) a. provides authority of the Design Review Board "...to administer and enforce all the provisions in Section 4.151(3) as they affect the design function and appearance of the sign."

Therefore, assuming that the applicant painted color schemes are as it proposes "an important element of the company's advertising" that "aid instant customer recognition", then the painted color scheme is a sign under Wilsonville Code 4.001 (70) whose display surface is violative of the size limitations for building graphics under 4.151 (3) (d) 3.a.

The specific criteria of size rationally limits a building by virtue of the amount and color it's painted from becoming a massive, garish sign incompatible with its neighbors. This is a reasonable time, place and manner prohibition to prevent an abusive medium, and is context neutral. The thrust of Art. 1, Section 8 of the Oregon Constitution is that free speech is not to be restricted unless it becomes abusive. See Ackerly v. Multnomah County, 72 Or. App. 617, 696 P2d 1140 (1985). The maxums involved in the police power cited above to not injure the property of others are found in the design criteria also cited that building signage not only be appropriate to the type of activity to which they pertain, but also be expressive of the identity of the individual proprietors and the Wilsonville Town Center as a whole. There is an obvious need to protect the aesthetic nature and character of other properties and the identity of the Town Center. There is no less need to preserve the property values of peaceful and harmonious use from loud and offensive noise than from loud and massive signage. Each is equally abusive.

As referenced above, comprehensive planning is widely recognized as a legitimate exercise of police power to preserve property values. Because of geographic unity, focal location and its early stage of development there is a rational basis to provide for a

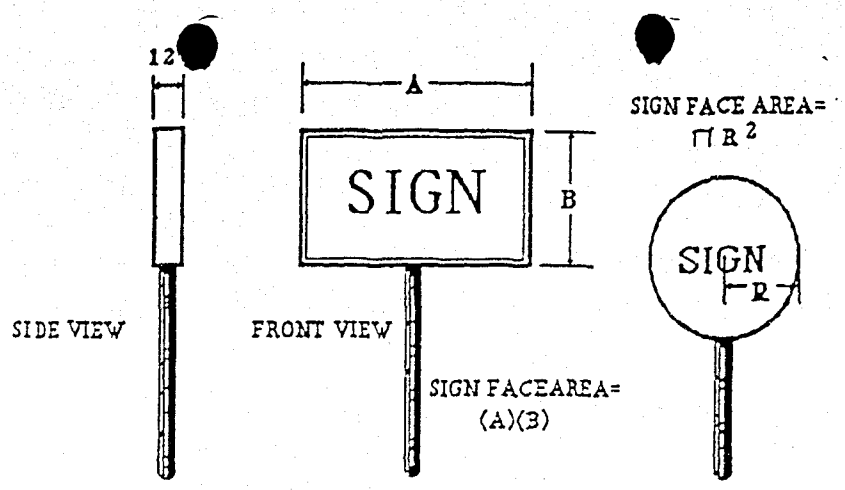
coordinated signage program which is both functional and aesthetic and to provide a method of administration through a Design Review Board for Town Center development. Clearly, this is in keeping with the multiple and often interrelated purposes set forth in 4.440 of the City's Code for Design Review Board. General criteria and standards are set forth to review site development in section 4.421, including color and material and as it relates to advertising medium that they "shall not detract from the design of proposed buildings and structures and the surrounding properties." Aesthetic sensibilities are also recognized as a sole ground and a proper subject for support of zoning regulation. See Oregon City v. Hartke, 240 Or 35, 400 Ord. 255.(1965); Naegele Outdoor Advertising v. City of Waynesville, 833 F.2d 43 (CA4 1987); Don's Porta Signs Inc. v. City of Clearwater, 829 F2d 1051 (CA11 1987).

The dynamic nature of police power is clearly seen in the contemporary, community trends to view aesthetic considerations as valid subjects for the exercise of police power. The very exercise of police power is based upon need. Modern, contemporary society has recognized that advertising in the commercial setting has historically been poorly constructed, grossly disproportionate in size or height, aesthetically disharmonious, located in manners detrimental to traffic safety, and has even obscured the rights of others to be seen, creating a need to establish reasonable time, place and manner restrictions.

On the other hand, such necessity has not risen to the same level of need to regulate the use of homes as signs. The business entrepreneurs who are willing to advertise their commercial product by virtue of using gross advertising structures in commercial areas have not historically turned their private homes into such uses. In short, the need to protect other homeowners from the detrimental effects of having the color schemes of homes turned into speech of a loud and abusive nature has not presented a public need to regulate. (Often, developers have instituted self regulation through homeowners associations in residential subdivisions). Thus, single family dwelling units are exempt from initial Design Review Board development approval. They are not exempt if and when the use involves signage. There are specific regulations which the Design Review Board has authority to govern addressing normal and typical signage within a residential use area, namely residential name plates, 4.151 (l)(a), bulletin boards, 4.151 (l)(b); real estate signs advertising individual lots, 4.151 (l)(c); subdivision signage, 4.151 (l)(d) and home occupation signage, 4.151 (l)(d). Nor is the applicant's comparison of industrial Planned Developments with the commercial developments a justification for not distinguishing the differences in the nature of uses. What may be appropriate to locate and identify industrial users and be harmonious with other surrounding industrial properties may, in fact, not be compatible with commercial uses. That basic recognition between different uses is what allows for zoning districts in the first instance.

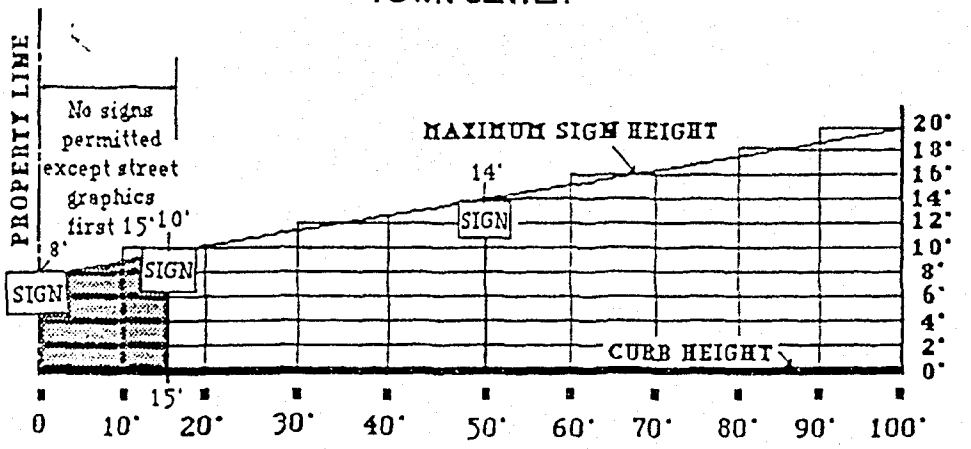
Therefore, I am of the opinion that the recommended revisions submitted by staff are reasonable time, place and manner restrictions, to prevent the use of a building as a grossly, large sign offensive to aesthetic sensibilities, coupled with the use of materials which are not harmonious with existing properties and the focal nature of Town Center to the detriment of the property of others. The regulations provide authority in the Design Review Board to act and neither as set forth or applied, are they arbitrary.

mek:pjm



SIGN FACE MEASUREMENT

TOWN CENTER



The maximum height of a sign is measured from a point 8 feet above the curb at the property line, to a point 20 feet in height or 4 feet above the roof, which ever is less.

MAXIMUM SIGN HEIGHT

EaE1aE1a
abcdefghijklmnopqrstuvwxyz
ABCDEFGHIJKLMNOPQRST
UVWXYZ
123456780&?!$(.,,.)^^><

FIG. 2

CHAPTER 4, ZONING CODE
TOWN CENTER SIGNAGE CODE
EXHIBIT "B"

City of Wilsonville
COMMUNITY DEVELOPMENT DEPARTMENT
Memorandum

November 7, 1991

TO: Blaise Edmonds, Planning
FROM: Martin Brown, Building Official
SUBJECT: DEVELOPMENT REVIEW TEAM

The following is a list of concerns for the proposed Project Thunder and the proposed Liberty Organization office/warehouse. Actual working drawings may expose additional code concerns.

THUNDER PROJECT

1. Provide a fire hydrant within 250 feet in hose-lay fashion of all exterior walls.

LIBERTY ORGANIZATION OFFICE/WAREHOUSE

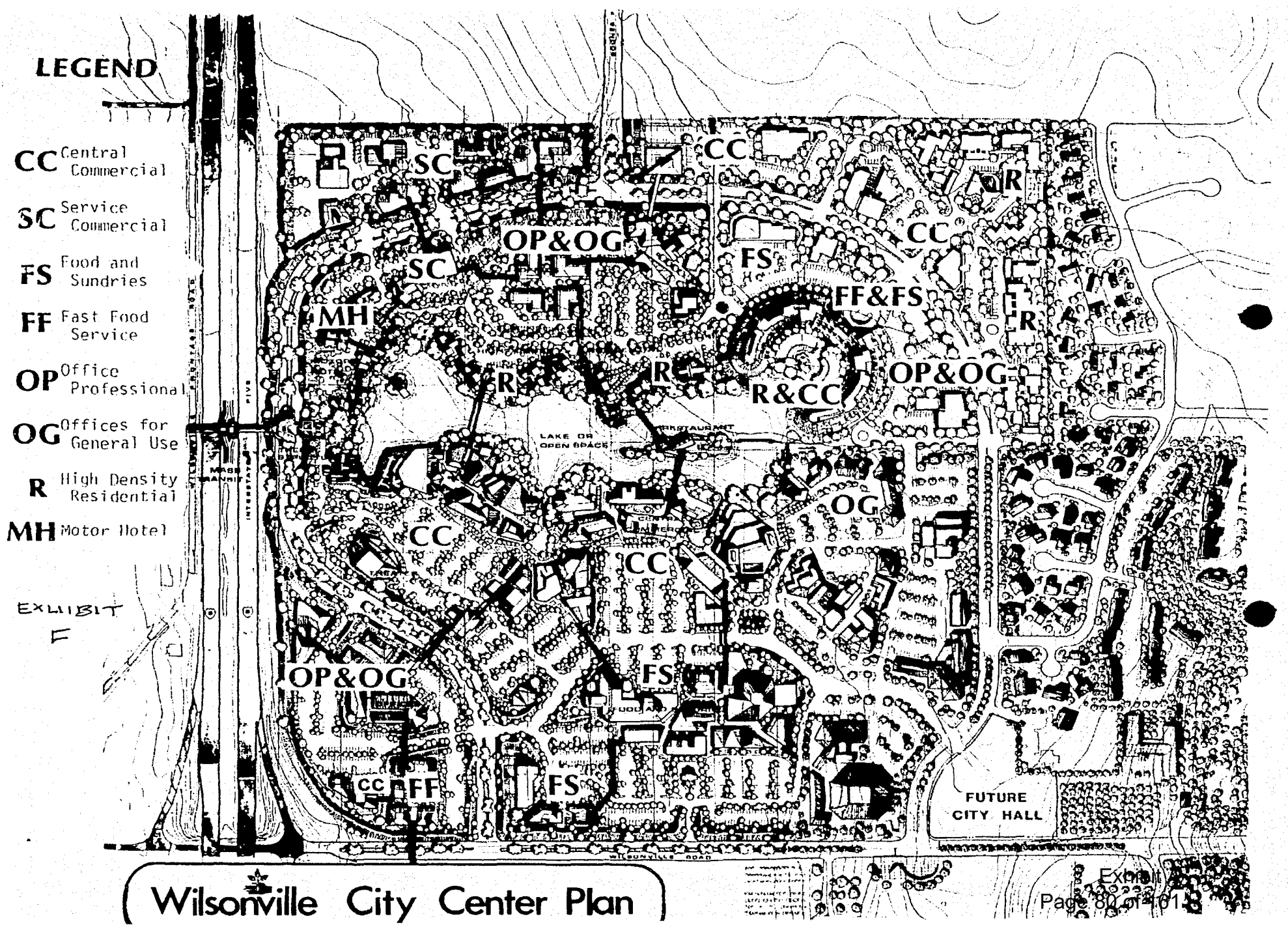
1. Provide a fire hydrant within 250 feet in hose-lay fashion of all exterior walls.

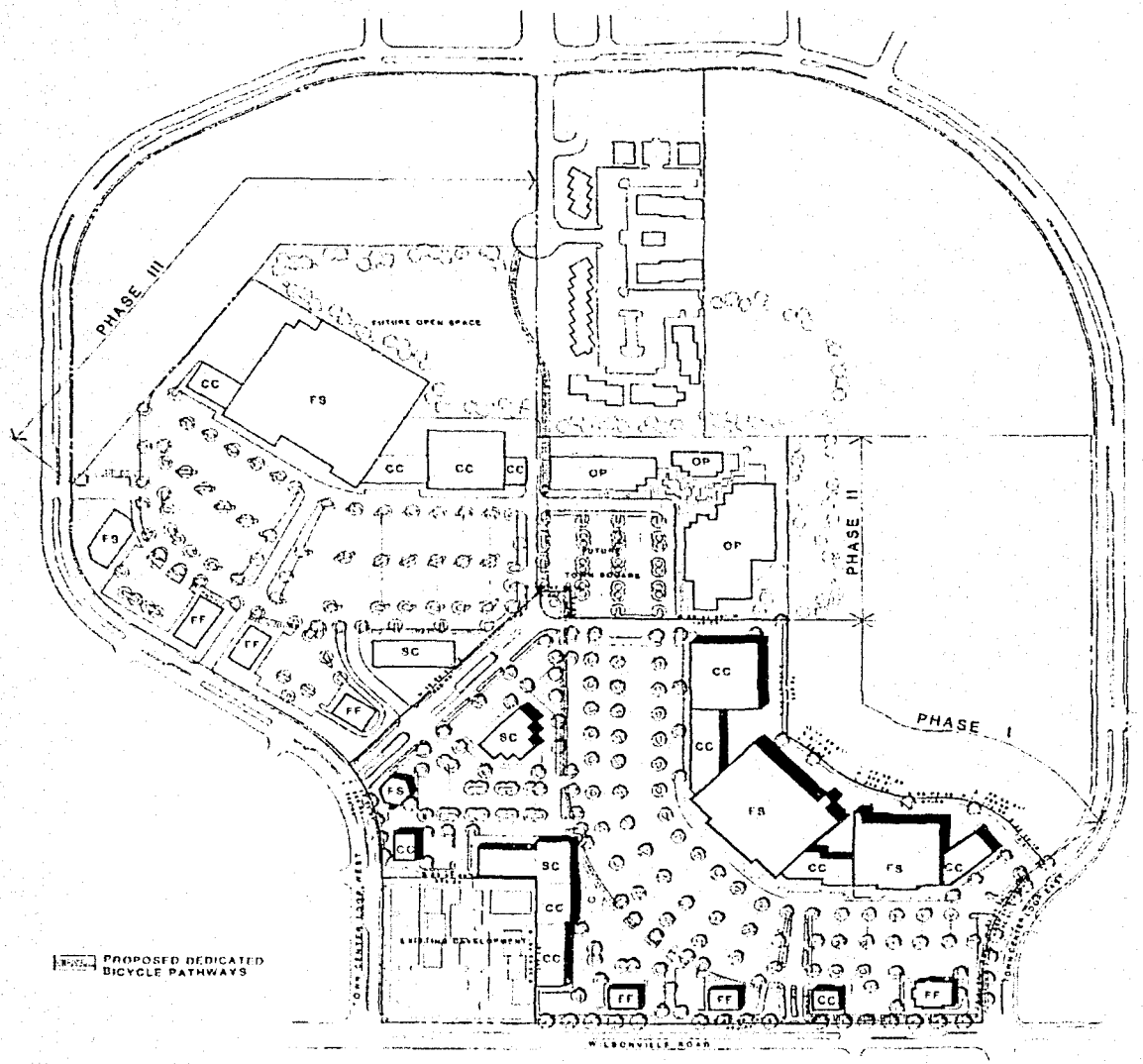
2. Proposed building shall comply with the A.D.A.

/s f

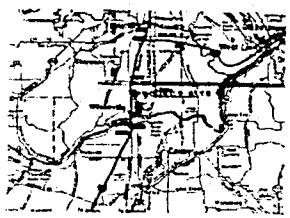
EXHIBIT E

DEFECTS IN ORIGINAL DOCUMENT


LEGEND
CC Central Commercial
SC Service Commercial
FS Food and Sundries
FF Fast Food Service
OP Office Professional
OG Offices for General Use
R High Density Residential
MH Motor Hotel
EXHIBIT F
SC
CC
OP&OG
SC
FS
FF&FS
MH
R
R
R&CC
OP&OG
LAKE OR OPEN SPACE
OG
CC
CC
OP&OG
FS
CC
FF
FS
FUTURE CITY HALL
WILSONVILLE ROAD
Wilsonville City Center Plan



1 MASTER PLAN: PHASE I, II, & III



1 VICINITY MAP

ACREAGE

PHASE I	23.17 ACRES
PHASE II	5.41 ACRES
PHASE III	22.02 ACRES
TOTAL	50.60 ACRES

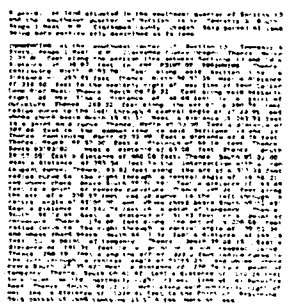


EXHIBIT H

JKS Architects P.C.

WILSONVILLE MARKETPLACE

1

EXHIBIT A 1

KITTELSON & ASSOCIATES, INC.
TRANSPORTATION PLANNING/TRAFFIC ENGINEERING
610 S.W. ALDER, SUITE 700 • PORTLAND, OREGON 97205 • (503) 228-5230 • FAX (503) 273-8169

October 16, 1991

Ms. Kim Beach
Capital Realty Corporation
101 SW Main, Suite 1500
Portland, OR 97204

RE: Traffic Analysis for Wilsonville Town Center Phase II

Dear Ms. Beach:

The purpose of this letter is to discuss the results of an update to the April 1990 Traffic Impact Analysis we conducted for the Wilsonville Town Center relative to the current phase II development proposal. Some of the specific issues that this letter addresses include:

- the level of development proposed in the current phase II submittal,
- the level of development analyzed in the April 1990 Traffic Impact Analysis,
- an update of current conditions within the vicinity of the site
- an assessment of projected conditions upon completion of the current development proposal
- an assessment of the need for a traffic signal at the Wilsonville Road/Town Center Loop West intersection upon completion of the proposed development

Based on the results of both the previous and updated analysis, the proposed development can occur while still maintaining acceptable levels of traffic operations and safety at site driveways and nearby key intersections. The significant findings and recommendations are as follows:

- The key unsignalized intersections within the study area are currently operating at an acceptable LOS during weekday evening peak hour conditions.

EXHIBIT G-7 SUPPLEMENTAL

- Upon completion of the development, the site driveways and key off-site intersections, with the exception of Wilsonville Road/Town Center Loop West, will operate within acceptable level of service limits during the evening peak hour time period.

- A traffic signal is warranted to accommodate projected 1992 traffic volumes at the Wilsonville Road/Town Center Loop West intersection. It is therefore recommended that a traffic signal be installed at this location upon completion of the proposed development.

Current Phase II Development Plans

The current phase II development plans call for the construction of a retail facility consisting of approximately 159,000 gross square feet of floor area. This development level (and substantially more) has already been accounted for in the previous traffic impact analysis. The traffic impact analysis conducted in April 1990 considered a Phase I development level of approximately 211,000 gross square feet of floor area, and a combined Phase II and III development level of approximately 451,000 gross square feet of retail space and 40,000 gross square feet of commercial office space. Therefore, the original traffic impact analysis, which evaluated conditions through the year 1995 is considered to be more than adequate in terms of its assessment of traffic impacts of the proposed development for the four year horizon. Included with this letter are 10 copies of the April 1990 Traffic Impact Analysis.

Update of Existing Conditions

Within the last week, Kittelson & Associates, Inc. obtained weekday p.m. peak hour turning movement counts at the intersections of Wilsonville Road/Town Center Loop West, and Wilsonville Road/Town Center Loop East. The results of those counts revealed that compared to the counts conducted in conjunction with the April 1990 study, traffic volumes have increased by approximately 70 percent on Wilsonville Road, by approximately 80 percent on Town Center Loop East, and have remained essentially the same on Town Center Loop West. The growth in traffic on Wilsonville Road and Town Center Loop East is due primarily to the substantial amount of residential development that has occurred within the vicinity of the site (particularly to the east of Town Center Loop East) within the past year, as well as to the development associated with Phase I of the Wilsonville Town Center.

The reason traffic volumes have remained basically the same on Town Center Loop West is likely due to the fact that the majority site-generated traffic associated with Phase I of the Wilsonville Town Center, as well as some of the site-generated traffic from the retail/office development located in the southwest corner of Town Center Loop are using the Wilsonville Town Center access drives on Wilsonville Road and Town Center Loop East. Another contributing factor may be that traffic volumes within the Wilsonville area have re-distributed somewhat since 1990. Table 1 displays a comparison of the 1990 and the current 1991 volumes.

TABLE 1
COMPARISON OF PEAK HOUR VOLUMES

Intersection	Approach	1990 Volume (Veh/Hr)	1991 Volume (Veh/Hr)
Wilsonville Rd./ Town Center Loop W.	Westbound	165	410
	Eastbound	530	785
	Southbound	295	270
Wilsonville Rd./ Town Center Loop E.	Westbound	155	300
	Eastbound	280	435
	Southbound	80	145

Based on the results of the recent p.m. peak hour traffic counts, Level of Service analyses were conducted at each of the intersections following the analytical techniques described in the *1985 Highway Capacity Manual*. Table 2 displays the results of that analysis. As indicated in the table, both intersections are currently operating at Level of Service "D" or better, which is considered acceptable by standards.

Projected 1992 Conditions

The current site plan indicates that three access driveways on Town Center Loop West will serve the proposed retail development, consisting of a main access drive, a secondary access drive, and a service drive on the north end of the development which will be limited to right-turns only. This access scheme is consistent with what was assumed in the 1990 Traffic Impact Analysis, with the exception of the north service drive. In the previous analysis, the two primary access drives were projected to operate at Level of Service "D" or better through the year 1995. Given that traffic volumes will be substantially lower in 1992 than the projected 1995 levels, all three driveways serving

TABLE 2
PM PEAK HOUR LOS
EXISTING TRAFFIC VOLUMES

Intersection	Time Period	UNSIGNALIZED	
		Reserve Capacity	LOS
Wilsonville Rd./ Town Center Loop W.	PM	113	D
Wilsonville Rd./ Town Center Loop E.	PM	299	C

the development are anticipated to operate at Level of Service "D" or better upon completion development.

Estimates of site-generated traffic for the Phase II development proposal were added to the existing traffic volumes at the intersections of Wilsonville Road/Town Center Loop W. and Wilsonville Road/Town Center Loop E. Based on that assignment, additional analyses were conducted to assess the level of service at these two intersections upon completion of the development. Table 3 displays the results of that analysis. As shown in the table, the intersection of Wilsonville Road/Town Center Loop West is anticipated to experience an "F" Level of Service, which is considered unacceptable by City standards. An examination of signal warrants contained in the *Manual on Uniform Traffic Control Devices* indicates that at least two warrants for a traffic signal will be met under projected 1992 conditions.

Based on these results, and given that background traffic volumes on Wilsonville Road are likely to continue to increase somewhat, it is recommended that a traffic signal be installed at the Wilsonville Road/Town Center Loop West intersection coinciding with the completion of the current Phase II development proposal. Based on this recommendation officials at Capital Realty Corporation have retained Kittelson & Associates, Inc. to begin the preliminary design of a traffic signal at the Wilsonville Road/Town Center Loop West intersection.

TABLE 3
PM PEAK HOUR LOS
PROJECTED 1992 EXISTING + SITE TRAFFIC

Intersection	Time Period	UNSIGNALIZED	
		Reserve Capacity	LOS
Wilsonville Rd/ Town Center Loop W.	PM	-29	F
Wilsonville Rd/ Town Center Loop E.	PM	113	D

I trust that this letter adequately addresses City staff's traffic related concerns with respect to this development proposal. If in the meantime you have any questions or comments please do not hesitate to contact me.

Sincerely,

Mark A. Vandehey
Associate

October 18, 1991

Wayne Sorenson
Planning Director, Wilsonville
City Hall
P. O. Box 270
Wilsonville, OR 92070

Dear Mr. Sorenson:

Re: Request for Modification of Condition of Approval No. 90PC15

On behalf of the Owner, Capital Realty Corp., we request a reconsideration of Condition No. 8 of Planning Commission Resolution No. 90PC15 to provide the opportunity for Capital Realty to work with the City to accomplish the following:

1. Develop a design for the conceptual Wilsonville Town Center open space that allows for the participation of the appropriate City staff and commissions,

2. To formulate a development plan and time frame consistent with the development of Phase II and III of the balance of the Wilsonville Town Center property, and

3. Determine Capital Realty's financial obligation and any credits related thereto.

Concurrently submitted to you are Stage I Master Plan Re-submittal and Stage II, Phase II of the Center. We feel that they have a bearing on this condition and warrant review.

Thank you for your consideration, if you have any questions, please call.

Very truly yours,

Richard S. Brooks, AIA
Project Manager

bc

C:\BC\RSB\WTC-1017.PM

JKS Architects PC
1620 S.W. Taylor Street, Suite 200
Portland, Oregon 97205
503-227-5616 • 800-292-5400 • FAX 503-227-3590

EXHIBIT G-8

Stage I Master Plan Re-submittal
Wilsonville Town Center—Wilsonville, Oregon

1. Nature of Application:

This is a re-submittal for Stage I Master Plan approval for a proposed retail development of 59.79 acres, to be located adjacent to, and north of Wilsonville Road spanning from the southeast portion of Town Center Loop East, the inner portion of Town Center Loop West, north to the intersection of the Loop West and Parkway in that area previously designated as The Wilsonville Town Centre.

The Applicant:

Seeks to develop the site as a community shopping center. The center, at full build out would consist of approximately five larger retail commercial anchor stores, infill retail commercial space and pads located independently from the central retail complex for commercial retail development.

The proposed development includes a total building area of approximately 500,000 square feet constructed in three phases.

Phase I

The existing development of Phase I will include retail commercial space of approximately 207,130 square feet oriented primarily to Wilsonville Road. The Phase I Center consists of three anchor tenants, including major grocery and drugstore tenants, with infill commercial retail shop space and several pads at the periphery for retail uses. Parking for Phase I is 1,063 spaces at a ratio in excess of five spaces per 1,000 square feet of gross leasable area. The third anchor and several of the pads are as yet un-built.

The initial development provides two full-turning accesses along Town Center Loop; one at the eastern end of the development near Wilsonville Road, and the other off Town Center Loop West, which is a heavily landscaped entry boulevard, that in later phases will become the central identified main entry to the fully built-out center. Further, a secondary full turn access is proposed at Town Center Loop West and the Northern boundary of the existing retail center; and finally in Phase I, a right-in-right-out access at mid-site on Wilsonville Road, which is temporarily a full access entry until development to the south of Wilsonville Road completes construction of the final road design.

EXHIBIT 69

1. Nature of Application: (cont'd)

Phase II:

The proposed Phase II development is one retail user of approximately 159,400 square feet located on 14.75 acres primarily fronting Loop Road West. Phase II is to be built and developed by a separate owner other than Capital Realty Corp. Capital Realty, however, maintains its right of review for compliance with the concept and intent of the Town Center retail development. Approximately 872 parking spaces are provided (see Stage II Submittal attached).

Phase III:

The proposed development of Phase III includes retail commercial space of approximately 143,568 square feet completing the connection to Phases I and II. The Phase III development would consist of one large retail anchor tenant, retail pad tenants, and a two-story professional office building oriented at the end of the main entrance boulevard.

The parking development for Phase III, approximately 980 spaces, brings the total parking count to 2,915 spaces, serving the proposed 510,000 square feet of gross building area.

2. Property Description:

The property is located north of Wilsonville Road, east of Interstate 5, and west of City Hall. The property is located on the following parcels:

Parcel 1: 19.73 acres
Tax Lots 600 and 601, Section 13, Township 3 south, Range 1 west, Willamette meridian, situated in the City of Wilsonville, County of Clackamas, State of Oregon.

Parcel 2: 4.37 acres
Tax Lot 500, Section 13, Township 3, south, Range 1 west, Willamette meridian, situated in the City of Wilsonville, County of Clackamas, State of Oregon.

2. Description (cont'd)

Parcel 3: 25.96 acres
Tax Lots 200, 300, and 405, Clackamas County Map 3-1W-14D and ownership interests in a triangle of land approximately 6,381 square feet on the west of Tax Lot 200.

Parcel 4: 9.73 acres
Tax Lots 101, 201, and 102 Clackamas County Map 3-1W-14D

3. Plan Designation and Zoning:

The subject site is designated commercial on the comprehensive plan map and zoned Planned Development Commercial on the zoning map. The site, being situated within the Wilsonville Town Center master Plan map, has underlying use designations indicating CC Central Commercial, FS Food and Sundries, OP Office Professional, FF Fast Food Restaurant, R high density residential, and open space.

The intent of our proposal is to accomplish the mix of other desired and designated uses within the boundaries of our development. We feel our plan as submitted is consistent with the comprehensive plan goals and with the Town Center Master Plan.

October 18, 1991

Wayne Sorenson
Planning Director, Wilsonville
City Hall
P. O. Box 270
Wilsonville, OR 92070

Dear Mr. Sorenson:

Re: **Stage I Re-submittal Master Plan Approval Wilsonville Town Center**
Stage II, Phase II Submittal

On behalf of Capital Realty Corp., and the owners of properties so designated as comprising the development area, we are re-submitting this application for a Stage I Master Plan Approval for a 59.79 acre commercial center and Stage II approval for the Phase II 14.75 acre site.

As you may be well aware, Phase I of this plan has been completed in part. The economics of the region and the country have impacted the nature of the project as originally planned. This re-submittal represents those pressures, and at the same time expands the size of the project while maintaining the original intent of mixed uses as outlined in the Wilsonville City Center Plan.

Capital Realty has the opportunity to bring to the Town Center project a major, innovative retail anchor which will comprise all of Phase II. This parcel will be sold to a separate user for which application for Stage II, Phase II is attached. Their progress and subsequent design submittals will be reviewed and monitored by Capital Realty.

The addition of this anchor, at this time will serve as a catalyst for the completion of Phase I buildings as well as increase the desirability of Phase III tenants. This, in effect, will improve the success of the entire City Center Plan to the benefit of Wilsonville as a whole.

JKS Architects PC
1620 S.W. Taylor Street, Suite 200
Portland, Oregon 97205
503-227-5616 • 800-292-5400 • FAX 503-227-3590

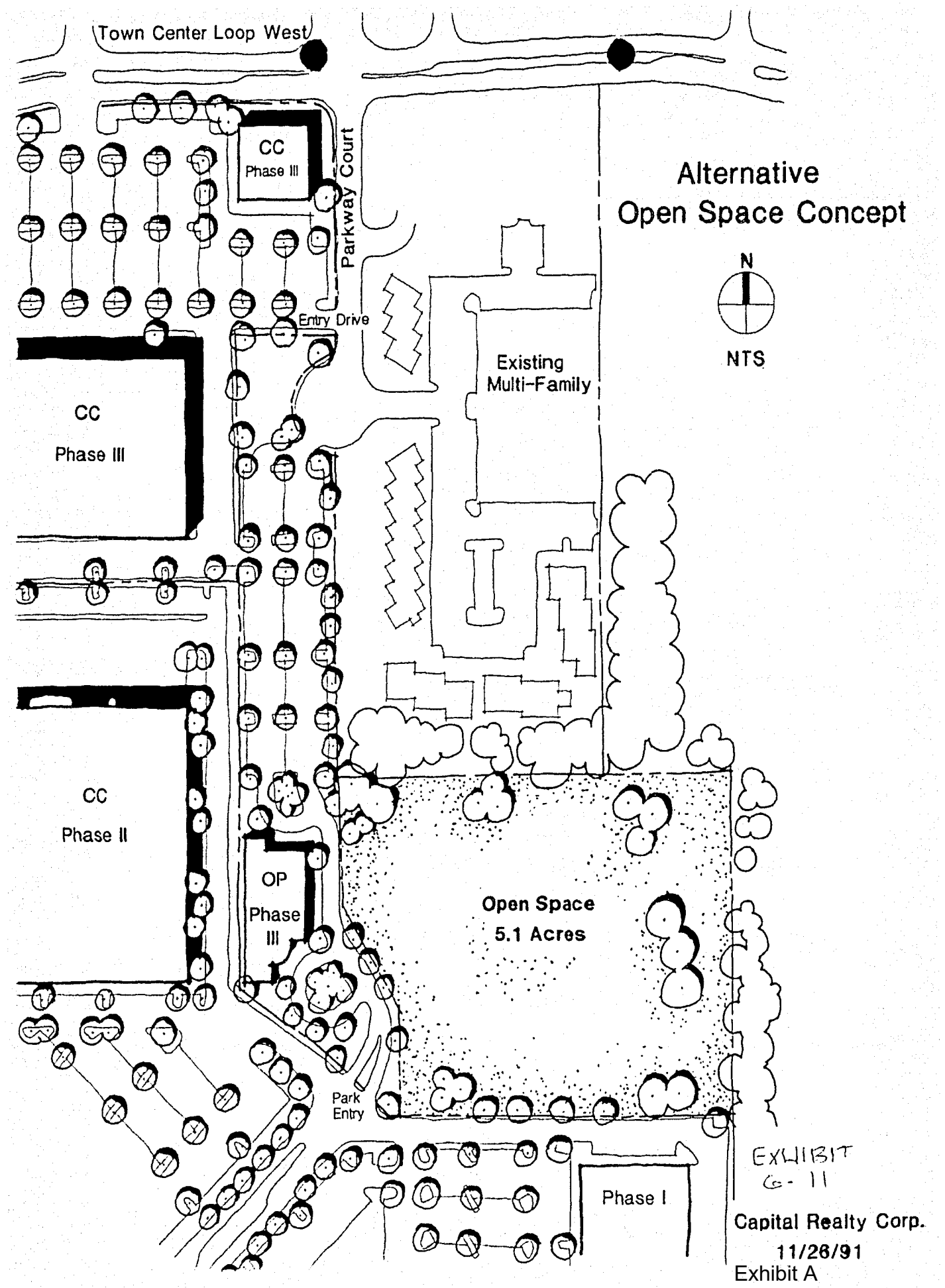
EXHIBIT
6-90

We are always available to answer questions to aid you in your analysis of this re-submission and its compliance with the current conditions of approval. This project represents a long-term commitment on the part of Capital Realty in the development of a strong, successful center for Wilsonville which will serve the needs of all its citizens. Thank you for your's and the City Staff's time, energy and cooperation towards the realization of this project.

Sincerely,

Richard S. Brooks, AIA
Project Manager

bc


Town Center Loop West
CC
Phase III
Parkway Court
Alternative
Open Space Concept
N
NTS
Entry Drive
Existing
Multi-Family
CC
Phase III
CC
Phase II
OP
Phase
III
Open Space
5.1 Acres
Park
Entry
Phase I
EXHIBIT
G-11
Capital Realty Corp.
11/26/91

AS REVISED
11/19/92

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PROJECT THUNDER
Wilsonville, Oregon
Design Review Board
January 27, 1992 Meeting 1R
REVISED GENERAL COMMENTARY:

Project Thunder is a single story building with mezzanine, 166,495 GSF retail sales building, with accessary storage areas. Project Thunder is a new concept in merchandising with this location selected for the pilot program.

Enclosed is data that we believe supports the design concepts expressed, outlines the project exterior signage program; building architecture, materials and colors. The project exterior lighting program, the project landscaping and site improvements information is shown on the revised drawings included with this additional submittal.

As per phone conversations with Blaise Edmonds, Associate Planner, the materials and colors sample board will be presented at the evening of the actual meeting. It will not be forgotten. We will provide a sample board of wall elements, as requested, as soon as we receive material samples from the manufacturers involved.

Enclosed within this booklet are color photocopies of the revised color scheme, two views, plus the proposed parking lot light standards with the directory signage of aisle indicators. Also enclosed is a new drawing titled "View Corridor Concept." Submitted separately are revised drawings DRBC1, DRBC2, DRB1, DRB2, DRB3, and DRBL1.

We believe we meet all known City of Wilsonville ordinances in regards to architecture, landscaping and site improvements. There are no signage variances required. We do request a deviation from the Phase I signage program as explained following. Since our reconsideration of the signage program has eliminated all variances we request reimbursement of the variance fees previously paid.

We request the Design Review Boards consideration of Project Thunder, as resubmitted.

Sincerely,

James L. Faulkner, AIA
Senior Vice President, Architecture

JLF:dr

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ARCHITECTS

PROJECT THUNDER
Wilsonville, Oregon
Design Review Board
January 27, 1992 Meeting 2R
MATERIALS/COLORS DIALOGUE:

The general concept of the project design aesthetic is to create a vibrant and lively shopping environment, having this a "fun place to be". This concept is visualized to the shopper by the dynamic main facade of the building by three means: building form, materials selected and colors used.

The basic building background material is an "Exterior Insulation and Finish System", common name used Dryvit. While proprietary, we will use this term in this discussion. The Dryvit will be in a field color of light beige (neutral) with dark green color Dryvit used as a horizontal accent band on the North and West elevations. Dark green will also be used at the curved wall element of the primary building entry and exit points on the West elevation. The Dryvit will be on all sides of the building, scored in the patterns indicated on the elevations. Use of the dark green color relates this project to the Phase I buildings.

To compliment the Dryvit field, and to help to reduce the scale of this building, a horizontal band of metal siding, in a light bronze color with 50% reflectivity is expressed on the West, North and South elevations. This metal siding is a vertical pattern with vertical "grooves" 6" o.c. On the East elevation, the color and position of the metal siding is simulated by use of Dryvit accent band.

To accent and provide visitor orientation to the entry area, an open "dome" of steel framing, painted red, is mounted on the roof. Coupled with the curved element wall, this designates the building entry area. At grade the curved element concept is carried forward with curved concrete curbs, radial lined concrete walkways and flagpoles/bollards in a circular centerline aligning with the curved wall element at entry. The flagpoles are 25'-0" high, natural aluminum color, and will fly solid color flags or nylon banners. The non-illuminated bollards are 42" high, 10" diameter pipe painted light beige. Bollards around entry points will be internally lighted, and be painted red.

To further designate entry points, clear glass in natural aluminum storefront framing is located adjacent to the curved element entry area, and also occurs at the building service entrance and other secondary entrance points.

The overhead doors will be solid, insulating units without windows, painted light beige. Other secondary doors will be hollow metal painted to match adjacent wall color. Miscellaneous site items such as handrails will be painted black.

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PROJECT THUNDER
Wilsonville, Oregon
Design Review Board
January 27, 1992 Meeting 3R

The following are our calculations of area for the Project Thunder Signage Program:

Wall Graphics:

Single face, backlit signs:

Store Name Sign*:	1 Each at 224 SF	=	224 SF
Fascia Sign: "Service":	1 Each at 12 SF	=	12 SF
Fascia Sign: "Customer Pickup":	1 Each at 28.5 SF	=	28.5 SF
Fascia Sign: "Car Stereo Installation":	1 Each at 40.5 SF	=	40.5 SF
TOTAL WALL GRAPHICS AREA			305 SF

* This sign of channelume construction with individual letters for the word "UNIVERSE"; the word "INCREDIBLE" is in script neon.

There are miscellaneous directional signs on site, i.e. stop signs, that are under 2' x 2' in size, single face, non-illuminated and pole mounted. These include the Parking Lot Aisle Indicator Signs: 12 each at 8 SF = 96 SF. These are shown on sheet DRBC1, but are not included in signage area calculations.

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PROJECT THUNDER
Wilsonville, Oregon
Design Review Board
January 27, 1992 Meeting 4R

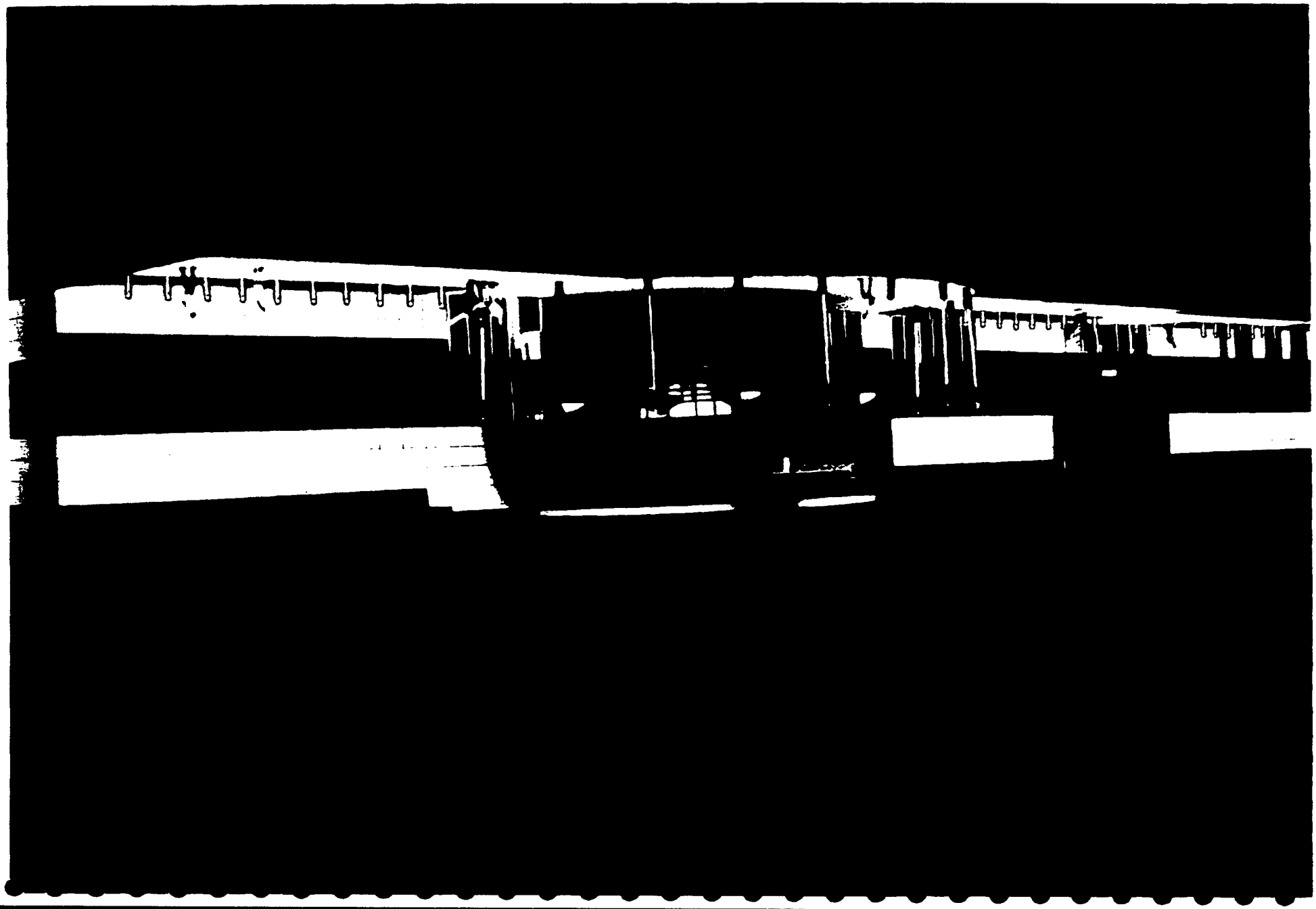
We request the consideration of the Design Review Board for a deviation from the Phase I, Wilsonville Town Center Signage program, as follows:

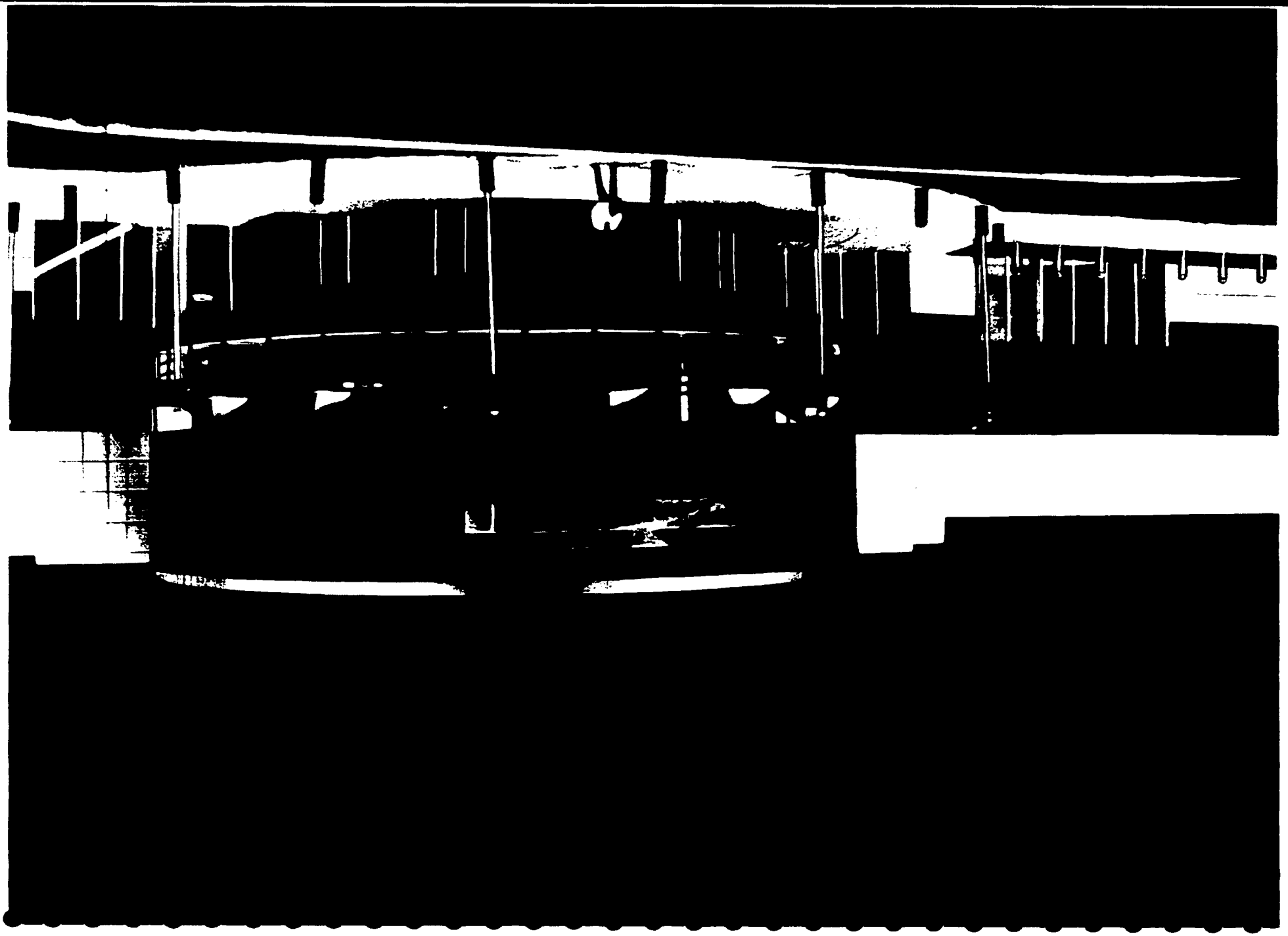
- Deviation #1 from Phase I signage program for sign construction method

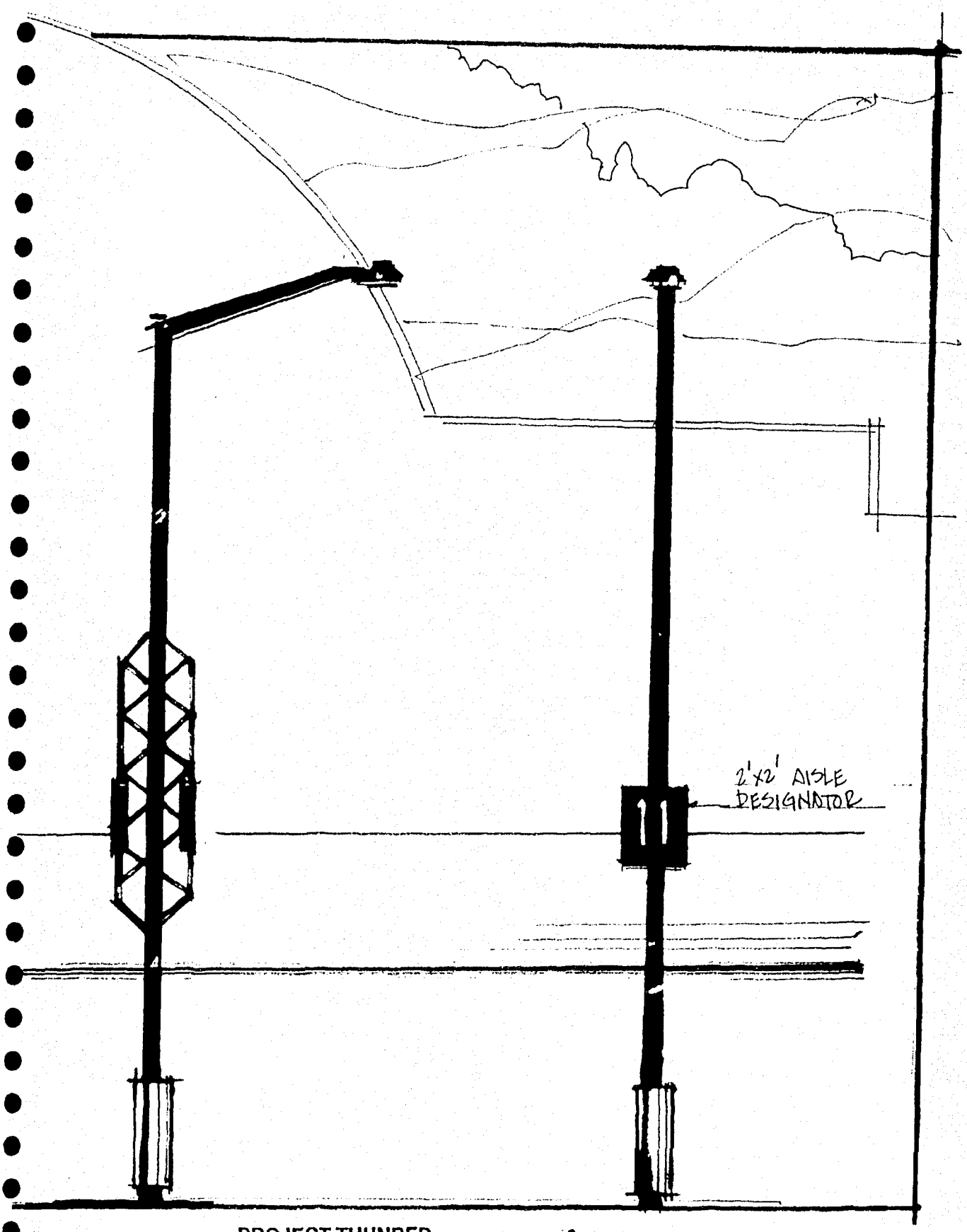
Deviation #1 from Phase I signage program for Wilsonville Town Center

We request this deviation from the approved program for the purpose of changing the method of construction for the 3 fascia signs (aggregate area approximate 81 SF) to be consistent with our design idiom. We feel our approach of a fascia panel type sign, back lit, cutout individual letters, appearing to be in a larger horizontal band to be of more benefit to this architectural design. Individual channel construction is not an appropriate usage in this application.

DEFECTS IN ORIGINAL DOCUMENT







PROJECT THUNDER
Wilsonville, Oregon
Design Review Board
January 27, 1992 Meeting

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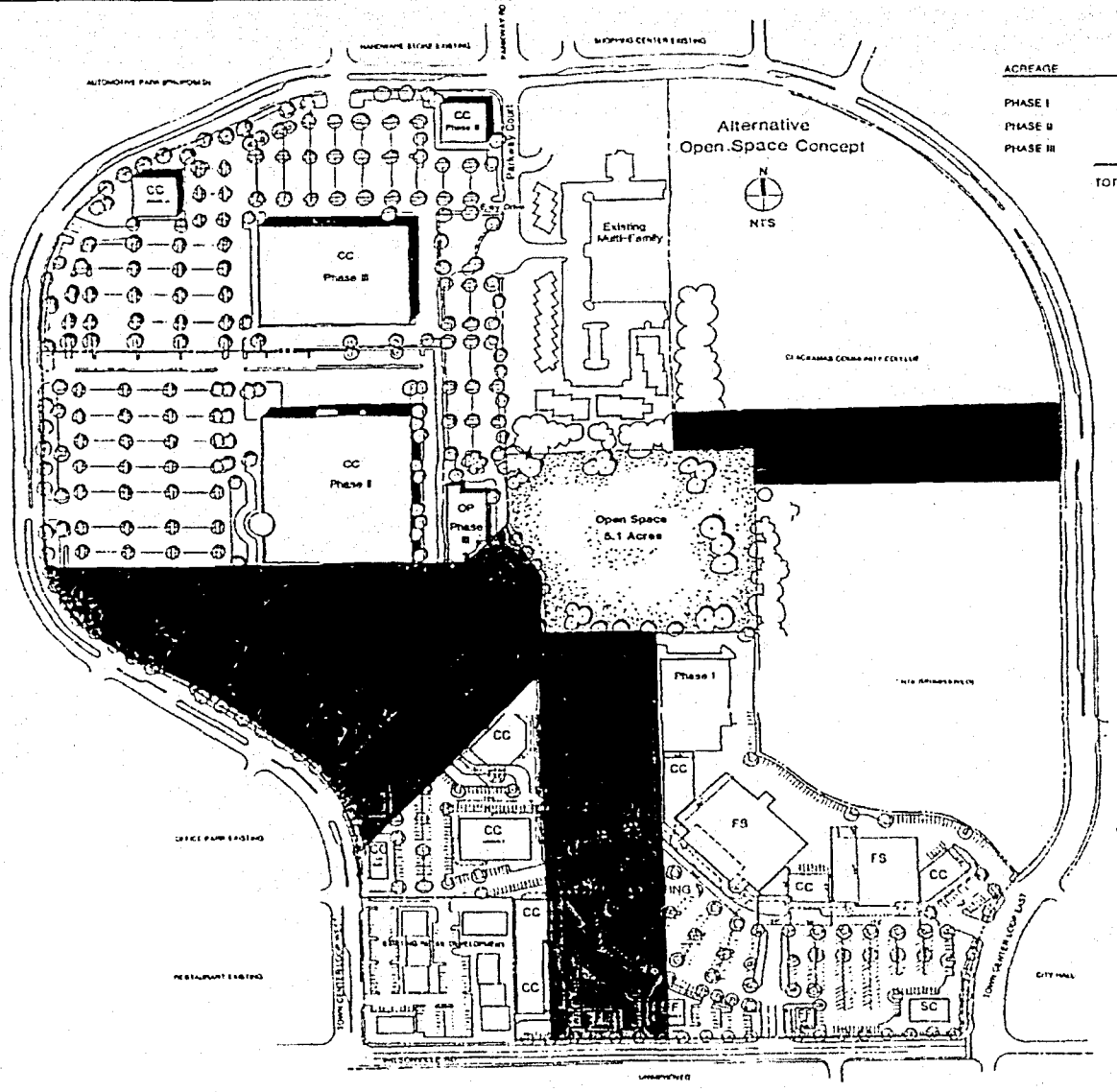
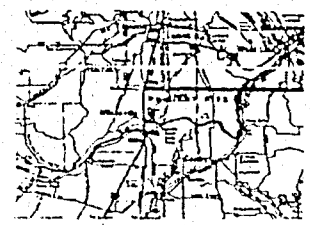
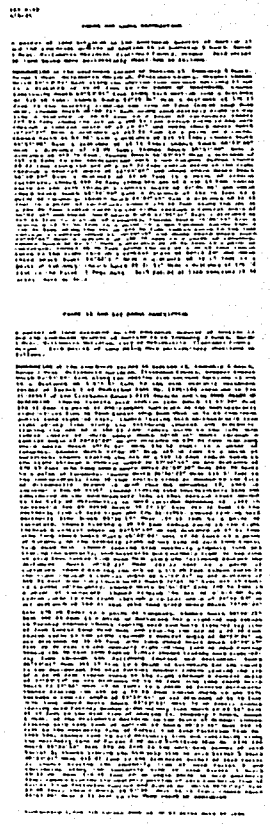


ACREAGE	
PHASE I	22.96 ACRES
PHASE II	14.75 ACRES
PHASE III	22.08 ACRES
TOTAL	59.79 ACRES



VICINITY MAP



SITE MASTER PLAN: PHASE I, II, & III

VIEW CORRIDOR CONCEPT

1-6-92

JKS Architects PC

WILSONVILLE TOWN CENTER

WILSONVILLE, OREGON

1

DesignForum

LETTER OF TRANSMITTAL

From: William F. Bergman, AIA
Design Forum
3484 Far Hills Avenue
Dayton, OH 45429

To: Mr. Blaise Edmonds
Associate Planner
City of Wilsonville
8445 S.W. Elligsen Road
Wilsonville, OR 97070

We are sending you:

- [ ] Prints
- [ ] Plans
- [ ] Estimates
- [ ] Shop Drawings
- [ ] Copy of letter
- [ ] Samples
- [ ] Comps Prototypes
- [ ] Photography
- [ ] Specifications
- [ ] Keylines
- [ ] Layouts
- [ ] _____

COPIES	DATE OR NO.	DESCRIPTION
2	10/28/91	Preliminary Prints of First Floor and Mezzanine Floor Plans

- [X] For your use
- [ ] For approval
- [X] As requested
- [ ] For review & comment
- [ ] Approved & noted
- [ ] Construction approval
- [ ] Returned for corrections
- [ ] Returned after loaned to us
- [ ] Return _____ corrected prints
- [ ] Submit _____ copies for _____
- [ ] Resubmit _____ copies for _____
- [ ] For bids due _____
- [ ] _____

Remarks:

Signed: William F. Bergman
William F. Bergman, AIA
Project Architect

Date: 10/28/91

cc: Rich Hollander
Marla

MEMORANDUM

TO: Development Review Team DATE: October 21, 1991

FROM: Blaise Edmonds, Associate Planner, City of Wilsonville.

Please review the enclosed Site Development Plans for the following projects:

1. Thunder project (retail anchor store).
2. Office and warehouse, Liberty Organization, applicant.
3. Comprehensive plan amendment, Mr. Marvin Wagner, applicant.

Your review should focus on the technical aspects required for development. In addition, please comment on any other issue that may affect approval as proposed.

Please submit written comments or requirements to the Planning staff by Nov 15, 1991, so that my review can be more complete.

W&H PACIFIC
1099 S.W. Columbia Street
Portland, Oregon 97201

Blaise

MEMORANDUM

TO: Blaze Edmonds, Associate Planner
City of Wilsonville

FROM: Rick Martin, P.E.
W&H Pacific

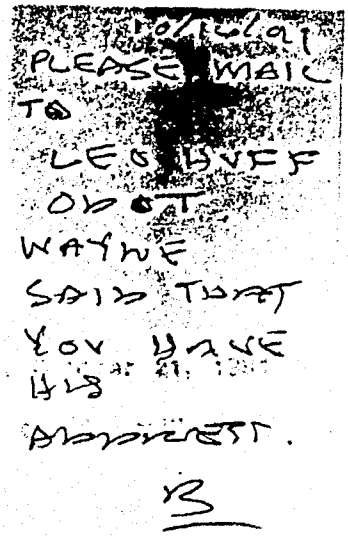
DATE: October 18, 1991

RE: Phase Two Development - Storm Drainage
Wilsonville Town Center

The Phase Two development will require the existing drainage detention pond be filled due to construction of required parking areas. It should be noted that drainage calculations completed for Phase One development took into account that the detention pond will be eliminated with future development in the proposed Phase Two area.

Final Phase Two development design will provide connections to the existing storm drain system currently terminating at the pond. Refer to the Phase Two Utility Plan submitted with this application.

Blaise—
I understand
W&H says 150 cfs
for Town Center to 90 with
48" culvert — is there
more from other properties—
if so how does that affect
park drainage — if not
know & if not Dube probably
need to make sure all
info is available before
abandoning on site retention—
could keel a plus as a water
feature for Town Center
Mike.
cc. Steve Shaner



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W&H PACIFIC
1099 S.W. Columbia Street
Portland, Oregon 97201

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TO: Blaze Edmonds, Associate Planner
City of Wilsonville

FROM: Rick Martin, P.E.
W&H Pacific

DATE: October 18, 1991

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Creative Solutions ... Superior Service

W&H PACIFIC
1099 S.W. Columbia Street
Portland, Oregon 97201
(503) 227-0455
Fax (503) 274-4607
• Planning • Surveying • Environmental Services
• Engineering • Landscape Architecture

To: Blaise Edmonds
Pam Emmons
City of Wilsonville, Annex
30000 SW Town Center Loop ~~East~~
Wilsonville, OR. 97070

Date: 10/16/91
Project Number: 467-6301
Project Name: PROJECT THUNDER
Regarding:

PLEASE NOTIFY US IMMEDIATELY AT (503) 227-0455 IF THERE ARE ANY PROBLEMS RECEIVING THIS TRANSMISSION

We Are Sending:	These Are Transmitted:	Copied To:
☐ Attached	☒ For Your Info/File	
☒ Facsimile 682-7025	☐ As Requested	
3 Number Of Pages Including Cover	☒ For Review And Comment	
☐	☐	

Copies	Description
1 ea.	Minutes of 10/14/91 Meeting

Comments

Blaise & Pam

We'll see ya tomorrow w/13 FOLDED sets of drawings ...

Please call if you have any questions during the review/application acceptance. This submittal date & scheduling of hearings is vitally important ... Thanks

Signed Pam Jones

W&H PACIFIC
1099 S.W. Columbia Street
Portland, Oregon 97201

MEMORANDUM

October 15, 1991

TO: Kim Beach, Capital Realty Corp.
Bill Bergman, Design Form Architects
All in Attendance

FROM: Tom Jones

RE: MINUTES OF MEETING WITH THE CITY OF WILSONVILLE
OCTOBER 14, 1991, 4:00 P.M. TO 5:05 P.M.
PROJECT THUNDER
4-467-0301; 4-755-0101

ATTENDEES: Tom Jones, W&H Pacific
Rick Martin, W&H Pacific
Pat Marquis, W&H Pacific
Logan Cravens, JKS Architects
Blaise Edmonds, City Planner
Pam Emmons, Planning Assistant

The following was discussed regarding the project in preparation for the Friday, October 18th submittal.

STAGE ONE SUBMITTAL

1. The site plan prepared by JKS should show:
   a. Revised project phasing
   b. Open space area as previously shown as a condition of approval from initial submittal.
   c. Specific "Town Center" land use designations must be shown for the northerly portion of the site not previously included and for any changed designations from the original submittal for Phases II and III.

2. Submit ten (10) copies of the original Traffic Report and provide an Executive Summary outlining any revisions to the initial projections and provide a summary that addresses the level of service "D" or better at surrounding intersections. Review the Parkway/Loop Road intersection.

3. Show existing adjacent land uses (i.e., vacant or improved) and the names of key surrounding developments for the Planning Commission orientation. Show only existing improvements not proposed.

4. Capital Realty must provide an updated list of addresses and property owners within 250 feet from the project.

5. Capital Realty must submit the Certification of Assessments and Liens form with the application. This is to determine if the tax lots included owe money to the City. Contact Atta Curser for clarification.

6. All property owners must sign the application.

7. Application fees:
   a. Stage One Submittal: $500.00
   b. Stage Two Submittal: $250.00 plus $25 per acre (Project Thunder is 14.98 acres)
   c. Application fee for Friday: ($500 + $250 + $375 = $1,125)
   d. Design Review: $250 plus a fee for the master signage plan review.

STAGE TWO SUBMITTAL

1. Design of site signs are not required to be submitted until Design Review submittal of December 6th.

2. Landscape design needs to show planting areas, significant trees and plaza areas. Plant list is optional.

3. Grading calculations and storm drainage calculations are not required for Friday's submiual according to Blaise. Grading plan should show existing contours and general grading concept.

4. Utilities design should be kept schematic. Graphically illustrate the utility alignments that will require easement vacations and relocation.

5. Architectural elevations can be conceptual in detail. Planning Commission is only concerned with general massing and quality of appearance. Materials and color board to be submitted at Design Review.

6. If waivers to the City development standards are anticipated, be specific with your request and how it would be consistent with other surrounding project development standards.

GENERAL COMMENT

The two issues that will be of the most interest to the Planning Commission will be traffic and the implementation of the open space. We should develop a clear strategy to present to the Commission prior to the December 9th hearing addressing these two issues.

The meeting notes represent comments that have been paraphrased as accurately as possible. The notes will be held as an accurate and true account as to intent unless notice to the contrary is set forth within 10 days of the date above.

W&H PACIFIC

Creative Solutions ... Superior Service

FAXED 10/17/91

1099 S.W. Columbia Street
Portland, Oregon 97201

(503) 227-0455
Fax (503) 274-4607

• Planning • Engineering • Surveying • Landscape Architecture • Environmental Services

To: Blaise Edmonds
Pam Emmons
City of Wilsonville, Annex
30000 SW Town Center Loop ~~EAST~~
Wilsonville, OR. 97070

Date: 10/16/91
Project Number: 967-6301
Project Name: PROJECT THUNDER
Regarding:

PLEASE NOTIFY US IMMEDIATELY AT (503) 227-0455 IF THERE ARE ANY PROBLEMS RECEIVING THIS TRANSMISSION

We Are Sending:
- ☐ Attached
- ☒ Facsimile 682-7025
- 3 Number Of Pages Including Cover

These Are Transmitted:
- ☒ For Your Info/File
- As Requested
- ☒ For Review And Comment

Copied To:

Copies	Description
1 es.	Minutes of 10/14/91 Meeting

Comments

Blaise & Pam

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Signed Pam Jones

DesignForum
ARCHITECTS

Project Thunder
Wilsonville, Oregon
Project No. 91702.03
Pre-Application Conference
October 8, 1991

In Attendance:

Pam Emmons	City of Wilsonville, Associate Planner	WSV	503-682-4960
Martin Brown	City of Wilsonville, Building Official	WSV	503-682-4960
Steven Starner	City of Wilsonville, Community Development Dir.	WSV	503-682-4960
Jim Long	City of Wilsonville, Design & Survey Technician	WSV	503-682-4960
Doug Seely	Real Estate Investment and Sales	REI	503-655-7631
Jim Parsons	Grubb & Ellis	GEI	503-241-1155
Jim Faulkner	Design Forum Architects	DFA	800-835-4401

Item No.	Action	Item
1.10	CAP/WHP	Storm drainage is an issue. Calculations and 25 year storm design for Phase II master plan must be submitted with application by October 18, 1991 deadline. The connection for metered release to interstate highway from existing retention pond and the retention pond itself will be eliminated. According to Wayne Bauer of Wilsey & Ham Pacific, Civil Engineers for Phase I development of the site, the new storm sewer system was designed to accommodate this. The city would like to see calculations supporting this.
1.2	CAP/KAI	According to the city, a traffic light at Wilsonville Road and Town Center Loop West is now warranted. The north intersection at Town Center Loop East and West at Parkway Avenue needs to be addressed in traffic study.
1.3	DFA	The currently approved master plan calls for "Food and Sundries" (FS) and "Central Commercial" (CC). These zoned uses are compatible with the desired development of Project Thunder. No rezoning is necessary, however, currently approved uses will have to be redistributed on the site.

3484 Far Hills Avenue, Dayton, Ohio 45429 Telephone: (513) 298-4400 Fax: (513) 294-2842

DesignForum
ARCHITECTS

Project Thunder
Wilsonville, Oregon
Project No. 91702.03
Pre-Application Conference
October 8, 1991

1.4	ALL	The Stage I and Stage II planning review applications will be made simultaneously on October 8, 1991, and be reviewed simultaneously at the Planning Commission on December 9, 1991.
1.5	GEI	Hearing notification list for all property owners of record within 250 foot of any point on property (not including street widths) must be presented with October 18, 1991 submittal. Notification does not have to cross interstate highway. The city will send the notices. Jim Parsons will obtain list from assessors office or from a title company.
1.6	DFA	The signage theme from Phase I should be carried through Phase II. Sign issues are handled by the Design Review Board. Setback issues are handled by the Planning Commission.
1.7	DFA/WHP	The building is designed utilizing the "unlimited area" provision of the code. A sixty (60) foot minimum distance from all property lines and an approved automatic sprinkler system throughout will be provided to accommodate this provision.
1.8	TNB	There is a ten (10) day appeal period following design review approval. Normal procedure is such that no work should be commenced during the appeal period. Due to the tight schedule for this project and the need to utilize every available good weather period for site escavation, an option for work during the appeal period was discussed. A "hold harmless" agreement from owner in favor of the City of Wilsonville, enabling work to start immediately after design review approval during the appeal period at the sole risk of the owner has been used in the past to facilitate an early start.

DesignForum
ARCHITECTS

Project Thunder
Wilsonville, Oregon
Project No. 91702.03
Pre-Application Conference
October 8, 1991

1.9	WHP	For any construction to begin, fire hydrants must be installed to within 250 feet of any point of the exterior wall of the building. Work should begin immediately to obtain Public Works approval and have installation complete by scheduled start of construction, February 1, 1992.
1.10	ALL	The required completion date of construction necessitates a start date for construction of February 1, 1992. For this to happen, working drawings and specifications would have to be accomplished prior to design review hearing date of January 27, 1992. To minimize risk of changes to completed documents, a partial permit (foundation permit) can be applied for at a cost of $250.00. This would allow work to begin while balance of documents are being prepared. The review time for foundation and underground utilities permit is approximately three weeks, so documents should be submitted by January 10, 1992 for a February 1, 1992 start of construction.
1.11	DFA	The zoning height limitation for any point of the building is 35'-0". Design Forum will check with Blaise Edmonds regarding height of dome feature with center pole.
1.12	DFA	Elevations and material, color and finish boards must be submitted with Design Review Board application by December 6, 1991 deadline for hearing date of January 27, 1992.

DesignForum
ARCHITECTS

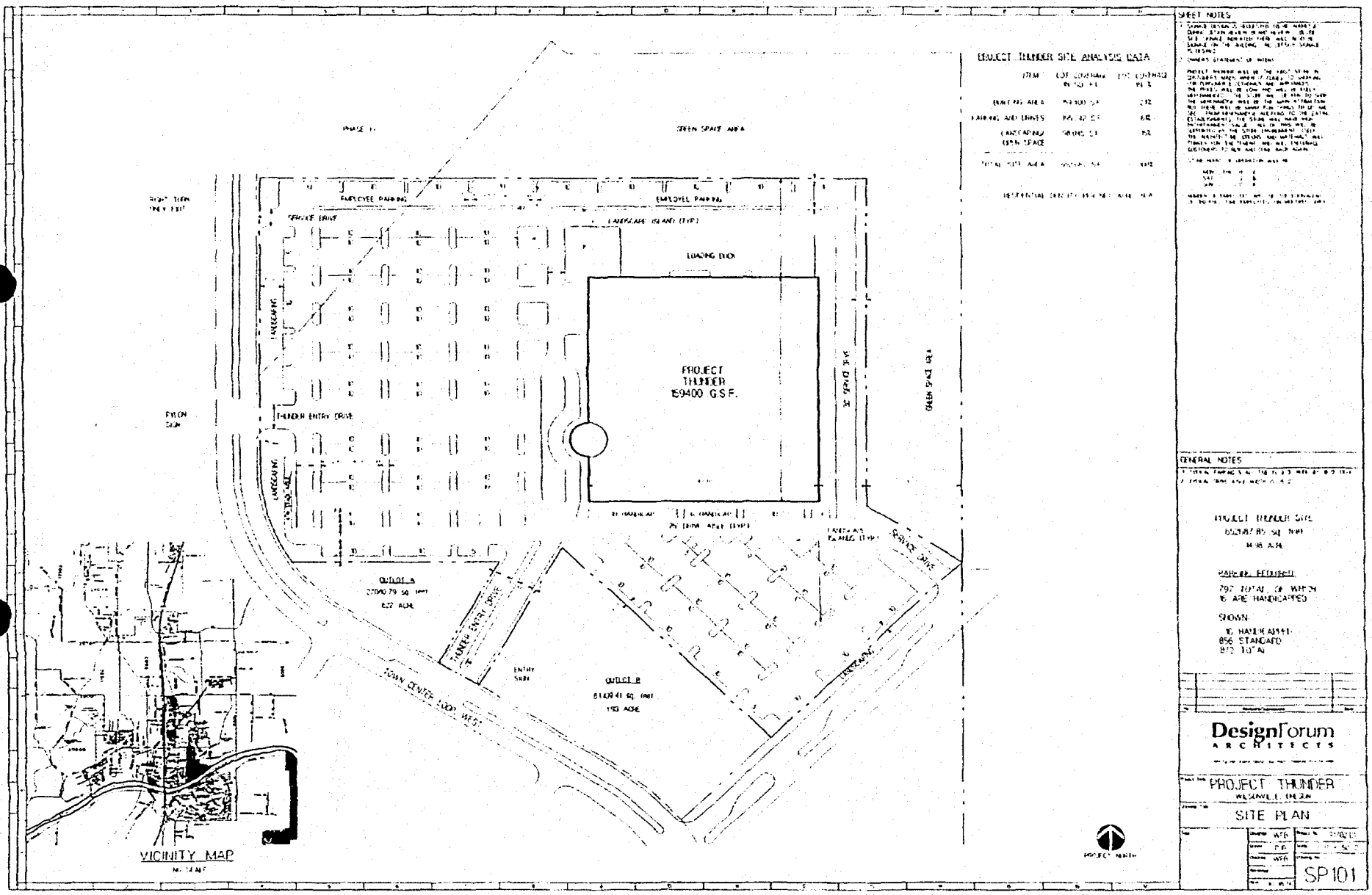
Project Thunder
Wilsonville, Oregon
Project No. 91702.03
Pre-Application Conference
October 8, 1991

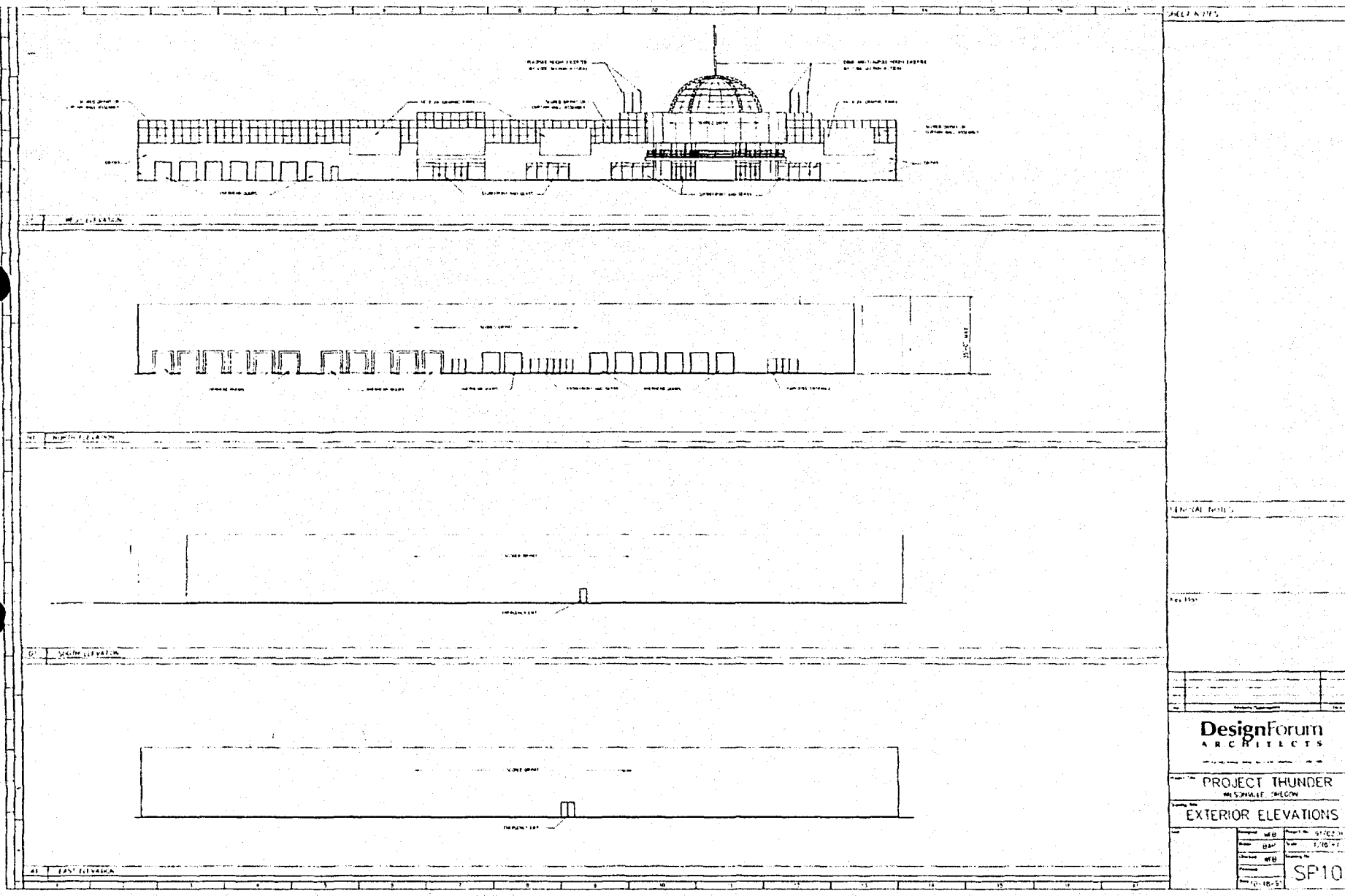
The meeting notes represent comments that have been paraphrased as accurately as possible. The notes will be held as an accurate and true account as to intent unless notice to the contrary is set forth within 10 days of the date above.

Respectfully submitted,

James L. Faulkner, AIA
Vice President, Architecture

cc: All in Attendance
Rich Hollander, Tandy Name Brand (TNB)
Blaise Edmonds, City of Wilsonville, Associate Planner (WSV)
Kimberly Beach, Capital Realty Corporation (CAP)
Tom Jones, Wilsy & Ham Pacific (WHP)
Wayne Kittelson, Kittelson & Associates, Inc. (KAI)
D. Lee Carpenter, Design Forum
Bruce Dybvad, Design Forum
Marla Halley, Design Forum
Bill Bergman, Design Forum Architects


PROJECT THUNDER SITE ANALYSIS DATA
ITEM
LOT COVERAGE IN SQ. FT.
LOT COVERAGE IN %
BUILDING AREA
PARKING AND DRIVES
LANDSCAPING / OPEN SPACE
TOTAL SITE AREA
SHEET NOTES
GENERAL NOTES
PROJECT THUNDER SITE
PARKING REQUIRED
SHOWN
PHASE 1
GREEN SPACE AREA
EMPLOYEE PARKING
SERVICE DRIVE
LANDSCAPE ISLAND (TYP.)
LOADING DOCK
PROJECT THUNDER 159400 G.S.F.
PYLON SIGN
THUNDER ENTRY DRIVE
LANDSCAPING
CONTROL JOINT
OUTLOT A
27040.79 SQ. FEET
0.62 ACRE
OUTLOT B
81409.41 SQ. FEET
1.93 ACRE
TOWN CENTER LOOP WEST
ENTRY SIGN
LANDSCAPE PLANTER (TYP.)
VICINITY MAP
NO SCALE
PROJECT NORTH
DesignForum ARCHITECTS
PROJECT THUNDER
WILSONVILLE, OREGON
SITE PLAN
SP101

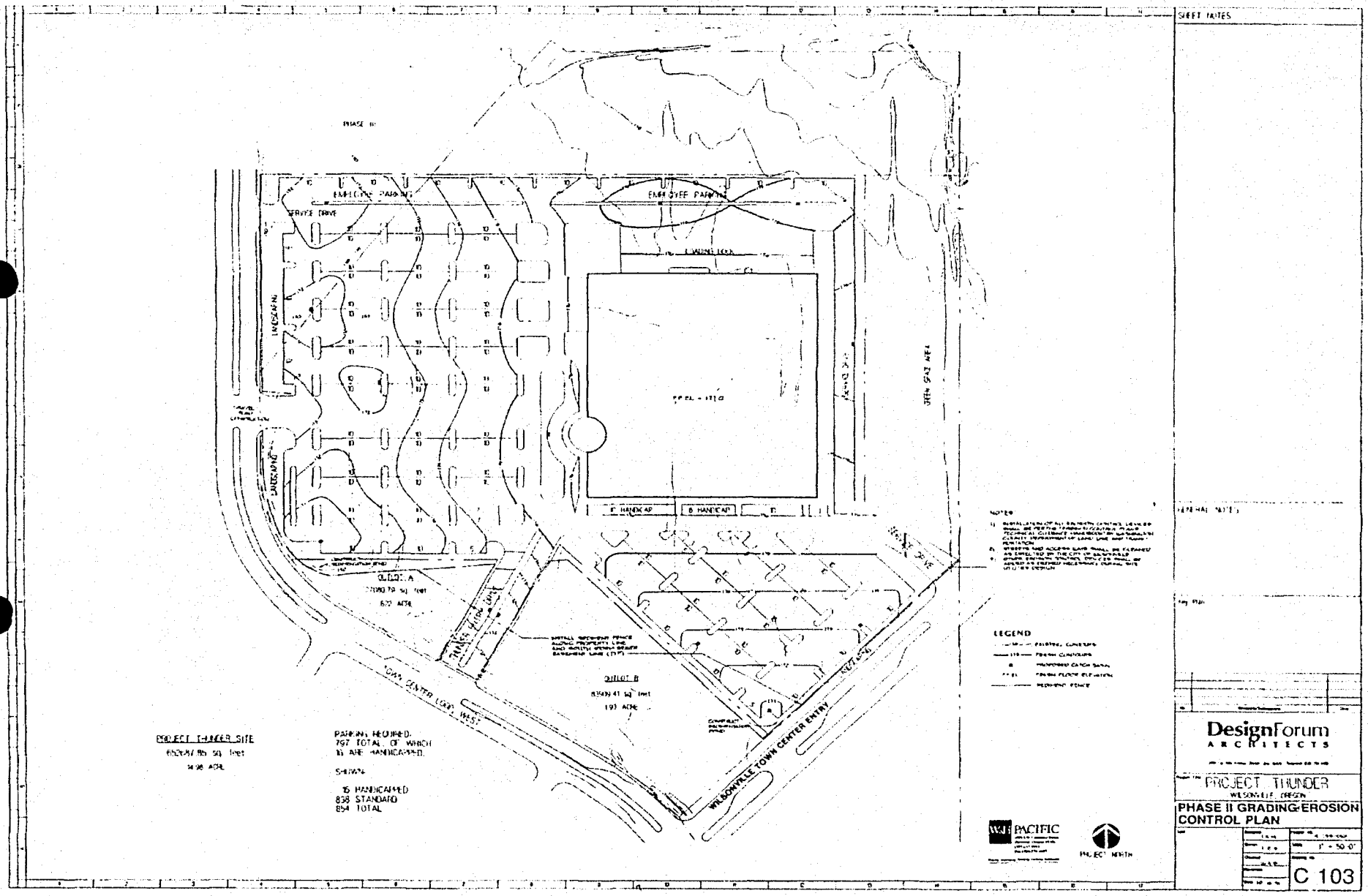


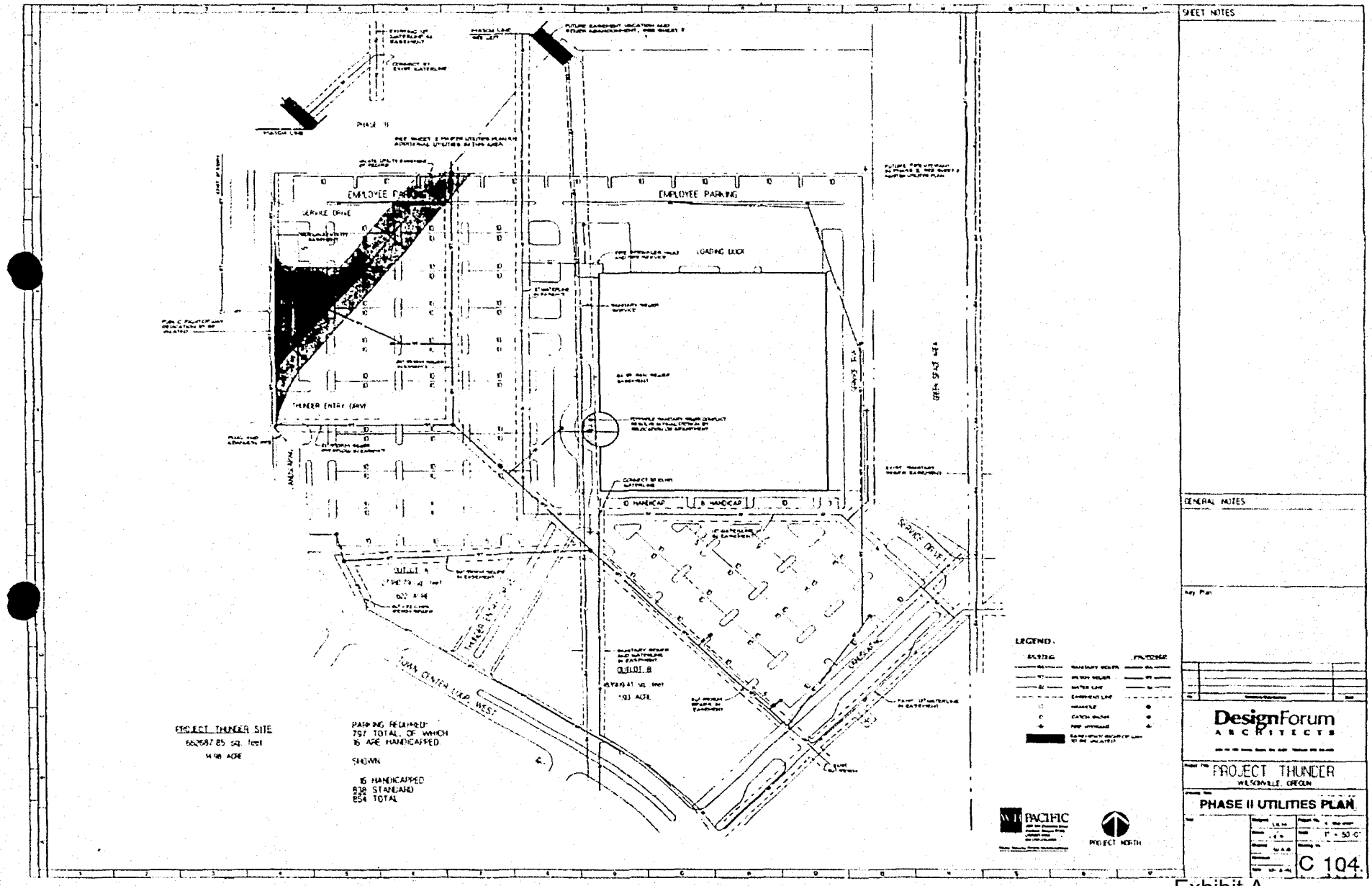
DesignForum
ARCHITECTS

PROJECT THUNDER
MCMINNVILLE, OREGON

EXTERIOR ELEVATIONS

SP102


SHEET NOTES
PHASE III
EMPLOYEE PARKING
EMPLOYEE PARKING
SERVICE DRIVE
LANDSCAPING
LANDSCAPING
OPEN SPACE AREA
8' HANDICAP
8' HANDICAP
OUTLOT A
OUTLOT B
TOWN CENTER LOOP WEST
WILSONVILLE TOWN CENTER ENTRY
PROJECT TRACER SITE
PARKING REQUIRED:
797 TOTAL OF WHICH
16 ARE HANDICAPPED
SHOWN:
16 HANDICAPPED
838 STANDARD
854 TOTAL
NOTES
LEGEND
PROJECT NORTH
DesignForum
ARCHITECTS
PROJECT THUNDER
WILSONVILLE, OREGON
PHASE II GRADING/EROSION CONTROL PLAN
1" = 50'-0"
C 103



SHEET NOTES

GENERAL NOTES

Key Plan

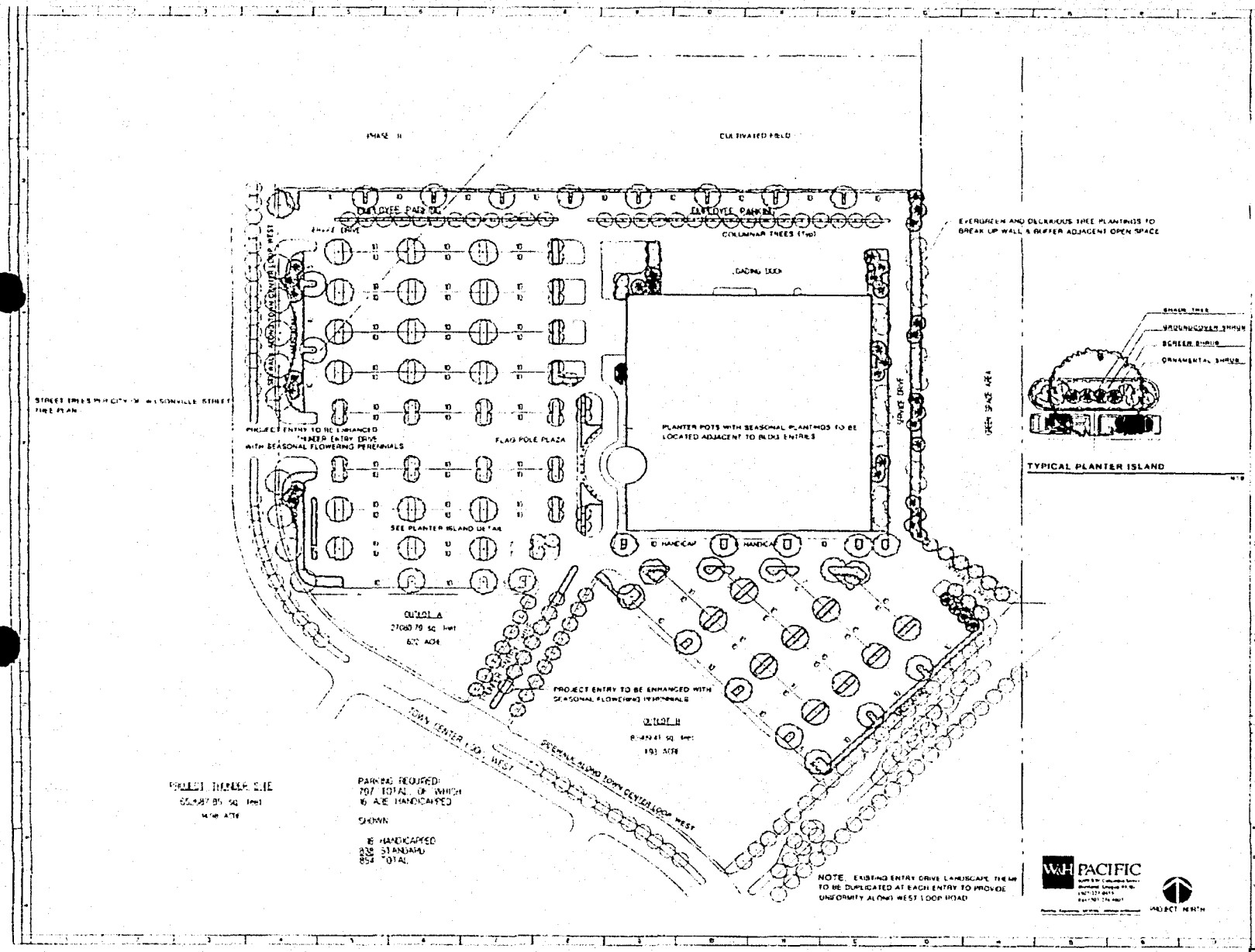
DesignForum ARCHITECTS

PROJECT THUNDER
WILSONVILLE, OREGON

PHASE II UTILITIES PLAN

1" = 50'-0"

C 104


PHASE II
CULTIVATED FIELD
EMPLOYEE PARKING
EMPLOYEE PARKING
COLUMNAR TREES (Typ)
EVERGREEN AND DECIDUOUS TREE PLANTINGS TO BREAK UP WALL & BUFFER ADJACENT OPEN SPACE
LOADING DOCK
SERVICE DRIVE
PLANTER POTS WITH SEASONAL PLANTINGS TO BE LOCATED ADJACENT TO BLDG ENTRIES
PROJECT ENTRY TO BE ENHANCED WITH SEASONAL FLOWERING PERENNIALS
FLAG POLE PLAZA
SEE PLANTER ISLAND DETAIL
HANDICAP
HANDICAP
OUTLOT A
OUTLOT B
PROJECT ENTRY TO BE ENHANCED WITH SEASONAL FLOWERING PERENNIALS
TOWN CENTER LOOP WEST
PROJECT SITE
PARKING REQUIRED:
PARKING PROVIDED:
16 HANDICAPPED
STANDARD
TOTAL
NOTE: EXISTING ENTRY DRIVE LANDSCAPE THEME TO BE DUPLICATED AT EACH ENTRY TO PROVIDE UNIFORMITY ALONG WEST LOOP ROAD
PROJECT NORTH
SHADE TREE
GROUNDCOVER SHRUB
SCREEN SHRUB
ORNAMENTAL SHRUB
TYPICAL PLANTER ISLAND
LEGEND
SHADE TREES
FLOWERING TREES
EVERGREEN CONIFER TREES
ORNAMENTAL LANDSCAPE SHRUBS & GROUNDCOVER
LAWN
EXISTING STREET TREES
GENERAL NOTES
AUTOMATIC IRRIGATION SYSTEM WILL BE PROVIDED
DesignForum ARCHITECTS
PROJECT TUNNEL
WILSONVILLE, OREGON
PHASE II LANDSCAPE PLAN
L 105

ASSIGNMENT

FOR VALUABLE CONSIDERATION, receipt and sufficiency of which are hereby acknowledged, SFS INVESTMENT CORP., an Oregon corporation (Assignor), hereby assigns, transfers and conveys to CAPITAL REALTY CORP., an Oregon corporation (Assignee), all of Assignor's right, title and interest in each option agreement, offer and other document described in Exhibit A attached hereto, the real property described in any such option agreement or offer, and all rights which Assignor now has or may hereafter acquire with respect thereto.

February 1, 1990.

SFS INVESTMENT CORP.

By _____
President

STATE OF OREGON)
) ss.
County of Multnomah)

On this 1st day of February, 1990, before me personally appeared Steven F. Stiles who, being duly sworn, did say that he is the president of SFS INVESTMENT CORP., an Oregon corporation, and acknowledged that the foregoing instrument was executed on behalf of the corporation by authority of its board of directors as its voluntary act and deed.

Before me:

_____
NOTARY PUBLIC for Oregon
My Commission Expires 10/31/92

AGREEMENT AND OPTION

THIS AGREEMENT AND OPTION is between E. JEAN YOUNG, SHERILYNN J. YOUNG, DAVID S. YOUNG, MARLENE A. YOUNG, also known as Marlene A. Young Rifai, the Estate of Harold J. Laswell, Deceased, and FRED A. ANDERSON, hereinafter collectively referred to as Grantors, and SFS INVESTMENT CORP., an Oregon corporation, hereinafter referred to as Grantee.

RECITALS

A. The owners of Parcel I, i.e. tax lot 600 & 601, MAP 3-1W-14D, are E. Jean Young, Sherilyn J. Young, David S. Young, Marlene A. Young, also known as Marlene A. Young Rifai, and Jack L. Lozo.

B. The owner of Parcel II, i.e. tax lot 300, MAP 3-1W-14D is Jack L. Lozo.

C. Grantee has options to purchase Parcel I and II by documents respectively dated August 17, 1989 and August 23, 1989; said options are valid through December 21, 1989.

D. Grantor's offer to option Parcel III is contingent upon Grantee's obtaining extensions of the options to purchase Parcel I and II.

E. Grantors own Parcel III, i.e. Tax Lot 200, 300 & 400, Clackamas County MAP 3-1W-14D and ownership interests in a triangle of land approximately 6381 square feet on the west of Tax Lot 200 , described in Exhibit A. Parcel III shall refer to the

be made in full upon closing and a statutory warrenty deed provided at that time.

3.4 Notice of Intent to Close must be given at least 15 days before closing. In any event notice of intent to close must be received by October 2, 1990 or the terms of this Option shall be Null and Void.

With notice of intent to close, Grantee shall specify which Phases are to be purchased in closing and changes, if any, in the boundaries of the Phases referencing the survey, to be completed as specified below, the written legal descriptions and acreage/footage specifications.

~~ion.~~ The Option to purchase Phase 2 in its enti er square foot shall terminate on July 16, 1990 or at closing of sale of any portion of Parcel III unless Grantees pay to Grantors $50,000 for an extension of the Option for one year. Payment for such extension is nonrefundable and not applicable to the purchase price.

If the above extension of Option is purchased, Grantee may purchase further extension of the Option providing that any sale must close on or be[illegible]vember 2, 1992, at the purchase price of ent on an additional $50,000, nonrefundable and not applicable

In event of such extensions, notice of intent to close shall be provided not less than 15 days before closing, and closing shall occur not more than 30 days thereafter. A Statutory

property. Grantee may, at its expense, make such grading plans, architectural and land planning studies and services, traffic engineering studies, economic and commercial benefit studies, and other surveys, services and studies which it deems reasonably necessary for its development of the Option Property.

9. Land Use Applications. Grantors agree to cooperate fully with Grantee in making all applications which Grantee deems necessary for Grantee's use and development of the Option Property, including but not limited to site plan approval, partition and other land use determinations which relate to Grantee's use and development of the property.

Grantors authorize Grantee to execute any such application in Grantor's name and as Grantors' representative. Grantee shall pay all expenses relating to any such application. Grantors shall bear no expense associated herewith.

10. Land use changes such as but not limited to size and location of Open Space and roads shall be presented to Grantors prior to formal application to the City of Wilsonville. Grantors shall retain the right of review during the planning process with the City,

Grantee may not agree to any request to increase the Open Space requirements on any Phase of any Parcel.

11. Real Property Taxes. The Option Property has been specifically assessed as Farm Use Land. Therefore, portions of the annual taxes are deferred until the Option Property becomes disqualified for that purpose. If Grantee exercises the Option as

preliminary agreements. This Option may not be changed except in writing, executed by both parties.

IN WITNESS WHEREOF, the parties have executed this Option this 31 day of October, 1989.

E. Jean Young
E. JEAN YOUNG

SFS INVESTMENT CORP.

11-8-89

Sherilynn J. Young
SHERILYNN J. YOUNG

By _____
SFS President
Steven F. Styles

David S. Young
DAVID S. YOUNG

SFS INVESTMENT CORP.

Marlene A. Young
by D. Young, attorney in fact
MARLENE A. YOUNG

By _____
SFS Officer

ESTATE OF HAROLD J. LASWELL
DECEASED

GRANTEES

By Emma D. Laswell
Emma D. Laswell
Personal Representative

By _____
Eugene L. Deffler
Personal Representative

Fred A. Anderson
FRED A. ANDERSON

GRANTORS

ST JOES PROPERTIES LTD.
by Edson E Bonham

EXHIBIT A

I
Wilsonville Property

Option dated November 16, 1989 granted by Jack L. Lozo for property generally known as Tax Lot 500, Map 3-1W-13, Clackamas County, Oregon.

Agreement and Option dated October 31, 1989 from E. Jean Young, Sherilynn J. Young, David S. Young, Marlene A. Young, Estate of Harold J. Laswell, Deceased, and Fred A. Anderson for property generally known as Tax Lots 200, 300 and 405, Map 3-1W-14D, Clackamas County, Oregon, togther with a triangular parcel containing approximately 6,381 square feet on the westerly side of Tax Lot 200.

Option dated November 15, 1989 from E. Jean Young, Sherilynn J. Young, David S. Young, Marlene A. Young, Jack L. Lozo, and Anne S. Lozo, Trustee for Claude F. Smith Trust, for property generally known as Tax Lots 600 and 601, Map 3-1W-13, Clackamas County, Oregon.

Attached hereto is a plot map showing the general location of the three parcels.

II
Gresham Property

Earnest Money Agreement dated August 1, 1989, amended by Memorandum of Agreement dated September 20, 1989, with Leonard P. Holfman and Kenneth G. Holfman, Trustees of the Olive H. Holfman 1979 Trust dated May 7, 1979, for the purchase of a tract of land in the Robert P. Wilmot DLC and being Sections 19 and 30, Township 1 North, Range 3 East of the Willamette Meridian, Multnomah County, Oregon (Tax Lot #32), containing approximately 21.3 acres on the north side of N. E. Sandy Boulevard west of Northeast 181st Avenue.

III
Salem Property

Offer dated November 1, 1989, accepted by Anita Hager Conley, Trustee, on November 29, 1989, for a parcel containing approximately 9.38 acres in the southwest quarter of Section 31, Township 7 South, Range 2 West, known as Tax Lot 200, Salem, Marion County, Oregon.

AGREEMENT AND OPTION

PARCEL II

THIS AGREEMENT AND OPTION is between JACK L. LOZO, hereinafter referred to as Grantors, and SFS INVESTMENT CORP., an Oregon corporation, hereinafter referred to as Grantee.

RECITALS

A. The owners of Parcel I, i.e. tax lot 600 & 601, MAP 3-1W-13, are E. JEAN YOUNG, SHERILYN J. YOUNG, DAVID S. YOUNG, MARLENE A. YOUNG, also known as MARLENE A. YOUNG RIFAI, JACK L. LOZO, and the CLAUDE F. SMITH TRUST, ANN S. LOZO Trustee.

B. The owner of Parcel III, i.e. tax lot 200, 300 & 305, Clackamas County MAP 3-1W-14D and a triangle of land approximately 6,381 square feet on the west of tax lot 200 are E. JEAN YOUNG, SHERILYNN J. YOUNG, DAVID S. YOUNG, MARLENE A. YOUNG, also known as MARLENE A. YOUNG RIFAI, the estate of HAROLD J. LASWELL, Deceased, and FRED A. ANDERSON.

C. Grantors own Parcel II, i.e. Tax Lot 500, MAP 3-1W-13. Parcel II shall also be referred to as the Option property.

D. Grantee has options to purchase Parcel I & II by documents dated August 17, 1989 and August 23, 1989, said options are valid through December 31, 1989.

E. Grantors' offer to option Parcel II is contingent upon Grantee's obtaining an extension of the option to purchase Parcel

3.4 Notice of Intent to Close must be given at least 15 days before closing. In any event notice of intent to close must be received by October 2, 1990 or the terms of this Option shall be Null and Void.

With notice of intent to close, Grantee shall specify which Phases are to be purchased in closing and changes, if any, in the boundaries of the Phases referencing the survey, to be completed as specified below, the written legal descriptions and acreage/footage specifications.

4. Extension. The Option to purchase Phase 1b and 2 in its ent er square foot shall terminate on July 16, 1990 or at closing of sale of any portion of Parcel II unless Grantee pays to Grantors $5,000 for an extension of the Option to purchase Phase 1b property, ~~and pays to Grantor an additional $5,000 for an extension of the Option to purchase Phase 2 property if owned by Grantors~~. Payment for such extension shall be for one year, is nonrefundable and not applicable to the purchase price.

If the above extension of Option is purchased, Grantee may purchase further extension of the Option providing that any sale must close on or before November 2, 199 at the purchase price of payment on an additional $5,000, s, nonrefundable and not applicable

In event of such extensions, notice of intent to close shall be provided not less than 15 days before closing, and closing shall occur not more than 30 days thereafter. A Statutory

authority to grant the Option and to sell their interest in the Option Property in accordance herewith.

7. Reciprocal Easements: Grantors and Grantee agree that each will enter into reciprocal easements with the owners of Parcels I and III as agreed upon by the parties.

8. Right of Entry. Grantee may, at its risk and expense during the term of the Option, enter upon the Option Property at any time to make engineering tests, soil tests and for any other lawful purpose in pursuit of the purchase and development of said property. Grantee may, at its expense, make such grading plans, architectural and land planning studies and services, traffic engineering studies, economic and commercial benefit studies, and other surveys, services and studies which it deems reasonably necessary for its development of the Option Property.

9. Land Use Applications. Grantors agree to cooperate fully with Grantee in making all applications which Grantee deems necessary for Grantee's use and development of the Option Property, including but not limited to site plan approval, partition and other land use determinations which relate to Grantee's use and development of the property.

Grantors authorize Grantee to execute any such application in Grantors' name and as Grantors' representative. Grantee shall pay all expenses relating to any such application. Grantors shall bear no expense associated herewith.

10. Land use changes such as but not limited to size and location of Open Space and roads shall be presented to Grantors

the entire agreement among the parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements. This Agreement and Option may not be changed except in writing, executed by both parties.

IN WITNESS WHEREOF, the parties have executed this Option this 11 day of November, 1989.

JACK L. LOZO

ANN S. LOZO, Trustee for
CLAUDE F. SMITH TRUST

GRANTORS

SFS INVESTMENT CORP.

By
SFS President
Steven F. Stiles

SFS INVESTMENT CORP.

By
SFS Officer

GRANTEES

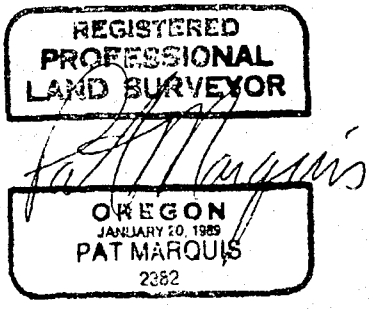
PROJECT THUNDER LEGAL DESCRIPTION

A parcel of land situated in the southeast quarter of Section 14 in Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon. Said parcel of land being more particularly described as follows:

COMMENCING at the southeast corner of Section 14, Township 3 South, Range 1 West, Willamette Meridian, Clackamas County, Oregon: thence North 00°03'01" East along the section line between Sections 13 and 14 a distance of 1,077.07 feet to the most westerly northwest corner of Parcel 1 of **Partition Plat No. 1991-164** recorded in Fee 91-48507 of the Clackamas County Plat Records and the **TRUE POINT OF BEGINNING**: thence leaving said section line and tracing the following courses and distances: South 45°03'00" West 400.00 feet; thence North 44°57'00" West 435.01 feet to a point of non-tangent curvature; thence tracing the arc of a 2,000.00 foot radius curve to the right (the radial center of which bears North 65°07'50" West) through a central angle of 07°23'12" an arc distance of 257.84 feet (the long chord bears South 28°33'46" West 257.66 feet) to the northeasterly right-of-way line of Town Center Loop Road West (a 72.00 foot-wide public road right-of-way); thence tracing said northeasterly road right-of-way line North 57°44'38" West 72.00 feet to a point of radial intersection with a 1,928.00 foot radius curve; thence leaving said northeasterly right-of-way line and tracing the arc of a 1,928.00 foot radius curve to the left through a central angle of 05°32'12" an arc distance of 186.31 feet (the long chord bears North 29°29'16" East 186.23 feet); thence South 89°52'55" West 304.91 feet to a point of non-tangent curvature on the said northeasterly right-of-way line of Town Center Loop Road West; thence tracing said right-of-way line along a 268.16 foot radius curve to the right (the radial center bears North 56°01'43" East) through a central angle of 33°55'55" an arc distance of 158.81 feet (the long chord bears North 17°00'19" West 156.50 feet) to a point of tangency; thence continuing along said right-of-way line North 00°02'22" West 151.37 feet to the southeasterly line of that certain tract as deeded to the City of Wilsonville, Oregon in deed recorded November 12, 1986 in recorder's fee 86-44957; thence tracing said southeasterly line and continuing on the southeasterly line of that certain tract deeded to the City of Wilsonville in deed recorded November 12, 1986 in recorder's fee 86-44959 North 38°37'19" East 215.39 feet to the northerly line of said tract per fee 86-44959; thence tracing said northerly line South 89°58'19" West 104.56 feet to a point of curvature; thence tracing a 30.00 foot radius curve to the right through a central angle of 89°59'19" an arc distance of 47.12 feet (the long chord bears North 45°02'02" West 42.42 feet) to a point of tangency on the easterly right-of-way line of said Town Center Loop Road West; thence leaving said northerly property line and tracing said right-of-way line North 00°02'22" West 121.76 feet; thence leaving said right-of way line and tracing the following

courses and distances: North 89°52'55" East 894.39 feet to a line being parallel with and 140.00 feet westerly of the said section line common to sections 13 and 14; thence tracing said parallel line South 00°03'01" West 528.73 feet; thence South 56°23'33" East 168.00 feet to the **TRUE POINT OF BEGINNING**. Said parcel contains 642,427 square feet or 14.75 acres more or less.

755-0101
10/16/91



Jim Parsons
Jim Faulkner
Doug Seely

Phase
~~Stage~~ I, II, III → Cap. Realty will submit

Phase II →
Cap. Realty Δ master plan modification
Site plan I, II

Landy - Thunder 120+ thou ☐ footprint
Electronics +

Parkway / TC (E) + (W)

~~Park~~ → Open Space.

Submit Stage I + II ~~Simultaneously~~

Please what else?

* Gave Stage I + II + application x2
250' radius map owners

Topo - 1' intervals - (map has readings)

~~Blaise - 50' top dirt~~

Φ phase

100 - 1-

CITY

100 - 120 DWELLING UNITS.

- DOUG SEELY TALKED TO BOB DANT -
- ABOUT DENSITY TRANSFER TO BRIDGE CREEK.
- P.O.S.

- CONTOUR SURVEY - >20%
- TREE SURVEY >6" caliper
- MAJOR DRAINAGEWAY.

STAKE THE PROPERTY - SITE VISIT TO VERIFY P.O.S LINE - AMBIGUITY - GO TO P.L TO C.L. FOR INTERPRETATION.

~~CALL MIKE - 420-7447~~

CITY of WILSONVILLE
PLANNING COMMISSION
SITE MASTER PLAN (STAGE I)
GENERAL SUBMISSION REQUIREMENTS

1. Completed application form, with appropriate fee, signed by property owner.
2. Set forth the professional coordinator and professional design team.
3. State whether the development will include mixed land uses, and if so, what uses and in what proportions and locations.
4. The application shall include conceptual and quantitatively accurate representation of the entire development sufficient to judge the scope, size and impact of the development on the community; and, in addition, shall be accommodated be the following information:

   13 FOLDED copies of Site Master Plan dimensioned at a scale of 1" = 20 ft. (or as determined by the Planning Director) showing the following:

   a. Vicinity map.
   b. The entire lot as described by the legal description.
   c. Location and size if all public facilities, utilities and easements.
   d. Location and dimension of site improvements such as roads, buildings, driveways, parking, loading and landscaping.
   e. All adjacent rights-of-way and improvements.
   f. Any surrounding development, i.e., existing buildings, property lines, driveways, etc.
   g. Development phasing. A stage development schedule demonstrating that the developer intends to commence construction within (1) One year after the approval of the development plan, and will proceed diligently to completion.
   h. Topographic information at one-foot intervals up to 5% slope; two-foot intervals, 6% - 12%; five-foot intervals. 12% - 20%; ten-foot intervals, 20% and above.

5. One copy of Site Plan reduced to 8-1/2" x 11". This must be a legible photo-mechanical transfer (PMT).
6. Site Analysis Data.

Item	Lot Coverage in sq. ft.	Lot Coverage in %.
Building area	458,771 sq. ft.	.18 %
Parking and Drives	1,394,390 sq. ft.	.53 %
Landscaping/Open Space	751,291.4 sq. ft.	.29 %
Residential density per net acreage.		
TOTAL SITE AREA	2,604,452.4 sq. ft. 59.79 ACRES	100 %

Planning Department 682-4960

INCOMPLETE SUBMITTALS WILL NOT BE SCHEDULED FOR A PUBLIC MEETING !

10 ■ 4M-MSO 10-22-90 Oregonian

Traffic count zooms at electronic store

■ Wilsonville's projections for vehicle flow at the Incredible Universe fall woefully short

By JOHN M. GRUND
Correspondent, The Oregonian

WILSONVILLE — When it comes to predicting how much traffic a new development will bring, Wilsonville officials always have gone by the book.

But going by the book has not worked for some recently opened projects — in particular the Incredible Universe electronics store. In some cases, traffic is already at levels predicted for 2010.

Now city officials are looking at ways to refine the city's traffic projections.

Eldon Johansen, community development director, told the City Council early this month that traffic on Town Center Loop West near the new electronics store is averaging 1,227 vehicles an hour northbound at 2 p.m. That's 550 more vehicles per hour than anticipated in projections for 1995, he said.

"As far as the traffic counts go, we've had a real eye-opener on our traffic projections. We're already up past (the year) 2010 on some of our traffic projections," Johansen said.

"The traffic analysis prepared by Capital Realty and the Incredible Universe's traffic consultants, Kittelson and Associates, has greatly underestimated the traffic impacts," said Arlene Loble, city manager.

The city has changed its procedure for getting traffic analysis done on proposed developments. This fall, it switched from having a developer hire a traffic engineering firm to requiring applicants to pay for a study by D.K.S. Associates, the firm chosen by the city to handle all of its traffic analysis.

Planning Director Wayne Sorensen said the move should not be interpreted as a criticism of the firms that have done studies in the past. All of them, in fact, bid on the city contract, he said.

"I think we feel better now (that) the traffic engineer is working for the city," he said. "When the applicant hires the engineer, they're working for the client, and the city's not the client."

Johansen said the city also would expand the scope of some studies.

The Incredible Universe study analyzed traffic flows through the adjoining intersection, at Town Center Loop West and Wilsonville Road. But it did not reach to the next intersection to the west, at Wilsonville Road and Interstate 5.

It was that intersection that clogged up at the Incredible Universe opening Sept. 17 and caused traffic to back up for miles in both directions.

If the study were being done today, the city would insist that engineers look at one more intersection down the road, Johansen said.

City Councilor Greg Carter asked if the traffic effects of some recent developments meant that the city should consider a moratorium on some new construction.

"I'm not willing to say that yet," Johansen said.

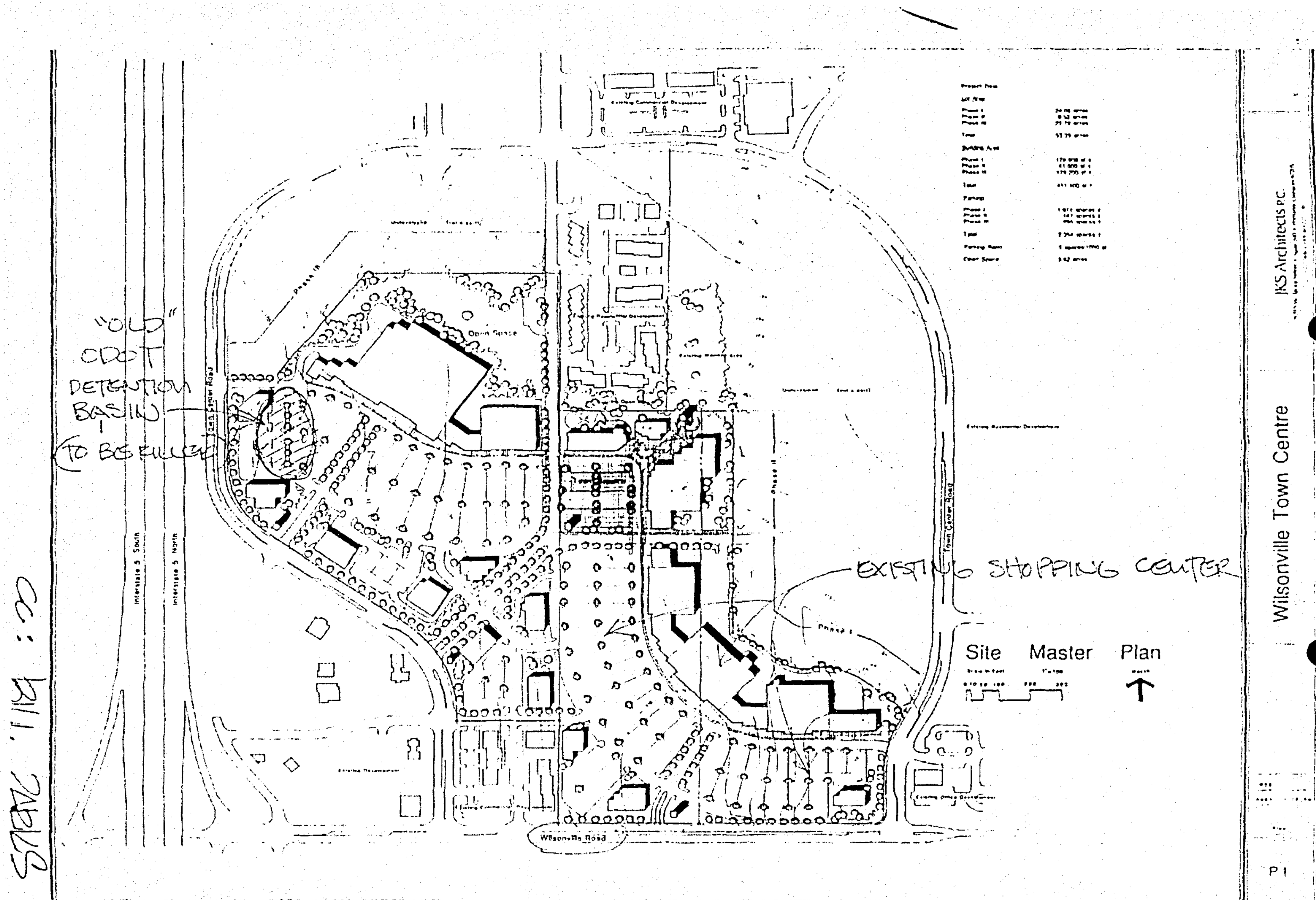
He said three things went wrong with the Incredible Universe traffic study. First, the predictions were made as if the city's Transportation Plan was already in place, but many roads are yet to be built.

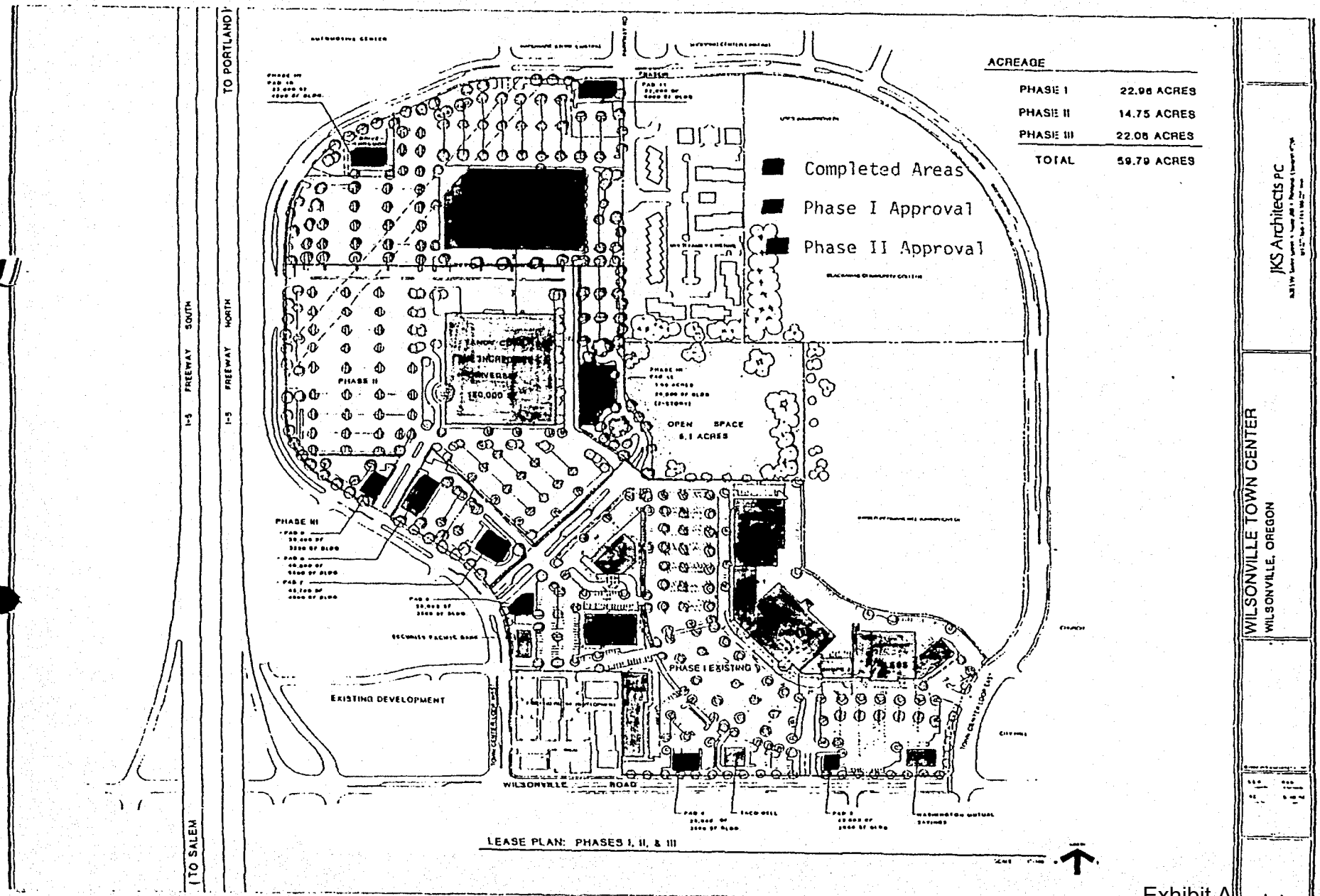
Second, the study assumed that 40 percent of the flow into the Incredible Universe would be "drop-in" traffic — that is, traffic already on the streets for other reasons. But the store has become a regional draw, and "drop-in" traffic is a tiny percentage of traffic it attracts. Finally, the traffic study did not account for the success of the store's marketing effort.

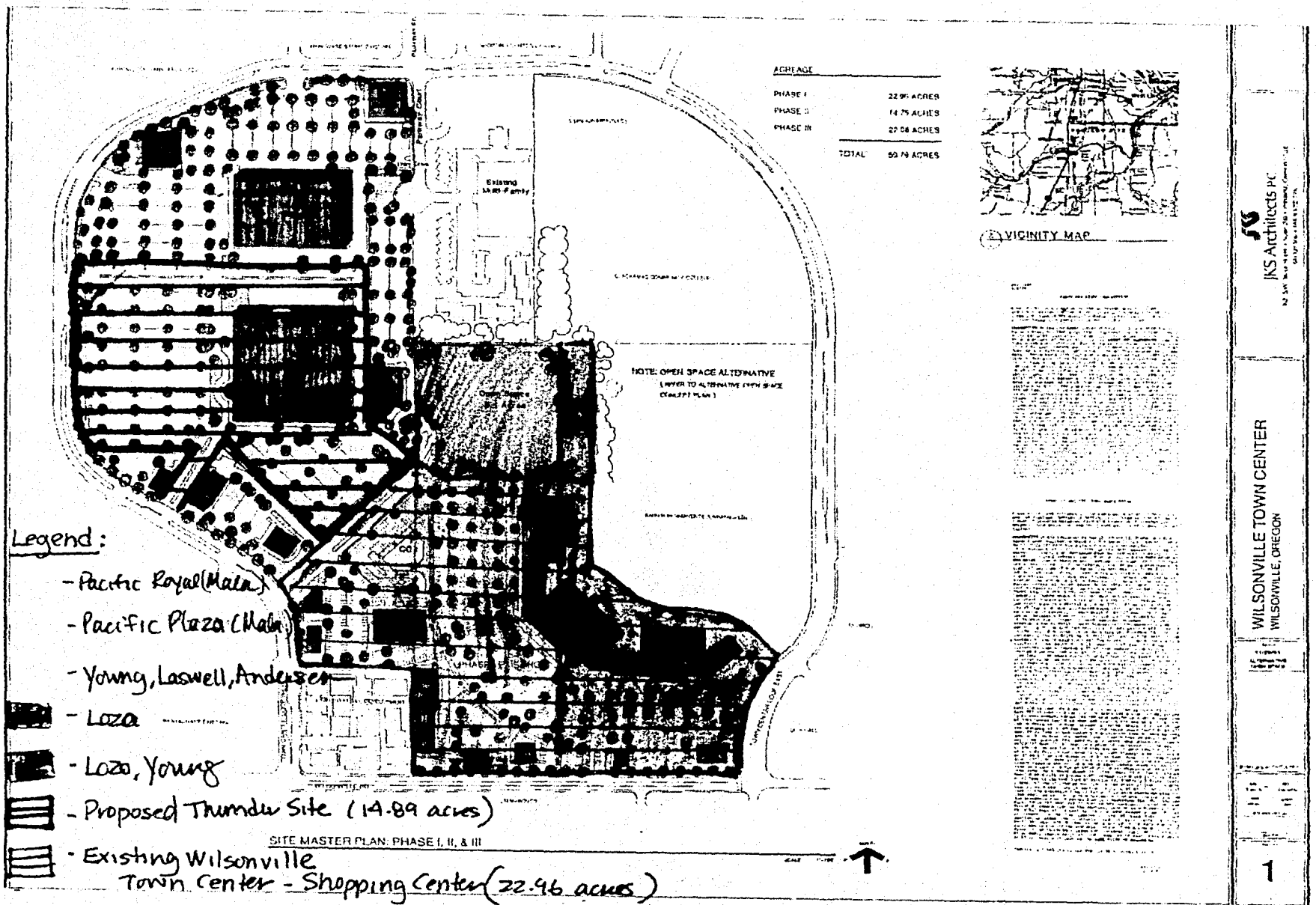
"At a minimum, we need to be broadening the assumptions on which decisions are made," Loble said. "We've recognized that the traffic situation is beyond anything anticipated in the rational decision-making model."

Sorensen, however, later said there are no plans to tinker with the engineering manual — he called it "the bible" — that predicts how many new trips will be generated by a particular use.

Sorensen would not hazard a guess about whether any of the changes will mean that developments will have a tougher time getting planning approval in Wilsonville. But he said that at least one major development was turned down as long as two years ago because it would have brought too much traffic to an overburdened street.

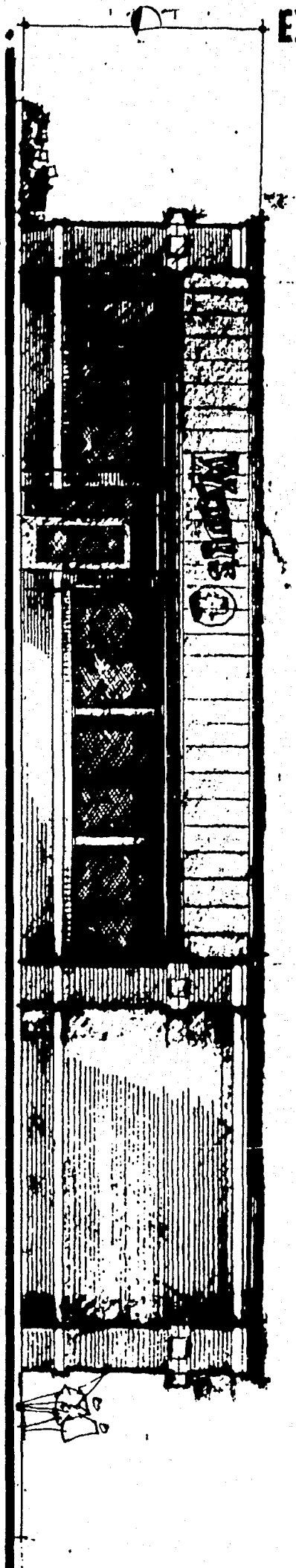

"OLD" ODOT DETENTION BASIN (TO BE FILLED)
EXISTING SHOPPING CENTER
Open Space
Interstate 5 South
Interstate 5 North
Town Center Road
Wilsonville Road
Site Master Plan
JKS Architects PC
Wilsonville Town Centre
P 1


ACREAGE
PHASE I 22.96 ACRES
PHASE II 14.75 ACRES
PHASE III 22.08 ACRES
TOTAL 59.79 ACRES
Completed Areas
Phase I Approval
Phase II Approval
TO PORTLAND
I-5 FREEWAY NORTH
I-5 FREEWAY SOUTH
TO SALEM
PHASE II
PHASE III
OPEN SPACE
6.1 ACRES
EXISTING DEVELOPMENT
PHASE I (EXISTING)
WILSONVILLE ROAD
LEASE PLAN: PHASES I, II, & III
JKS Architects PC
WILSONVILLE TOWN CENTER
WILSONVILLE, OREGON


ACREAGE
PHASE I 22.96 ACRES
PHASE II 14.75 ACRES
PHASE III 22.08 ACRES
TOTAL 59.79 ACRES
NOTE: OPEN SPACE ALTERNATIVE
VICINITY MAP
Legend:
- Pacific Royal (Mall)
- Pacific Plaza (Mall)
- Young, Laswell, Andersen
- Loza
- Loza, Young
- Proposed Thunder Site (14.89 acres)
- Existing Wilsonville Town Center - Shopping Center (22.96 acres)
SITE MASTER PLAN: PHASE I, II, & III
JKS Architects PC
WILSONVILLE TOWN CENTER
WILSONVILLE, OREGON
1

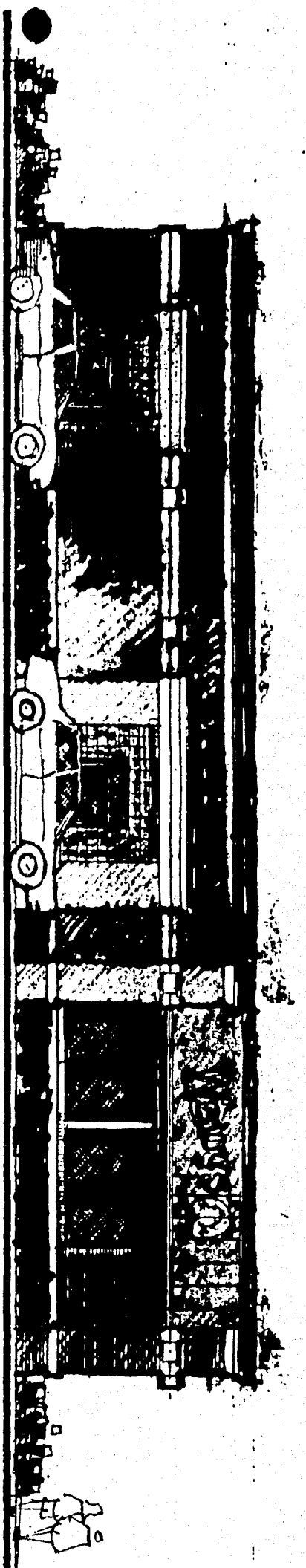
DEFECTS IN ORIGINAL DOCUMENT

EXHIBIT F



NORTH ELEVATION

1/8" = 1'-0"



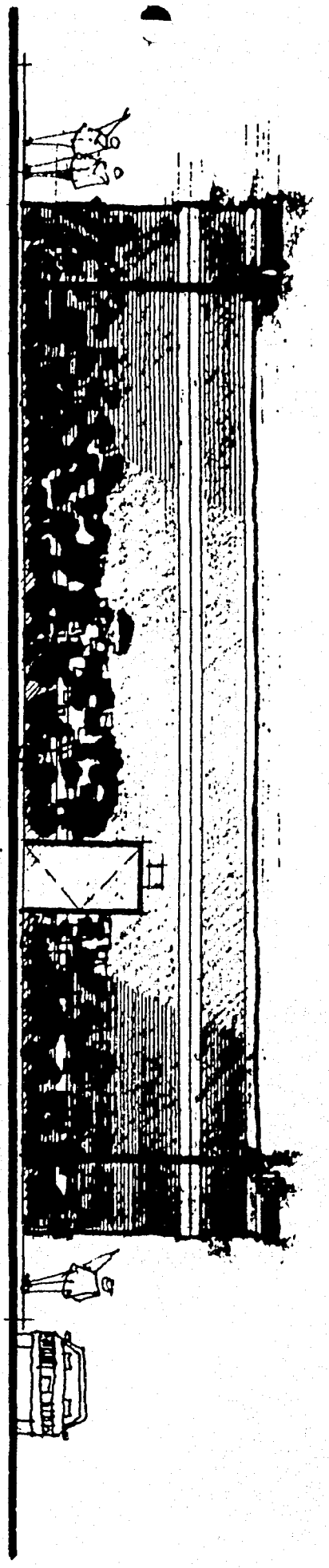
SOUTH ELEVATION

1/8" = 1'-0"

DRAWING NO: 1	PROJECT NAME: **Wendy's Restaurant**	DATE: **2/5/93**
	DRAWING TITLE: **Elevations**	REVISION:

WEST ELEVATION

1/8" = 1'-0"



EAST ELEVATION

1/8" = 1'-0"

DRAWING NO:	PROJECT NAME:	DATE:	
2	**Wendy's Restaurant**	**2/5/93**	
	DRAWING TITLE: **Elevations**	REVISION:	

CITY OF WILSONVILLE

30445 S.W. Boones Ferry Road
P.O. Box 220 Wilsonville, OR 97070-0220
(503) 682-4960

PLANNING DEPARTMENT
SITE DEVELOPMENT APPLICATION AND PERMIT

File No. 91 PC 43 1/4 Sec.

Final action on application or zone change is required within 120 days in accordance with provisions of ORS 227.178

Pre-App. ____ No. ____ Day ____ Yr.

A preapplication conference normally is required prior to submittal of an application. Please contact the Planning Department at 682-4960 for an appointment.

APPLICANT - COMPLETE

Owner's Name CAPITAL REALTY CORP. Contact Person Kim Beach

Address 101 S.W. MAIN SUITE 1500 Address ____

Portland OR. 97204

Phone 223-1200 Phone SAME

Owner's Signature Kimberlin J. Beach, Vice President Capital Realty Corp
Plaza Royale Officials Certifying Representative

Property Description: T 3 R ____ Map 3 1 5 1 2 Tax Lot(s) 200, 201, 101, 102, 300 See ON 13

Request STAGE I MASTER PLAN REVISION
STAGE II PHASE II WILSONVILLE Town Center
SITE PLAN - MOBILEY CONDITION #8 OF 90 PC 15

Please attach a plot plan (scale: 1"=40') and any other documents to this application. Please review the Planning Department submittal requirements to ensure that your application is complete.

—OFFICE USE ONLY—

Complete Application Accepted: Date 10/18/91 Public Hearing Date 12/9/91

Staff Signature Blair Edwards

☐ Class I ☐ Class II ☒ Class III

☐ PLAN AMENDMENT	☐ MAJOR PARTITION	☐ DESIGN REVIEW
☐ ZONE CHANGE	☐ MINOR PARTITION	☐ TEXT AMENDMENT
☐ PRELIMINARY PLAT	☐ CONDITIONAL USE	☐ SIGN REVIEW
☐ FINAL PLAT	☐ VARIANCE	☐ TEMPORARY USE
☒ PLANNED DEVELOPMENT	☒ OTHER REGNSIDER CONDITION OF 90 PC 15	

SITE FINDINGS

1. Zoning: PDC Town Center
2. Area of Lot: SEE FILE
3. Building or Sign Height: (Max) ____
4. Zoning Code Minimum Setbacks: Front ____ Side ____ Rear ____
5. Building Area ____
6. Access to Property TOWN CENTER LOOP WEST
7. Other: ____

☐ Approved ☐ Denied ☐ Approved with Conditions (see attached)

Conditions of Development ____

Approval of this development permit is submitted as based on information submitted by the applicant as called out above. Any change of plans or incorrect information when discovered will void this permit. This decision may be appealed in accordance with the provisions of the Wilsonville Code and ORS 227.180.

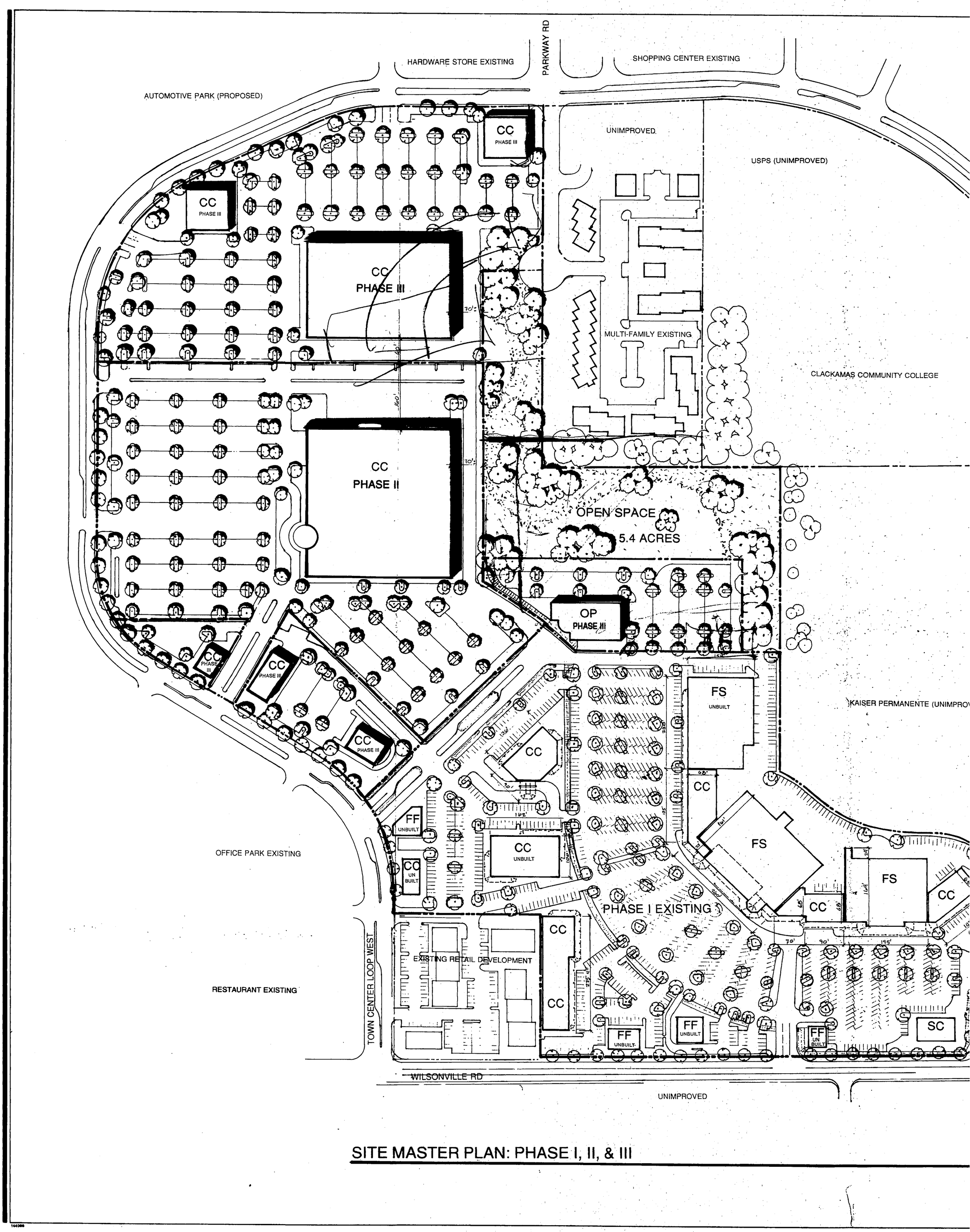
Fee Amount Paid $1315.00 Check No. SEE ⇨ Cash 1205 PAY $500.00 FEE - I
1206 PAY $625.00 II
1207 PAY $215.00 - CASH IV

Permit Approval: Planner's Signature ____ Date: ____

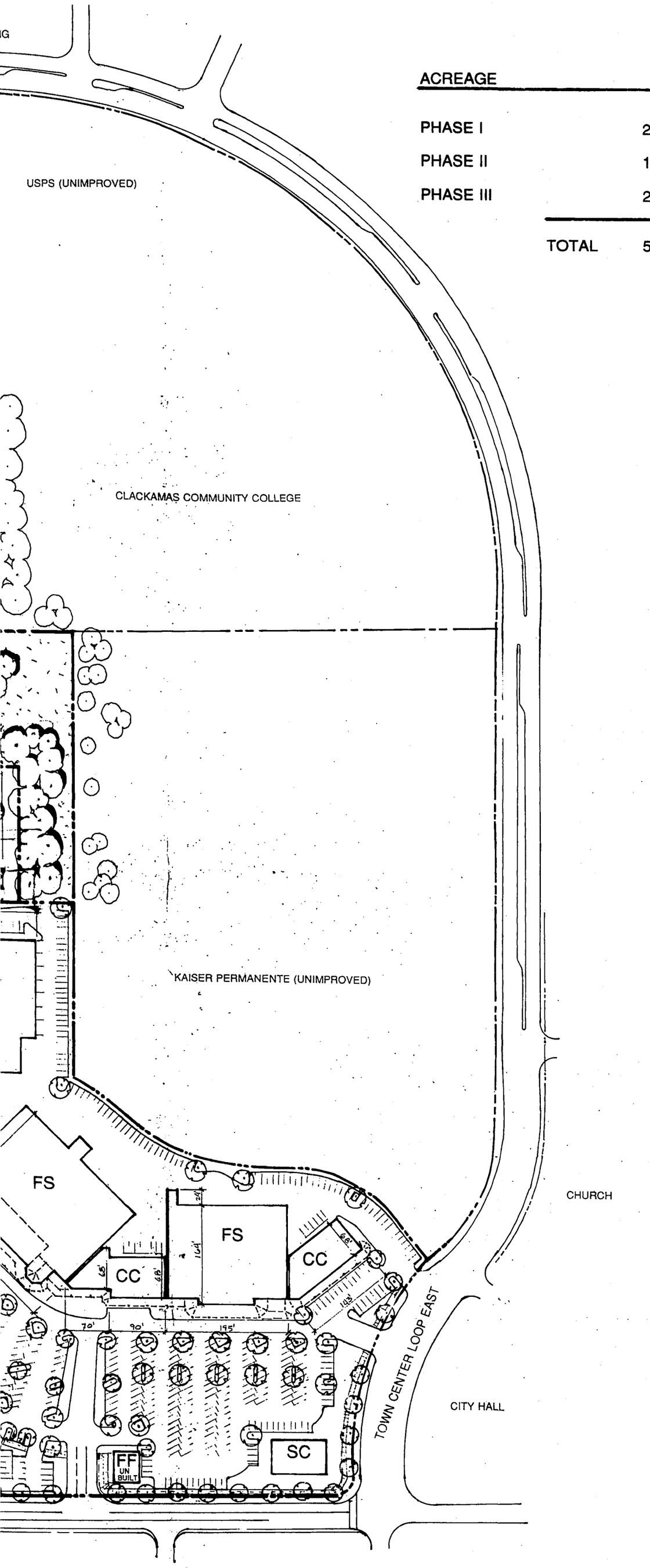
City Council or Planning Commission Approval ☐ Yes ☐ No

Order/Resolution ____

White — Applicant's Receipt Canary — File Pink — Finance Goldenrod — Applicant's Receipt

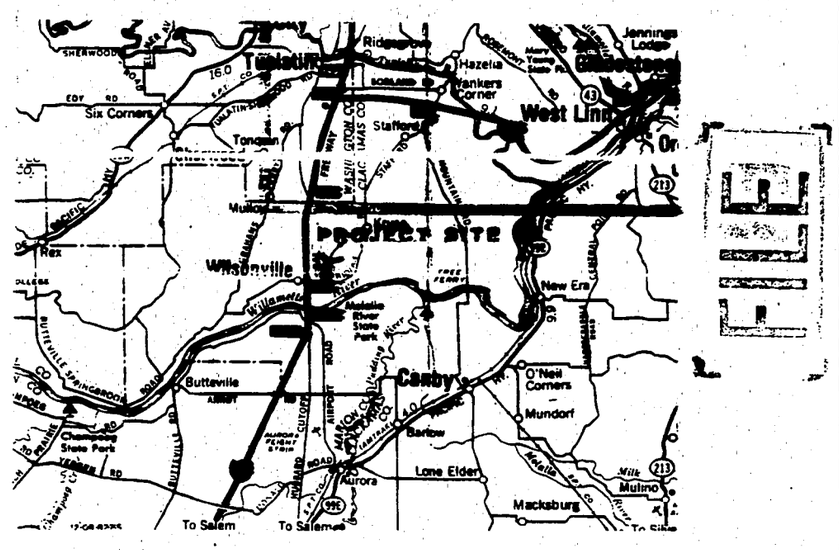


SITE MASTER PLAN: PHASE I, II, & III



ACREAGE

PHASE I	22.96 ACRES
PHASE II	14.75 ACRES
PHASE III	22.08 ACRES
TOTAL	59.79 ACRES



(2/1) VICINITY MAP

467-0102
5/6/91

PHASE ONE LEGAL DESCRIPTION

A parcel of land situated in the southwest quarter of Section 13 and the southeast quarter of Section 14 in Township 3 South, Range 1 West, Willamette Meridian, Clackamas County, Oregon. Said parcel of land being more particularly described as follows:

COMMENCING at the southwest corner of Section 13, Township 3 South, Range 1 West, Willamette Meridian, Clackamas County, Oregon; thence North 00°03'31" East along the section line between Sections 13 and 14 a distance of 44.00 feet to the **POINT OF BEGINNING**; thence continuing North 00°03'01" East along said section line a distance of 339.50 feet; thence South 89°59'30" West a distance of 338.63 feet to the easterly right-of-way line of Town Center Loop Road West; thence North 00°00'22" East along said easterly right-of-way line a distance of 44.55 feet to a point of curvature; thence 247.91 feet along the arc of a 360.54 foot radius curve to the left through a central angle of 39°23'37" and whose chord bears North 18°39'27" West a distance of 243.05 feet to a point on a curve; thence North 46°03'00" East a distance of 594.01 feet; thence South 89°57'00" East a distance of 66.14 feet; thence South 00°03'00" West a distance of 63.00 feet; thence South 89°57'00" East a distance of 479.78 feet; thence South 00°03'01" West a distance of 285.68 feet to the intersection with a non-tangent curve; thence 93.82 feet along the arc of a 317.33 foot radius curve to the right through a central angle of 16°56'21" and whose chord bears South 55°30'59" East a distance of 93.48 feet to a point of reverse curvature; thence 348.26 feet along the arc of a 336.67 foot radius curve to the left through a central angle of 42°03'00" and whose chord bears South 68°02'49" East a distance of 242.74 feet to a point of tangency; thence South 89°02'49" East a distance of 51.65 feet to a point of curvature; thence 174.68 feet along the arc of a 200.00 foot radius curve to the right through a central angle of 50°02'34" and whose chord bears South 64°01'32" East a distance of 169.15 feet to a point of tangency; thence South 39°00'15" East a distance of 97.50 feet to a point on a non-tangent curve; thence 328.21 feet along the arc of 494.00 foot radius curve to the left through a central angle of 38°04'18" and whose chord bears South 19°42'06" West a distance of 331.74 feet to a point of tangency; thence South 00°42'57" West a distance of 99.46 feet to a point of curvature; thence 48.14 feet along the arc of a 30.00 foot radius curve to the right through a central angle of 91°56'29" and whose chord bears South 44°40'11" West a distance of 43.17 feet to a point of tangency; thence South 89°21'26" West a distance of 375.16 feet to the Point of Beginning. Said parcel of land contains 22.96 acres, more or less.

PHASE II AND III LEGAL DESCRIPTION

A parcel of land situated in the southwest quarter of Section 13 and the southeast quarter of Section 14 in Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon. Said parcel of land being more particularly described as follows:

COMMENCING at the southwest corner of Section 13, Township 3 South, Range 1 West, Willamette Meridian, Clackamas County, Oregon; thence North 00°03'01" East along the section line between Sections 13 and 14 a distance of 1,077.07 feet to the most westerly northwest corner of Parcel 1 of **Partition Plat No. 1991-164** recorded in Fee 91-48507 of the Clackamas County Plat Records and the **TRUE POINT OF BEGINNING**; thence leaving said section line South 45°03'00" West 589.42 feet to point of non-tangent curvature on the northeasterly right-of-way line of Town Center Loop Road West (a 72.00 foot-wide public road right-of-way); thence tracing said northeasterly road right-of-way line along the following courses and distances: tracing the arc of a 360.54 foot radius curve to the left (the radial center of which bears South 53°40'44" West) through a central angle of 20°25'22" an arc distance of 135.64 feet (the long chord bears North 47°31'56" West 134.92 feet) to a point of tangency; thence North 57°44'38" West 463.30 feet to a point of curvature; thence tracing the arc of a 258.16 foot radius curve to the right through a central angle of 57°42'16" an arc distance of 270.07 feet (the long chord bears North 28°53'30" West 258.80 feet) to a point of tangency; thence North 00°02'22" West 151.37 feet to the southeasterly line of that certain tract as deeded to the City of Wilsonville, Oregon in deed recorded November 12, 1986 in recorder's fee 86-44957; thence tracing said southeasterly line and continuing on the southeasterly line of that certain tract deeded to the City of Wilsonville in deed recorded November 12, 1986 in recorder's fee 86-44959 North 38°37'19" East 215.39 feet to the northerly line of said tract per fee 86-44959; thence tracing said northerly line South 89°58'19" West 104.56 feet to a point of curvature; thence tracing a 30.00 foot radius curve to the right through a central angle of 89°59'19" an arc distance of 47.12 feet (the long chord bears North 45°02'02" West 42.42 feet) to a point of tangency on the easterly right-of-way line of said Town Center Loop Road West; thence leaving said northerly property line and tracing the easterly, southeasterly and southerly right-of-way line of said Town Center Loop Road West along the following courses and distances: North 00°02'22" West 211.31 feet to a point of curvature; thence tracing the arc of a 444.00 foot radius curve to the right through a central angle of 64°15'44" an arc distance of 498.01 feet (the long chord bears North 32°24'30" East 444.85 feet) to a point of tangency; thence North 64°32'22" East 286.54 feet to a point of curvature; thence tracing the arc of a 414.00 foot radius curve to the right through a central angle of 24°58'03" an arc distance of 180.41 feet (the long chord bears North 77°20'24" East 178.96 feet) to a point of tangency; thence North 89°49'25" East 300.93 feet to a point of curvature for a right-of-way return to Parkway Avenue; thence leaving said southerly right-of way line of Town Center Loop Road West and tracing the arc of a 20.00 foot radius curve to the right through a central angle of 90°13'35" an arc distance of 31.49 feet (the long chord bears South 45°03'47" East 28.34 feet to the westerly right-of-way line of said Parkway Avenue (31.00 feet from center line); thence tracing said right-of-way line through the following courses and distances: South 00°03'01" West 311.17 feet to a point of curvature for the return to the cul-de-sac for said Parkway Avenue; thence tracing the arc of a 20.00 foot radius curve to the right through a central angle of 47°09'23" an arc distance of 16.46 feet (the long chord bears South 23°37'42" West 16.00 feet) to a point of reverse curvature; thence tracing the arc of a 55.00 foot radius curve to the left through a central angle of 87°59'01" an arc distance of 84.46 feet (the long chord bears South 03°12'53" West 76.40 feet); thence leaving said Parkway Avenue right-of-way line North 89°52'55" East 41.62 feet to the east line of section 14, Township 3 South, Range 1 West, of the Willamette Meridian in the State of Oregon; thence tracing said east line of section 14 South 00°03'01" West 446.55 feet to the northerly line of Parcel 3 of said **Partition Plat No. 1991-164**; thence tracing said northerly line and continuing along the northerly line of Parcel 2 of said **Partition Plat No. 1991-164** North 89°26'52" East 549.20 feet to the northeast corner of said Parcel 2; thence tracing the easterly line of said Parcel 2 South 00°03'01" West 440.61 feet to the southeast corner of said Parcel 2; thence tracing the southerly line of said Parcel 2 and continuing along the southerly line of said Parcel 3 North 89°57'00" West 479.78 feet to an angle point in said southerly line; thence tracing the westerly portion of said southerly line of Parcel 3 the following courses and distances: North 00°03'01" East 63.00 feet; thence North 89°57'00" West 66.14 feet; thence South 45°03'00' West 4.59 feet to the **TRUE POINT OF BEGINNING.**

Containing 1,604,349 square feet or 36.83 acres more or less.

467-0301
10/16/91

JKS Architects PC
1620 S.W. Taylor Street • Suite 200 • Portland, Oregon 97205
503-227-5616 • FAX 503-227-3590

WILSONVILLE TOWN CENTER
WILSONVILLE, OREGON

Revisions

KJD	RSB
Drawn By	Checked By
8963	10/18/91
Job No.	Date

SITE MASTER PLAN

Sheet Title

Sheet No.

1

of

PARKWAY CIRCLE

VILLAGE DRIVE

6' SIDEWALK & UTILITY EASEMENT TO REMAIN

EXISTING WATER LINE

EXTEND WATER AND CONNECT TO EXIST.

RELOCATE 8" SANITARY IN EASEMENT

ABANDON EXIST. 8" SANITARY AND VACATE EASEMENT

WATERLINE EASEMENT

DRAINAGE AREA = 7 AC FLOW = 18 CFS

DRAINAGE AREA = 5 AC FLOW = 13 CFS

60' UTILITY EASEMENT RELOCATE UTILITIES & VACATE EASEMENT

EXTEND STORM AND CONNECT TO EXISTING

EXISTING SANITARY IN EASEMENT

EXISTING SANITARY IN EASEMENT

SEE SHT. C-104 FOR ADDITIONAL UTILITIES IN THIS AREA

21" PIPE TO BE PLUGGED

30" STORM

CONNECT TO EXIST. WATERLINE AND LOOP TO N.W.

SHIFT BUILDING AS NECESSARY TO AVOID SANITARY

36" STORM

TOWN CENTER LOOP ROAD

WEST

15" SANITARY IN EASEM'T

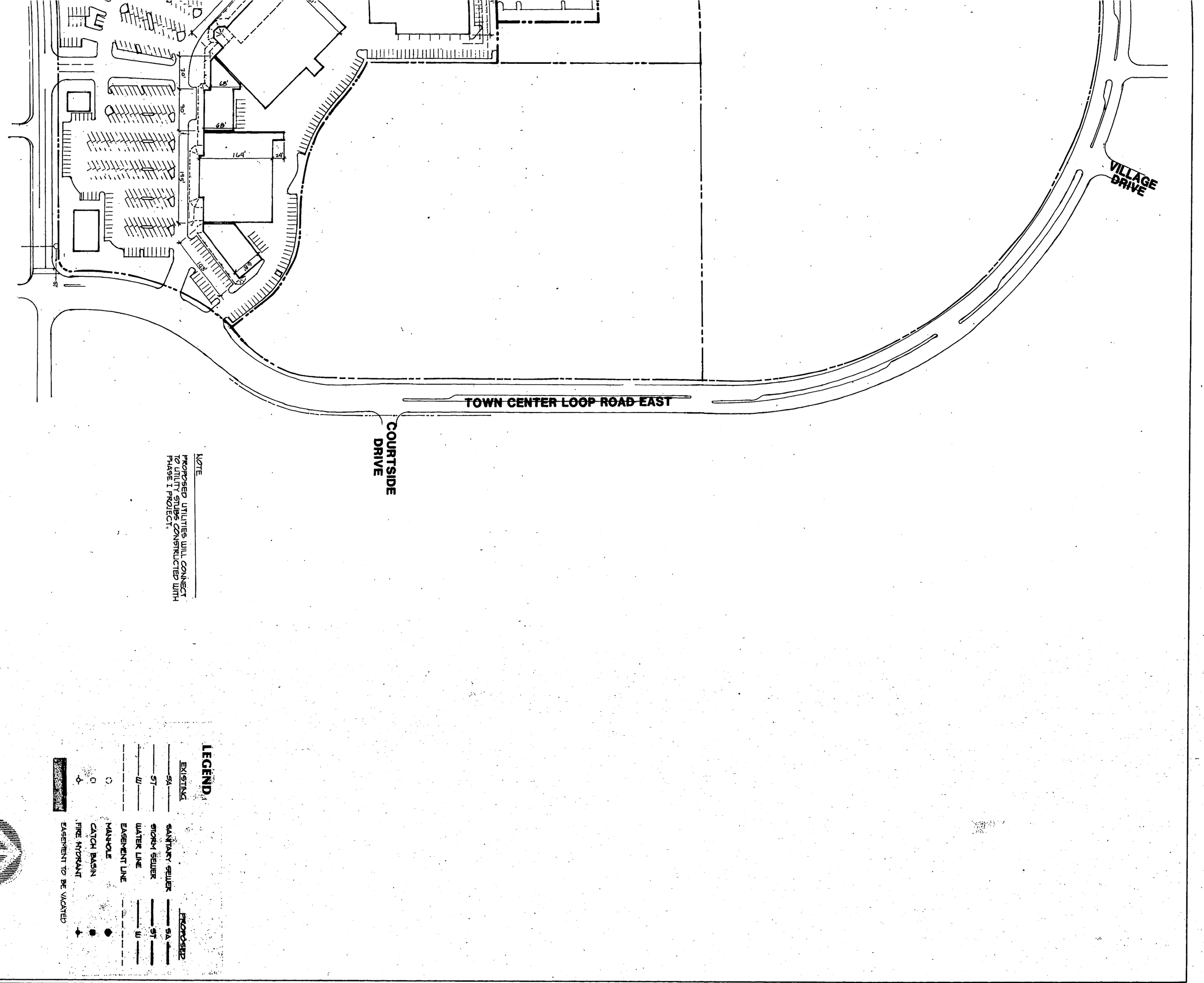
24" STORM IN EASEM'T

12" WATER IN EASEM'T.

EXIST. 8" SAN. IN EASEMENT

WILSONVILLE ROAD

144088



NOTE
PROPOSED UTILITIES WILL CONNECT TO UTILITY STUBS CONSTRUCTED WITH PHASE I PROJECT.

LEGEND

EXISTING		PROPOSED
SA	SANITARY SEWER	SA
ST	STORM SEWER	ST
W	WATER LINE	W
	EASEMENT LINE	
○	MANHOLE	●
□	CATCH BASIN	■
⊕	FIRE HYDRANT	●
	EASEMENT TO BE VACATED	

1" = 100'

Sheet No. 2 of

Sheet Title: MASTER UTILITIES PLAN

Job No. 4-4-0501 Date 6-4-01

Drawn By | Checked By

Revisions

WILSONVILLE TOWN CENTER
Wilsonville, Oregon

PACIFIC
1099 S.W. Columbia Street
Portland, Oregon 97201
(503)227-0455
Fax (503)274-4607
Planning • Engineering • Surveying • Landscape Architecture

JKS Architects PC
1620 S.W. Taylor Street • Suite 200 • Portland, Oregon 97205
503-227-5616 • FAX 503-227-3590

PARKWAY CIRCLE

VILLAGE DRIVE

EXISTING WATER LINE

6' SIDEWALK & UTILITY EASEMENT TO REMAIN

EXTEND WATER & CONNECT TO EXIST.

RELOCATE 8" SANITARY IN EASEMENT

ABANDON EXIST. 8" SANITARY AND VACATE EASEMENT

WATERLINE EASEMENT

DRAINAGE AREA - 7 AC FLOW = 18 CFS

DRAINAGE AREA - 5 AC FLOW - 13 CFS

10' UTILITY EASEMENT RELOCATE UTILITIES & VACATE EASEMENT

EXISTING SANITARY IN EASEMENT

EXTEND STORM AND CONNECT TO EXISTING

EXISTING SANITARY IN EASEMENT

SEE SHT. C-104 FOR ADDITIONAL UTILITIES IN THIS AREA

21" PIPE TO BE PLUGGED

30' STORM

CONNECT TO EXIST. WATERLINE AND LOOP TO N.W.

SHIFT BUILDING AS NECESSARY TO AVOID SANITARY

36' STORM

15" SANITARY IN EASEM'T.

24" STORM IN EASEM'T.

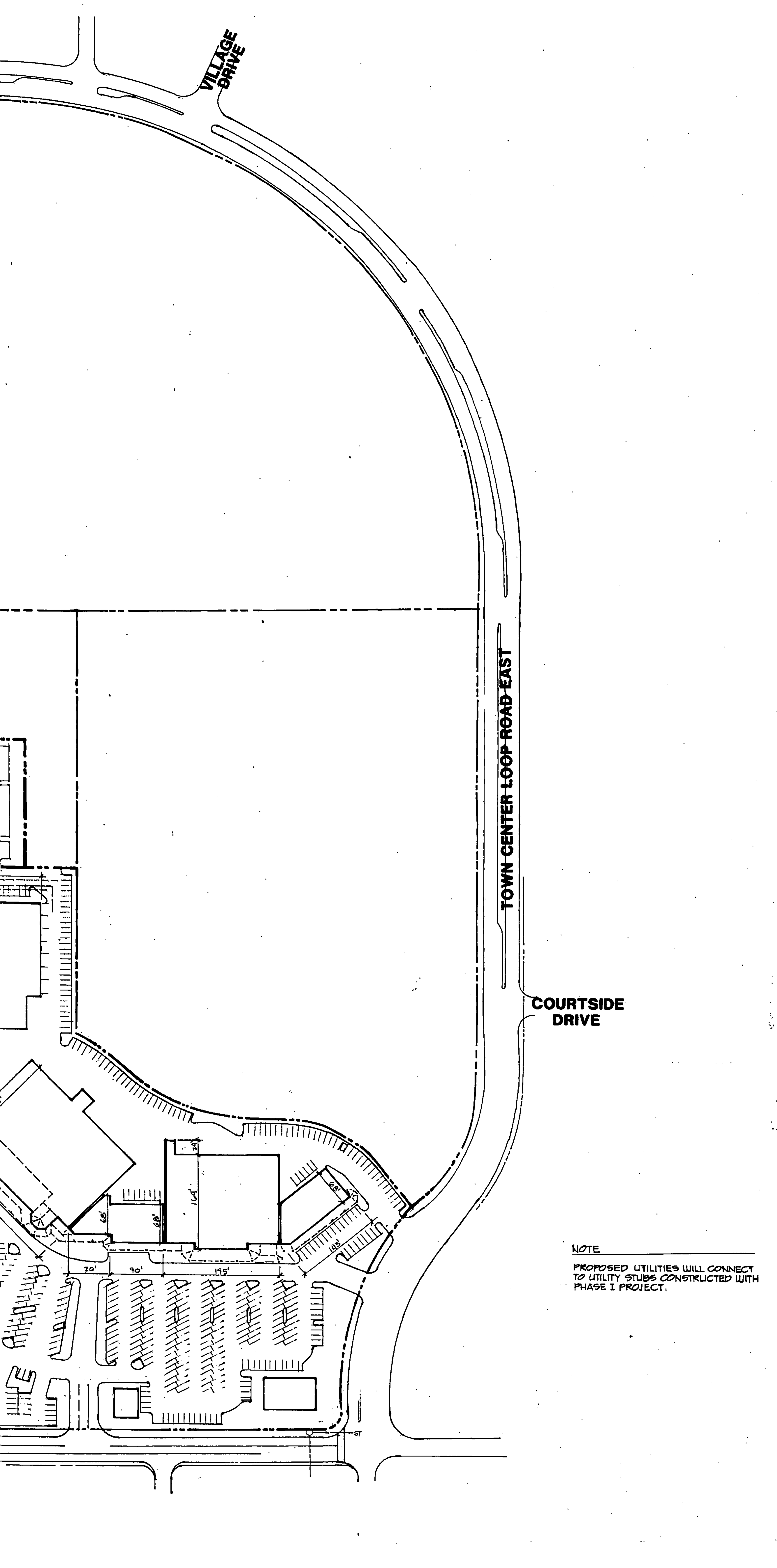
TOWN CENTER LOOP ROAD

WEST

12" WATER IN EASEMENT

EXIST. 8" SAN. IN EASEMENT

WILSONVILLE ROAD

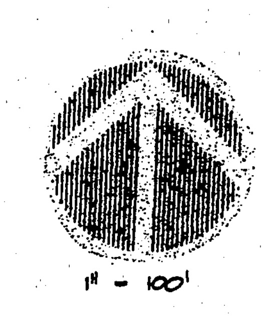


NOTE

PROPOSED UTILITIES WILL CONNECT TO UTILITY STUBS CONSTRUCTED WITH PHASE I PROJECT.

LEGEND

EXISTING		PROPOSED
——SA——	SANITARY SEWER	——SA——
——ST——	STORM SEWER	——ST——
——W——	WATER LINE	——W——
– – – – –	EASEMENT LINE	– – – – –
○	MANHOLE	●
□	CATCH BASIN	■
⊸	FIRE HYDRANT	✦
▬	EASEMENT TO BE VACATED	



1" = 100'

APPROVED

JKS Architects PC
1620 S.W. Taylor Street • Suite 200 • Portland, Oregon 97205
503-227-5616 • FAX 503-227-3590

W&H PACIFIC
1099 S.W. Columbia Street
Portland, Oregon 97201

WILSONVILLE TOWN CENTER
Wilsonville, Oregon

Revisions

Drawn By | Checked By

Job No. 4-467-0301 | Date 10-18-91

MASTER UTILITIES PLAN

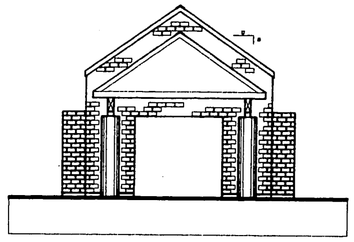
Sheet Title

Sheet No.

2

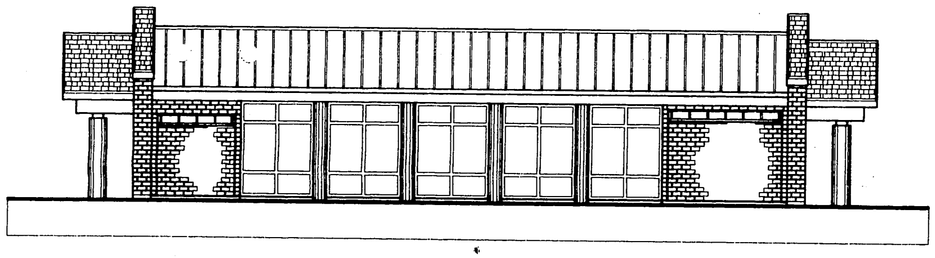
of

2



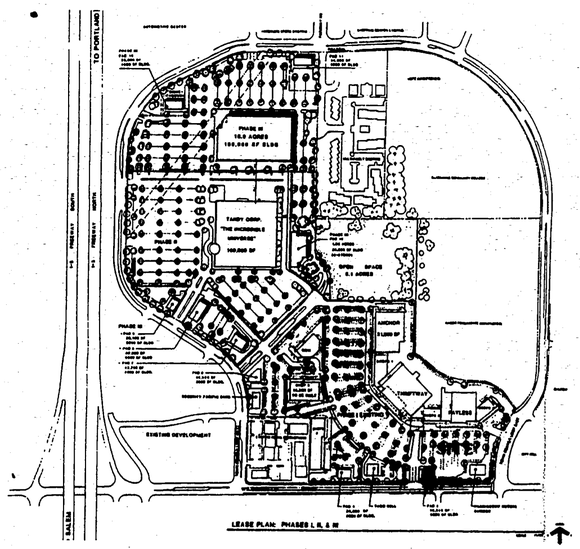
END ELEVATION

1/8" = 1'-0"



FRONT ELEVATION

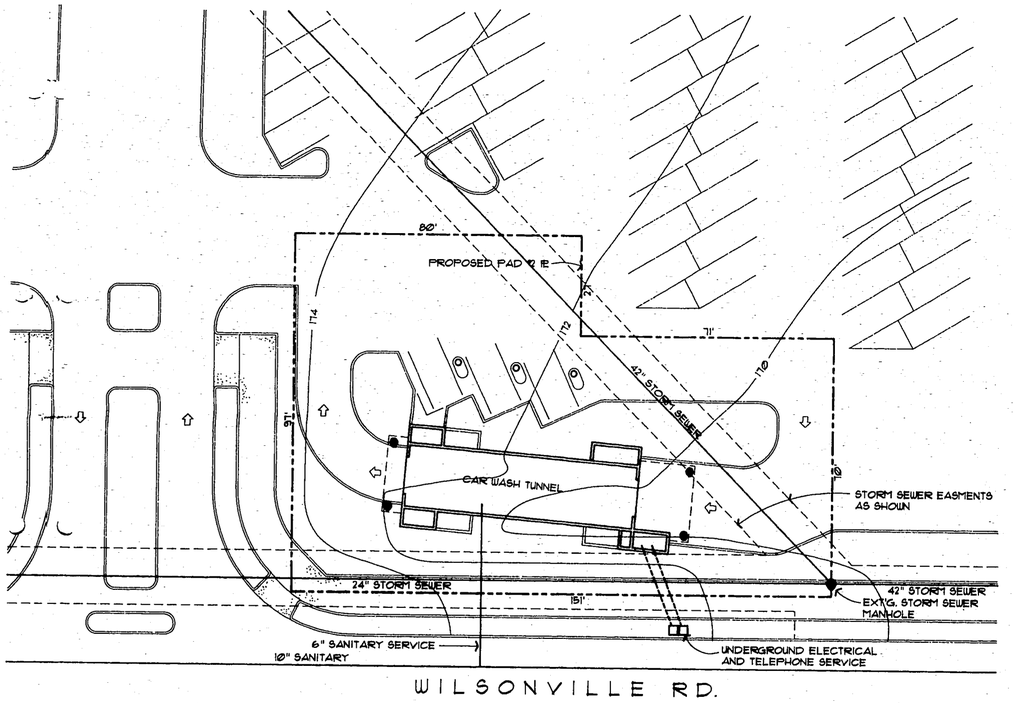
1/8" = 1'-0"



VICINITY MAP

SITE DATA

	LOT COVERAGE IN SQ. FT.	LOT COVERAGE IN %
BUILDING AREA	1,500±	12%
PARKING & DRIVES	8,293±	65%
LANDSCAPING/OPEN SPACE	2,937±	23%
TOTAL SITE AREA	12,730±	100%



NORTH

PRELIMINARY SITE PLAN

1" = 20'

NICOLI ENGINEERING
and Construction Services Inc
9025 S.W. Center Street • P.O. Box 23784
Tigard, Oregon 97223
Phone: (503) 620-2086
FAX: (503) 684-3636

WILSONVILLE TOWN CENTER
PROPOSED CAR WASH
WILSONVILLE, OREGON

CLIENT:
DENNIS THOMPSON

REVISIONS:

Date:	11-20-92
Scale:	AS SHOWN
Drawn by:	SET
Checked by:	JDA
Job No.:	2023
Drawing No.:	2023TITL

SHEET 1 OF 1

Exhibit A

PEN WTS. 1 2 3 4 1 3 1 6 8 8 8 8 8 8 8

3 | CED ATL 'GLAUCA'

30 | PPU LAU 'OTTO LUYKEN'

7 | EUO ALA 'COMPACTA'

36 | JUN HOP 'BAR HARBOR' 4 PER ISLAND

LIMIT OF WORK

14 | RHO 'JEAN MARIE'

78 | PPU LAU 'OTTO LUYKEN'

11 | ACE PUB 1 3/4" 'APPLEBLOSSOM'

22 | RHO 'JEAN MARIE'

6 | ACE PLA 3" 'EMERALD QUEEN' SEE PLTG. NOTES.

2 | PYR CAL 'REDSPIRE'

11 | EUO ALA 'COMPACTA'

EQ. EQ.

16 | PYR CAL 1 3/4" 'REDSPIRE'

5'-0" MIN. (TYP.)

LAWN - SEED (FINE) SEE SPECS.

50'-0" TYP.

45'-0"

SHOVEL CUT EDGE SEE PLTG. NOTES.

5 | CED ATL 'GLAUCA'

533 | PPU LAU 'OTTO LUYKEN'

TOWN CENTER LOOP ROAD WEST

LAWN - SEED SEE SPEC'S.

6 | PSL

AS REQ | AZALEA 'PURPLE SPLENDOR' 30" O.C.

AS REQ | PIN MUG 2 GAL | 36" O.C.

60 | RHO 'UNIQUE'

9 | SYR VUL 2 GAL. 'LAVENDER LAD

31 | PIE 'FOREST FLAME'

4 | VIB DAV

1 | QUE PUB

BARK MULCH SEE SPEC'S.

12 | BER THU 'ROSY GLOW'

2 | PYR CAL 'REDSPIRE'

LAWN - SEED SEE SPEC'S.

EQ. EQ.

1

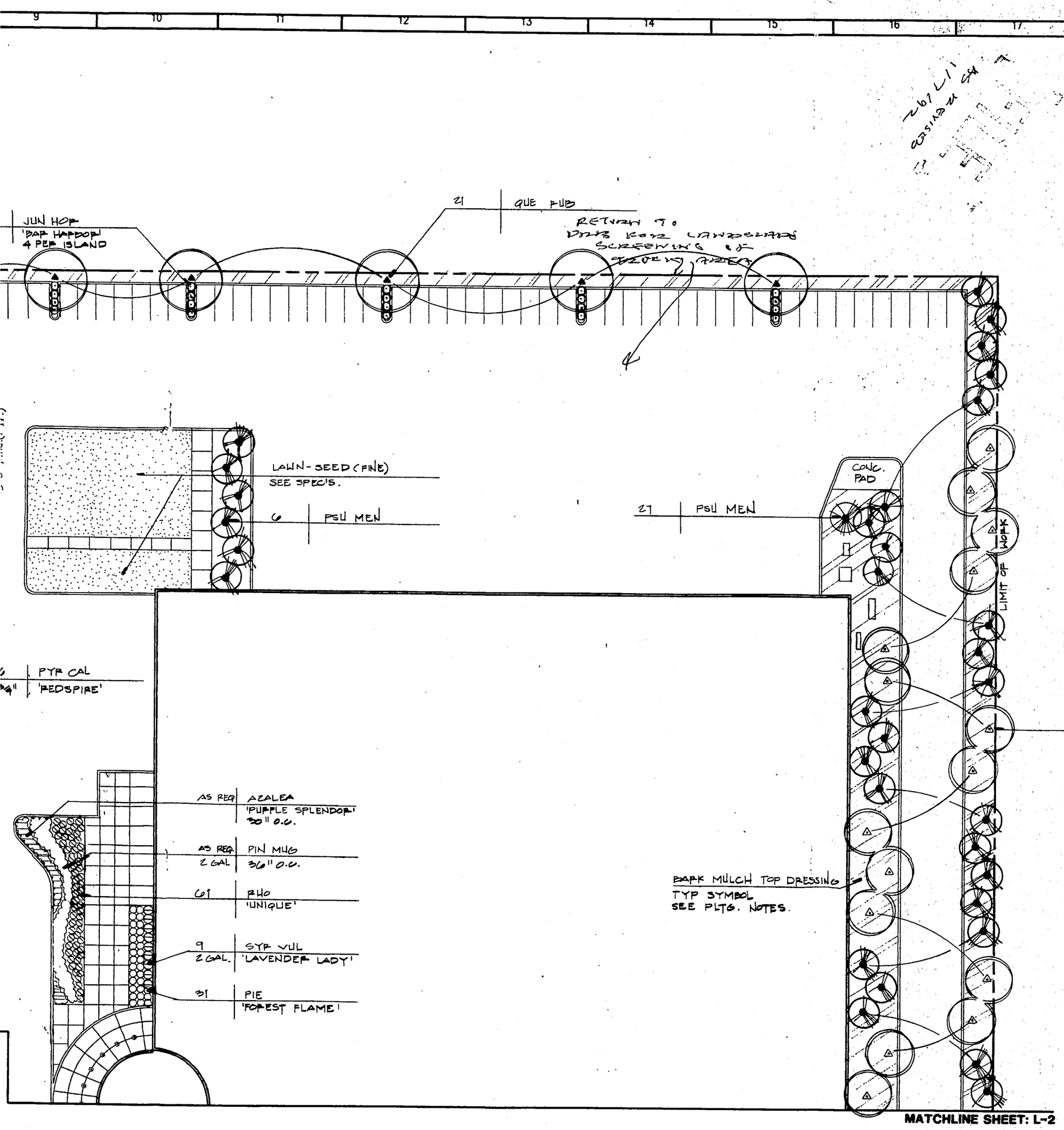
5

A PLANTING ISLAND 'A' DETAIL N.T.S.

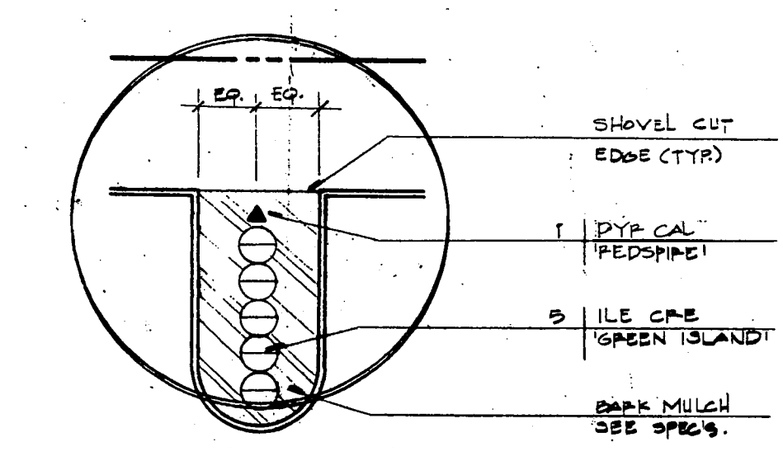
B PLANTING ISLAND 'B' DETAIL N.T.S.

C PLANTING ISLAND 'C' DETAIL

PROJECT NO. 4-755-0202
CADD FILE '0775LS01.DWG'



MATCHLINE SHEET: L-2



C PLANTING ISLAND 'C' DETAIL N.T.S.

SHEET NOTES

PLANTING GENERAL NOTES:

CONTRACTOR SHALL VERIFY LOCATIONS OF ALL UTILITIES IN PLANTING AREAS PRIOR TO PLANTING. CONTRACTOR SHALL CONTACT THE FOLLOWING AGENCIES 48 HOURS PRIOR TO BEGINNING EXCAVATION WORK FOR UTILITY LOCATION INFORMATION:

TELEPHONE:	503 246 6699	
GAS:	503 246 6699	
ELECTRIC:	503 246 6699	
SEWER:	503 682 4960	ATTN: MARTIN BROWN
WATER:	503 682 4960	ATTN: MARTIN BROWN

LIGHT STANDARDS ARE SHOWN FOR REFERENCE ONLY. REFER TO DRAWING NUMBER DRBC2 FOR ADDITIONAL LIGHTING INFORMATION.

PLANTING IN PARKING LOT ISLANDS AS SHOWN IN ENLARGEMENTS ON SHEET L-1.0.

ALL SHRUB AND GROUNDCOVER PLANTING AREAS TO RECIEVE MINIMUM 2" DEPTH OF BARK MULCH. SEE SPECIFICATIONS 02950.

REFER TO CIVIL'S FOR FINISH GRADES IN PLANTING AREAS.

STREET TREES ON TOWN CENTER LOOP ROAD WEST SHALL BE PLANTED PER CITY OF WILSONVILLE STANDARD PLAN. IF NONE EXISTS, INSTALL PER DETAIL 1, L-2.0.

ALL LAWN EDGES AT SHRUB PLANTING AREAS SHALL BE SHOVEL CUT. CONTRACTOR SHALL MAINTAIN ALL SHOVEL CUT EDGES IN A SMOOTH AND EVEN CONDITION UNTIL FINAL ACCEPTANCE.

CONTRACTOR SHALL SUPPLY AND INSTALL ANNUAL COLOR, 4" POT SIZE AT 10" O.C.. COLOR MATERIALS TO BE SELECTED BY CONTRACTOR AND APPROVED BY OWNER'S REPRESENTATIVE PRIOR TO PLANTING. ANNUAL COLOR MATERIAL SHALL BE IN SEASON (FULL BLOOM) AT TIME OF INSTALLATION.

NOT FOR CONSTRUCTION

PRINTED JAN 06 1992 W & H PACIFIC

APPROVED

PROJECT NORTH

W&H PACIFIC
200 S.W. COLUMBIA STREET
PORTLAND, OREGON 97201
(503) 227-0455
Planning • Engineering • Surveying • Landscape Architecture

No.	Revisions/Submissions	Date

DesignForum
ARCHITECTS
3484 Far Hills Avenue, Dayton, Ohio 45429 Telephone: (513) 298-4400

Project Title: PROJECT THUNDER
WILSONVILLE, OREGON

Drawing Title: LANDSCAPE PLAN

Seal: REGISTERED 261 MATTHEW P. SIMPSON OREGON LANDSCAPE ARCHITECT

Designed MDS MPS	Project No. 4-755-0202
Drawn MDS	Scale 1" = 30'-0"
Checked MPS	Drawing No. L1.0
Reviewed MH	
Date 12-27-91	

MATCHLINE SHEET: L-1

TOWN CENTER LOOP ROAD WEST

ANNUAL COLOR | 4" POT | SEE PLTG. NOTES

3 | 3" | ACE CIP

20 | RHO 'JEAN MARIE'

SHOVEL CUT EDGE (TYP.) SEE PLTG. NOTES.

EQ. EQ.

5'-0" MIN.

30 | VIB DAV

5 | CED ATL. 'GLAUCA'

10 | ILE CRE 'GREEN ISLAND'

61 | PRU LAU 'OTTO LUYKEN'

56 | EUO ALA 'COMPACTA'

4 | ACE PLA | 3" | 'EMERALD QUEEN' SEE PLTG. NOTES

LAWN - SEED (FINE) SEE SPEC'S.

6 | QUE PUB | 2" CAL

ROUGH SEEDED AREA
See Grading Plans for Limits

15 | PPY CAL | 1 3/4" | 'REDSPIRE'

AS REQ. | AZALEA 'PURPLE SPL.' 30" O.C.

AS REQ. | PIN MUG | 2 GAL. | 30" O.C.

61 | RHO 'UNIQUE'

31 | PIE 'FOREST FLAME'

9 | SYR VUL | 2 GAL | 'LAVENDER LADY'

25 | VIB DAV

13 | AZA 'PURPLE SPL.'

42 | AZA 'PURPLE SPL.'

AS REQ. | HED HEL | 4" POT | 'GLACIER'

6 | ACE CIP

SIDEWALK N.I.C.

9 | QUE PUB | 2" CAL

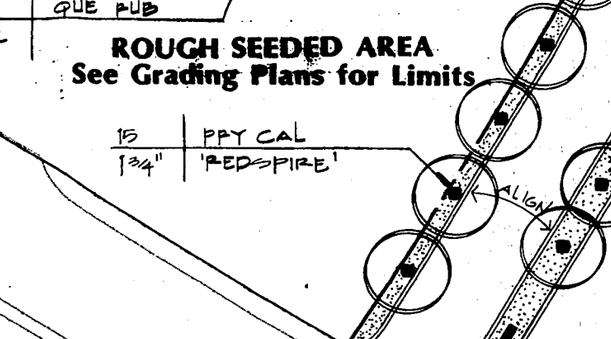
ROUGH SEEDED AREA
See Grading Plans for Limits

LAWN - SE
SEE SPEC'

PLANT LEGEND

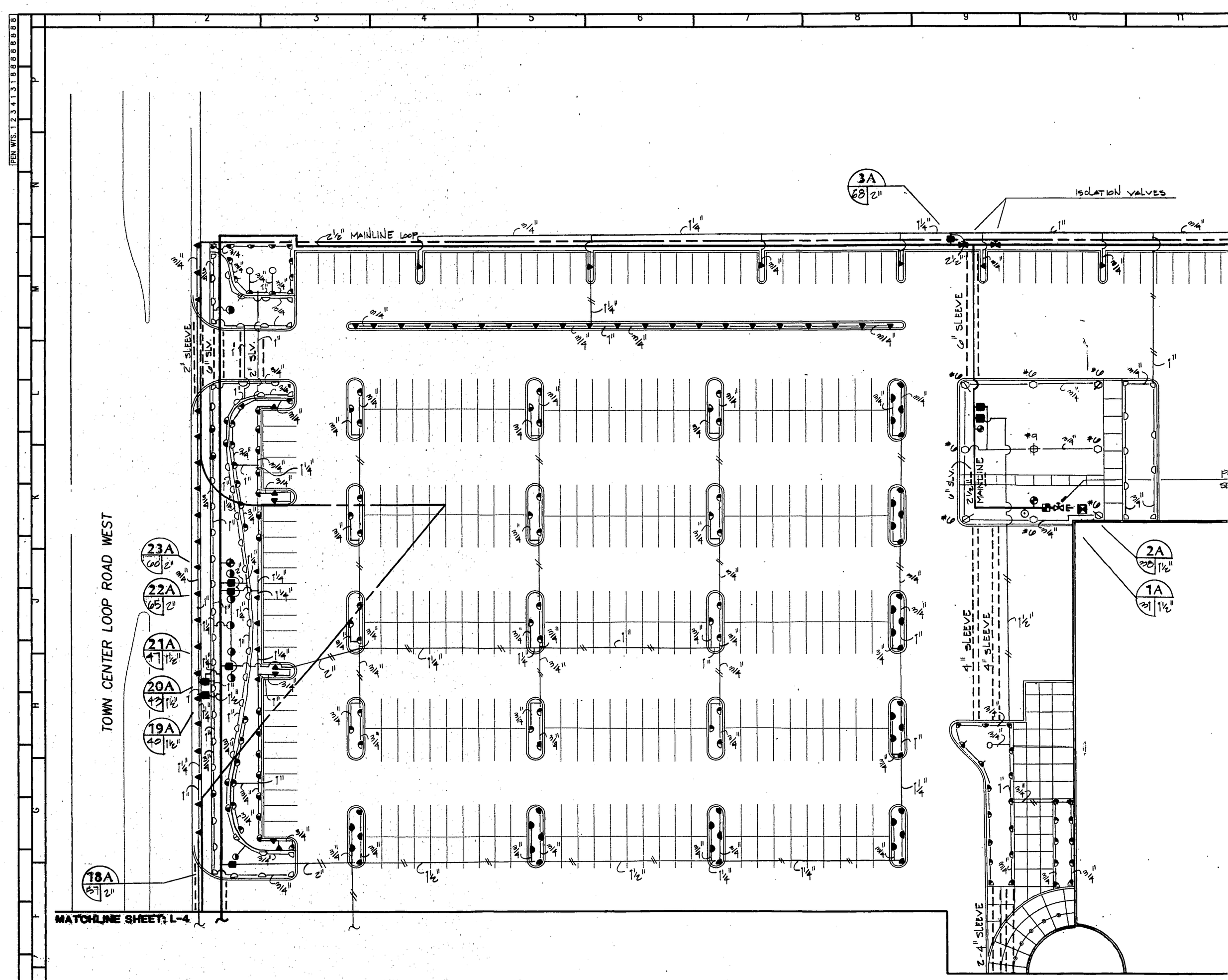
QTY	CODE	BOTANICAL NAME	COMMON NAME	SIZE
TREES				
9	Ace Cir	Acer circinatum	Vine Maple	7'- 8'
10	Ace pla	Acer platanoides 'Emerald Queen'	Emerald Queen Maple	3" Cal.
11	Ace rub	Acer rubrum 'Armstrong'	Armstrong Columnar Maple	1-3/4" Ca
18	Ced atl	Cedrus atlantica 'Glauca'	Blue Atlas Cedar	8'- 10'
19	Pyr cal	Pyrus calleryana 'Chanticleer'	Chanticleer Pear	1-3/4" Ca
40	Pse men	Pseudotsuga menziesii	Douglas Fir	8'- 10'
36	Que rub	Quercus rubra	Red Oak	2" Cal.
70	Pyr cal	Pyrus calleryana 'Redspire'	Redspire Pear	1 3/4" C
SHRUBS				
210	Aza	Azalea 'Purple Splendor'	Purple Splendor Azalea	12-15"
12	Ber thu	Berberris thunbergii 'Rosy Glow'	Rosy Glow Japanese Barberry	2 Gal.
184	Euo ala	Euonymous alata 'Compacta'	Compact Winged Euonymous	12-15"
53	I le cre	Ilex crenata 'Green Island'	Japanese Holly	2 Gal.
62	Pie	Pieris 'Forest Flame'	Forest Flame Pieris	12-15"
131	Pin mug	Pinus mugo Pumilio	Dwarf Mugo Pine	2 Gal.
240	Pru lau	Prunus laurocerasus 'Otto Luyken'	Otto Luyken Laurel	12-15"
56	Rho	Rhododendron 'Jean Marie'	Rhododendron	12-15"
122	Rho	Rhododendron 'Unique'	Rhododendron	12-15"
18	Syr vul	Syringa vulgaris 'Lavender Lady'	Lavender Lilac	2 Gal.
53	Vib dav	Viburnum davidii	David Viburnum	12-15"
GROUNDCOVER				
2,210	Hed hel	Hedera helix 'Glacier'	Glacier Ivy	4" Pots
66	Jun hor	Juniperus horizontalis 'Bar Harbor'	Bar Harbor Juniper	1 Gal.
216		Annual Color		4" Pots

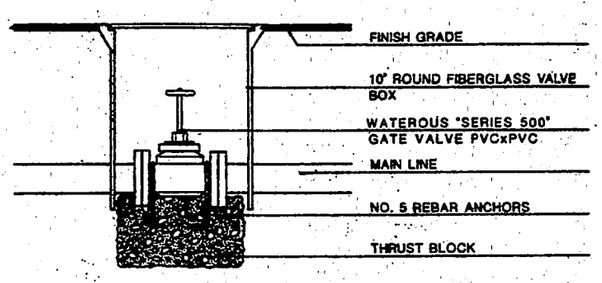
1 TREE PLANTING DETAIL — N.T.S.



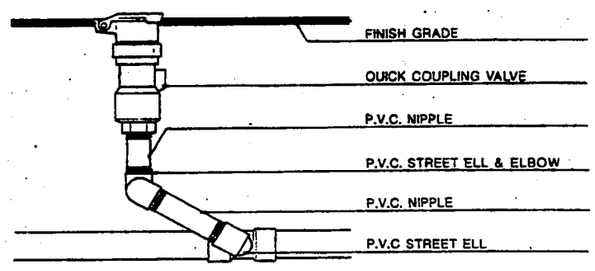
2 CONIFER PLANTING DETAIL — N.T.S.

PROJECT NO. 4-755-0202
CADD FILE 0775L502.DWG

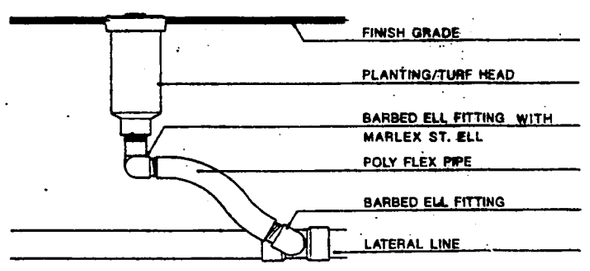




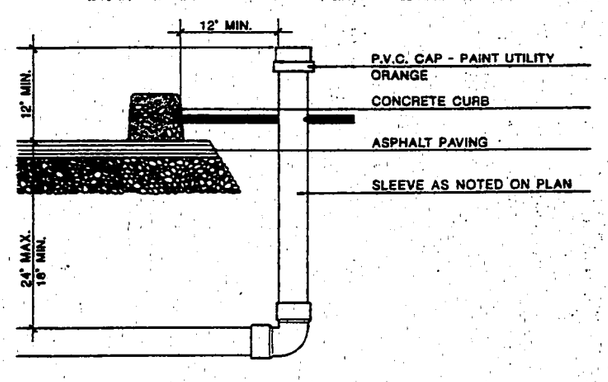
MAINLINE GATE VALVE



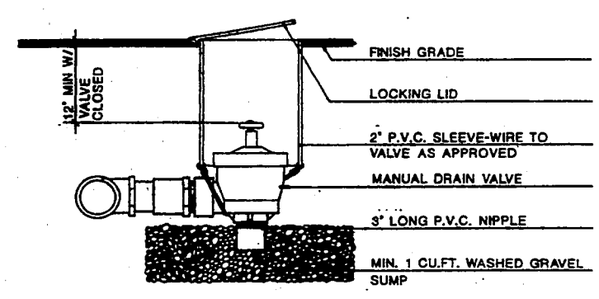
QUICK COUPLING VALVE DETAIL



POLY FLEX RISER DETAIL



SLEEVING DETAIL



MANUAL DRAIN VALVE DETAIL

PROJECT NO. 4-755-0202
CADD FILE 0775IR01.DWG

PEN WTS. 1 2 3 4 1 3 1 8 8 8 8 8 8 8 8

MATCHLINE SHEET: C-3

TOWN CENTER LOOP ROAD WEST

2½" MAINLINE LOOP

6" SLEEVE

ISOLATION VALVE

17A 44 1½"

16A 26 1½"

15A 42 1½"

14A 50

12A 32 1½"

13A 54 1½"

11A 48 1½"

10A 44 1½"

9A 43 1½"

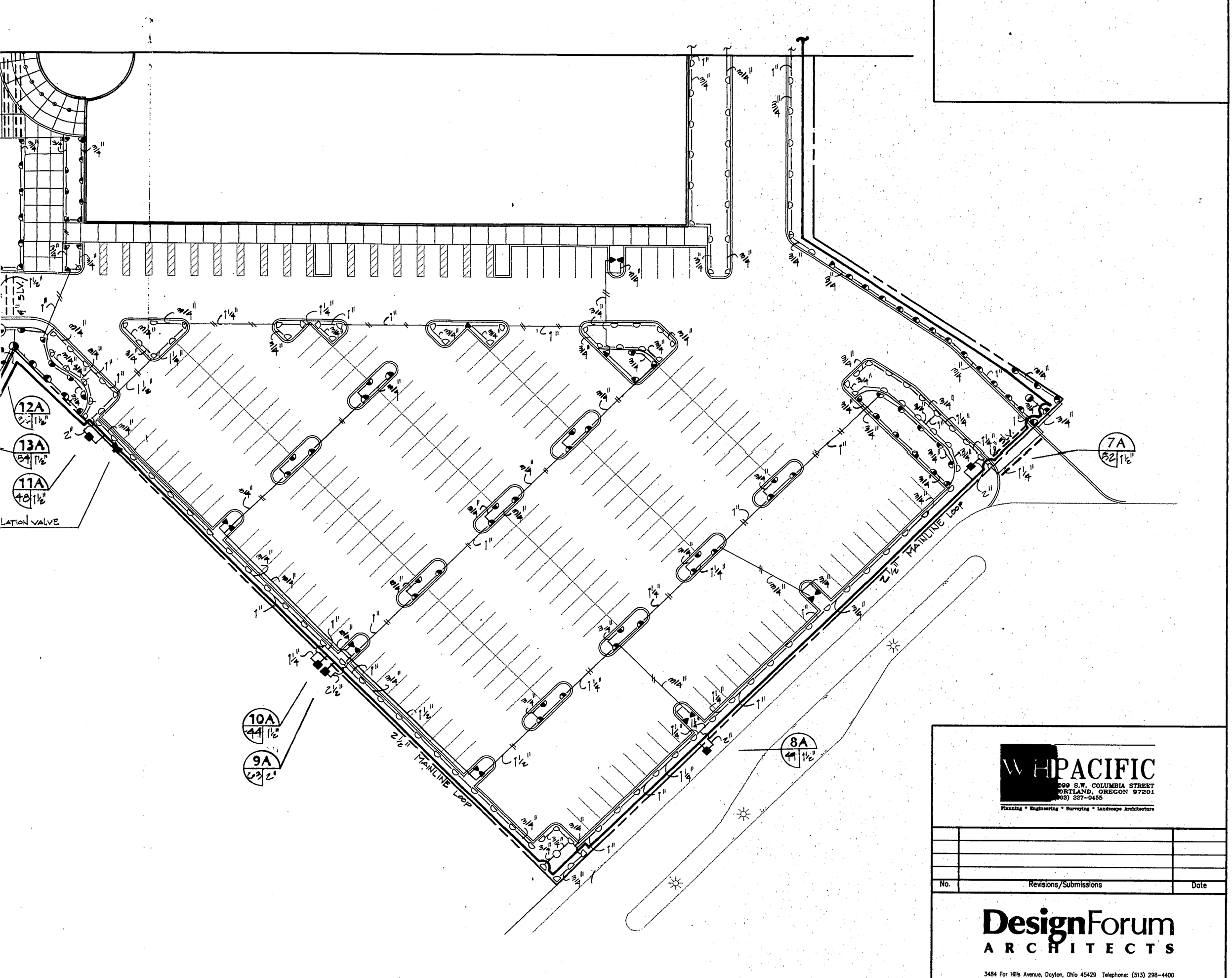
2-4" SLV's.

4" SLV.

PROJECT NO. 4-755-0202
CADD FILE 0775IR02.DWG

9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17

SHEET NOTES



WHPACIFIC
1099 S.W. COLUMBIA STREET
PORTLAND, OREGON 97201
(503) 227-0455
Planning • Engineering • Surveying • Landscape Architecture

No.	Revisions/Submissions	Date

DesignForum
ARCHITECTS
3484 Far Hills Avenue, Dayton, Ohio 45429 Telephone: (513) 298-4400

Project Title
PROJECT THUNDER
WILSONVILLE, OREGON

Drawing Title
IRRIGATION PLAN

Seal: REGISTERED 2861 MATTHEW P. SIMPSON OREGON LANDSCAPE ARCHITECT

Designed MDS MPS	Project No. 4-755-0202
Drawn MDS	Scale 1" = 30'-0"
Checked MPS	Drawing No. L4.0
Reviewed MH	
Date 12-27-91	

9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17

December 28, 2023

Dan Zoldak
Lars Anderson & Associates, Inc.
4694 W Jacquelyn Avenue
Fresno, CA 93722

Application No.:	ADMN23-0029 Class 1 Review Request
Request:	Class 1 Review of Use and Structure Conformance Status (per Section 4.030 (.01) A. 7. of Wilsonville Development Code)
Location/Legal:	29400 SW Town Center Loop West. Tax Lot 220, Section 14D, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon.
Status:	Notice of Planning Director Determination

Dear Mr. Zoldak:

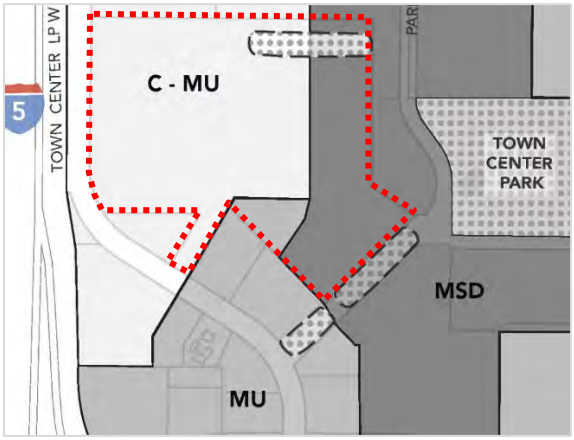
The City received your application on October 30, 2023, for Class 1 Review to confirm the status of the existing use and structure at 29400 SW Town Center Loop West. On November 28, 2023, City staff contacted you by email providing options for proceeding with your application and requesting that you notify staff of your preference by December 8, 2023 (see attached enclosure).

On November 29, 2023, staff conducted a completeness review within the statutorily allowed 30-day review period and found the Class 1 Review application to be complete. In the absence of a withdrawal of the Class 1 Review application, City staff has proceeded with the Class 1 Review of the existing use, structure, and site conditions at the above location per Section 4.030 (.01) A. 7. of the Development Code.

Here are some additional data points regarding the subject property:

Tax lot ID:	31W14D00220
Record No.:	01507257
County:	Clackamas
2008 100 Year Floodplain:	No
City Limits:	Yes
SROZ (Significant Resource Overlay Zone):	No
UGB (Urban Growth Boundary):	Yes

1. The most relevant previous Planning approvals for the property include:
    - 91PC43 Modified Stage I Master Plan, Phase II Stage II Site Development Plans, Amending Condition of Approval 8 of 90PC5
    - 91DR29 Site Design (Architectural, Landscaping) and Signage
    - 01AR01 Minor Architectural Revisions
    - 92DR21 Revise Condition of Approval 15 of 91DR29 regarding placement of containerized dumpsters
    - AR09-0053 Zoning Verification
2. The current Comprehensive Plan designation for the subject property is Town Center. The property is not located in an Area of Special Concern.
3. The current zoning classification, including any applicable overlay districts, for the subject property is Town Center (TC; adopted by Ordinance No. 835, June 5, 2019). The property is located in three (3) TC sub-districts: Commercial-Mixed Use (C-MU), Mixed Use (MU), and Main Street District (MSD). There are two (2) proposed open space areas within or adjacent to the property. The adjacent property zoning designation is TC on all sides.



4. The current use of the property is Fry's Electronics, a large format (159,400 square feet), electronics retail store, which has been vacant since 2021.
5. The original approval for development of the subject property in 1991 (Case File Nos. 91PC43 and 91DR29) characterized the use as "a retail business with the anonymous name "Project Thunder" "a 159,400 square foot electronics-related retail store". Zoning was Planned Development Commercial (PDC) with the property located in a functional use area under the Town Center Master Plan of Central Commercial (CC). Typical recommended uses in CC included department stores, retail stores, business machines retail sales and service, and similar retail or service establishments. Except for the purpose of determining minimum parking requirements for the site, which disaggregated the building square footage into such uses as retail commercial, service, office, restaurant, and storage, the primary use of the site was considered commercial retail or retail store.
6. According to the zoning ordinances and regulations for the TC zone, the current use of, structures on, and site conditions of, the subject property are legally established Non-Conforming (see Wilsonville Code Sections 4.132, 4.189, 4.190, and 4.191.) The following is a non-exhaustive list of the applicable ordinances and regulations:

- With respect to use, per Subsection 4.132 (.02) F., "retail sales and service of retail products, under a footprint of 30,000 square feet per use" is an outright allowed use in the TC zone. Further, per Subsection 4.132 (.03) A. 1., use-related regulations for the sub-districts Commercial-Mixed Use (C-MU) and Main Street District (MSD), under additional permitted uses state that "single-user commercial or retail (e.g. grocery store or retail establishment) may exceed 30,000 square feet if located on more than one story of a multi-story building". The existing use on the subject property, per the original approval as described above, is a large format (159,400 square feet), single-story with partial mezzanine, single-user electronics retail store that exceeds a footprint of 30,000 square feet. Therefore, the use is a legally established Non-Conforming Use in the TC zone.
- With respect to structures, per Subsection 4.132 (.06), the purpose and intent of the design and development standards of the TC zone is, in part, "to provide high quality design in new development and redevelopment that promotes a sense of community identity and implements the Wilsonville Town Center Vision", and "provide sustainable development through the adaptive reuse of existing buildings". All developments must follow the design and development standards unless a waiver is granted by the Development Review Board per Subsection 4.132 (.06) D. The existing building as it currently exists on the subject property does not conform to many of the design and development standards in Subsection 4.132 (.06), such as building placement and frontage requirements, location of parking in relation to the building, building setbacks, height and number of stories, façade design, and architectural materials and treatments. A waiver to these standards has not been applied for, nor has a waiver been granted, for the existing structure. Therefore, the structure is a legally established Non-Conforming Structure in the TC zone.
- With respect to site conditions, per Subsection 4.132 (.04) A., "all development will be consistent with the Street Network and Multi-modal Network". The purpose of the network plans (Figures 2 and 3) is to support creation of a highly connected and walkable Town Center where there are options for travel. Several proposed streets, a multi-use path, and bicycle facilities are shown within or immediately adjacent to the subject property. Per Subsection 4.132 (.05) A., "all development will be consistent with the Open Space Network, shown in Figure 4". A proposed open space is shown in the northeast corner and along the southeast boundary of the subject property. Other site improvement standards of the TC zone address such features as walkway connection to building entrances, parking location, landscape design, and plaza areas. Existing site conditions do not comply with the applicable standards. Therefore, the existing site conditions are legally established Non-Conforming Site Conditions in the TC zone.

7. There are not any variances, special permits/exceptions, ordinances, or conditions that apply to the subject property. See case files cited above for Conditions of Approval.

Based on the application materials, prior land use approvals, existing site conditions, and the applicable zoning ordinances and regulations, it is the determination of the Planning Director that Fry's Electronics, on the subject property at 29400 SW Town Center Loop West, is a legally established Non-Conforming Use in a Non-Conforming Structure with Non-Conforming Site Conditions in the

TC zone. The complete record for this application is available on the City's online portal under Case File No. ADMN23-0029.

In your application on October 30, 2023, requesting Class 1 Review to confirm the status of the existing use and structure at the subject site, you also stated that The Home Depot, Inc., intends to operate a store within the existing structure that was previously occupied by Fry's. You, therefore, sought confirmation from the City that a warehouse retail store can continue operating at the property. You went on to assert that the two stores are interchangeable with respect to use as warehouse retailers and indicated that you were requesting confirmation from the City that this is, indeed, the case. That second request is for written interpretation of the Development Code and requires Class 2 Review per Section 4.030 (.01) B. 3. In response to the options for proceeding with your application that staff provided to you via email on November 28, 2023, you submitted, on December 15, 2023, an application for Class 2 Review (Case File No. AR23-0031); that application is currently in the 30-day completeness review period, which expires on January 14, 2024. Therefore, nothing in this Class 1 decision shall be construed to provide a determination one way or another with regard to the interpretation requested in the subsequent Class 2 Review (re: Home Depot, Inc.).

This information was provided on December 28, 2023, by the undersigned, on behalf of the City of Wilsonville, per request and as a public service. The undersigned certifies that the above information contained herein is believed to be accurate and is based upon, or relates to, the information supplied by the requestor. The Zoning Authority assumes no liability for errors and omissions. All information was obtained from public records, which may be inspected during regular business hours.

If you have any questions, please contact me at 503-682-4960, or at bateschell@ci.wilsonville.or.us.

Sincerely,

Miranda Bateschell
Planning Director
City of Wilsonville

cc via email: David Fry, Lumberjack LP, dave@rdjdevelopment.com

Enclosure: City Staff Email Correspondence to Applicant, dated November 28, 2023

From:	Luxhoj, Cindy
To:	dzoldak@larsandersen.com
Cc:	dave@rdjdevelopment.com; Bateschell, Miranda; Rybold, Kim; Daniel Pauly (pauly@ci.wilsonville.or.us)
Bcc:	Luxhoj, Cindy
Subject:	ADMN23-0029 Class 1 Review Request for 29400 SW Town Center Loop
Date:	Tuesday, November 28, 2023 1:51:00 PM
Attachments:	image001.png

Mr. Zoldak,

This email is in regards to the application you submitted on October 30, 2023, requesting a Class 1 Review for the property located at 29400 SW Town Center Loop West, Case File No. ADMN23-0029.

In your application, you state that you are requesting a Class 1 review to confirm the status of the existing non-conforming use at the above location. If this is your intent, then the City is prepared to deem your application complete tomorrow, which is the last day within the 30-day completeness review period. We would then process the application as a Class 1 review per Section 4.030 (.01) A. 7. of the Development Code unless you indicate differently – see options listed below.

You also state, however, that The Home Depot, Inc., intends to operate a store within the existing structure that was previously occupied by Fry's and, therefore, seeks confirmation from the City that a warehouse retail store can continue operating at the property. You go on to assert that the two stores are interchangeable with respect to use as warehouse retailers and indicate that you are requesting confirmation from the City that this is, indeed, the case. This second request is for written interpretation of the Development Code and requires Class 2 review per Section 4.030 (.01) B. 3.. As such, this determination will not be part of the Class 1 review or decision.

Below are a few options we have identified for proceeding with your application:

- Staffs proceeds with the Class 1 review and issues a determination of non-conforming use at the subject site.
- You submit a request to withdraw the Class 1 review application and apply for a Class 2 review.
- Staff proceeds with the Class 1 review and, in addition, you apply for a Class 2 review requesting written interpretation.

If you choose to apply for a Class 2 review, you would select "Class 2 Review Master Plan" as the application in the City's online portal and specify "Staff Interpretation (with public notice)" as the request within your application. For convenience, here is a link to the application portal. The fee for this application is $2,027, and we would invoice you when the application is submitted to the portal.

Please let us know how you prefer to proceed. If you do not submit a request to withdraw the Class 1 by **Friday December 8**, staff will proceed with the Class 1 review and decision.

Thank you,

Cindy Luxhoj AICP
Associate Planner

City of Wilsonville

503.570.1572
luxhoj@ci.wilsonville.or.us
www.ci.wilsonville.or.us
Facebook.com/CityofWilsonville

29799 SW Town Center Loop East, Wilsonville, OR 97070

VIA: Certified Mail, Return Receipt Requested

March 15, 2024

Dan Zoldak
Lars Andersen & Associates, Inc.
4694 W Jacquelyn Avenue
Fresno, CA 93722

Re: Determination of Non-Conformance
29400 SW Town Center Loop West

Case File: DB24-0002 Appeal of Administrative Decision
- Appeal (APPL24-0001)

The Development Review Board's Decision and Resolution No. 429 are attached, affirming the Planning Director Determination in Case File ADMN23-0029 and denying the Appeal in Case File DB24-0002.

Thank you.

Mandi Simmons
Planning Administrative Assistant

CC: David Fry, Lumberjack LP

CC via e-mail: Kenneth Katzaroff, KKatzaroff@schwabe.com
Keenan Ordon-Bakalian, Kordon-bakalian@schwabe.com
Barry Simmons, barry_simmons@homedepot.com
Patrick Donaldson, pfdforbes@aol.com

March 15, 2024

DEVELOPMENT REVIEW BOARD PANEL B

NOTICE OF DECISION

Application Nos.:	DB24-0002 Appeal of Administrative Decision - Appeal (APPL24-0001)
Appellant/Applicant:	Lars Andersen & Associates, Inc. (Contact: Dan Zoldak)
Request:	Appeal of Administrative Decision
Case File Appealed:	ADMN23-0029 Class 1 Review Request
Decision Appealed:	Planning Director Determination of Non-Conformance
Owner:	Lumberjack LP (Contact: David Fry)
Location:	29400 SW Town Center Loop West. The property is specifically known as Tax Lot 220, Section 14D, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon.

On March 15, 2024, at the meeting of the Development Review Board the following action was granted on the above-referenced subject:

The Development Review Board affirmed the Planning Director Determination in Case File ADMN23-0029, and denied the Appeal in Case File DB24-0002.

Any appeals by anyone who has participated in this hearing, orally or in writing, must be filed with the City Recorder within fourteen (14) calendar days of the mailing of the Notice of Decision. *WC Sec. 4.022 (.02).*

This decision has been finalized in written form and placed on file in the City records at Wilsonville City Hall this **15th day of March 2024** and is available for public inspection. This decision shall become effective on the fifteenth (15th) calendar day after the postmarked date of the written Notice of Decision, unless appealed or called up for review by the Council in accordance with this Section. *WC Sec. 4.022 (.09).*

Written decision is attached

For further information, please contact the Wilsonville Planning Division at Wilsonville City Hall, 29799 SW Town Center Loop E, Wilsonville Oregon 97070 or phone 503-682-4960.

Attachments: DRB Resolution No. 429

DEVELOPMENT REVIEW BOARD
RESOLUTION NO. 429

A RESOLUTION AFFIRMING THE PLANNING DIRECTOR'S DETERMINATION OF NON-CONFORMANCE IN CASE FILE ADMN23-0029 AND DENYING THE APPLICANT'S APPEAL DB24-0002.

WHEREAS, an application for Class 1 Administrative Review (ADMN23-0029), together with planning exhibits, has been submitted by Dan Zoldak of Lars Andersen & Associates, Inc. – Applicant, on behalf of David Fry of Lumberjack LP – Owner, in accordance with the procedures set forth in Section 4.008 of the Wilsonville Code; and

WHEREAS, the subject property is located at 29400 SW Town Center Loop West on Tax Lot 220, Section 14D, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon ("the Location"); and

WHEREAS, the subject of the Class 1 Administrative Review was a Planning Director's Determination of non-conformance per Subsection 4.030 (.01) A. 7. of the Wilsonville Development Code; and

WHEREAS, the City issued the Planning Director's Determination, on the above-captioned subject, that Fry's Electronics is a legally established Non-Conforming Use in a Non-Conforming Structure with Non-Conforming Site Conditions in the Town Center (TC) zone, dated December 28, 2023; and

WHEREAS, within the prescribed appeal period, the Administrative Decision was appealed by Dan Zoldak of Lars Andersen & Associates, Inc. – Appellant/Applicant, dated January 10, 2024; and

WHEREAS, specifically, the filed appeal grounds were stated: *"An APPEAL of Planning Director Determination ADMN20-0029 [sic] determining that Fry's Electronics is a legally established Non-Conforming Use in a Non-Conforming Structure with Non-Conforming Site Conditions at 29400 SW Town Center Loop West"*; and

WHEREAS, per Code Section 4.022 (.01), a decision by the Planning Director on issuance of an Administrative Decision may be appealed, and such appeals shall be heard by the Development Review Board for all quasi-judicial land use matters; and

WHEREAS, the matter at issue will be a determination of the appropriateness of the action or interpretation of the requirements of the Code; and

WHEREAS, the Planning Staff mailed the Notice of Public Hearing for the Appeal on February 6, 2024, in advance of the Public Hearing; and

WHEREAS, the Planning Staff has prepared the staff report on the above-captioned subject dated February 15, 2024, for consideration by the Development Review Board in hearing the appeal; and

WHEREAS, said planning exhibits and staff report were duly considered by the Development Review Board Panel B at a scheduled meeting conducted on February 26, 2024, at which time exhibits, together with findings and public testimony were entered into the public record; and

WHEREAS, interested parties, if any, have had an opportunity to be heard on the subject; and

WHEREAS, during the February 26, 2024 public hearing, the Applicant requested that the record be kept open for seven days to allow it to respond to testimony entered into the record; and

WHEREAS, the Development Review Board Panel B closed the public hearing and unanimously approved the request to keep the record open for Resolution No. 429 until March 4, 2024 at 5:00 pm; and

WHEREAS, on March 4, 2024, the Applicant filed a first written submittal, which has been marked as Exhibit B2, forwarded by Planning Staff to the Development Review Board on March 7, 2024; and

WHEREAS, on March 11, 2024, the Applicant filed a final arguments submittal, which has been marked as Exhibit B3, forwarded by Planning Staff to the Development Review Board on March 12, 2024; and

WHEREAS, on March 14, 2024, commencing at 4:30 pm, the Development Review Board Panel B held a special meeting to consider all evidence timely submitted to, and not rejected by, the Development Review Board regarding Case File No. DB24-0002; and

WHEREAS, the Development Review Board considered all evidence placed before, and not rejected by, the Development Review Board on the record for Resolution No. 429, and, thereafter, deliberated.

NOW, THEREFORE, BE IT RESOLVED that the Development Review Board of the City of Wilsonville does hereby affirm the Planning Director's Determination of Non-Conformance (ADMN23-0029) dated December 28, 2023, attached hereto, with findings and recommendations contained therein, determining that:

1. There is a legally established non-conforming use at the Location; specifically, that the protected use is "a 159,400 square-foot electronics-related retail store."
2. There is a legally established non-conforming structure at the Location.
3. There are legally established non-conforming site conditions at the Location.

ADOPTED by the Development Review Board of the City of Wilsonville this 14th day of March 2024, and filed with the Planning Administrative Assistant on 3/14/24. This resolution is final on the 15th calendar day after the postmarked date of the written notice of decision per *WC Sec 4.022 (.09)* unless appealed per *WC Sec 4.022 (.02)* or called up for review by the Council in accordance with *WC Sec 4.022 (.03)*.

Rachelle Barrett, Chair - Panel B
Wilsonville Development Review Board

Attest:

Mandi Simmons, Planning Administrative Assistant

Exhibit A1
Staff Report
Wilsonville Planning Division
Appeal of Administrative Decision
29400 SW Town Center Loop West

Development Review Board Panel 'B'
Quasi-Judicial Public Hearing
Amended and Adopted March 14, 2024
Added language ***bold italics underline***
Removed language ~~struck through~~

Hearing Date:	February 26, 2024
Special Meeting Date:	***March 14, 2024***
Date of Report:	February 15, 2024
Application Nos.:	DB24-0002 Appeal of Administrative Decision - Appeal (APPL24-0001)
Appellant/Applicant:	Lars Andersen & Associates, Inc. (Contact: Dan Zoldak)
Request:	Appeal of Administrative Decision
Case File Appealed:	ADMN23-0029 Class 1 Review Request
Decision Appealed:	Planning Director Determination of Non-Conformance
Owner:	Lumberjack LP (Contact: David Fry)
Location:	29400 SW Town Center Loop West. The property is specifically known as Tax Lot 220, Section 14D, Township 3 South, Range 1 West, Willamette Meridian, City of Wilsonville, Clackamas County, Oregon.
Comprehensive Plan Designation:	Town Center
Zone Map Classification:	Town Center (TC); Sub-districts: Commercial-Mixed Use (C-MU), Mixed Use (MU), Main Street District (MSD)
Staff Reviewers:	Cindy Luxhoj AICP, Associate Planner Miranda Bateschell, Planning Director

Staff Recommendation: **Affirm** the Planning Director Determination of Non-Conformance (ADMN23-0029).

Applicable Review Criteria:

DB24-0002 Appeal of Administrative Decision	
Development Code:	
Section 4.022	Appeal and Call-up Procedures
ADMN23-0029 Class 1 Review Request	
Development Code:	
Section 4.001	Definitions
Section 4.008	Application Procedures-In General
Section 4.009	Who May Initiate Application
Section 4.010	How to Apply
Section 4.011	How Applications are Processed
Section 4.014	Burden of Proof
Section 4.030	Jurisdiction and Powers of Planning Director and Community Development Director
Section 4.031	Authority of the Development Review Board
Section 4.034	Application Requirements
Subsection 4.035 (.05)	Complete Submittal Requirement
Section 4.102	Official Zoning Map
Section 4.110	Zones
Section 4.132	Town Center (TC) Zone
Section 4.189	Non-Conforming Uses
Section 4.190	Non-Conforming Structures
Section 4.191	Non-Conforming Site Conditions
Other Planning Documents:	
Previous Land Use Approvals	

Site Location:

Existing Development:

Procedural Background:

On October 30, 2023, the City received an application for Class 1 Review (ADMN23-0029) to confirm the status of the existing use and structure at 29400 SW Town Center Loop West (respectively, the "Class 1 Review Application" and the "Location"). The Location was previously occupied by Fry's Electronics, an electronics retail store and has been vacant since 2021. In their submittal, the Applicant requested a Class 1 Review to confirm the status of the existing non-conforming use at the Location.

On November 28, 2023, City staff contacted the applicant by email providing options for processing the application and requesting that they notify staff of their preference by December 8, 2023 (Exhibit A3). Applicant did not contact the City to withdraw the Class 1 Review Application, so the City deemed the application complete on November 29, 2023 and processed the request as a Class 1 Planning Director Determination per Subsection 4.030 (.01) A. 7. of the Development Code. On December 28, 2023, the City's Planning Director issued a Notice of Planning Director Determination, which provided the Planning Director's decision on the Class 1 Review Application that Fry's Electronics located on the subject property is a legally established Non-Conforming Use in a Non-Conforming Structure with Non-Conforming Site Conditions in the Town Center (TC) zone (Exhibit A4) (the "Planning Director's Decision").

The Appellant submitted a notice of appeal of the Planning Director's Decision on January 10, 2024 (the "Notice of Appeal").

The City is currently processing a separate but related Class 2 Review application per Subsection 4.030 (.01) B. 3, which was filed by the Applicant on December 15, 2023 (AR23-0031) (the "Class 2 Review Application").

Scope of Review:

This appeal is a *de novo* review of the Class 1 Review Application under Subsection 4.022 (.01) of the Wilsonville Development Code. "De novo," is Latin for "from the beginning;" the Development Review Board must review the Class 1 Review Application as if the action had not been previously heard and as if no decision had been rendered by the Planning Director. The Development Review Board should base its decision on the testimony, evidence and other material submitted by Applicant to the City in the Class 1 Review Application, as stated in Subsection 4.022 (.07) B. of the Wilsonville Development Code. Further, it shall, by order, affirm, reverse, or modify, in whole or part, a decision that is under review; in this proceeding the decision under review is the Planning Director's Decision. Subsection 4.022 (.08) A. of the Wilsonville Development Code.

For the purpose of applying the applicable 120-day time limit, a final decision on the Class 1 Application, including any appeals, must be rendered by March 28, 2024.

The Class 2 Review Application, and any issues that are subject to the Class 2 Review – such as the scope of what non-conforming use may be continued – are beyond the scope of this appeal proceeding.

Questions Presented:

On the cover page of the Class 1 Review Application, Applicant requests "non conforming use confirmation." See Exhibit B1. Reviewing this document with the portion of the Class 1 Review Application titled, "Applicant's Narrative and Exhibits Demonstrating Compliance with the Relevant Approval Criteria," City staff believe that Applicant requests an answer to the following questions:

1. Is the Location a non-conforming use?
2. Does the Location contain a non-conforming structure?
3. Does the Location contain non-conforming site conditions?

Considering that this is a *de novo* review of the Class 1 Review Application, the Development Review Board should address all three questions listed above. However, the Notice of Appeal does not challenge the Planning Director's Decision on the second and third questions listed above. Accordingly, City staff believe that there is no disagreement between the Applicant and the City with respect to these points. The main point of disagreement between the Applicant and the City is the Planning Director's Decision regarding the first question listed above.

This staff report addresses each question in order, outlining the legal standard that applies to the question, then highlighting facts that staff believe are relevant to the question, and finally, quoting the determination of the question as stated in the Planning Director's Decision.

Non-Conforming Use Inquiry:

1. Applicable Legal Standard

Before a use can be deemed "non-conforming" it must be impermissible under a current land use ordinance. Generally, a non-conforming use is understood to be "one that is contrary to a land use ordinance but that nonetheless is allowed to continue because the use lawfully existed prior to the enactment of the ordinance." *Morgan v. Jackson Cnty.*, 290 Or App 111, 114, (2018) (citing *Rogue Advocates v. Board of Comm. Of Jackson Cnty.*, 277 Or App 651, 654 (2016), *rev. dismissed*, 362 Or 269, 407 (2017)); *see* Subsection 4.001 (196.) of the Development Code (defining a non-conforming use as "a legally established use, which was established prior to the adoption of the zoning use requirements for the site with which it does not conform"). As is outlined in greater detail below, the Location's existing use would not be permitted by the City due to the Town Center Plan, which was adopted effective June 5, 2019.

"Nonconforming uses are not favored because, by definition, they detract from the effectiveness of a comprehensive zoning plan. . . . Accordingly, provisions for the continuation of nonconforming uses are strictly construed against continuation of the use, and, conversely, provisions for limiting nonconforming uses are liberally construed to prevent the continuation or expansion of nonconforming uses as much as possible." *Parks v. Bd. of Cnty. Comm'rs of Tillamook Cnty.*, 11 Or App 177, 196–97 (1972) (internal citation omitted).

Once a use is determined to be impermissible under a current land use ordinance, the question becomes: may the use continue because it is legally protectable as "non-conforming"? "The purpose of a local government proceeding to determine the existence of a nonconforming use is to determine what use existed on the date restrictive regulations were applied." *Nehoda v. Coos Cnty.*, 29 Or LUBA 251, 1995 WL 1773153, at *5 (1995).

Appellant has the burden of establishing that a non-conforming use exists by substantial evidence in the whole record. ORS 197.835(9)(a)(C); *see also* Subsection 4.014 of the Development Code (stating that the burden of proof is on the Appellant in an appeal); *ODOT v. City of Mosier*, 36 Or LUBA 666, 671 (1999) (citing *Lane Cnty. v. Bessett*, 46 Or App 319 (1980)); *Sabin v. Clackamas Cnty.*, 20 Or LUBA 23, 30 (1990) (citing *Webber v. Clackamas Cnty.*, 42 Or App 151, *rev. den.*, 288 Or 81 (1979)). In other words, the Development Review Board must be sure that its decision – in favor of or against the Applicant's position – is supported by substantial evidence.

The only portion of the City's code that is relevant to this inquiry is Subsection 4.189(.01)A., which states that "[a] non-conforming use may be continued subject to the requirements of this Section." The balance of this code Subsection is irrelevant to the questions before the Development Review Board.

The identity of the party that engaged in the use is irrelevant to this inquiry. *See City of Mosier* at 678 (stating that focus of the inquiry is the nonconforming activities themselves, not whether the entity performing the activity is a landowner, permittee, or licensee). In other words, it is not relevant that the party that engaged in the use at issue was Fry's Electronics – rather than Applicant.

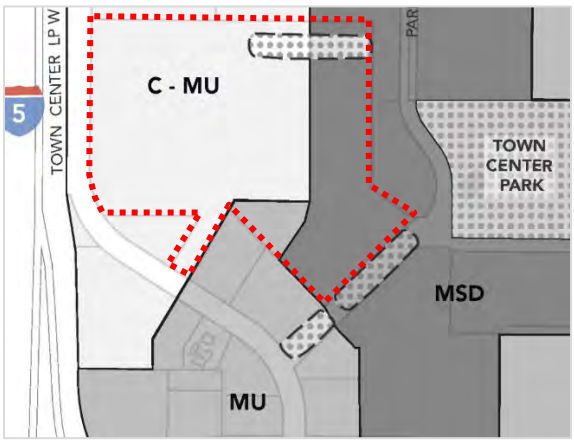
To summarize the legal standard articulated above, the Development Review Board should answer the following questions:

A. Is the current use of the Location impermissible under a current land use ordinance?
B. If the answer to the first question is "yes," what was the actual use of the Location as of the date the ordinance became effective (i.e., June 5, 2019)?

2. Relevant Facts

A. Is the current use of the Location impermissible under a current land use ordinance?

The Location is currently in the TC Zone, and more specifically, the following three (3) TC sub-districts, as shown in the map below: Commercial-Mixed Use (C-MU), Main Street District (MSD), and Mixed Use (MU).



The C-MU sub-district applies to roughly two-thirds of the Location. Permitted uses within this sub-district include retail sales and service of retail products, under a footprint of 30,000 square feet per use, office, personal and professional services, and single-user commercial or retail, such as a grocery store or retail establishment, that may exceed 30,000 square feet if located on more than one (1) story of a multi-story building, provided the footprint of the building does not exceed 30,000 square feet.

The existing structure at the Location has a footprint of 124,215 square feet in a single story with a partial mezzanine, which exceeds the footprint of 30,000 square feet per retail user and footprint limitation that is allowed in the TC Zone.

Applicant appears to concede that use of the Location is impermissible under the City's current Code provisions. *See* Exhibit B1, pages 4-5 and page 15 (referring to the use of the Location as non-conforming).

B. What was the actual use of the Location as of the date the ordinance became effective (i.e., June 5, 2019)?

As of June 5, 2019, the actual use of the Location was a Fry's Electronics store, an electronics retail store with a total interior square-footage of 159,400 square feet and a footprint of 124,215 square feet.

To the extent that the Development Review Board finds it is relevant to this review, the original approval for development of the subject property in 1991 (Case File Nos. 91PC43 and 91DR29) characterized the use as "a retail business with the anonymous name "Project Thunder" "a 159,400 square foot electronics-related retail store." *See* Exhibit B1, page 31.

3. Planning Director's Decision

The Planning Director's Decision addressed this question as follows (see page 3 of Exhibit A4):

"[T]he use is a legally established Non-Conforming Use in the TC zone."

Non-Conforming Structure Inquiry:

The Notice of Appeal does not challenge the Planning Director's Decision on this point. Accordingly, City staff believe that there is no disagreement between the Applicant and the City with respect to these point. City staff are providing a complete analysis for the Development Review Board because this is a *de novo* appeal.

1. Applicable Legal Standard

Appellant has the burden of establishing that a non-conforming structure exists by substantial evidence in the whole record. ORS 197.835(9)(a)(C); *see also* Subsection 4.014 of the Development Code (stating that the burden of proof is on the Appellant in an appeal). In other words, the Development Review Board must be sure that its decision – in favor of or against the Applicant's position – is supported by substantial evidence.

Subsection 4.001 (195.) defines a Non-Conforming Structure as "a legally established building or other structure that does not conform with the height, setback, area, lot coverage, or other standards for structures of the zone in which it is located." The definition further states that "a structure may be rendered non-conforming through a change in zoning requirements[.]" Subsection 4.190 (.01) further states that "[a] non-conforming structure that is in use may continue to be used." The balance of this code Subsection is irrelevant to the questions before the Development Review Board.

To summarize the legal standard articulated above, the Development Review Board should answer the following questions:

A. Is the Location's structure impermissible under a current land use ordinance?
B. If the answer to the first question is "yes," was the structure legally established and may it continue to be used?

2. Relevant Facts

A. Is the Location's structure impermissible under a current land use ordinance?

The structure as it currently exists does not conform to many of the design and development standards in Subsection 4.132 (.06), such as building placement and frontage requirements, location of parking in relation to the building, building setbacks, height and number of stories, façade design, and architectural materials and treatments. A waiver to these standards for the existing structure has not been applied for, nor has a waiver been granted.

B. Was the structure legally established and may it continue to be used?

The Planning Director has conceded that the structure was legally established and complied with the applicable ordinances and standards when it was approved in 1991, and therefore may continue to be used in its current state.

3. Planning Director's Decision

The Planning Director's Decision addressed this question as follows (see page 3 of Exhibit A4):

"[T]he structure is a legally established Non-Conforming Structure in the TC zone."

Non-Conforming Site Condition Inquiry:

The Notice of Appeal does not challenge the Planning Director's Decision on this point. Accordingly, City staff believe that there is no disagreement between the Applicant and the City with respect to these point. City staff are providing a complete analysis for the Development Review Board because this is a *de novo* appeal.

1. Applicable Legal Standard

Appellant has the burden of establishing that non-conforming site conditions exists by substantial evidence in the whole record. ORS 197.835(9)(a)(C); *see also* Subsection 4.014 of the Development Code (stating that the burden of proof is on the Appellant in an appeal). In other words, the Development Review Board must be sure that its decision – in favor of or against the Applicant's position – is supported by substantial evidence.

Non-Conforming Site Conditions are defined in Subsection 4.001 (194.) as "a legally established site that does not conform with the landscaping, parking or other site development standards of

the zone in which it is located." The definition further states that "a site may be rendered non-conforming to development standards through a change in zoning requirements[.]" Subsection 4.191 (.01) further states that "[a] property with non-conforming site conditions that is in use may continue to be used." The balance of this code Subsection is irrelevant to the questions before the Development Review Board.

To summarize the legal standard articulated above, the Development Review Board should answer the following questions:

A. Are the Location's site conditions impermissible under a current land use ordinance?
B. If the answer to the first question is "yes," were the site conditions legally established, and may the Location continue to be used?

2. Relevant Facts

A. Are the Location's site conditions impermissible under a current land use ordinance?

The existing site conditions do not comply with at least two City code sections:

- Subsection 4.132 (.04) A. requires that "all development [in the TC zone] will be consistent with the Street Network and Multi-modal Network". Existing site conditions do not conform with this requirement as they do not include the proposed streets, a multi-use path, and bicycle facilities shown in the Network within or immediately adjacent to the subject property.

- Subsection 4.132 (.05) A. requires that "all development will be consistent with the Open Space Network, shown in Figure 4". The existing site conditions do not include the proposed open spaces shown in the northeast corner and along the southeast boundary of the subject property and, therefore, are non-conforming with this requirement.

Other site improvement standards of the TC zone address such features as walkway connection to building entrances, parking location, landscape design, and plaza areas.

Existing site conditions do not comply with these applicable standards.

B. Were the site conditions legally established, and may the Location continue to be used?

The Planning Director has conceded that the site conditions at the Location were legally established and complied with the applicable ordinances and standards when it was approved in 1991, and therefore the Location may continue to be used.

3. Planning Director's Decision

The Planning Director's Decision addressed this question as follows (see page 3 of Exhibit A4):

"[T]he existing site conditions are legally established Non-Conforming Site Conditions in the TC zone."

Neighborhood and Public Comments:

No public comments were received during the public comment period for the appeal.

Conclusion:

Staff recommends that the Development Review Board **affirm** the Planning Director Determination of Non-Conformance (ADMN23-0029) determining that:

1. There is a legally established non-conforming use at the Location; specifically, that the protected use is "a 159,400 square-foot electronics-related retail store."
2. There is a legally established non-conforming structure at the Location.
3. There are legally established non-conforming site conditions at the Location.

Master Exhibit List:

Entry of the following exhibits into the public record by the Development Review Board confirms its consideration of the application as submitted. The list below includes exhibits for Planning Case File No. DB24-0002 and reflects the electronic record posted on the City's website and retained as part of the City's permanent electronic record. Any inconsistencies between printed or other electronic versions of the same exhibits are inadvertent and the version on the City's website and retained as part of the City's permanent electronic record shall be controlling for all purposes.

Planning Staff Materials

A1. Staff report and Findings (this document)
A2. Staff's Presentation Slides for Public Hearing (to be presented at Public Hearing)
A3. Staff Email Correspondence with Applicant regarding ADMN23-0029, Dated November 28, 2023
A4. ADMN23-0029 Class 1 Planning Director Determination of Non-Conformance, Issued December 28, 2023

Materials from Applicant

B1. **Applicant's Materials –** *Available Under Separate Cover*
Signed Application Form
Applicant's Notice of Appeal
B2. ***Applicant's First Open Record Submittal Dated March 4, 2024***
B3. ***Applicant's Final Arguments Dated March 11, 2024***

Public Comments

C1. ***Homebuilding Association of Greater Portland Comment Dated February 26, 2024***

Findings:

NOTE: Pursuant to Section 4.014 the burden of proving that the necessary findings of fact can be made for approval of any land use or development application rests with the applicant in the case.

General Information

Application Procedures - In General
Section 4.008

The application is being processed in accordance with the applicable general procedures of this Section.

Initiating Application
Section 4.009

The application for Class 1 Review (ADMN23-0029) has the signatures of David Fry of Lumberjack LP, owner, and Dan Zoldak of Lars Andersen & Associates, Inc., applicant and authorized representative.

Pre-Application Conference
Subsection 4.010 (.02)

A pre-application conference (PA22-0004) for the subject property was held on March 24, 2022.

Lien Payment before Approval
Subsection 4.011 (.02) B.

No applicable liens exist for the subject property. The application can thus move forward.

General Submission Requirements
Subsections 4.035 (.04) A. and 4.035 (.05)

The applicant has provided all of the applicable general submission requirements contained in this subsection. The following documents/testimony within Exhibit B1 are hereby deemed rejected and are excluded from the record as being beyond the scope of this Class I Review and/or not relevant to the Class I Review:

- Page 6 of 184: 3rd Paragraph – entire paragraph (parking calculations are irrelevant)
- Pages 18-19 of 184: Photographs (not Wilsonville, irrelevant)
- Page 19 of 184: 2nd Paragraph – 1st, 2nd, and 3rd sentences (continuing on page 20) (relates to Class II)
- Page 20 of 184: 1st Full paragraph – entire paragraph (relates to Class II)
- Page 20 of 184: Response to WDC 4.189.02 Change of Use – 2nd sentence (relates to Class II)
- Page 21 of 184: Response to WDC 4.190.05 Non-Conforming Structures – entire paragraph (relates to Class II)

- Page 184 of 184: Proposed site plan for Home Depot – entire page (irrelevant, relates to Class II)

Zoning - Generally
Section 4.110

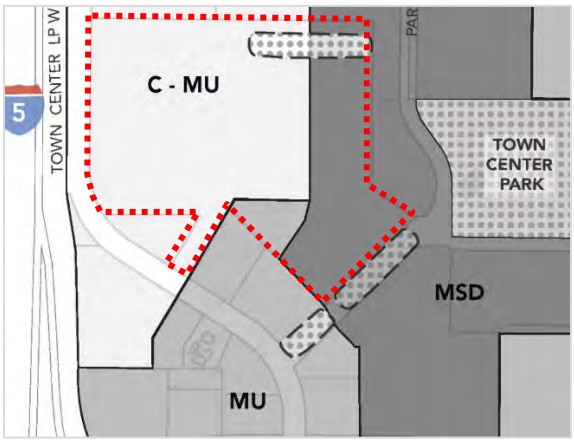
The subject property is located in the Town Center (TC) zone, in three (3) TC sub-districts: Commercial-Mixed Use (C-MU), Main Street District (MSD), and Mixed Use (MU). There are two (2) proposed open space areas within or adjacent to the property. Applicable zoning district and general development regulations, as appropriate, have been applied in accordance with this Section, as discussed in more detail in the Findings in this staff report.

Request: ADMN23-0029 Class 1 Review Request

Town Center (TC) Zone

Purpose of Town Center Zone
Subsection 4.132 (.01)

A1. The TC Zone in which the subject property is located is divided into four sub-districts that contain recommendations for building form and use to achieve the vision set forth in the Town Center Plan. The subject property is located in three (3) TC sub-districts, as shown in the map below: Commercial-Mixed Use (C-MU), Main Street District (MSD), and Mixed Use (MU). There are two (2) proposed open space areas within or adjacent to the property. All adjacent property is also zoned TC.



Allowed Uses in TC Zone
Subsection 4.132 (.02) F.

A2. With regard to use, per Subsection 4.132 (.02) F., "retail sales and service of retail products, under a footprint of 30,000 square feet per use" is an outright allowed use in the TC zone. Although the existing use on the subject property is a retail store and, thus, consistent with allowed use in the TC zone, its footprint of 124,215 square feet exceeds the 30,000 square feet per use limitation of the TC zone.

Permitted and Prohibited Uses in Specific Sub-districts in TC Zone
Subsection 4.132 (.03) A. 1.

A3. Per Subsection 4.132 (.03) A. 1., single-user commercial or retail (e.g. grocery store or retail establishment) that exceeds 30,000 square feet if located on more than one story of a multi-story building is an additional permitted use allowed in the C-MU sub-district. The current use on the subject property does not meet this additional permitted use standard due to its large format footprint of 124,215 square feet square feet in a single story, exceeding the maximum footprint of 30,000 square feet.

Consistency with Street Network and Multi-modal Network
Subsection 4.132 (.04) A.

A4. With regard to site conditions, per Subsection 4.132 (.04) A., "all development [in the TC zone] will be consistent with the Street Network and Multi-modal Network". The purpose of the network plans (Figures 2 and 3) is to support creation of a highly connected and walkable Town Center where there are options for travel. Several proposed streets, a multi-use path, and bicycle facilities are shown within or immediately adjacent to the subject property. Site conditions as they currently exist on the subject property do not comply with these applicable standards.

Consistency with Open Space Network
Subsection 4.132 (.05) A.

A5. Per Subsection 4.132 (.05) A., "all development [in the TC zone] will be consistent with the Open Space Network, shown in Figure 4". Proposed open spaces are shown in the northeast corner and along the southeast boundary of the subject property; however, these are not included in the existing development. Therefore, existing site conditions do not comply with these applicable standards

Consistency with Design and Development Standards of TC Zone
Subsection 4.132 (.06)

A6. With regard to structures and site design, per Subsection 4.132 (.06), all developments must follow the design and development standards unless a waiver is granted by the Development Review Board per Subsection 4.132 (.06) D. The existing building, as it currently exists on the subject property, does not conform to many of the design and development standards in Subsection 4.132 (.06), such as building placement and frontage requirements, building setbacks, height and number of stories, façade design, and architectural materials and treatments. A waiver to these standards for the existing structure has not been applied for, nor has a waiver been granted. Therefore, the existing structure does not comply with these applicable standards.

Other Development Standards

Non-Conforming Uses
Subsection 4.001 (196.) and 4.189

A7. A Non-Conforming Use is defined as "a legally established use, which was established prior to the adoption of the zoning use requirements for the site with which it does not conform" (Subsection 4.001 (196.)). As noted elsewhere in this report, the existing use at the Location has a footprint of 124,215 square feet in a single story with a partial mezzanine, which exceeds the footprint of 30,000 square feet per retail user and footprint limitation that is allowed in the TC Zone. The use is a legally established Non-Conforming Use in the TC zone.

Non-Conforming Structures
Subsection 4.001 (195.) and Section 4.190

A8. Subsection 4.001 (195.) defines a Non-Conforming Structure as "a legally established building or other structure that does not conform with the height, setback, area, lot coverage, or other standards for structures of the zone in which it is located". The definition further states that "a structure may be rendered non-conforming through a change in zoning requirements or through the acquisition of some portion of the property by a public agency." As noted elsewhere in this report, the structure as it currently exists does not conform to many of the design and development standards in Subsection 4.132 (.06), such as building placement and frontage requirements, location of parking in relation to the building, building setbacks, height and number of stories, façade design, and architectural materials and treatments. The structure is a legally established Non-Conforming Structure in the TC zone.

Non-Conforming Site Conditions
Subsection 4.001 (194.) and Section 4.191

A9. Non-Conforming Site Conditions are defined in Subsection 4.001 (194.) as "a legally established site that does not conform with the landscaping, parking or other site development standards of the zone in which it is located". The definition further states that "a site may be rendered non-conforming to development standards through a change in zoning requirements or through the acquisition of some portion of the property by a public agency." As noted elsewhere in this report, existing site conditions do not conform TC zone requirements including planned streets, a multi-use path, bicycle facilities, open spaces, parking location, landscape design, and plaza areas. The existing site conditions are legally established Non-Conforming Site Conditions in the TC zone.

VIA E-MAIL

BEFORE THE WILSONVILLE CITY COUNCIL

An APPEAL of the Development Review Board's Decision and Resolution No. 429 Affirming and modifying the Planning Director Determination in Case File ADMN23-0029 and denying the Appeal in Case File DB24-0002.	APPLICANT'S NOTICE OF APPEAL

This is a notice of appeal to the Wilsonville City Council ("**City Council**") for Development Review Board ("**DRB**") Decision and Resolution No. 429 (the "**Decision**") affirming – but also modifying – Planning Director Determination ADMN23-0029 and denying the Applicant's Appeal of ADMN23-0029 at 29400 SW Town Center Loop West (the "**subject property**"). *See attached*, Case File Nos. DB24-0002/APPL24-0001 ("**Exhibit A**"). This Appeal is timely submitted, in writing, prior to the March 29, 2024 deadline. *See* Wilsonville Development Code ("**WDC**") 4.022.09.

1. STANDING AND PROCEDURAL BACKGROUND

Kenneth Katzaroff and Keenan Ordon-Bakalian are legal counsel for the Applicant, and as such, are the Applicant's authorized agents. As the project proponent, the Applicant prepared and filed the Class I application upon which the Planning Director's Determination was issued. *See attached*, **Exhibit B**.[1] On January 10, 2024, the Applicant timely appealed the Planning Director's Determination. Exhibit A, at 3. On February 26, 2024, DRB Panel B held a public hearing to consider the Applicant's appeal of the Planning Director's Decision. *Id.*, at 3-4. On March 14, 2024, the DRB deliberated to the Decision that is subject to this Appeal. Exhibit A. The City of Wilsonville (the "**City**") issued its Notice of Decision on March 15, 2024. *Id.*

As the applicant for the Class I application upon which the Decision is based on – and the appellant for DB24-0002/APPL24-0001 – the Applicant has standing to file this appeal.

2. FILING REQUIREMENTS

A. Name and Address of Appellant.

Lars Andersen & Associates, Inc.
c/o Kenneth Katzaroff & Keenan Ordon-Bakalian
1211 SW 5th Ave., Suite 1900
Portland, OR 97204
KKatzaroff@SCHWABE.com
Kordon-bakalian@schwabe.com

[1] The Planning Director Determination for ADMN23-0029.

B. Reference to the Subject Development and Case Number.

The decision being appealed is DRB Decision and Resolution No. 429 finding that "there is a legally established non-conforming use at the Location; specifically, that the protected use is 'a 159,400 square-foot electronics-related retail store.'" Exhibit A, at 4. The Decision also modifies the Planning Director's Determination that "Fry's Electronics, on the subject property at 29400 SW Town Center Loop West, is a legally established Non-Conforming Use." Exhibit B, at 3. In short, the Decision has replaced the Planning Director's finding that the lawfully established non-conforming use is a "Fry's Electronics" with the finding that the lawfully established non-conforming use is "a 159,400 square-foot electronics-related retail store." Exhibit A, at 4 (emphasis added). Both the Decision and the Planning Director's Determination are in error, as they are unsupported by the City's past decisions or applicable law.

Moreover, the Applicant also specifically challenges several actions taken by the DRB during the March 14, 2024 deliberation where the Decision was adopted:

1. The DRB's motion to reject and exclude from the record portions of the documents and testimony that the Applicant has submitted and offered in support of both the Class I application, as well as the Applicant's appeal of the Planning Director's Determination (APPL24-0001); and
2. The DRB's motion to adopt the Staff Report for APPL24-0001 as part of the Decision.

C. Statement of the Basis for Appeal.

The Applicant hereby files this appeal to challenge the Decision's ultimate finding that the legally established non-conforming use at the subject property is "a 159,400 square-foot electronics-related retail store" (Exhibit A, at 4), as well as the aforementioned motions made by the DRB during the March 14 deliberation to reject and exclude from the record portions of the Applicant's submittals and testimony, as well as the DRB's adoption of the Staff Report for APPL24-0001. *See supra*, Section 2(B). The Applicant objects to the DRB's efforts to reject and exclude any of the Applicant's evidence and testimony from the record for APPL24-0001 and hereby re-incorporates by reference all evidence and argument made within the Applicant's Class I Application Packet, March 4, 2024 Open Record Submittal and the Applicant's Final Legal Argument, submitted March 11, 2024. **Exhibit C**.

i. Background.

The Applicant intends to operate a Home Depot within the existing structure at the subject property. To this end, the Applicant sought a Class I director's determination that the commercial retail use that was established as a result of the 1991 development approval (Case File Nos. 91PC43 and 91DR29, hereinafter the "**1991 Decision**" and attached hereto as **Exhibit D**) remained a lawfully established non-conforming use at the subject property. Upon receipt of the Applicant's Class I application, the City attempted to bifurcate Applicant's request to

confirm the legality of a non-conforming use at the subject property from Applicant's request for a determination to establish the scope of use at the property. Exhibit B, Enclosure.[2]

The City required the Applicant to submit two applications – a Class I application to confirm the legality of the non-conforming use, and a Class II application to establish the *actual* nature and scope of use at the subject property. The Applicant's Class II application was submitted to the City on December 15, 2023. On March 19, 2024, the Applicant's Class II request was referred to the DRB for a public hearing rather than a decision being rendered by the Planning Director. *See* AR23-0031; DB24-0003.

Although the Applicant's Class II application remains under review, it is the Applicant's belief – based on the findings contained within the City's Decision for the Class I application – that the City has prejudged Applicant's Class II application for a use determination. Specifically, within the Decision subject to this appeal, the DRB determined that the lawfully established non-conforming use at the subject property is "a 159,400 square-foot electronics-related retail store." Exhibit A, at 4. The Planning Director similarly found that the lawfully established non-conforming use at the subject property is a "Fry's Electronics." Exhibit B, at 3. Therefore, the City has already determined the nature and scope of the non-conforming use at the subject property – something the City initially said it could only do within the Class II application. Exhibit B, Enclosure.

ii. The Decision erred in finding that the lawfully established non-conforming use at the subject property is "a 159,400 square-foot electronics-related retail store."

The lawfully established non-conforming use at the subject property is neither a "Fry's Electronics" nor "a 159,400 square-foot electronics-related retail store" as the Decision found. Instead, the lawfully established non-conforming use at the subject property is a *commercial retail use*. The 1991 Decision is the controlling authority for determining the nature and extent of the non-conforming commercial retail use at the property because the 1991 Decision lawfully established the non-conforming use in the first instance. "The purpose of a local government proceeding to determine the existence of a nonconforming use is to determine what use existed on the date restrictive regulations were applied." *Nehoda v. Coos Cnty*., 29 Or LUBA 251, 1995 WL 1773153, at *5 (1995). A non-conforming use is understood to be "one that is contrary to a land use ordinance but that nonetheless is allowed to continue because the use lawfully existed

[2] "You also state, however, that The Home Depot, Inc., intends to operate a store within the existing structure that was previously occupied by Fry's and, therefore, seeks confirmation from the City that a warehouse retail store can continue operating at the property. You go on to assert that the two stores are interchangeable with respect to use as warehouse retailers and indicate that you are requesting confirmation from the City that this is, indeed, the case. This second request is for written interpretation of the Development Code and requires Class 2 review per Section 4.030 (.01) B. 3.. As such, this determination will not be part of the Class 1 review or decision." Exhibit B, Enclosure, at 1.

prior to the enactment of the ordinance." *Morgan v. Jackson Cnty.*, 290 Or App 111, 114 (2018) (citing *Rogue Advocates v. Board of Comm. Of Jackson Cnty.*, 277 Or App 651, 654 (2016), *rev. dismissed*, 362 Or 269, 407 (2017)); *see* WDC 4.001.196 (defining a non-conforming use as "a legally established use, which was established prior to the adoption of the zoning use requirements for the site with which it does not conform").

The commercial retail use at subject property is a lawfully established non-conforming use pursuant to WDC 4.001.196 and *Morgan v. Jackson Cnty.*, 290 Or App 111 (2018). As explained in the Applicant's Class I application materials and throughout the appeal proceeding before the DRB, the City approved a commercial retail use at the subject property on December 9, 1991 with the adoption of Planning Commission Resolution No. 91PC43 (the 1991 Decision). Exhibit D, at 3.[3] Specifically, the 1991 Decision approved a 159,400 retail commercial building and associated commercial retail activities on the 14.75 acre subject property. Exhibit D, at 9. At the time, the subject property's Planned Development Commercial ("**PDC**") zoning allowed commercial retail uses of the nature and extent that was approved by the 1991 Decision. Exhibit D, at 9.

The commercial retail use approved by the 1991 Decision was rendered non-conforming on June 5, 2019, when the City adopted its Town Center Plan and rezoned the property Town Center ("**TC**"). This is because the property's present TC zoning prohibits commercial retail uses that exceed 30,000 square feet, unless the commercial retail use is located on more than one story of a multi-story building, and the 1991 Decision approved a 159,400 retail commercial building. WDC 4.132.03(A)(1); Exhibit D, at 9. Although the City's application of the TC zone to the property rendered the ongoing commercial retail use non-conforming, the commercial retail use approved in the 1991 Decision is allowed to continue pursuant to WDC 4.001.196 and *Morgan v. Jackson Cnty.*, 290 Or App 111 (2018).

The DRB's determination that the non-conforming use allowed to continue at the subject property is "a 159,400 square-foot electronics-related retail store" is contrary to the express language of the 1991 Decision, which is the controlling substantial evidence for the City's non-conforming use analysis. Furthermore, the Applicant has reviewed the zoning code in place at the time of the 1991 Decision, and nothing within the zoning code further classified uses or limited commercial retail uses to specific subsets, such as an electronic store or commercial hardware store. The Applicant is also not aware of any state law that makes such a distinction; nor has the City pointed to any state law or code provision applicable at the time. Finally, the both the Planning Director and DRB have abjectly failed to so much as even *address* the 1991 Decision as it relates to the lawfully established commercial retail nonconforming use at the subject property.

[3] The Planning Commission's adopting resolution includes findings of fact and conditions of approval, and incorporates all application materials, staff reports, and associated planning exhibits.

As such, the Decision must be reversed or modified to reject the limitation of the use approved by the 1991 Decision to "a 159,400 square-foot electronics-related retail store." *See* Exhibit A, at 4.

iii. The Decision effects a taking on the Applicant.

As explained in the Applicant's submittals before the DRB and within the record for this Appeal, both the Planning Director's Determination and the Decision effect a compensable regulatory "taking" under Article I, section 18, of the Oregon Constitution, and the Fifth and Fourteenth Amendments to the United States Constitution. The Decision's overly-restrictive "use" determination is unsupported by the City's own code and Oregon law. If left to stand, the Decision will deny the Applicant (or any other party) any economic use of the lawfully established non-conforming use at the property.

The City Council must reverse or modify the Decision's finding that the lawfully established non-conforming use at the subject property is "a 159,400 square-foot electronics-related retail store."

iv. The DRB's rejection and exclusion of portions of the Applicant's written and oral testimony from the record was improper and violates ORS 197.797(9).

The Applicant also appeals the DRB's attempt to exclude from the record certain documents and testimony submitted by the Applicant as part of its Class I application. *See* Exhibit A, at 17 (Staff Report for APPL24-0001, Exhibit A1, at 13); *see also*, Development Review Board Panel B – Special Meeting Verbatim Minutes Excerpt (**Exhibit E**).

At the March 14, 2024 deliberation for APPL24-0001, DRB Board Member Alice Galloway made the following motion, which was adopted by the DRB:

> "Madam Chair, I would like to make the following additional finding. The following evidence submitted is not relevant to the DRB appeal of ADMN23-0029:
>
> Any oral testimony or written material regarding the 1991 Planning Department approvals, including Slides Nos. 3 and 5 of Applicant's PowerPoint presentation, because this information is not relevant to a determination of the actual use of the subject property at the time the more restrictive land use regulation was enacted in July 2019.
>
> B. Any oral testimony or written material regarding "The Home Depot" or any potential future user or continuation of use or a change of use for the subject property because this information is not relevant to a determination of the actual use of the subject property at the time the more restrictive land use regulation was enacted in July 2019.

> I move to reject from the record the following evidence, anywhere in the record it appears:
>
> 1. Oral testimony or written evidence that refers to "The Home Depot" or any potential future user or continuation of use or a change of use for the subject property, including the image of Home Depot on Slide No. 1 of Applicant's PowerPoint presentation and Slide Nos. 9 through 17 of the Applicant's PowerPoint presentation and including the materials attached as Exhibits A and B to Applicant's written materials submitted on March 4th, 2024.
>
> 2. The documents and the testimony submitted by the Applicant that pertain to the Class 2 application under review as outlined in Pages 13 and 14 of the Staff report, anywhere in the record that they appear.
>
> 3. Any material from the 1991 Planning Department approvals related to calculation of parking requirements, including Slide No. 4 of the Applicant's PowerPoint presentation."

Exhibit E, at 2.

Critically, Board Member Galloway's motion *is not contained in the written decision for APPL24-0001*. Therefore, the Applicant does not believe that the DRB actually rejected any of the Applicant's argument and evidence aside from those documents and testimony explicitly listed on Pages 13 and 14 of the Staff Report that was incorporated within the Decision. *See* Exhibit A, at 17-18.

Regardless, the documents and testimony submitted by the Applicant as part of its application are within the record before the DRB on appeal. The documents and testimony that the DRB moved to exclude constitute "argument" and "evidence" as defined in ORS 197.797(9):

> (a) "Argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. "Argument" does not include facts.
>
> (b) "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision. [Formerly 197.763]

The DRB cannot exclude certain documents and testimony within the Applicant's Class I application because the documents and testimony that the DRB excluded are "argument" and "evidence" that the Applicant believed – and continues to believe – to be relevant to the satisfaction of the applicable approval criteria for the subject application, as well as the Applicant's appeals of both the Planning Director Determination and the Decision currently on appeal. ORS 197.797(9). In addition, the City's attempt to omit certain documents and testimony that were submitted by the Applicant as part of its Class I application runs afoul ORS 197.797(4)(a)'s requirement that "[a]documents or evidence relied upon by the applicant shall be submitted to the local government and be made available to the public." ORS 197.797 prohibits

the DRB from excluding portions of the Applicant's Class I application materials from the record. Therefore, the Applicant reincorporates all argument and evidence submitted in support of its Class I application. *See attached,* Exhibit C.

Furthermore, the Applicant must respectfully object to the DRB's premature motion to exclude certain documents and testimony from the record that were offered by the Appellant during the February 26, 2024 public hearing. The Applicant takes the position that all of the argument and evidence that the Applicant offered during the February 26 hearing was relevant to the DRB's decision on the appeal, and must be held within the record pursuant to ORS 197.797(9).

3. REQUESTED RELIEF

The Applicant requests that the City Council impose the relief requested by the Applicant in the above argument. Specifically, the Applicant respectfully requests that the City Council find that the lawfully established non-conforming use at the subject property is the use approved in the 1991 Decision, a 159,400 square foot ("SF") retail, office, warehouse, manufacturing, and service store (a commercial retail use); not a 159,400 square-foot electronics-related retail store and to not provide additional restriction as to the type of commercial retail because no such limitation existed in the 1991 zoning code or the 1991 Decision itself.

The Applicant reserves the right to submit additional written testimony prior to the public hearing date that will be set for this Appeal, as well as within any open record period.

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SCOTT A. MOMMER, PE, QSD
PRESIDENT

DANIEL J. ZOLDAK, PE, PLS
CASp, LEED AP, QSD/P
VICE PRESIDENT

March 4, 2024

Development Review Board Panel B
City of Wilsonville
c/o Cindy Luxhoj, Associate Planner
luxhoj@ci.wilsonville.or.us
29799 Town Center Loop E
Wilsonville, OR 97070
Re: Home Depot, Wilsonville, OR – ADMN23-0029 (DB24-0002/APPL24-0001)

The purpose of this letter is to provide an overview of the reduced scale of development impacts that will be associated with Home Depot's proposed operations at 29400 Town Center Loop W. Wilsonville, OR 97070 (the "subject property").

Consistent with Planning Commission Resolution No. 91PC43 (the "1991 Decision"), Home Depot intends to operate at the subject property. Operations will include reoccupying the existing commercial retail building on the property. The structure currently has an existing 166,494 SF associated with it. Of this existing square footage, Home Depot intends to demolish portions of the existing mezzanine which will result in a reduced commercial square foot for a total proposed square footage of 129,069 square foot.

Home Depot operates stores across the United States, and typical operations require approximately 400 parking stalls. There are currently 838 parking stalls at the subject property. In the future, should other development be interested in developing on the property, Home Depot will be able to reduce the current count by over 400 stalls allowing for this future development while still retaining sufficient parking capacity for Home Depot operations.

Finally, as detailed in the Transportation Northwest ("TENW") Trip Generation Memorandum that is submitted under separate cover, Home Depot's operations at the subject property will result in a reduction of average daily trips to and from the property, as well as a potential reduction in peak hour trips.

Should you have any questions or comments, please feel free to contact me at (559) 276-2790 Ext. 117

Sincerely,
LARS ANDERSEN & ASSOCIATES, INC.

Daniel J. Zoldak PE, PLS, CASp, LEED AP, QSD/P
Vice President

103058\270719\KOB\45201063.1

MEMORANDUM

DATE: March 4, 2024

TO: City of Wilsonville

FROM: Amy Wasserman / Chris Forster, P.E.
TENW

SUBJECT: Trip Generation Memorandum
Home Depot Wilsonville
TENW Project No. 2023-264

This memorandum summarizes the preliminary traffic information for the proposed Home Depot Wilsonville project located at 29400 Town Center Loop West in Wilsonville, Oregon. This memo includes a project description and project trip generation estimate. Upon your review of this information, we would like to confirm if any additional traffic analysis is required for this project.

Project Description

The proposed Home Depot Wilsonville project is located at 29400 Town Center Loop West in Wilsonville, Oregon as illustrated in the Attachment A site vicinity map. The proposed project would consist of up to 129,100 square feet (SF) of building area for a home improvement superstore. The Home Depot will replace an existing building consisting of 166,495 SF that was previously occupied by an electronics superstore (Fry's). Buildout and occupancy of the Home Depot project is expected in 2025.

Vehicular access to the site is proposed to remain the same as existing with one (1) full access driveway on Park Place, and three (3) access driveways on Town Center Loop West; two (2) of which are full access and one of which is right-in right-out only. A preliminary site plan is shown in Attachment B.

Trip Generation

Trip generation estimates for the proposed project were based on methodology documented in the Institute of Transportation Engineers (ITE) *Trip Generation* Manual, 11th Edition for Code 862 (Home Improvement Superstore) and Code 863 (Electronic Superstore). Adjustments to the trip generation estimates were made to account for pass-by trips.

Pass-by trips are trips that are made by vehicles that are already on the adjacent streets and make intermediate stops at commercial uses on route to a primary destination (i.e., on the way from work to home). Pass-by trips were based on studies included in the appendices of the ITE *Trip Generation Manual*, 11th Edition, 2021.

The resulting net new weekday daily, AM peak hour, and PM peak hour trip generation for the proposed Home Depot project is summarized in Table 1. The detailed trip generation estimates are included in Attachment C.

Table 1
Project Trip Generation Summary

	Net New Trips Generated		
Weekday Time Period	In	Out	Total
Daily	-900	-800	-1,799
AM Peak Hour	22	34	56
PM Peak Hour	-129	-124	-253

Next Steps

Upon your review of this information, we would like to confirm if any additional traffic analysis is required for this project.

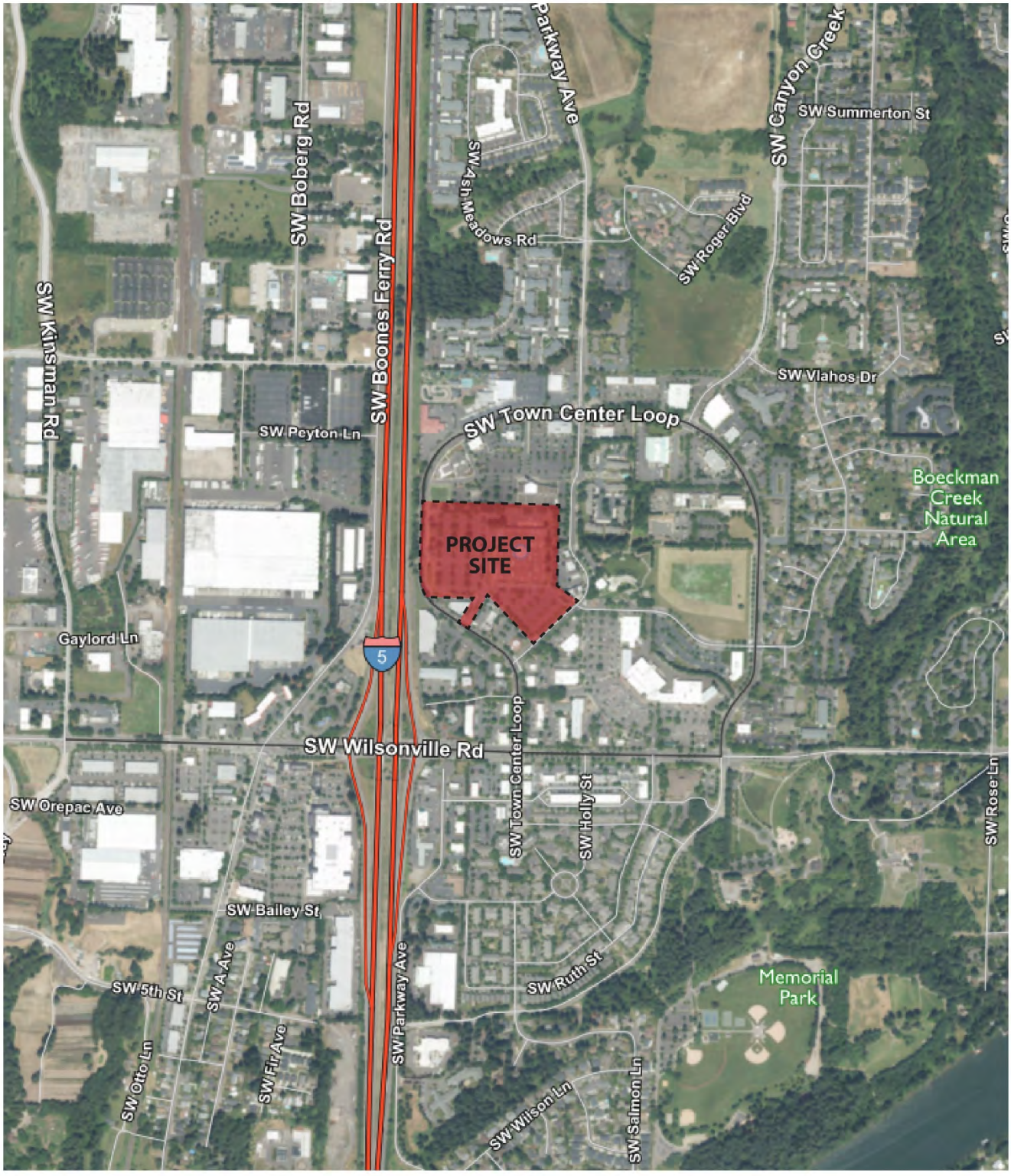
If you have any questions regarding the information presented in this memo, please contact me at (425) 466-7072 or amy@tenw.com.

cc: Dan Zoldak, Lars Andersen & Associates

Attachments: A. Project Site Vicinity
B. Preliminary Site Plan
C. Trip Generation Calculations

ATTACHMENT A

Project Site Vicinity

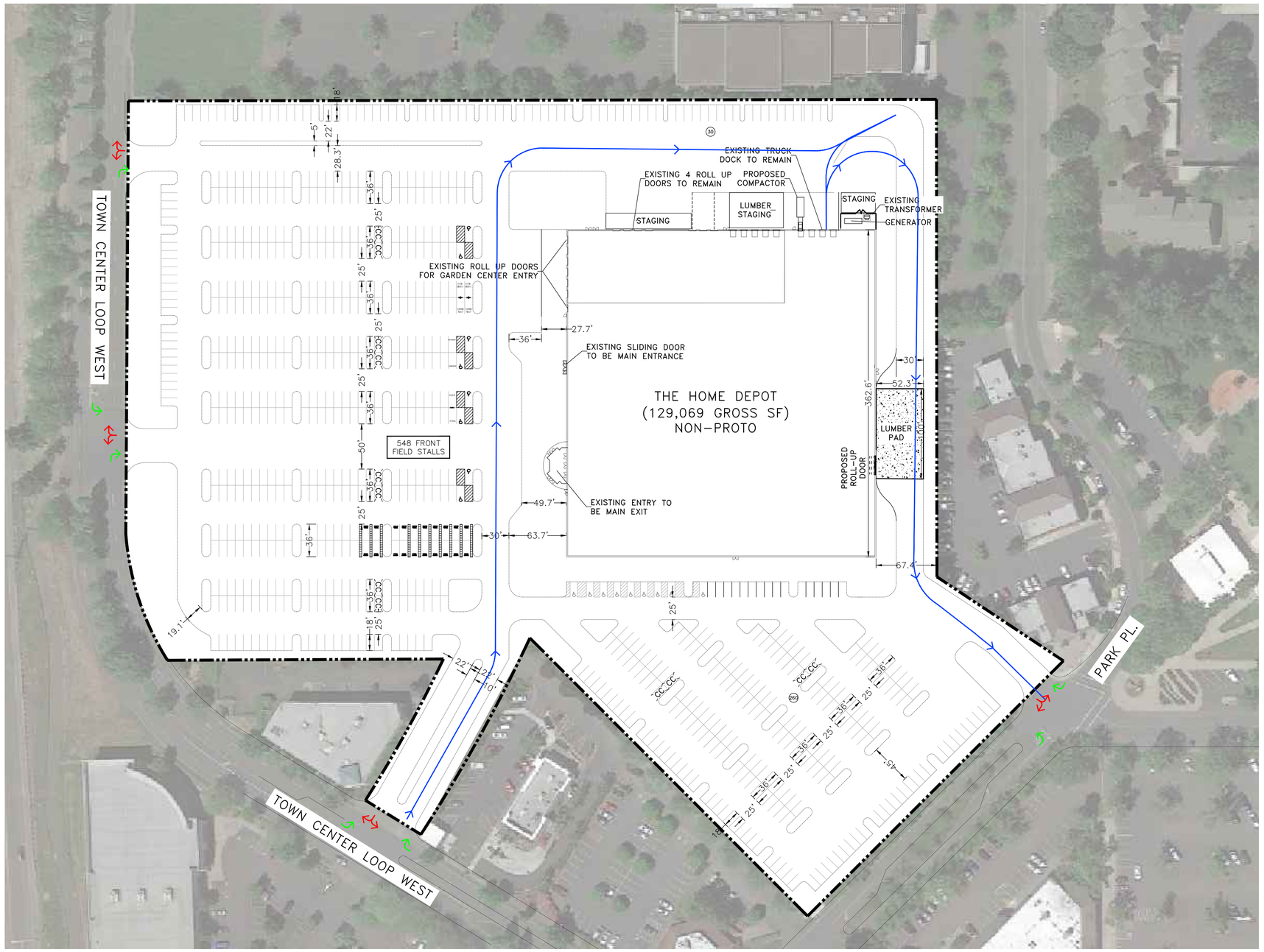


N
NOT TO SCALE

Attachment A: Project Site Vicinity

ATTACHMENT B

Site Plan



NOTES
1. PLAN BOUNDARY IS BASED OFF AVAILABLE APN MAPS; AN ALTA SHOULD BE COMPLETED FOR ACCURACY.

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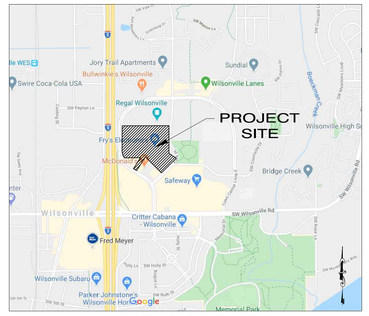
LA PROJECT NO. 20042.00



LOCATION MAP (NTS)

SITE AREA

THE HOME DEPOT PARCEL	15.01 AC	653,836 SF

BUILDING AREA

THE HOME DEPOT	125,176 SF
MEZZANINE	3,893 SF
SUBTOTAL	129,069 SF
TOTAL BUILDING AREA	129,069 SF

PARKING REQUIRED

THE HOME DEPOT	4.1 / 1,000 SF	529 STALLS
TOTAL PARKING REQUIRED		529 STALLS

PARKING PROVIDED

FRONT FIELD	548 STALLS
SIDE FIELD / REAR	290 STALLS
TOTAL PARKING PROVIDED	838 STALLS

INCLUDED IN PARKING PROVIDED

ACCESSIBLE STALLS (17 REQ. @ 2%)	17 STALLS

NOT INCLUDED IN PARKING PROVIDED

CART CORRALS	12 STALLS
ACCESSORY PARKING NOT INCLUDED	12 STALLS
TOTAL THD PARKING PROVIDED	838 STALLS

ZONING CLASSIFICATION

JURISDICTION	CITY OF WILSONVILLE
ZONING CLASSIFICATION	PLANNED DEVELOPMENT COMMERCIAL TOWN CENTER (PDC-TC)
THD USE PERMITTED BY RIGHT	YES

THE HOME DEPOT WILSONVILLE, OR

29400 TOWN CENTER LOOP W
WILSONVILLE, OR 97070

DRAWING ISSUE DATE 03.04.2024
HD SITE SELECTION NUMBER SS-02804.2001

SCALE: 1"=50'-0"
25 0 25 50 100 150 200

OR - SITE PLAN 10

ATTACHMENT C

Trip Generation Calculations

Home Depot Wilsonville
Weekday Daily Trip Generation Summary

	Units[1]	ITE LUC[2]	Directional Distribution[2] In	Directional Distribution[2] Out	Trip Rate or Equation[2]	Trips Generated In	Trips Generated Out	Trips Generated Total
WEEKDAY DAILY								
Proposed:								
Home Improvement Superstore	129,100 SF	862	50%	50%	30.74	1,985	1,984	3,969
Passby Trips[3]	*42%*					*-834*	*-833*	*-1,667*
					Subtotal (less passby) =	1,151	1,151	2,302
Less Existing:								
Electronics Superstore	166,495 SF	863	50%	50%	41.05	3,418	3,417	6,835
Passby Trips[3]	*40%*					*-1,367*	*-1,367*	*-2,734*
					Subtotal (less passby) =	2,051	2,050	4,101
					Net New Daily Trips =	**-900**	**-899**	**-1,799**

Notes:

[1] SF = Square Feet.

[2] Institute of Transportation Engineers, Trip Generation Manual, 11th Edition.

[3] Passby percent based on Institute of Transportation Engineers, Trip Generation Manual, 11th Edition. The pass-by rate was assumed to be equal to the PM peak hour rate for LUC 862 and 863.

Home Depot Wilsonville
Weekday AM Peak Hour Trip Generation Summary

	Units[1]	ITE LUC[2]	Directional Distribution[2] In	Directional Distribution[2] Out	Trip Rate or Equation[2]	Trips Generated In	Trips Generated Out	Trips Generated Total
WEEKDAY AM PEAK HOUR								
Proposed:								
Home Improvement Superstore	129,100 SF	862	57%	43%	1.51	111	84	195
Passby Trips[3]	*42%*					*-47*	*-35*	*-82*
					Subtotal (less passby) =	64	49	113
Less Existing:								
Electronics Superstore	166,495 SF	863	73%	27%	0.34	42	15	57
Passby Trips[3]	*0%*					*0*	*0*	*0*
					Subtotal (less passby) =	42	15	57
					Net New AM Peak Hour Trips =	**22**	**34**	**56**

Notes:

[1] SF = Square Feet.

[2] Institute of Transportation Engineers, Trip Generation Manual, 11th Edition.

[3] Passby percent based on Institute of Transportation Engineers, Trip Generation Manual, 11th Edition. The pass-by rate was assumed to be equal to the PM peak hour rate for LUC 862 and was assumed to be 0% for LUC 863.

Home Depot Wilsonville
Weekday PM Peak Hour Trip Generation Summary

	Units[1]	ITE LUC[2]	Directional Distribution[2] In	Directional Distribution[2] Out	Trip Rate or Equation[2]	Trips Generated In	Trips Generated Out	Trips Generated Total
WEEKDAY PM PEAK HOUR								
Proposed:								
Home Improvement Superstore	129,100 SF	862	49%	51%	2.29	145	151	296
Passby Trips[3]	*42%*					*-61*	*-63*	*-124*
					Subtotal (less passby) =	84	88	172
Less Existing:								
Electronics Superstore	166,495 SF	863	50%	50%	4.25	354	354	708
Passby Trips[3]	*40%*					*-141*	*-142*	*-283*
					Subtotal (less passby) =	213	212	425
					Net New PM Peak Hour Trips =	**-129**	**-124**	**-253**

Notes:

[1] SF = Square Feet.

[2] Institute of Transportation Engineers, Trip Generation Manual, 11th Edition.

[3] Passby percent based on Institute of Transportation Engineers, Trip Generation Manual, 11th Edition.